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COMPETITION ISSUES IN TELEVISION AND BROADCASTING

Contribution from Tunisia

-- Session II --

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COMPETITION ISSUES IN TELEVISION AND BROADCASTING

-- Tunisia* --

Abstract

During the last two years, the Tunisian television and broadcasting market has received a rapid expansion. In fact, several new TV and radio channels have been launched, creating a new competitive environment. This paper intends to present the Tunisian television and broadcasting market and analyze its structures and its competition level. Enforcement of the Tunisian competition law to anticompetitive practices in television and broadcasting market is also examined in this paper through a real case.

1. Introduction

1. In the current transition phase, television and broadcasting industry represents the milestone for establishing a democratic climate in Tunisia and consolidating freedom of expression. The Tunisian television and broadcasting market has received a rapid expansion during the last two years. In fact, the revolution of 14 January 2011 has had a positive impact on the development of this market, due to the principles of free media supported by the revolution. Today, the Tunisian television and broadcasting market is composed of 11 TV channels and 21 radio channels. This new era of free media in Tunisia is likely to modify the competition environment in television and broadcasting sector, which was for a long time a non-liberalized sector, dominated by a few number of TV and radio channels.

2. This paper is organized as follows. Section 2 is dedicated to give an overview of the Tunisian television and broadcasting market with an analysis of its competition level. Section 3 discusses the enforcement of Tunisian competition law to anticompetitive practices in television and broadcasting market. Section 4 summarizes this paper.

2. Overview of the Tunisian television and broadcasting market

2.1 *Analysis of competition level*

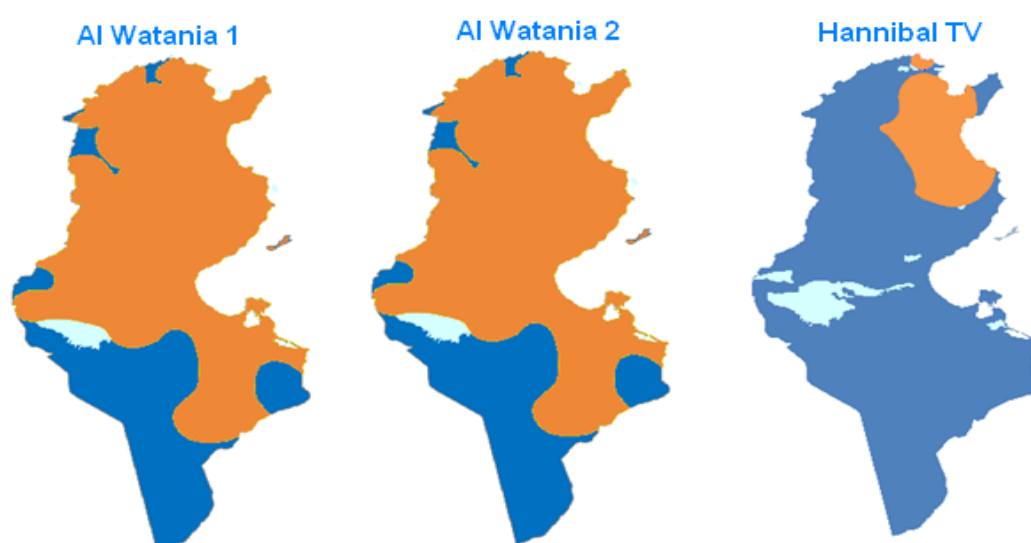
3. The Tunisian television and broadcasting market can be divided into two main relevant markets: TV broadcasting market and Radio broadcasting market. In the following, we give an overview on these two markets.

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2.1.1 TV broadcasting market

4. Since there are two TV broadcast systems mainly the analog system and the digital system, therefore we distinguish between two types of TV broadcasting markets, which are: the analog TV broadcasting market and the digital TV broadcasting market. In the analog mode, the Tunisian TV broadcasting market is highly concentrated since it is dominated by three main channels namely Al Watania 1, Al Watania 2 and Hannibal TV. Actually, the programs of Al Watania 1 and Al Watania 2 cover respectively 99.80% and 99.60% of the Tunisian territory¹, while the cover rate of Hannibal TV is 44.80%, as shown in Figure 1. It should be noted that the programs of these three channels in analog mode are ensured by the National Broadcasting Corporation.

Figure 1. The covered Tunisian territorial areas (in orange color) by three main TV channels in analog mode

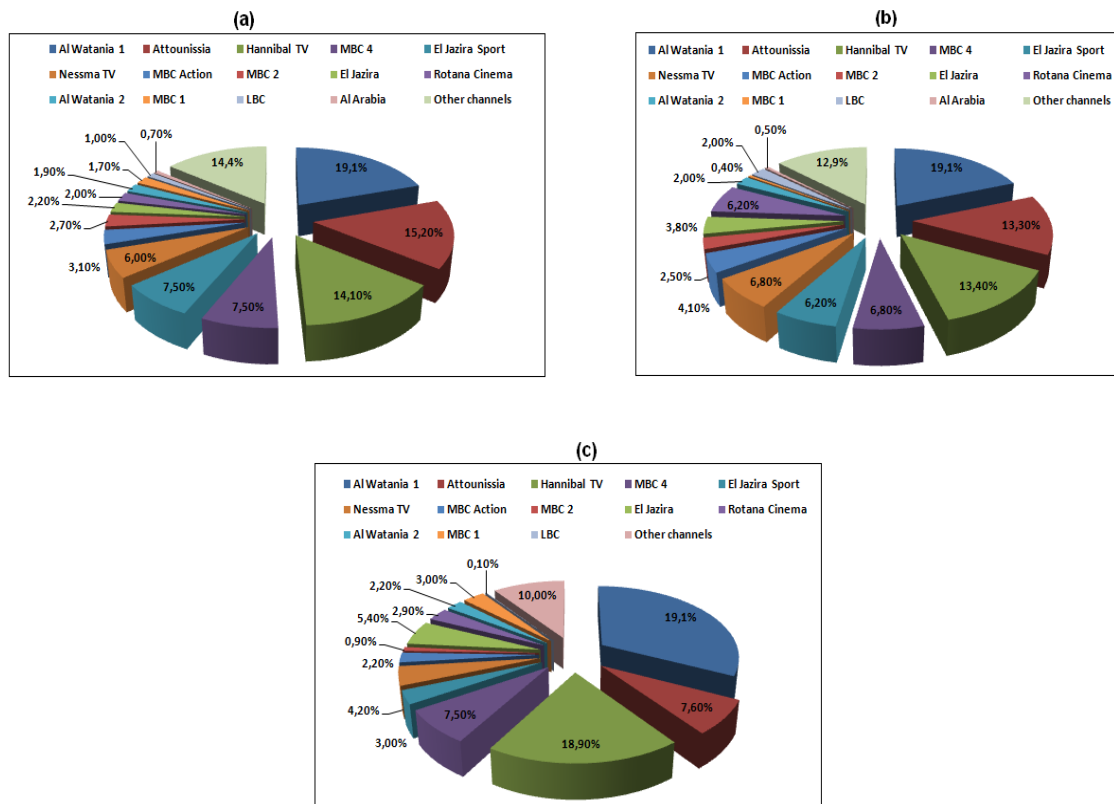


5. The digital TV broadcasting market, which is much more interesting than the analog one, includes 11 televisions: two public channels which are Al Watania 1 and Al Watania 2, and 9 private channels namely Hannibal TV, Nessma TV, Attounissia, El Hiwar Ettounsi, TWT, Al Janoubia TV, Tounesna TV, Ezzitouna TV and El Kalem TV. According to the last statistics² on audience shares in three biggest governorates namely Tunis, Sousse and Sfax, four principal Tunisian TV channels which are Al Watania 1, Hannibal TV, Attounissia and Nessma TV acquire for a total audience share of 55.30%, 52.6% and 62.80% in Tunis, Sousse and Sfax respectively, as shown in Figure 2. Using the Herfindahl-Hirschman Index (HHI), TV broadcasting markets in Tunis and Sousse are considered as unconcentrated, since their HHI, estimated at 942.35 and 813.74 respectively, remains inferior to 1000. However, TV broadcasting market in Sfax is considered as moderately concentrated since its HHI was estimated at 1501.63.

¹ Official statistics of National Broadcasting Corporation.

² Statistics of Med Media, November 2012.

**Figure 2. Audience shares of TV channels in three biggest Tunisian governorates:
(a) Tunis, (b) Sousse and (c) Sfax.**



2.1.2 Radio broadcasting market

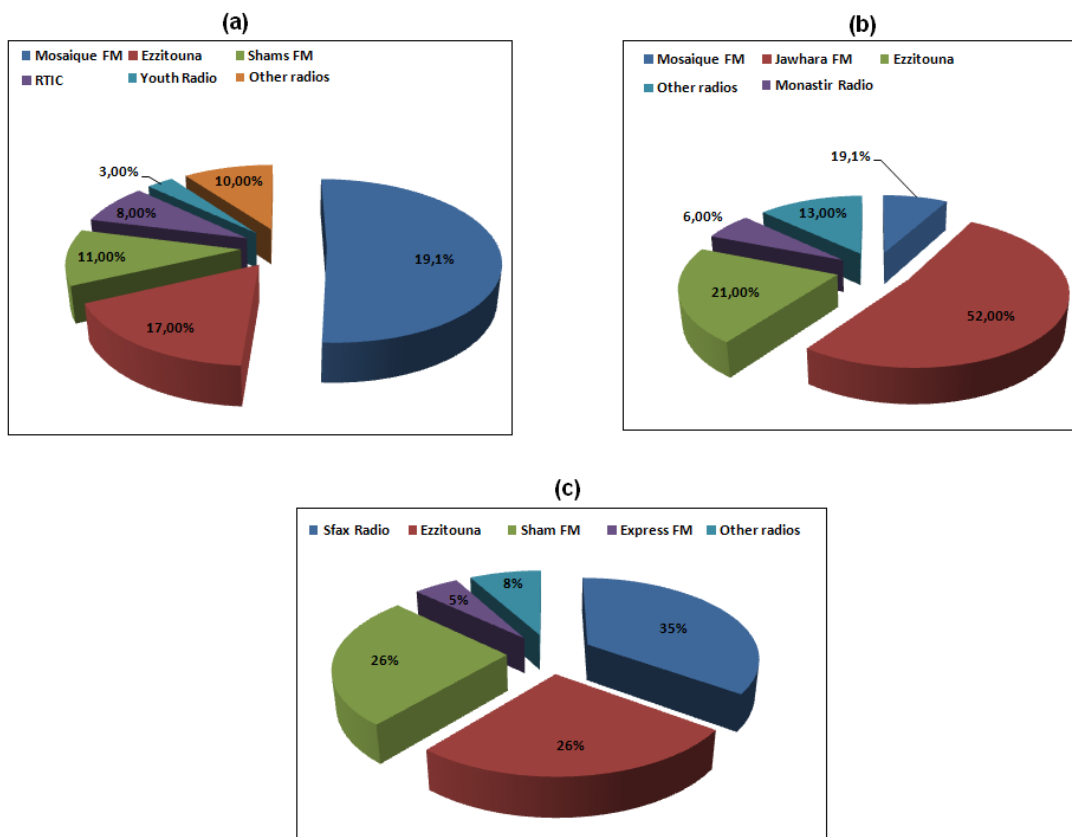
6. The Tunisian Radio broadcasting market is composed of 9 public radio channels and 12 private radio channels, as shown in Table 1. Unlike TV broadcasting market, the Tunisian Radio broadcasting market is considered as highly concentrated. The estimated values of HHI for the three governorates of Tunis, Sousse and Sfax, are about 3075, 3245 and 2602, respectively, which are superior to 2500 meaning a high degree of concentration. As shown in Figure 3, Mosaique FM dominates the Radio broadcasting market of Tunis with an audience share of 51%. The Radio broadcasting markets of Sousse and Sfax are dominated by Jawhara FM and Sfax Radio respectively, with audience shares of 52% and 35%, respectively. The high degree of concentration of Tunisian Radio broadcasting markets can be explained by the fact that the majority of radio channels broadcast their programs in limited geographical zones and therefore the number of radio channels remains insufficient to create a competitive climate.

Table 1 : Tunisian radio channels.

Radio Channel	Status	Broadcast Mode	Cover rate
The National Radio Channel	Public	Short waves, medium waves, FM and satellites	100% of the Tunisian population
Radio Tunis International Channel	Public	medium waves, FM and satellites	86% of the Tunisian population
The Youth Radio	Public	FM	98% of the Tunisian population
The Cultural Radio Channel	Public	medium waves, FM and satellites	97% of the Tunisian population
Sfax Radio	Public	FM	Limited to the governorate of Sfax
Monastir Radio	Public	FM	Limited to the governorate of Monastir
Gafsa Radio	Public	FM	Limited to the governorate of Gafsa
Le Kef Radio	Public	FM	Limited to the governorate of Kef
Tataouine Radio	Public	FM	Limited to the governorate of Tataouine
Mosaïque FM	Private	FM	Limited to the governorates of Grand Tunis and Cap Bon
Jawhara FM	Private	FM	Limited the Center East and the Sahel
Ezzitouna	Private	FM and satellites	100% of the Tunisian population
Shams FM	Private	FM	60% of the Tunisian population
Express FM	Private	FM	Limited to the governorates of Grand Tunis and Sfax
Oxygène FM	Private	FM	Limited to the governorate of Bizerte
Ibtissama	Private	FM	Limited to the governorate of Grand Tunis
Oasis FM	Private	FM	Limited to the governorate of Gabes
Kalima FM	Private	FM	Limited to the governorate of Grand Tunis
Chaambi FM	Private	FM	Limited to the governorate of Kasserine
Ulysse FM	Private	FM	Limited to the governorate of Mednine
Cap FM	Private	FM	Limited to the governorate of Cap Bon

Source: National Broadcasting Corporation, October 2012.

**Figure 3: Audience shares of Radio channels in three biggest Tunisian governorates:
(a) Tunis, (b) Sousse and (c) Sfax.**



2.2 *Television and broadcasting regulations*

7. The television and broadcasting sector is governed by a legislative framework composed of the following texts:

- Law N° 93-8 dated 1 February 1993, relating to the creation of the National Broadcasting Corporation.
- Law N° 2001-1 dated 15 January 2001 promulgating the telecommunications code.
- Law N° 2007-33 dated 4 June 2007, relating to the public audio-visual establishments.
- Decree-Law N° 2011-10 dated 2 March 2011, relating to the creation of a national authority independent for the reform of the sector of information and communication.
- Decree-Law N° 2011-115 dated 2 November 2011, relating to the freedom of press, printing and publication.
- Decree-Law N° 2011-116 dated 2 November 2011, relating to freedom of audio-visual communication and on the creation of the Independent High Authority for Audio-visual Communication.

8. The Independent High Authority for Audiovisual Communication (IHAAC) plays the role of broadcast regulator by:

- Promoting democracy, human rights and rule of law.
- Promoting and protecting freedom of expression.
- Supporting public, private and associative audiovisual communication sector and enhancing its quality and diversity.
- Promoting the rights of public in media and knowledge by guaranteeing pluralism and diversity in programs related to public affairs.
- Avoiding concentration of ownership of audiovisual communication means and promoting fair competition in this sector.
- Establishing a plural, diverse and balanced audiovisual media scene strengthening the values of freedom, justice and renouncing any discrimination on the bases of origin, gender or religion.
- Promoting accurate and balanced media programming.
- Promoting high quality educational programs.
- Promoting dissemination of audiovisual communication services to the maximum geographical scope nationally, regionally and locally.
- Developing and supporting programming and broadcasting that express the national culture.
- Ensuring control of the use of modern technology.
- Enhancing financial and competitive capacities of audiovisual communication institutions in the Republic of Tunisia.
- Promoting the development of highly qualified human resources.

9. It is worth noticing that, currently, there is no institution in charge of enforcing the legislation of television and broadcasting sector. Regarding IHAAC, the latter will be activated soon and their members will be appointed by the President of the Republic.

3. Enforcement of competition law in television and broadcasting market

10. The Tunisian competition law³ is deeply involved in dealing with television and broadcasting-related competition issues. However, it should be mentioned that there are few cases dealing with anticompetitive practices in television and broadcasting sector. The most important case handled by the Tunisian Competition Council (TCC) concerns the market of televised football matches. Two domestic alleged infringers are involved in this case, namely the Tunisian Football Federation (TFF) and the National Television Corporation (NTC). In fact, in its Decision N° 61126 dated 22 April 2010, the TCC

³ Law N° 1991-64 on competition and price, enacted in July 29, 1991. It was amended and completed by Law N° 93-83 of July 26, 1993; Law N° 95-42 of April 24, 1995; Law N° 99-41 of May 10, 1999; Law N° 2003-74 of November 11, 2003; Law N° 2005-60 of July 18, 2005

dealt with a case involving an agreement between the TFF, NTC and the National Agency for Promoting the Audiovisual Sector. According to this agreement, TFF attributed the exclusive audiovisual broadcasting rights of football matches to the NTC. The TCC decided to oppose the concluded agreement and qualified it as anticompetitive practice, impeding competition in the market. The theory of harm applied by TCC was the creation of barriers to entry on the market and exclusion of competitors from the market. The TCC forced infringers to put end to their practices and condemned them to pay a fine of five thousand dinars.

11. The main challenge encountering this case was essentially related to capacity constraints. The unavailability of data mainly indicators on market shares and turnovers of the concerned parties remain the most important obstacle to conduct rigorous studies on the affected relevant market. Another challenge that arose from the analysis of this case was the absence of a clear and concise legislative framework that governs the rights relating to TV broadcasting of football matches.

12. The few cases dealing with competition in television and broadcasting sector are explained by the fact that the undertakings in this sector are in general not violating competition law. Another factor that can explain this situation is that the television and broadcasting sector was, for a long time, a non-liberalized sector with a limited number of channels operating in the market. Regarding awareness of anticompetitive practices, it should be noted that undertakings in the television and broadcasting sector, as well as in other sectors, are not very familiar with the Tunisian competition law. This factor could be also a reason for the few number of claims reported to the TCC. In a survey conducted by the Arab Center for the Development of the Rule of Law and Integrity⁴ dated October 2009, the score of familiarity with the Tunisian competition law in public, private and legal sectors was estimated at 3.8. This score, which was slightly above the average of a scale of 5, means that awareness and knowledge of competition regulations in Tunisia is not strong, that is why the TCC insists in each annual report on its role of disseminating knowledge on competition law in Tunisia.

13. In addition to the case discussed above, the TCC gave, within its advisory role, its opinion⁵ on a set of four specifications dealing with the conditions of organization of the activity of creating and utilizing of commercial and associative both TV and radio channels. One of the most important remarks highlighted by the TCC in this opinion is that decisions on mergers in audiovisual sector must belong to the competence of Minister of Trade as mentioned in article 7 of the Tunisian competition law and not to IHAAC. The role of the latter should be limited to giving technical opinions on any merger operation in audiovisual sector.

4. Conclusion

14. This paper has presented the Tunisian television and broadcasting market and has analyzed its competition level. In addition, application of the Tunisian competition law to anticompetitive practices in television and broadcasting market is examined through a real case. In fact, the most important conclusion that can be drawn from this paper is that cases dealing with anticompetitive practices in Tunisian television and broadcasting market are rare. However, within the new environment of freedom of expression, we expect a rise of the number of cases on competition matters in television and broadcasting sector in the future.

⁴ Details about this survey can be found at <http://www.arabruleoflaw.org>

⁵ TCC's opinion N° 112434 dated 19 January 2012.