



OPEN SOCIETY INSTITUTE  
EU MONITORING AND ADVOCACY PROGRAM

NETWORK MEDIA PROGRAM

# Television across Europe:

## Follow-up Reports 2008

BULGARIA

*Published by*

OPEN SOCIETY INSTITUTE

Október 6. u. 12.  
H-1051 Budapest  
Hungary

400 West 59th Street  
New York, NY 10019  
USA

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<[www.eumap.org](http://www.eumap.org)>

*Design & Layout by Q.E.D. Publishing*

## Acknowledgements

This country report was prepared as part of a series of monitoring reports titled “Television across Europe: Follow-up Reports 2008”. The series presents an update of the situation in nine of the original twenty countries covered in the 2005 reports series “Television across Europe: regulation, policy and independence”. The countries included in the 2008 series are: Albania, Bulgaria, Czech Republic, Italy, Lithuania, Macedonia, Poland, Romania and Slovakia.

Both series of reports have been prepared by the EU Monitoring and Advocacy Program (EUMAP) of the Open Society Institute and by the Network Media Program (NMP) of the Open Society Foundation, in cooperation with local experts. EUMAP and NMP would like to acknowledge the primary role of the following individuals in researching and drafting this country report.

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## Preface

*Television across Europe: Follow-up Reports 2008* is a monitoring project of EUMAP (EU Monitoring and Advocacy Program) at the Open Society Institute and of the Network Media Program at the Open Society Foundation. The project updates and builds on the outcome of the original *Television across Europe: regulation, policy and independence* monitoring reports released in October 2005, which covered 20 countries.

The 2005 reports concluded that the pivotal role of television in supporting democracy in Europe was under threat. It showed that public service broadcasters were being forced to compromise quality to compete with commercial channels, and that many of them depended on Governments or political parties. Moreover, ever-larger concentrations were developing in the commercial sector, often with clear political affiliations. These developments jeopardised broadcasting pluralism and diversity, with the new democracies of Central and Eastern Europe most acutely at risk.

The original *Television across Europe* project and its linked advocacy activities ended in June 2006. Since then, the Network Media Program has funded a number of follow-up projects, carried out by partner organisations in selected countries, aimed at promoting and building on the reports' findings and conclusions.

There have been significant developments in many of the countries covered in the 2005 reports, with respect to many of the areas monitored. Launched in London in March 2008, *Television across Europe: Follow-up Reports 2008* monitors these developments in 9 of the 20 countries that were originally monitored: Albania; Bulgaria; the Czech Republic; Italy; Lithuania; Poland; the Republic of Macedonia; Romania and Slovakia. These countries were selected because of the continuing significant changes in their broadcasting landscape.

*Television across Europe: Follow-up Reports 2008* maps the main changes in broadcasting legislation, policy and market over the past three years and assesses the progress – or lack of – that these countries have made in improving the independence and pluralism of their broadcasting.

As with the original 2005 reports, these updates are addressed to policy makers, civil society activists and academics alike, as a contribution to bringing about change where it is needed.

The 9 country reports were drafted by local experts with the support of partner NGOs. All country reports are based on the same methodology, thus allowing for a comparative analysis. OSI and OSF assume final responsibility for their content.

## **About EUMAP**

EUMAP, the EU Monitoring and Advocacy Program of the Open Society Institute, monitors the development of selected human rights and rule of law issues in both the European Union and in its candidate and potential candidate countries.

EUMAP works with national experts and nongovernmental organizations (NGOs) to compile reports that are distributed widely throughout Europe and internationally. The reports are designed to encourage broader participation in the process of articulating the EU's common democratic values as well as in ongoing monitoring of compliance with human rights standards throughout the Union.

In addition to these monitoring reports on Televisions across Europe, EUMAP is currently focusing on access to Education for Roma and on the situation of Muslims in selected EU Cities.

Previous EUMAP reports include the 2005 Television across Europe series as well as reports on minority protection, the rights of people with intellectual disabilities, judicial independence, judicial capacity, corruption and anticorruption policy and equal opportunities for women and men.

All EUMAP reports as well as further information on the program are available at [www.eumap.org](http://www.eumap.org).

## **About NMP**

The Network Media Program seeks to promote independent, professional, and viable media and quality journalism, primarily in countries undergoing a process of democratization and building functioning media markets.

The Media Program supports initiatives aimed at helping media-related legislation conform to international democratic standards, increasing professionalism of journalists and media managers, strengthening associations of media professionals, and establishing mechanisms of media self-regulation. The Media Program also supports media outlets that stand for the values of open society, as well as efforts aimed at monitoring and countering infringements on press freedom, and promoting changes in media policy that ensure pluralism in media ownership and diversity of opinion in media.

Although traditionally the Media Program has focused on Central, Eastern, and South Eastern Europe, CIS, and Mongolia, during the past several years it has expanded to Western and Southern Africa, Southeast Asia, and Latin America.

Television across Europe:  
Follow-up Reports 2008

Bulgaria

By Assya Kavrakova

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## List of Abbreviations

ABBRO	Association of Bulgarian Broadcasters, <i>Асоциация на българските радио- и телевизионни оператори (АБРО)</i>
BNR	Bulgarian National Radio, <i>Българско национално радио (БНР)</i>
BNT	Bulgarian National Television, <i>Българска национална телевизия (БНТ)</i>
CEM	Council for Electronic Media, <i>Съвет за електронни медии (СЕМ)</i>
CRC	Communications Regulation Commission, <i>Комисия за регулиране на съобщенията (КРС)</i>
ARA	Association of Advertising Agencies, <i>Асоциация на рекламните агенции – България (АРА-България)</i>
KZK	Commission for Competition Protection, <i>Комисия за защита на конкуренцията (КЗК)</i>
NCRT	National Radio and Television Council, <i>Национален съвет за радио и телевизия (НСРТ)</i>

EU MONITORING AND ADVOCACY PROGRAM (EUMAP)

NETWORK MEDIA PROGRAM (NMP)

NCJE National Council for Journalism Ethics, *Национален съвет за журналистическа етика*

BTA Bulgarian News Agency, *Българската телеграфна агенция (БТА)*

## A. Executive Summary

Business interests rather than policy decisions have dominated Bulgarian broadcasting in recent years. Although Parliament and the media regulatory bodies have made a series of important moves, in terms of both policy and legislation, the dominant market players have outmanoeuvred the regulators, managing to achieve healthy financial growth, prevent the entrance of newcomers into the market and strengthen their positions before the digital switch-over.

While the State-controlled broadcaster, Bulgarian National Television (BNT, *Българска национална телевизия*), has stabilised its position on the TV market, it has made no significant progress in its transition to becoming a public service broadcaster. The independent fund that is intended to nourish public service broadcasting is unlikely to start functioning in the near future, meaning that BNT will remain dependent on ever increasing State subsidies.

On the regulatory level, the 2005 adoption by the National Assembly of the long-delayed Strategy for the Development of the Radio and Television Activities,<sup>1</sup> (hereafter Broadcasting Strategy) which was expected to unblock the licensing process, brought no practical results. The content regulator, the Council for Electronic Media (CEM, *Съвет за електронни медии*), and the technical regulator, the Communications Regulation Commission (CRC, *Комисия за регулиране на съобщенията*), developed contradictory interpretations of the Strategy, with the CEM pushing for more analogue licences to be granted, while the CRC tried to impose digital licensing as a priority. As a result, the licensing process ended in another stalemate.

In 2005, amendments to the Law on Radio and Television<sup>2</sup> envisaged that the radio and television fund was to become operational in 2008, but there are no signs that this will happen. Instead, the public service broadcasters, Bulgarian National Radio (BNR, *Българско национално радио*) and BNT, are in dire need of stable funding. This could involve an increased allocation from the State budget, which has been the stations' main source of finance. Since the adoption of the Law on Radio and Television in 1998, the fund was envisaged as a source of financing for the public service broadcasters and the regulatory authority. But the fund never became functional because there was no system in place to collect the licence fee from households. The Law has been amended several times since then in order to postpone the functioning of the fund.

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<sup>1</sup> Decision of the National Assembly of the Republic of Bulgaria from 28 September 2005, published in *State Gazette* 82, 14 October 2005, in force as of 1 January 2006. "Стратегия за развитие на радио- и телевизионната дейност чрез наземно радиоразпръскване" (Strategy for Development of the Radio and Television Activities), available at [http://www.cem.bg/r.php?sitemap\\_id=100](http://www.cem.bg/r.php?sitemap_id=100) (accessed on 10 December 2007).

<sup>2</sup> Provisional and Concluding Provisions of the Law on Radio and Television, §2(1), (2), (3), (4).

When Bulgaria joined the European Union on 1 January 2007, the country's media legislation was already in line with the provisions of the Television Without Frontiers (TVWF) Directive, now the Audiovisual Media Services (AVMS) Directive.<sup>3</sup> Parliament then adopted the Law on Electronic Communications,<sup>4</sup> which incorporated a series of EU provisions related to the regulatory framework for electronic communications.<sup>5</sup> The Law creates a legal framework for the introduction of digital broadcasting. The Law on Radio and Television had to be amended within six months of the Law on Electronic Communications as a complement to the legal process allowing the transition to digital broadcasting.<sup>6</sup> As of February 2008, this has not happened. The amendments have never been presented to Parliament.

With the recently amended TVWF Directive, which would prompt a new legal harmonisation process, and developments in new technologies and the media market, it has become clear that lawmakers must revise the Law on Radio and Television, in order to reflect these changes. Media legislation has not been a priority for the Bulgarian Government. The Plan for the Introduction of Terrestrial Digital Broadcasting (DVB-T) was finally adopted on 31 January 2008, although a draft reportedly reached ministers' desks in mid-2007. All moves in the media policy sector take a long time, with two exceptions: first, when economic interests are strong enough to speed up the adoption of legislation; and second, when a new political party comes to power and changes the legislation to gain control over the regulators.

After unsuccessful attempts by the media community in 2004–2005 to achieve journalists' consensus on a new Law on Radio and Television, a draft of which was put together at the time, media professionals significantly lowered the pressure of their advocacy. Today, the main driving force for the legislative process is represented by the business interests of the media owners.

Over recent years, the CEM has set up six regional bureaus across the country with the aim of improving its monitoring work. The regulator concentrated investment in technical infrastructure rather than human resources. As a result, its experts lack solid expertise and most of the operators are still not being monitored by the regulator. With

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<sup>3</sup> Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007, amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, *Official Journal of the European Union*, 18 December 2007, L 332/27.

<sup>4</sup> Law on Electronic Communications, *State Gazette* 41, 22 May 2007. (Hereafter the Law on Electronic Communications).

<sup>5</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), *Official Journal of the European Communities*, 24 April 2002, L 108/33.

<sup>6</sup> Law on Radio and Television, prom. SG 138, 26 November 1998; amend. SG 60, 1999; amend. SG 81, 1999; amend. and suppl. SG 79, 2000; amend. and suppl. SG 80, 2001; amend. and suppl. SG 96, 2001; amend. SG 112, 2001; amend. and suppl. SG 77, 2002; amend. SG 99, 2003; SG 99, 2004. (hereafter the Law on Radio and Television).

the arrival of digitalisation, the CEM and the CRC, which manages the frequency spectrum, have collided several times, making better co-operation and even union of the two regulators imperative if the digital switch-over is to be timely and successful.

In commercial broadcasting, the lack of ownership transparency has not been addressed. Effective measures would require a range of mechanisms for registering media ownership, and legal provisions that would stop licence holders from swapping ownership of their stations “behind the curtain”. Far from this, the legal environment actually favours media concentration by failing to restrict ownership consolidation.

A positive development in 2006 for media independence in general was the beginning of work by two commissions responsible for overseeing compliance with the journalistic Code of Ethics. Likewise positive was the introduction in 2006 of a second system of people-meter measurement of audiences that brought about an opportunity to compare market data.

## B. Recommendations

### 1. ORIGINAL RECOMMENDATIONS FROM THE 2005 REPORT<sup>7</sup>

Most of the recommendations from the previous OSI report are still valid. Except for the recommendation for the implementation of a comprehensive self-regulatory system, which many in the industry see as a positive development, not much has been achieved in the intervening years.

#### 1.1 Media policy

<i>Legislation</i>	
1. The Government should ensure that the Law on Radio and Television is completely harmonised with the EU <i>acquis communautaire</i> to ensure predictability, transparency and effective implementation of audiovisual policy.	This recommendation was fulfilled before Bulgaria’s accession to the European Union in 2007.
2. Parliament should, as a priority, accept an updated Broadcasting Strategy as is stipulated in the Law on Radio and Television, in order to de block broadcasting licensing procedures as soon as possible.	The Strategy was adopted, but with a delay, and was therefore already old at the time. As a result, the Strategy should be updated to respond to the current situation of the broadcast market.
<i>Digitalisation</i>	
3. The Government should accept a concrete strategy on digitalisation. The draft “Strategy for the Planning of Digital Terrestrial Broadcasting in the 174–230 MHz and 470–862 MHz Frequency Bands” needs to be updated, and, moreover, has never been officially approved.	The Plan for the Introduction of Terrestrial Digital Broadcasting (DVB-T) was finally adopted on 31 January 2008. As it contains elements of a strategy, it can be concluded that this recommendation has been fulfilled.

<sup>7</sup> “Bulgaria” in Open Society Institute, *Television across Europe: regulation, policy and independence*, Budapest, 2005 (hereafter OSI/Bulgaria), pp. 419–421.

## 1.2 Regulatory authorities

<i>Independence</i>	
<p>4. Parliament should, following a process of wide consultation with media experts and NGOs, introduce amendments to the Law on Radio and Television to better ensure the independence of the main regulatory body, the Council for Electronic Media (CEM). These amendments should, in particular, do the following:</p> <ul style="list-style-type: none"> <li>• introduce a civic quota in the CEM's composition, capable of providing adequate checks and balances;</li> <li>• introduce mandatory qualified majority voting for the election of the members from the parliamentary quota, in order to guarantee the economic and political independence of the regulatory authority (even if this might require a change in the Constitution);</li> <li>• envisage a mechanism to hold CEM members responsible (as individuals, or collegially) for those of their decisions that have proven to be in breach of the law as decided by the Supreme Administrative Court;</li> <li>• create new mechanisms to guarantee the financial independence of the regulatory authority as an alternative source of funding to the State subsidy.</li> </ul>	<p>The recommendation was not fulfilled and remains pertinent. There have been no major changes in the CEM's composition or legal framework.</p> <p>There was no political will to establish a truly independent and professional regulator. Current CEM members do not have adequate education or experience in licensing, technology or intellectual property, but have been appointed for their loyalty towards different political or social groups.</p>
<i>Copyrighting</i>	
<p>5. The Government should amend the Law on Radio and Television to increase the remit and the responsibilities of the CEM with respect to the observation of the copyright and related rights.</p>	<p>This recommendation was not fulfilled. Much of the European financing for regulatory structures was invested more in infrastructure than in human resources.</p>
<i>Monitoring</i>	
<p>6. The Government should increase the administrative capacity of the CEM, with respect to the monitoring of local and regional broadcasters, in order to ensure equal treatment of broadcasters at the national and local levels. This should include the provision of higher levels of funding.</p>	<p>The recommendation was fulfilled, at least in terms of technical infrastructure.</p>
<i>Professional ethics</i>	
<p>7. The regulatory authorities – the CEM and the CRC – should develop a Code of Ethics with detailed clauses on preventing any conflict of interests.</p>	<p>There has been no development in this field. Moreover, the two regulators have clashed several times over the scope of the regulatory framework.</p>

### 1.3 Public broadcasters

<i>Funding</i>		
<p>8. The Law on Radio and Television should be changed to envisage new mechanisms that can guarantee the financial independence of public service radio and television, as an alternative to the Radio and Television Fund.</p> <p>9. The Government and Parliament should amend the Law on Radio and Television to define concrete principles for targeted funding of the public broadcasters, and for the production and broadcast of public service programmes, along with the relevant mechanisms for civic control over their expenditures.</p>	<p>The recommendations to public broadcasters have not been fulfilled.</p> <p>With media not being a priority for decision-makers, the regulatory framework for public service funding, management and programming has not changed. BNT overcame the management crises in 2004. However, its management still needs restructuring, as the station's performance is almost wholly dependent on the director's personal qualities, affiliations and professionalism.</p>	
<i>Management</i>		
<p>10. The Government and Parliament should amend the Law on Radio and Television to define new mechanisms of election and appointment for the management of BNR and BNT, as well as a new division of rights and responsibilities between the Management Board and the Director General, in order to optimise the effectiveness of their performance and administrative structure.</p>		
<i>Programming</i>		
<p>11. BNR and BNT should develop new programme schemes that better respond to concrete social needs and public expectations of the public service broadcasters.</p>		

## 1.4 Commercial broadcasters

<i>Transparency and media diversity</i>	
<p>12. A public register for media ownership in Bulgaria should be implemented as a self-regulatory mechanism within the media community.</p> <p>13. The Government and Parliament should take steps to liberalise all procedures related to changes in the ownership of the broadcasting licences, and make them transparent to the public.</p> <p>14. Journalists' associations and other media NGOs should debate media concentration in order to try and define thresholds needed to protect pluralism. The Government and Parliament should take account of these proposals when preparing new or amended legislation on this matter.</p>	<p>These recommendations were not fulfilled. The regulation and management of commercial broadcasting remain unchanged. The sector is still characterised by lack of transparency over ownership. The general opinion among media professionals is that a self-regulatory system for registering media ownership could only be effective on the basis of consensus on the need for this step.</p>
<i>Public service content</i>	
<p>15. The Government and Parliament should amend the Law on Radio and Television to offer chances for commercial operators to compete for public financing to produce programmes that meet the public interest. The provisions of the Law on Radio and Television on commercial operators defined as public service providers should be reviewed to allow additional stimuli.</p>	<p>The Law on Radio and Television has not been amended to offer financial incentives to commercial broadcasters to produce and air public service content.</p>

## 1.5 Media ethics and professionalism

<p>16. All parties signatory to the Ethical Code of the Bulgarian Media should ensure that the Code is respected in practice.</p>	<p>These recommendations were fulfilled. In 2006, two commissions responsible for overseeing compliance with the journalistic Code of Ethics started work.</p>
<p>17. The Bulgarian media community should adopt new self-regulation mechanisms with respect to the fair implementation of the people-meter system, which is currently being argued about and its results disputed in the community.</p>	<p>In the same year, a second system of people-meter measurement of audiences was introduced, thus bringing about an opportunity to compare market data.</p>

## **2. NEW RECOMMENDATIONS BASED ON THE 2008 REPORT**

### **2.1 Legislation**

1. With the revision of Television Without Frontiers (TVWF) Directive, Bulgarian legislation needs to be further amended to incorporate the new EU provisions on audiovisual media services.

### **2.2 Regulatory authorities**

2. With the advent of digital broadcasting, the Government should seek to improve the regulatory framework for the electronic communications sector by, for example, proposing the creation of a single regulatory authority for the entire electronic communications market.

### **2.3 Public broadcasters**

#### *Funding*

3. Parliament should amend the Law on Radio and Television to introduce new mechanisms that guarantee the financial independence of public service radio and television. An alternative to the Radio and Television Fund would be a State subsidy. Mechanisms should be designed to ensure that financing is in line with EU competition rules.
4. An independent body should be tasked to estimate the funds that are needed for public service broadcasters to perform their public service function.

## C. Main Findings of the Follow-up Monitoring

### 1. GENERAL BROADCASTING ENVIRONMENT

#### 1.1 Key developments in legislation and policy

The major developments in the Bulgarian media environment in 2006 and 2007 were:

- resumption of licensing broadcasters;
- launching a debate on digital broadcasting;
- consolidation and concentration of media ownership, involving foreign investment;
- growth of cable penetration, digital reception of TV and radio and Internet coverage.<sup>8</sup>

The advertising market has continued to expand. As well as an overall increase, there has been growth in emerging sectors such as outdoor advertising and online media.

The two major developments in the Bulgarian media environment for the past three years were the relaunch of the licensing process and the introduction of a system of self-regulation for journalists. Another achievement was the increasing ability of the media to operate as well managed businesses, which also allowed for more editorial independence. Other indicators of sustainability were the access to international news and the easier access to the journalism.

On the other hand, the general legal and social climate in which the media have to operate was much criticised. The licensing of new broadcasters and the legal environment in which journalists work were particularly censured. The economic interests of media owners and businesses often compromise the independence of news coverage, with editors and reporters sometimes preferring self-censorship. This is especially marked in the countryside where economic and even political interests often interfere with the work of the media. Moreover, the lack of ownership transparency harms their economic and political independence. The legal protection of journalists is still inadequate in cases where the targets of their investigations try to influence their objectivity and independence by threatening them with lawsuits.<sup>9</sup>

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<sup>8</sup> International Research and Exchanges Board (IREX), *Media Sustainability Index (MSI)*, “Bulgaria 2006/2007”, available at [http://irex.org/programs/MSI\\_EUR/2006/bulgaria.asp](http://irex.org/programs/MSI_EUR/2006/bulgaria.asp) (accessed 19 November 2007). (Note: the author of this study was one of the panelists who took part in the assessment of the Bulgarian media on which the MSI was based.)

<sup>9</sup> *Media Sustainability Index*, Bulgaria, 2006, p. 6.

The adoption of the Broadcasting Strategy opened the doors to the revival of the licensing process, which had been blocked for almost four years.<sup>10</sup> The Strategy was put together by the regulatory authorities, the CEM and the CRC, and submitted to Parliament in early 2003. But by the time of its adoption in 2005, it was already outdated and was downgraded to a legal formality needed to unblock the licensing process.

The Strategy identifies digitalisation as a main priority, defining two stages in the development of the broadcast sector. In the first stage (2005–2006), the Strategy envisaged, among other things: the development of nationwide television broadcasters with polythematic profiles covering the least populated and border areas of the country; the development of BNT as a public service broadcaster; licensing local television operators and regional broadcasters; and the development of a national frequency plan for digital terrestrial broadcasting. The second stage, scheduled for 2007–2008, envisages, among other things: the development of pilot projects for digital television; the development of a third nationwide broadcaster; guaranteed conditions for BNT’s transition to digital broadcasting; and the development of BNT’s regional networks.

However, the Strategy contains neither concrete plans for the development of the radio and television market, which broadcasters have wanted for a long time, nor a clear vision of an appropriate State policy for the sector. Another weakness is that the Strategy does not set benchmarks for digitalisation. Nor does it include the opinion of the two regulators on the launch of digital broadcasting in Bulgaria.<sup>11</sup> The Strategy covers only analogue broadcasting, but states that digitalisation is the main priority.

The lack of a clear and consistent vision, as well as of any preliminary assessment of the media market before the launch of digitalisation, created confusion among current broadcasters and those companies interested in entering the broadcast market, giving at the same time serious headaches to the regulators tasked with putting in place the new analogue licensing framework for the first time since its adoption in 2001.<sup>12</sup> The process became even more complicated in early 2006 because of the following factors:

- the outdated and inadequate media regulatory framework,
- the limited frequency spectrum,

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<sup>10</sup> The process was frozen in August 2002 when amendments to the Law on Radio and Television envisaged that the adoption of the Strategy would be the prerequisite for any further licensing of the radio and television broadcasters in the country.

<sup>11</sup> Janet Zaharieva, “Лицензиране и регистрация на радио и телевизионните оператори” (Licensing and Registration of the Radio and Television Operators) in Bulgarian Media Coalition, *Issues of Media Regulation*, Sofia, December 2006, p. 28.

<sup>12</sup> Amendments to the Law on Radio and Television and the Telecommunications Law were passed in 2001 and entered into force on 5 February 2002.

- the lack of information about available frequencies at the national, regional and local levels, which prevented broadcasters from adequately and effectively planning their applications for licences,
- the non-enforcement before 2006 of the provisions on fees that commercial broadcasters pay for licences,<sup>13</sup>
- the instability caused by the conflicting interests of the three main groups of applicants:
  - licensed broadcasters which do not want competition,
  - broadcasters with temporary telecommunications permits, issued by the CRC,<sup>14</sup> who seek preferential treatment, so they can “upgrade” automatically to broadcast licences in future tenders,
  - newcomers that want fast and fair tenders for analogue broadcasting at the beginning of the digitalisation process and equal treatment for all the participants.
  - the lack of an official strategy or national plan for the digitalisation of the radio and television broadcasting.<sup>15</sup>

In May 2006, the CEM issued an expert report that aimed to formulate the main principles and priorities that would guide the CEM in the forthcoming licensing of radio and television programmes.<sup>16</sup> According to the CEM, the development of the television sector is uneven and concentrated primarily in Sofia. The sector also suffers from a lack of diversity of television formats, insufficient transparency of the capital behind the broadcasters, and a lack of conditions for the development of BNT as a public service television broadcaster.<sup>17</sup>

According to the CEM, the priorities in the forthcoming analogue licensing process were as follows:

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<sup>13</sup> The tariff for the fees for radio and television activity was scrapped through the Decision no. 9028 of the Supreme Administrative Court (4 November 2004). A new tariff was adopted in 2006 (Council of Ministers, Decision no. 135 of 5 June 2006, *State Gazette* 49, 16 June 2006).

<sup>14</sup> According to Art. 9a of the Law on Radio and Television, those frequencies used by broadcasters with temporary permits are considered available until a tender for the use of those frequencies is carried out.

<sup>15</sup> Desislava Velkova, “Analysis and Evaluation of the Adopted Procedures and Actions of the Regulators” in *Monitoring of the Licensing of the Radio and Television Operators in Bulgaria 2006–2007*, p. 72, available at <http://open-bg.net/> (accessed 10 December 2007).

<sup>16</sup> CEM, “Development of the Radio and Television Activity in the Republic of Bulgaria (2001–2006)”, Sofia, 23 May 2006, available online at <http://www.cem.bg/docs/doklad.doc> (accessed 19 November 2007).

<sup>17</sup> CEM, *op. cit.*, p. 8.

- improving the national and regional networks of public service broadcasters to reach less populated and border areas of the country,
- developing the commercial radio and television networks with national coverage,
- enforcing licensing provisions on broadcasters with temporary licences,
- launching tenders for new broadcast licences,
- ensuring a smooth transition from analogue to digital terrestrial broadcasting.<sup>18</sup>

The licensing of new television programmes within the analogue spectrum had to be co-ordinated with the new frequency plan for digital terrestrial distribution adopted at continental level at the ITU's 2006 Regional Radiocommunication Conference (RRC-06).<sup>19</sup> The broadcast frequencies are used for both analogue and digital broadcasting, which means that licensing analogue channels reduces the spectrum available for digital channels.<sup>20</sup>

## 1.2 EU legal provisions

Bulgaria's media environment is now approaching sustainability, and its stability is robust enough not to depend on any particular government or businesses. General economic and social improvements have boosted the sustainability of Bulgarian media over recent years.

Bulgaria became a fully-fledged member of the EU on 1 January 2007. A number of amendments to the Law on Radio and Television were made in order to further incorporate the EU *acquis* into national law. Following an amendment that transposed EC Treaty provisions concerning freedom of establishment into the Bulgarian law, foreigners and foreign companies were allowed to apply directly for broadcast licences as of 1 January 2007.<sup>21</sup> Another change was the prohibition of alcohol advertising before 10p.m.<sup>22</sup> The Association of Bulgarian Broadcasters (ABBRO) and the Association of Advertising Agencies (APA) are negotiating the adoption of an ethical code on alcohol advertising, which would be the first self-regulatory mechanism in the country's advertising sector.<sup>23</sup>

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<sup>18</sup> CEM, *op. cit.*, p. 161.

<sup>19</sup> CEM, *op. cit.*, p. 153.

<sup>20</sup> For more on the history of licensing see OSI/Bulgaria, pp. 361–366.

<sup>21</sup> Law on Radio and Television, Art. 105(2).

<sup>22</sup> Law on Health, *State Gazette* 70, 10 August 2004, last amended in October 2007, Art. 55.

<sup>23</sup> Janet Zaharieva, "Commercial regulations", in *Issues of Media Regulation, cit.*, p. 82.

CEM has tried to fill the gaps in copyright law by introducing a new element to the licensing process: candidates are required to submit proof of copyright and related rights for the programmes that they intend to air. However, this served to create additional problems as the contracts are signed with entities that are not television operators at the time of application, and therefore cannot guarantee compliance with these rights. Broadcasters presented contracts which stated that their broadcasting operations should comply with copyright rules for a six-month duration, after which there is no guarantee that they would continue to uphold those provisions.<sup>24</sup> The regulator lacks the authority and capacity to enforce the execution of court rulings on copyrights.<sup>25</sup>

In 2007, Parliament adopted the Law on Electronic Communications. It harmonises Bulgarian legislation with the EC regulatory framework on electronic communications, replacing the Telecommunications Law. According to this law, the management of electronic communications is carried out by the Council of Ministers, by the Chair of the State Agency for Information Technologies and Communications and by the Council on the National Radio Frequency Spectrum, which brings together representatives of the Government, the CRC, the National Security Office and the National Intelligence Office. The Council is chaired by the head of the State Agency for Information Technology and Communications, or a representative. The Council of Ministers adopts regulatory provisions on the operation of the Council on the National Radio Frequency Spectrum upon proposal of the latter Council's Chair.<sup>26</sup>

The State Agency for Information Technologies and Communications is a State-financed body in charge of putting together policy for electronic communications and information society. Its Chair is appointed by the Prime Minister at the Council of Ministers' proposal.<sup>27</sup> The Council of Ministers adopts the policy in the two areas. These policies should be updated at least once every two years. The Council of Ministers also adopts the policy and the national plan for distribution of the radio frequency spectrum at the suggestion of the Council on the National Radio Frequency Spectrum. The national plan is subject to revision at least once every two years.<sup>28</sup>

The CRC is responsible for regulation and control in the field of electronic communications.<sup>29</sup> It co-operates with the CEM in the area of digital broadcasting. Upon request, the CRC must inform the CEM of available spectrum for digital terrestrial broadcasting. The CEM then chooses two radio and two television

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<sup>24</sup> Ivailo Lukanov, "Protection of the Intellectual Property" in *Issues of Media Regulation, cit.*, p. 145.

<sup>25</sup> Law on Copyrights and Related Rights, *State Gazette*, 56, 29 June 1993, last amended in July 2007, Art. 95.

<sup>26</sup> Law on Electronic Communications, Art. 10.

<sup>27</sup> Law on Electronic Communications, Art. 15.

<sup>28</sup> Law on Electronic Communications, Art. 6-8.

<sup>29</sup> Law on Electronic Communications, Art. 21(1).

programmes for each digital network that would receive broadcast licences. They include the public service broadcasters. The CEM is also in charge of licensing the other digital radio and television broadcasters.<sup>30</sup>

The CRC is responsible for organising a tender<sup>31</sup> to select the operator that receives a licence for using the radio frequency spectrum for electronic communications via networks for terrestrial digital broadcasting.<sup>32</sup> Representatives of the CEM, chosen by the CRC, are part of the expert commission organising the tender. The operators must air the programmes that CEM licences for a certain network. According to the Law on Radio and Television, they could also broadcast any other licensed or registered programme. The Law on Radio and Television was to be amended in line with the Law on Electronic Communications by 20 November 2007, but this did not happen.

On 31 January 2008, the Council of Ministers adopted the Plan for the Introduction of Terrestrial Digital Broadcasting (DVB-T), which was prepared by the State Agency for Information Technologies and Communications. The plan defines as a priority the creation of the necessary conditions for the start of the transition to digital terrestrial broadcasting in 2008. The process should be completed in 2012, according to the plan. The transition is envisaged as taking place in two phases based on the so-called “island” principle, meaning gradual coverage of a certain area with simulcast for no longer than a year, followed by the total switch off of the analogue signal. The terrestrial analogue switch off is scheduled to take place before December 2012. The State Agency for Information Technologies and Communications will be responsible for organising and financing a public relations and educational campaign around digital broadcasting. The plan states that a package of regulatory measures and updated legislation is necessary to ensure the transition.

### 1.3 Broadcasting market

The broadcasting market has not seen any major developments with regard to TV transmission platforms. Cable penetration increased only slightly in 2006, up to 61.3 per cent of television households from 58.4 per cent in 2004. Likewise, satellite use reached over 9 per cent of households in 2006, up from some 8 per cent in 2004. Almost 30 per cent of households still accessed TV only via the analogue terrestrial platform in 2006.<sup>33</sup>

According to the CEM, 203 television channels are currently operating in Bulgaria: seven terrestrial and 196 via cable or satellite. The terrestrial channels include the nationwide Kanal 1 of BNT, and commercial stations bTV and TV Nova. The

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<sup>30</sup> Law on Electronic Communications, Art. 47(2).

<sup>31</sup> Law on Electronic Communications, chapter 5.

<sup>32</sup> Law on Electronic Communications, Art. 48.

<sup>33</sup> Source for these data is the research company Noema Bulgaria.

remaining four terrestrial channels are BNT regional programming for the towns of Varna, Rousse, Plovdiv and Blagoevgrad.

There are telecom operators, which have diversified into broadcasting, airing in 42 Bulgarian towns on the basis of temporary licences.<sup>34</sup> Some of them have their own programming, others are only technical distributors. In Sofia, for example, GTV, TV2 and 7 Dni are aired terrestrially, but the latter now carries terrestrially the signal of the commercial broadcaster Balkan Bulgarian Television (BBT), and its own programming only via cable. They will use these licences until new tenders have been organised.<sup>35</sup>

More than 100 of the cable and satellite television channels have generalist formats and over 80 are thematic channels. Generalist formats are typical mostly for the regional channels while the thematic ones usually have nationwide coverage. Out of these channels, 169 television programmes are broadcast by commercial broadcasters and 17 by public television operators.<sup>36</sup>

Television viewing time has decreased in recent years among younger people who have increasingly turned to other platforms such as the Internet or magazines. People over 70 years of age, retired people, the unemployed, people living in Sofia and citizens of larger towns spend the largest amount of time in front of the TV. Some 98 per cent watch Bulgarian channels, while 37 per cent also watch foreign channels.<sup>37</sup> Channel 1 of BNT has lost younger viewers, but it has strengthened its position in small towns. Overall, Channel 1 has seen its audience share go down from 25 per cent in 2003 to 13.3 per cent in 2007.<sup>38</sup>

bTV was losing viewers between 2003 and 2005, but ratings for its morning programming and primetime newscast have improved sharply. It is watched mainly by urban viewers and people aged between 15 and 69. Its audience share was hovering around 40 per cent in 2007.<sup>39</sup>

Nova TV has also increased its ratings. Thanks to additional distribution by cable, the station boosted its reach from 61 per cent of households in 2003 to 84 per cent in 2005. The station boasts a younger demographic, with 35 per cent of its viewers below 35 years of age. The station increased its audience by buying reality formats such as “Big Brother”. Nova TV has the largest urban audience: some 77 per cent come from

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<sup>34</sup> Law on Radio and Television, chapter §9a (1) and (3) of the provisional and concluding provisions.

<sup>35</sup> CEM, *op. cit.*, p. 152.

<sup>36</sup> CEM, *op. cit.*, p. 43.

<sup>37</sup> CEM, *op. cit.*, p. 159.

<sup>38</sup> CEM, *op. cit.*, p. 159; Data from TV Plan/TNS peplemeter panel

<sup>39</sup> Data from TV Plan/TNS peplemetry panel, average daily for the period January–March 2007.

large towns and about 20 per cent from the capital.<sup>40</sup> In 2007, the station had an average audience share of 18.5 per cent.<sup>41</sup>

The overall audience share of the three largest nationwide channels declined from 84.2 per cent in 2003 to 79.2 per cent in 2006.<sup>42</sup> However, the cable channels did not benefit from this, due to the oversupply of new cable stations, which fragmented the audience.<sup>43</sup>

**Table 1. Audience shares of the main channels (2004–2006)**

Channel	Audience share		
	2004	2005	2006
bTV	36.5	37.8	37.5
Nova TV	18.8	21.7	21.9
Kanal 1	26.6	19.5	19.8
Planeta	2.5	3.6	3.2
Diema+	3.5	3.3	2.7
Fox Life	n.a.	n.a.	1.8
Skat	n.a.	n.a.	1.6
Evrokom	1.9	1.5	1.1
Other	8.2	10.8	10.4

Source: IP International Marketing Committee<sup>44</sup>

<sup>40</sup> CEM, *op. cit.*, p. 107.

<sup>41</sup> Data from TV Plan/TNS peoplemetry panel, average daily for the period January–March 2007.

<sup>42</sup> Open Society Institute, *Television across Europe: regulation, policy and independence*, Budapest, 2005, Overview, p. 137.

<sup>43</sup> CEM, *op. cit.*, p. 160.

<sup>44</sup> IP International Marketing Committee, *Television 2006. International Key Facts*, October 2006, p. 101 (hereafter, *Television 2006*); IP International Marketing Committee, *Television 2007. International Key Facts*, October 2007, p. 105, (hereafter, *Television 2007*).

## 2. REGULATION AND LICENSING OF THE TELEVISION SECTOR

### 2.1 Regulatory authorities and framework

According to the newly adopted Law on Electronic Communications, the CRC is responsible for regulating the electronic communications sector.<sup>45</sup> The CRC is entitled to adopt secondary or delegated legislation and general administrative acts in electronic communications and policy. The CEM's functions as a content regulator for the sector are to be redefined when the Law on Radio and Television has been amended. There have not been any major changes in the CEM's composition or legal framework.

The licensing process remains highly controversial mainly because there is no political will to establish a truly independent and professional regulator.<sup>46</sup> None of the CEM's current members has adequate education or experience in licensing, technology or intellectual property. They have been appointed for their loyalty towards different political or social groups. Much of the European financing for regulatory structures was invested more in infrastructure than in human resources. This explains the low administrative capacity of the regulator.

### 2.2 Licensing system

After an interruption of four years, the analogue licensing process was resumed in early 2006, but no concrete results on television licensing were achieved. Rather than taking account of the public interest or broadcasters' interests, the process was shaped by private interests. The regulator's move to launch tenders for analogue frequencies in big towns was driven by the lobbying of companies that wanted to break into the television market. The poor performance of the two regulators in respect of compliance with the law or sheer commonsense could jeopardise the entire transition to digitalisation. Bulgaria will not be ready to switch off its analogue transmitters in 2012. The CRC's and CEM's record to date raises serious doubts about their capacity to regulate effectively in the digital era.

The CEM's licensing tender, launched at the beginning of 2006, drew 771 applications for radio and TV channels.<sup>47</sup> The tender criteria covered the whole country, down to the smallest settlements, in order to plug existing gaps. This

<sup>45</sup> Law on Electronic Communications, sections I–II.

<sup>46</sup> “Мониторинг на лицензирането на радио и телевизионните оператори в България 2006–2007”, изготвен от доц. Нели Огнянова, Десислава Велкова, Северина Любенова, Светлана Божилова, Александър Кашъмов и доц. Георги Лозанов (Monitoring of the Licensing of the Radio and Television Operators in Bulgaria 2006–2007), Sofia, November 2007, pp. 6–9.

<sup>47</sup> Monitoring of the Licensing of the Radio and Television Operators in Bulgaria 2006–2007, *op. cit.*, p. 17.

approach, however, did not reflect audience needs or market potential. Moreover, it was based on an approach that served the logic of analogue broadcasting rather than the challenges posed by digitalisation. They did not take into account any scenarios on how digitalisation will change the broadcasting landscape.

The main problem is the lack of strategic vision regarding the licensing process combined with a lack of solid research into the media market. Applicants were not required to identify or address the needs of different regions, or to come up with diverse programming. Moreover, the regulator kicked off tenders for TV channels in the country's three largest cities, where the public already has sufficient sources of information, instead of focusing on smaller settlements, and in particular on the border regions where there is a chronic lack of information. On top of that, neither the legislator nor the CEM took any decision on the status of those operators functioning with temporary permits. The frequencies on which those operators have aired for years were declared "available" and were then tendered. The final straw was the CRC's decision to withdraw from the licensing process and stop announcing available frequencies, which led to tensions between the two regulators. Eventually, the whole TV licensing process froze again. As the law imposes no limits on territorial coverage, most of the applicants sought licences in more than one area.<sup>48</sup>

Cable and satellite broadcasters Balkan Bulgarian Television and Television Europe applied for broadcast licences with national coverage. Such licensing of a fourth nationwide television broadcaster was not envisaged in the Broadcasting Strategy, but the CEM still asked the CRC about the technical possibilities for issuing such a licence.<sup>49</sup> The CRC responded that there was no available frequency for a fourth nationwide analogue television station, arguing that such a broadcaster could not cover the 85 per cent of the country's territory required by the Strategy.<sup>50</sup>

Media experts from the non-governmental sector criticised the CRC for not always providing information on the availability of frequencies within the legal three-month term.<sup>51</sup> However, the CRC issued positive decisions for available frequencies for analogue television broadcasting for the towns of Varna, Plovdiv and Sofia, paving the way for tenders for licensing analogue broadcasting on these frequencies.<sup>52</sup>

The CEM adopted its licensing criteria after months of consultations with the broadcasters and media non-governmental organizations (NGOs).<sup>53</sup> They put forward

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<sup>48</sup> Dessislava Velkova, *op. cit.*, p. 74.

<sup>49</sup> Decision of CEM no. 13, 2006.

<sup>50</sup> Decision of CRC no. 796, 20 April 2006.

<sup>51</sup> For example, the CRC did not reply within three months to a CEM inquiry of February 2006. (Decision of CRC no. 969, 11 May 2006 on a request by the CEM filed on 6 February 2006.)

<sup>52</sup> Decision of CRC nos. 765, 781 and 788 of 20 April 2006.

<sup>53</sup> Decision of CEM no. 1013, 29 June 2006, available at [http://www.cem.bg/r.php?sitemap\\_id=78&id=1984](http://www.cem.bg/r.php?sitemap_id=78&id=1984) (accessed on 19 November 2007).

four main criteria, with the programming project having priority. In the CEM's assessment guide, this criterion is worth 55 points, of which 35 are given for programming profile, concept and schedule, local coverage, a balanced ratio between national, European and other works, terms for fulfilling the intentions on programmes, and innovation and diversity of the programming. The remaining 20 points are given for organisational structure including the professional qualification of the employees, the station's editorial and professional standards, etc. The other three criteria, financial capacity, technical plans and the track record in broadcasting were worth 15 points each.<sup>54</sup>

On 12 October 2006 the CEM adopted a set of "Regulations for organising and carrying out tenders for licensing terrestrial radio and television broadcasters".<sup>55</sup> The Regulations define the steps and conditions of the tender including the launch, the submission of applications, the establishment of expert commissions, the assessment and ranking of applicants, and the licence issuance. Some of the tender procedures had already been completed by the time the Regulations were adopted. At the same time, the CEM adopted the "Regulations for Setting up the Expert Commissions", as required by the law.<sup>56</sup> These five-member commissions include three representatives of the CEM, the Chair of each expert commission and two members, and two representatives of the CRC, the commission's vice-Chair and one member.<sup>57</sup>

On 10 July 2006, the CEM announced licensing tenders for two new TV operators for the town of Plovdiv<sup>58</sup> and for three channels for the town of Varna.<sup>59</sup> The tenders were scheduled to take place in early December 2006. The CEM did not respect the legal 14-day term for announcing tenders following the CRC's decision on available frequencies. The CRC had announced the available frequencies almost three months before.<sup>60</sup> The delay was caused by late adoption of the evaluation criteria.<sup>61</sup> ABBRO contested these criteria. They were eventually published in the *State Gazette* only at the end of August 2006, almost a month and a half after their adoption.<sup>62</sup> The CEM decided to go ahead with the process, arguing at the time that any further delay could lead to "significant or hardly repairable damage" to the operators and the licensing

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<sup>54</sup> Protocol of CEM no. 56, 14 September 2006.

<sup>55</sup> Available at [http://www.cem.bg/r.php?sitemap\\_id=78&cid=2096](http://www.cem.bg/r.php?sitemap_id=78&cid=2096) (accessed on 19 November 2007).

<sup>56</sup> Law on Radio and Television, Art. 116C(1); available at [http://www.cem.bg/r.php?sitemap\\_id=78&cid=2095](http://www.cem.bg/r.php?sitemap_id=78&cid=2095) (accessed on 19 November 2007).

<sup>57</sup> CEM, "Regulations for Setting up the Expert Commissions", Art. 18(3).

<sup>58</sup> Decisions of CEM nos. 1017 and 1018 from 2006.

<sup>59</sup> Decisions of CEM nos. 1019, 1020 and 1021 from 2006.

<sup>60</sup> Dessislava Velkova, *op. cit.*, p. 74.

<sup>61</sup> Decision of CEM no. 1013 from 29 June 2006.

<sup>62</sup> *State Gazette* 70, 29 August 2006.

process itself.<sup>63</sup> The delay forced the regulator to reschedule the tenders for early 2007, when the CEM eliminated two out of 17 applicants for the Plovdiv area and two out of 24 applicants for the Varna area because they did not comply with the legal provisions on licensing.<sup>64</sup>

But the process did not end positively. On 11 July 2006, a day after announcing the tenders for Plovdiv and Varna, the CRC revoked all its decisions on the technical parameters for analogue terrestrial broadcasting of television programmes for which the CEM had requested information. The CRC argued that the revocation followed the agreements from the RRC-06 and that if all available frequencies were used, no frequencies for the digital broadcasting would be left. But some of the applicants questioned this argument, saying that, in fact, the real reason behind the move was the interest of current broadcasters to maintain the *status quo* and block competition from newcomers.

The tender for three channels covering the city of Sofia was announced by the CEM in September 2006.<sup>65</sup> The frequency for the fourth channel was put on hold at the request of BNT, which has the right to automatically receive a licence to broadcast a regional programme.<sup>66</sup> The tender was announced despite the CRC's decision to stop announcing available frequencies.<sup>67</sup> In February 2007, the CEM announced the candidates that fulfilled the conditions necessary to enter the tender,<sup>68</sup> approving 25 of 32 applicants. Later on, the CEM allowed one of the applicants who was rejected in the first instance to participate in the tender after submitting additional documentation.

In July 2007, the CEM decided to postpone the tender for all three towns until the adoption of a national strategy for digitalisation.<sup>69</sup> The decision followed a letter that the Supreme Administrative Prosecutor's office sent to the CEM, asking the regulator to comply with the CRC's decisions to suspend tenders before the frequencies become

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<sup>63</sup> CEM, Administrative Procedure Code, Art. 60 (Preliminary execution).

<sup>64</sup> Decisions of CEM nos. 4 and 8 from 4 January 2007 (Plovdiv); Decisions of the CEM nos. 11–13 from 9 January 2007 (Varna).

<sup>65</sup> Decisions of CEM nos. 1137, 1138 and 1139 from 21 September 2006.

<sup>66</sup> An amendment to the Law on Radio and Television of 2005 envisages that the Bulgarian National Television and the Bulgarian National Radio obtain their licences by virtue of the law without any tenders or contests. The amendment poses the question if every future request of the public broadcasters for licensing would be fulfilled regardless of market conditions and other circumstances. (Law on Radio and Television, Art. 105(3).)

<sup>67</sup> Decision of CRC no. 1497 from 11 July 2006; Decision of the CRC no. 788 from 20 April 2006.

<sup>68</sup> Decisions of CEM nos. 18, 19 and 20 from 6 February 2007.

<sup>69</sup> Declaration of CEM, available at [http://www.cem.bg/r.php?sitemap\\_id=93&cid=2438](http://www.cem.bg/r.php?sitemap_id=93&cid=2438) (accessed on 19 November 2007).

available.<sup>70</sup> TV7, one of the applicants, appealed the CEM's decision to suspend the tenders, and the Supreme Administrative Court found in TV7's favour.<sup>71</sup> The court considered that the CEM's decision to postpone the licensing process exceeded its competence and was therefore null and void. The CEM appealed the courts' decision, but the court rejected the appeal in January 2008. The CEM now faces the dilemma of whether to continue or halt the licensing process.

The fiercest fight is for Sofia frequencies, according to various observers.<sup>72</sup> The applicants for licences to air in the capital included: Balkan Bulgarian Television (BBT), formerly owned by Petar Mandzukov, an arms dealer and publisher of the daily newspaper *Duma*; TV7, controlled by Lubomir Pavlov, the former boss of the Municipal Bank; Max, a channel, owned by the advertising mogul Krassimir Gergov; Television Europe, co-owned by Emil Stoyanov, brother of former president Petar Stoyanov, and Maria Kapon, a member of parliament; and Diema Vision, owned by Apace Media, a UK company.

At the moment, GTV, City TV and TV 7 Dni broadcast with temporary licences. The battle is waged between these temporary operators, which want to keep the frequencies, and the newcomers, which want access to the spectrum. Initially, the CEM rejected the applications from TV7, Television Europe and Diema Vision as they did not comply with transparency rules on their sources of finance and on their relations with advertising agencies. Later, the CEM re-admitted TV7 and Diema Vision. The latter was given this right through a decision of the Supreme Administrative Court. According to media industry sources, BBT, TV7 and Max will win the licences for Sofia. Meanwhile, the CEM has decided to suspend the tenders until the adoption of a Strategy for digitalisation.

### 3. REGULATION AND MANAGEMENT OF PUBLIC SERVICE TELEVISION BROADCASTING (PSB)

#### 3.1 PSB legislation and policy

The regulatory framework for public service funding, management and programming has not changed. Although the management crises at BNT in 2004 have been overcome, management at the national broadcaster still needs restructuring. At present,

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<sup>70</sup> "CEM спря конкурсите за ефирните телевизии" (CEM stopped the tenders for terrestrial televisions), <http://www.mediapool.bg/show/?storyid=129941&srcpos=2> (accessed 10 December 2007).

<sup>71</sup> SAC Decision 8898, 2007.

<sup>72</sup> "CEM спря конкурсите за ефирните телевизии" (CEM stopped the tenders for terrestrial televisions), <http://www.mediapool.bg/show/?storyid=129941&srcpos=2> (accessed 10 December 2007).

the station's performance is almost wholly dependent on the Director's personal qualities, affiliations and professionalism. The station needs new mechanisms for appointing its management as well as a new division of rights and responsibilities between the Management Board and the Director General.

The station's funding also needs reform. As the Radio and Television Fund<sup>73</sup> will not start functioning soon, a possible solution would be to channel more funds from the State budget for producing public service content. Although State subsidy is theoretically a hazardous form of funding as it can threaten the independence of the public service broadcasters, it currently appears to be the only way of ensuring their survival. Politicians have avoided introducing a licence fee because they fear making themselves unpopular with viewers who would see the licence fee as disguised taxation. Secondly, it is difficult to convince viewers to pay this fee in a country where the average standard of living is not high. The station also needs a clear mechanism for evaluation of the programming cost, which would include spending on digital technologies and services. The station has also lacked transparency on how it spends the money from the State budget.

### 3.2 PSB governance structure

The only major development at BNT over the past three years has been the appointment of a new Director General. On 19 April 2007, CEM adopted the rules for selecting a new BNT head.<sup>74</sup> It scheduled the appointment process for June 2007. The mandate of the current Director General, Uliana Pramova, expired on 25 September 2007.

On 20 June 2007, the CEM interviewed three candidates for the position of Director General, including Pramova. Journalists covered the meeting and reported on the candidates' presentations.<sup>75</sup> A week before the interviews, the CEM met BNT's Board, management and Director General and discussed BNT's performance during Pramova's tenure (2004–2007). At the meeting, the CEM approved BNT's annual report, which has not yet been made public.<sup>76</sup> On 26 June 2007, the CEM unanimously reappointed Pramova.<sup>77</sup>

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<sup>73</sup> OSI/Bulgaria, pp. 374–375.

<sup>74</sup> Decision of CEM no. 106, 19 April 2007; CEM Press Release 19 April 2007, available at <http://www.cem.bg> (accessed on 19 November 2007).

<sup>75</sup> CEM, Press Release, 20 June 2007, available at <http://www.cem.bg> (accessed on 20 November 2007).

<sup>76</sup> CEM, Press Release, 14 June 2007, available at <http://www.cem.bg> (accessed on 20 November 2007).

<sup>77</sup> CEM, Press Release, 26 June 2007, available at <http://www.cem.bg> (accessed on 20 November 2007).

### 3.3 PSB funding

Under the 2005 amendments to the Law on Radio and Television, the functioning of the Radio and Television Fund was postponed until 2008. There are no signs that the fund will become operational this year. Therefore, there is a need for a new regulatory framework on funding. This could be the State budget, which has always been the main funder of BNT and BNR.

The Law on the State Budget for 2008 envisages a State subsidy for BNT of BGN 66.73 million (Bulgarian Lev), or €34.1 million. Of this sum, BGN 57.76 million (€29.5 million) are allocated for the production of nearly 22,000 hours of programmes for BNT's Channel 1, BNT regional programmes and the TV Bulgaria satellite channel. The remainder is to be invested in long-term material assets. BNT's State subsidy in 2007 was BGN 60.66 million (€31 million).<sup>78</sup>

The State money for BNT is allocated on the basis of hours of programming, without clear requirement for types of programming. The law should also give commercial broadcasters the chance to compete for public financing to produce public service-type programmes. They should also be given by law incentives to produce more such programming.

## 4. COMMERCIAL BROADCASTING

### 4.1 Regulation and management

The regulation and management of commercial broadcasting remain unchanged. Lack of transparency over ownership still persists, calling for various solutions. One would be the establishment of a voluntary register of media ownership as an industry self-regulatory mechanism. The general opinion among media professionals is that a self-regulatory system for registering media ownership could only be effective on the basis of consensus on the need. It is also important to create mechanisms obliging broadcasters to reveal changes in their ownership, which have continued to happen "behind closed doors". Georgi Lozanov, chairman of the Bulgarian Media Coalition, said: "After the freezing of the licensing [process], the media sector suffered a difficult crisis of legitimacy. The appearance and disappearance of players, the changes in ownership and programming have a very limited visibility and take place behind the [backs of the] regulators."<sup>79</sup>

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<sup>78</sup> Attachment 1 to the Report on the Law of the State Budget of the Republic of Bulgaria for 2008, p. 70, available at <http://www.minfin.government.bg> (accessed 10 December 2007).

<sup>79</sup> Monitoring of the Licensing of the Radio and Television Operators in Bulgaria 2006–2007, *op. cit.*, p. 11.

## 4.2 Ownership and cross-ownership

The concentration of media ownership has continued, thanks mainly to the lack of legally binding preventions. The sector needs a debate on appropriate thresholds to protect media pluralism. In 2005–2006, the Commission to Protect Competition (KZK, *Комисия за защита на конкуренцията*) reviewed and permitted concentrations in all media markets.

In October 2006, the Balkan News Corporation, which owns nationwide bTV, took over Radio Company CJ, which operates the local radio stations NJoy, Classic FM Radio and Jazz FM.

Along with the endless licensing saga, the television market has seen other developments that have proved crass ignorance and helplessness on the side of the regulators. A new television station, with almost nationwide coverage, TV2, completely ignored the licensing process and announced that it would start airing.<sup>80</sup> The station is allegedly owned by the advertising mogul Krassimir Gergov and is slated to broadcast on 27 regional frequencies throughout Bulgaria. This has become possible thanks to a combination of a package of telecommunications licences owned by the company CTN to broadcast on 27 regional frequencies, and a broadcast licence that TV2 obtained in 2000 from the regulatory authority at that time (NCRT).

## 4.3 The advertising market

The advertising market has grown continuously over recent years. The total advertising spend in 2006 grew by almost 30 per cent on a yearly basis to BGN 626.8 million (€320.48 million) in gross figures, with television pulling in over 70 per cent of that.

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<sup>80</sup> Biserka Borisova, “Нова национална тръгва без конкурс за лиценз Краси Гергов пак направи за смях СЕМ, КРС и депутатите, Бисерка Борисова” (New national station starts without a contest for a licence. Krasni Georgov made fun of the СЕМ, CRC and MPs), *168 hours*, 20 September 2007, p. 33.

**Table 2. Share of ad spending by media sector (2006)<sup>81</sup>**

Media	Share
Television	70.8
Daily press	10.5
Magazines	6.8
Radio	4.6
Outdoor	3.1
Other press	1.9
Internet	1.3
Cinema	1.0

Source: IP International Marketing Committee<sup>82</sup>

The advertising market has continued to be dominated by the three nationwide television broadcasters: bTV, Nova TV, and BNT Kanal 1 command over 80 per cent of the television ad spend. However, the leading station bTV has lost money to its rival Nova TV.

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<sup>81</sup> In gross figures.

<sup>82</sup> *Television 2006*, p. 104; *Television 2007*, p. 107.

**Table 3. Share of TV advertising income (2004–2006)<sup>83</sup>**

Station	Share		
	2004	2005	2006
bTV	49.7	48.2	43.3
Nova TV	25.4	30.5	34.7
Kanal 1	10.4	6.7	6.5
Fox Life	n.a.	2.2	3.1
7 Dni	4.9	2.0	2.7
Evrokom	2.0	2.0	1.6
M-Sat	2.8	1.5	1.3
Evropa	2.4	1.0	1.2
Diema+	n.a.	1.6	1.0
Other	2.4	4.3	4.6

Source: IP International Marketing Committee<sup>84</sup>

#### 4.4 Regional and local broadcasting

Regional and local broadcasting is still underdeveloped in Bulgaria, mainly due to the licensing deadlock. Terrestrial television broadcasting is chiefly carried out by the three nationwide television broadcasters. BNT operates regional centres in Varna, Plovdiv, Blagoevgrad and Rousse. An exception is the private station TV7 that has regional TV centres with one to two hours of daily programming in the towns of Haskovo, Stara Zagora, Veliko Tarnovo and Varna.

Tenders have not yet been held for regional terrestrial television broadcasting. Analogue broadcasting in the regions is currently done by telecom operators that air in 42 towns on the basis of temporary permits from the CEM. These operators are mainly interested in attracting viewers from larger towns. The 196 television channels, transmitted via cable and satellite, have some regional coverage. More than half of them are generalist and the rest are thematic channels.

There is a pressing need for local television programmes of good quality. At BNT, the generous budget for BNT's regional centres is not visible in their output. For example, the yearly budget of BNT's Rousse centre is approximately BGN 2 million (€1.02

<sup>83</sup> In gross figures.

<sup>84</sup> *Television 2006*, p. 104; *Television 2007*, p. 107.

million). This covers some eight hours of daily programming, including up to two newscasts, a one-hour current affairs programme and documentaries for the region. Some 70 full-time staff employees work on the two hours of in-house production while the rest is filled with old series and movies from the BNT's archives. Only in October 2006 were some independent productions made.<sup>85</sup>

The quality of programmes produced by cable TV operators is generally very low. Most of the local cable distribution companies that produce their own programming lack the resources or the willingness to invest in the professional training of their staff. As a result, the local newscasts they produce are of very poor quality. People still watch, in order to find out what is happening in their town.

## 5. EDITORIAL STANDARDS AND INDEPENDENCE

The foundation National Council for Journalism Ethics (NCJE, *Национален съвет за журналистическа етика*) was established in 2005 by the Association of Bulgarian Radio and Television Broadcasters (ABBRO), the Bulgarian Media Coalition, the Union of Publishers in Bulgaria, the Union of the Bulgarian Journalists and the Media Development Center. Its goal is to create a self-regulatory framework for print and electronic media through which to implement the Ethical Code that was adopted at the end of 2004 by some 100 media outlets.<sup>86</sup>

A first responsibility of the NCJE was to create structures that would monitor compliance with the Code of Ethics. This process started at the end of 2005. In March 2006, the NCJE adopted the Regulations for the Activity of the Commission for Ethics in the Print Media, and of the Commission for Ethics in the Electronic Media.<sup>87</sup> In June 2006, the two bodies started to accept complaints against breaches of ethical norms.

Each commission consists of 12 members, representing journalists, media owners and the public. The journalists' seats on each commission are occupied by four acting journalists nominated by the journalists' community at a general assembly of Bulgarian journalists. The owners' representatives in the print commission are three, selected by the Union of Publishers and one by the Association of Regional Media. The owners' representatives in the electronic commission are three selected by the Association of

<sup>85</sup> Phone interview with Dimitar Lipovanski, owner of the independent production company Arena Media, which organises in Rousse the annual festival for media production "The Bulgarian Europe," 12 December 2007.

<sup>86</sup> The Code of Ethics is available at <http://www.mediaethics-bg.org/?op=page&lan=BG&page=mediaList> (accessed on 20 November 2007).

<sup>87</sup> Available at <http://www.mediaethics-bg.org/?op=page&lan=EN2&page=kak> (accessed on 20 November 2007).

Bulgarian Radio and Television Broadcasters and one jointly by the state-financed Bulgarian News Agency (*Българската телеграфна агенция*, БТА), BNR and BNT. The seats reserved for the public are personalities renowned for their work and contribution to ensuring freedom of expression in Bulgaria. Two are selected by the general assembly of the journalists' community, and two by media owners. The nominating parties have the right to veto each other's nominees. If this happens, the two parties make new nominations until they are accepted by the other side.

The basic functions of the two commissions are:

- reviewing complaints regarding editorial content;
- mediating between the complainant and the media with the aim of solving the dispute through an agreement;
- issuing recommendations, warnings or public condemnation against media outlets found to have breached the Code of Ethics;
- issuing recommendations to improve journalists' work;
- recommending amendments of the Code of Ethics.

In cases of breaches of the Code, when all means for reaching a voluntary agreement between the disputing parties have been exhausted, the commissions can ask the offending outlet to publish or air correction and remedies, to give the right to reply or to apologise. If the media outlet does not do that, the commissions can threaten to issue a public condemnation. If the outlet still does not implement the commissions' recommendation, the commissions can issue a public condemnation.<sup>88</sup> The commissions do not handle cases of stories or programmes older than two months at the date of the complaint, complaints against a media outlet that is not a signatory of the Code of Ethics, anonymous complaints, or cases under litigation.

The activity of the two commissions is based on principles such as:

- accessibility (any citizen or organisation that feels affected by a story or programme can easily file a complaint with the commission, which investigates the issues in a simple and fast manner; the procedure is described on the commissions' Internet pages<sup>89</sup>);
- participation (the parties involved have access to the meetings of the commissions and can be represented by third parties);
- mediation (the commissions try in the first instance to settle the dispute amicably);

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<sup>88</sup> Regulations for the Activity of the Commission for Ethics in the Print Media and the Commission for Ethics in the Electronic Media, Art. 17.

<sup>89</sup> See <http://www.mediaethics-bg.org> (accessed on 20 November 2007).

- independence and impartiality (commission members are banned from participating and voting where there is a conflict of interests and from commenting on pending complaints);<sup>90</sup>
- transparency (the commissions must justify their decisions to the parties involved; at the same time, all the decisions of the commissions are public and must be published on the commissions' Internet pages).

During the first year of work ending June 2007, the commission received 90 complaints, letters and opinions from citizens.<sup>91</sup> Each commission met five times during the year. The two commissions had three joint meetings.<sup>92</sup>

The commission dealing with electronic media received 26 complaints, of which eight were judged as worth reviewing. Of these, the commission found that four were in breach of the Code of Ethics. One of them was found justified because it was made in the public interest. The commission clearly stated that the Code of Ethics was breached, but did not impose any sanction. Most of the breaches were related to the Code's requirements for reliable, accurate information media must supply to the public.<sup>93</sup>

It is too early to assess the overall value of the commissions' work and their contribution to encouraging ethical behaviour. But the existence of both the Code of Ethics and the self-regulatory mechanisms for its implementation is clearly a positive sign for the maturity of the Bulgarian media sector. Such broad self-regulation is not in place in any other sector of Bulgarian public life and therefore the experience of the self-regulatory framework for the media could be a model to follow.

Nevertheless, political pressures and interference with the broadcasters' work have continued. In May 2006, Georgi Koritarov, a renowned Bulgarian journalist who co-hosts Nova TV's morning talk show, confessed on Nova TV and Radio New Europe his cooperation with the former communist State security service. His public statement was prompted by an announcement of the Minister of Interior Rumen Petkov about

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<sup>90</sup> Regulations for the Activity of the Commission on Ethics in the Print Media and the Commission for Ethics in the Electronic Media, Art. 13 and Art. 18(5).

<sup>91</sup> Reports of the Commission on Ethics in the Print Media and the Commission for Ethics in the Electronic Media (19 June 2006–19 June 2007), available at [http://mediaethics-bg.org/images/razni/File/OtchetiStatistika/Otchet\\_June2006-June2007.pdf](http://mediaethics-bg.org/images/razni/File/OtchetiStatistika/Otchet_June2006-June2007.pdf) (accessed 11 December 2007).

<sup>92</sup> The author of this report is a member of the Commission for Ethics in the Electronic Media and its Chair for the first year of its operation.

<sup>93</sup> The Code states that journalists will supply the public with accurate and verified information and will not deliberately suppress or distort facts; will not mislead the public and will clearly indicate where manipulated texts, documents, images and sounds have been used; will distinguish clearly between comments and facts; and will ensure that when reporting on a controversial issue, all parties involved have the opportunity to state their position. (1.1.2–1.1.6).

Koritarov's work with the communist political police. Koritarov explained the context of his involvement with the communist police and apologised publicly to those he may have harmed in any way. The discussions sparked by the Koritarov affair focused on two issues. On the one hand, it re-affirmed the necessity to adopt relevant legislation on access to the archives of the former state security service in order to prevent politically motivated exposure or even blackmailing of public figures. The second issue, heatedly debated, had an entirely ethical character, raising the question of the extent to which people who co-operated with the political police during communism can play the role of opinion-makers in a democratic society. Nova TV backed Koritarov and kept his talk show on air, leaving the ethical dilemmas to be judged by its viewers.

In a different story, on 8 October 2006, during the electoral campaign for the presidential elections in Bulgaria, Ivo Indjev, the host of the programme "*V Decetkata*" (In the Bull's Eye) on commercial bTV announced that the station received electronic messages from an anonymous source saying that President Georgi Parvanov had not publicly declared all his properties. Parvanov, a Socialist Party leader since 1996 who was then running for a second presidential mandate, allegedly owned an apartment in the centre of Sofia worth €100,000. Indjev admitted that he did not check the information and asked his guest on the talk show, Mihail Mirchev, a sociologist from Parvanov's Party, if he wanted to comment on the allegations. Mirchev said that the emails were part of a negative PR campaign against the Socialists. After the show, Indjev resigned, saying that he was forced to do so under pressure from the President's office. The station alleged that Indjev had breached journalistic ethical rules by not double-checking the information before airing it. The Commission stated that Indjev did not break the Code of Ethics as he clearly said that the information was from an anonymous source and did not label it as a fact. Overall, the media community was somewhat divided over whether Indjev breached the Code of Ethics. The political pressure on bTV mentioned by Indjev was, however, impossible to substantiate.

## 6. PROGRAMMING

### 6.1 Output

There have been no major changes in the programme requirements for the nationwide broadcasters. Overall, the programming of nationwide television stations does not offer much variety, especially for young people who are often acquainted with the newest cultural productions, including movies and music, long before they reach Bulgarian TV stations. Exceptions are the specialised music TV channels like MM, Veselina and Planeta.<sup>94</sup>

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<sup>94</sup> CEM, "Development of the Radio and Television Activity in the Republic of Bulgaria (2001–2006)", *op. cit.*, p. 104.

In 2004, the reality-show format entered Bulgarian broadcasting, attracting massive interest very quickly, particularly among young viewers. In 2006, this format strengthened its position in the TV schedules. The success of the “Big Brother” programme in 2005–2006 prompted Nova TV to launch two more series of “Big Brother” and “VIP Brother” in 2007. In the autumn of 2006, bTV followed suit, with the reality show “Survivor”.

Following a controversy around the accuracy of audience data supplied to the market by TNS TV Plan, BNT and TV Nova signed up for people-meter measurement with a competing research company, GfK.<sup>95</sup> The second people-meter system in the country led to improved accuracy, with the results of both companies being more or less similar.

A large number of viewers do not want new Bulgarian television channels, but better quality and more diverse output from existing stations.<sup>96</sup> A continuing trend among viewers is the popularity of the newscasts, which have scored high ratings in the past six years. bTV retains a leading position, with an average 17 per cent audience share for its primetime newscasts in 2007.<sup>97</sup> The other commercial station, Nova TV, also improved the ratings for its main newscast “*Kalendar*” (Calendar) from 4 per cent in 2005 to 9.3 per cent in 2007.<sup>98</sup> Only the first channel of BNT suffered a ratings decline for its news programmes. The station’s main newscast, “*Po sveta i u nas*” (Around the World and at Home), has seen a continual drop in audience between 2003 and 2006. The programme slightly improved its audience to 10.9 per cent in 2007.<sup>99</sup>

Viewers’ preferences are divided among films, news, sports and entertainment programmes. The Bulgarian television market is dominated by the three national stations with generalist formats. There is still room on the market for films, local news, drama series, entertainment programmes, international news, health programmes and science documentaries.

In 2005, fiction, news and information and entertainment dominated the programming of BNT’s Channel 1. There is no consolidated data on the output by genre of the private stations.

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<sup>95</sup> GfK Audience Research Bulgaria (GARb) started functioning at the end of 2006.

<sup>96</sup> CEM, “Development of the Radio and Television Activity in the Republic of Bulgaria (2001–2006)”, *op. cit.*, p. 160.

<sup>97</sup> The data for 2007 is for the period 1 January–31 March 2007.

<sup>98</sup> Research of BBSS Gallup/TNS and Market Test for the period January–March 2007. The data has been submitted upon the author’s request.

<sup>99</sup> Research of BBSS Gallup/TNS and Market Test for the period January–March 2007. The data has been submitted upon the author’s request.

**Table 4. Output BNT (2005)**

Genre	Number of hours	Percentage of total programming
Fiction	3,404	45.1
News and information	1,636	21.6
Entertainment	1,048	13.9
Arts/Science/Culture	475	6.3
Sports	456	6.0
Promos	404	5.3
Advertising	81	1.1
Other	48	0.7
Music	0	0
Total	7,552	100

Source: European Audiovisual Observatory<sup>100</sup>

## 6.2 General provisions on news

There have been no changes in the general provisions on news aired by broadcasters. According to the Law on Radio and Television, only BNT and BNR can produce the news and current affairs programmes on political and economic subjects that they broadcast. This provision has been criticised by foreign experts as a clause limiting the broadcasters' editorial independence.<sup>101</sup>

BNR and BNT have the right to include in their news, free of charge, reports and information about events for which another radio or television operator has exclusive reporting rights. In compliance with the Law on Copyright and Related Rights, the source of information must be announced.

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<sup>100</sup> European Audiovisual Observatory, *Yearbook 2007. Film, Television and Video in Europe*, 2007 Edition, Vol. 1, "Television in 36 European States", Strasbourg, 2007, p. 34.

<sup>101</sup> OSI/Bulgaria, p. 385.

### 6.3 General programme production guidelines

The general programme obligations and guidelines remain unchanged. They apply to commercial and public service broadcasters alike, and are enshrined in the Law on Radio and Television.<sup>102</sup>

### 6.4 Quotas

The programme obligations and quotas of both public service and commercial broadcasters are defined in their broadcast licence conditions, which are set by the CEM.<sup>103</sup> Interestingly, a comparison between the programme obligations envisaged in the broadcast licences of the three nationwide television broadcasters reveals that they have strikingly similar commitments in terms of thematic programmes and quotas. This makes it even more difficult to justify BNT's privileged position in the media market.<sup>104</sup> Without a clear and distinct identity, BNT will have difficulties in justifying its funding from the State budget.

### 6.5 Obligations on PSB

No major changes have been introduced to the programme obligations of public radio and television. The Law on Radio and Television determines the programming obligations of BNR and BNT<sup>105</sup> and stipulates additional requirements of the programme content broadcast by BNT.<sup>106</sup> Public service television is also obliged to provide airtime, immediately and free of charge, for official announcements by representatives of state bodies.

### 6.6 Obligations on commercial broadcasters

Commercial broadcasting has seen no significant changes. The Law on Radio and Television determines the basic principles that should be observed by all broadcasters with respect to programme content. The commercial broadcasters' programme obligations and quotas are defined in their broadcast licences, issued by the CEM.

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<sup>102</sup> Law on Radio and Television, Art. 10–19.

<sup>103</sup> For programming quotas on BNT, see OSI/Bulgaria, pp. 387–389.

<sup>104</sup> For quotas on commercial broadcasters see OSI/Bulgaria, pp. 402–404.

<sup>105</sup> Law on Radio and Television, Art. 6.

<sup>106</sup> Law on Radio and Television, Art. 7.

## 7. CONCLUSIONS

The Bulgarian media environment has seen two major developments in recent years. On a negative note, the sector has failed to welcome new players on the television market, as it was hoped after the government's Broadcasting Strategy seemed to be able to unfreeze the analogue licensing of commercial broadcasters, after a four-year paralysis, and to prepare for digital switch-over. On the other hand, the media sector in general finally saw a system of self-regulation working.

On the policy and legislation front, Bulgaria incorporated the most important elements of the EC audiovisual *acquis*. It will, however, have to revise its media regulatory framework in line with the new AVMS Directive. The country has adopted a new law on electronic communications, which paves the way for the arrival of digital broadcasting, but it has yet to amend the relevant broadcasting legislation, namely the Law on Radio and Television, to complete the legal framework for the introduction of digitalisation.

The new legislation should create a unitary regulatory framework for broadcasting, which could even mean marrying the current two regulators under a single roof. It should also improve the working framework for the public service broadcasters, particularly its funding model. An important step was the adoption of the Plan for the Introduction of Terrestrial Digital Broadcasting (DVB-T) on 31 January 2008, which paves the way for the digital transition.

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