Unclassified **DAF/COMP/GF/WD(2013)28**

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

29-Jan-2013

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP/GF/WD(2013)28
Unclassified

Cancels & replaces the same document of 25 January 2013

Global Forum on Competition

COMPETITION ISSUES IN TELEVISION AND BROADCASTING

Contribution from Egypt

-- Session II --

This contribution is submitted by Egypt under Session II of the Global Forum on Competition to be held on 28 February and 1 March 2013.

JT03333721

English - Or. English

COMPETITION ISSUES IN TELEVISION AND BROADCASTING

-- Egypt --

Introduction

1. The broadcasting industry witnessed an exponential growth throughout the past decade. This was due primarily to the ongoing technological changes that have affected both market size and consumer preferences. Such industry has a significant impact over the whole economy.

2. In Egypt, the television broadcasting industry[1] is, seemingly, the oldest in the region.

3. Created in early 1960's, the state-owned channels are holding a monopoly over the terrestrial TV as yet.

4. In the late 1990's Egypt entered into the satellite broadcasting industry by launching the first satellite in the African continent.

5. In this Paper, the Egyptian Competition Authority ("ECA") would like to share its views as to the challenges that face the growth of TV broadcasting market in Egypt taking into account its very limited experience in the field.

6. We will first present the entry conditions by TV broadcasters; then we will discuss the level of competition that exists among TV broadcasters and the hurdles that may jeopardize the future of this key industry.

1. Entry Conditions

7. The conditions to enter television broadcasting market, especially for a content packager (known as TV channel or TV broadcaster), differ dramatically whether the said entry will take place in the terrestrial TV market (or free-to-air television) or satellite TV market.

1.1 Entry in Terrestrial TV Market

8. The Free-to-air television falls entirely under the Government's supervision. In this scope, the Law No.13 in 1979 established the Radio and television Union ("RTU") and entrusted it with the mission of managing and operating all aspects related to broadcasting on free-to-air television.

[1] It should be noted that free-to-air television and satellite television are the only television broadcasting means in Egypt, as neither Cable TV nor paid-to-air television are operating yet.

9. This legislation was amended ten years later[2] to grant RTU statutory monopoly over the acquisition and management of TV and Radio stations in Egypt[3].

10. Hence, entry by private TV broadcasters in the terrestrial TV is prohibited ab initio.[4]

1.2 Entry in Satellite Television Market

11. As mentioned hereabove, Egypt entered into the satellite broadcasting in the late 1990's. The entry conditions may vary depending on the TV broadcaster is governed by the Egyptian investment Law[5] or otherwise. Also, such conditions may differ between free TV channels and Pay TV channels.

12. We will opt, for the purpose of this section, to the free/pay TV classification and we will refer to the other type of classification whenever it is appropriate.

1.2.1 Entry of Free TV Broadcaster

13. In order to enter the satellite market, the TV broadcaster has to meet some licensing requirements. Afterwards, he has to have access to spectrum and to studio broadcasting.

A. Licensing Requirements

14. In order to evade the afore-mentioned restrictions stipulated in the law No.13/1979, a cabinet Decree on the 24th of February 2000 created the media free zone ("MFZ") in accordance with article 29 of the Investment Law.

15. As such, all entities operating inside the free zone are considered to carry on business "outside" Egypt. Therefore, the law No.13/1979 is not applicable on the MFZ.

16. The TV broadcaster must approach the General Authority for Investment and Free Zone ("GAFI"), regulator responsible for enforcing the said Investment Law, to get a license to be incorporated under the Investment Law. The newly established entity should take the legal form of Joint Stock Company or Limited Liability Company. In addition, the company's capital must be proportional to the capital investment needed to operate in the market. This latter condition is subjective and judgmental and in contradiction with the statutory minimum capital requirements set out by the Companies Law. Furthermore, the Applicant should abide by MFZ internal regulations especially the broadcasting code of ethics (e.g. protecting the interests of the nation; objectivity; protecting the IP rights of third parties etc...).

---

2 Law No.223/1989 – official journal No.28 (17 July 1989).

3 It is worth mentioning that article 215 of the new Constitution provides that the National Council for Communications will run the audiovisual related matters and will be responsible, inter alia, of ensuring the freedom of communications, pluralism and of preventing monopoly and concentration in the audiovisual sector.

4 It is possible, though, to circumvent the entry ban imposed by the Law No.223/1989 by the use of concession agreements. Such agreements are already introduced in the radio broadcasting market. The government seems to be reluctant to recoursing to such agreements in the terrestrial television broadcasting.

5 Law no. 8 for the year 1997 with regard to guaranties and incentives to investment.

17. Furthermore, the GAFI requires that the TV broadcaster provides a proof of preliminary approval from both the spectrum provider as well as the studio provider to warranting that the TV broadcaster will have access to the key facilities needed to operate in the market.

18. It is worthwhile noting that the incorporation decision is issued by GAFI. As for the license to carry on business, it is emanated from MFZ Chairman (art. 31 of Investment Law)[6]. The said license is effective till the end of the contracts concluded by and between the TV broadcaster one the one hand and Spectrum/Studio providers on the other.

19. As regards the timeliness factor, ECA has indications that some TV broadcasters entered the market within one year.

20. Relatedly, once established, the TV broadcaster will enjoy from the guarantees stipulated in the Investment Law (articles 8-11). As such, the TV broadcaster cannot be nationalized, confiscated, sequestrated administratively, or to be subject to any kind of price regulation.

21. On the other hand, in the event that the Investor breaches GAFI's regulations (including the above mentioned code of ethics), the latter will have the right to notify the investor to rectify the causes of such breach within a specific period. In case he did not abide by such notice, GAFI will have the right to suspend the activity of his project.[7]

B. Access to Spectrum

22. As previously mentioned, the TV broadcaster operating in satellite television must have access to a spectrum.

23. Viewers in Egypt (Consumers of the broadcasting market) have access to several satellites, inter alia, the Nile Sat, Arab Sat, El Noor Sat, Hotbird (…) The most viewed satellite in Egypt is the Nile Sat with 42 million viewers. This large viewer share results from the fact that the Nile Sat provides a broad array of broadcasting services (news, sports, music, movies etc…) targeting the Egyptian viewer in particular and the Arabic viewer in general.

24. The Nile Sat Company is partially owned by the RTU (40% of shares), State Owned Enterprises (SOEs) have a shareholding of 40%; and the remainder share (20%) is listed in the stock exchange. The Nile Sat Board of directors is composed of 11 members, where 5 of them are representatives of the RTU.

25. The Nile Sat company provides the TV broadcaster with one spectrum or a package of spectrums provided he obtains the GAFI license and fulfills his contractual obligations (ex: paying the spectrum rental fee).

26. It should be noted that there is no restrictions as to the nationality of broadcasters to get broadcasting signal.

---

6 It is worth mentioning that MFZ Board is appointed by GAFI (article 29 of the Investment Law).

7 Article 63 of law No. 8/1997: *"The administrative bodies, in case the project is in breach of any provision of the laws, regulations and decrees, shall notify the investor together with a copy of such notice to the Authority, to rectify the causes of the breach within a period to be defined in the notice in light of the extent and nature of such breach, in case such period lapses without rectification of the breach, the Authority shall issue a justified decision to suspend the activity of the project."*

27. It is, also, possible to have access to the Nile Sat spectrum from outside Egypt provided that the applicant obtains a license to operate as a TV broadcaster from the Country he will broadcast from.

28. Accordingly, among 700 TV broadcasters owning a spectrum on the Nile Sat, only 13% are present and have studios in Egypt. One of the reasons explaining this low percentage is due – as purported by some market players – to the ambiguity and duration of the procedure inside GAFI. Consequently, the TV broadcaster can form his company and lease broadcasting studio outside Egypt; then he can obtain the broadcasting signal from the Nile Sat.

C. Access to Broadcasting Studio

29. The MFZ comprises the "Egyptian Media Production City" ("EMPC") which embodies various forms of broadcasting studios.

30. All TV broadcasters who desire to broadcast from "Egypt" must do so from within EMPC. Accordingly, EMPC Company is the only studio supplier in Egypt for satellite television.

31. The EMPC Company is also partially owned by RTU who owns 43% of shares, 37% are owned by SOEs and 20% are listed in Stock Exchange.

32. As for studio allocation, EMPC Company leases its studios for a renewable duration of 5 years. The leasing contract is standardized to all lessees and the rent depends on the size of the studio and its specs. Moreover, EMPC Company offers the option to lease all or part of the equipment needed for all stages of production and packaging.

33. Along with its role of studio provider, EMPC Company is also a content provider as it takes part in producing television serials and series each year.

34. Albeit the fact that both Nile Sat and EMPC companies are partially owned by RTU, and although that EMPC company is vertically integrated (content provider & Studio provider), conditions to access to any of the key facilities (spectrum- studio) are standardized to all TV broadcasters and are available on a "first come, first served" basis.

1.2.2 Entry of Pay TV Broadcaster

35. The Pay TV broadcaster is subject to the same rules and licensing and contractual conditions mentioned hereabove.

36. However, he should, further, get the prior Government's approval to encrypt his content. Afterwards, he needs to contract with an Encryption/Decryption Company to broadcast his services against a subscription fee.

37. Summing up, the entry into the terrestrial TV broadcasting market is blocked. As for the satellite TV broadcasting, the entry is to some extent regulated. However, ECA does believe that the main competition concerns lie beyond the entry barriers, as it will be illustrated later.

2. Anatomy of Competition in the Television Broadcasting Market

38. In this section, we will touch on the parameters of competition in the TV broadcasting market; then we will shed light on the challenges of competition by tackling two types of content broadcasting markets.

2.1 Parameters of Competition in TV Broadcasting Market

39. Competition in the TV broadcasting is subject to various categorizations. In Egypt, the main categorizations can be outlined as follows:

- Terrestrial TV vs. Satellite TV;
- Free TV vs. Pay TV; and
- Types of Content (Sports events- Movies- Serials- General Entertainment- Youth etc..).

2.1.1 Competition Between Terrestrial TV Market and Satellite TV Market

40. As mentioned earlier, the terrestrial TV is legally protected from any competition on the free to air level. Further, the terrestrial TV is not subject to antitrust scrutiny for the reason that it is run directly by RTU.[8]

41. Nonetheless, it is facing fierce competition from satellite TV especially after January 25 Revolution.

42. In effect, free to air television has reached the point where it is nearly unable to compete with TV broadcasters on satellite (mainly Nile Sat), except for the short period of the holy month of Ramadan.[9] RTU admits facing nowadays, especially after the revolution, a true managerial and financial crisis at its peak. Due to these, RTU is unable to produce or acquire any good or innovative content that would attract advertisers and consequently add to its profits. It even tried to decrease its advertising prices but this had no significant impact on the number of advertisers.

43. As such, many reputable presenters and experienced technicians switched away from the RTU and contracted with satellite TV broadcasters.

44. It should be noted that one of the reasons that contributed to extending the scope of competition in this category is TV coverage of the revolution itself. RTU was accused of lack of transparency and impartiality at a time where private TV broadcasters were competing on timeliness in delivering the most accurate and complete information, which automatically drove a considerable stake of the audience away from the national TV to the benefit of private channels on Nile Sat.

45. It is worth mentioning that despite the fact that satellite TV broadcasters are considered as if they are operating outside Egypt, their anticompetitive practices, if any can be caught by the Egyptian Competition Law ("ECL") due to its extra-territorial reach.[10]

---

8 As per Article 9 para. 1 of the Competition Law public utilities (in this case terrestrial TV) managed by the State (in this case RTU since it is a public juristic person) are not subject to antitrust law.

9 Many market players, including RTU, assert that the month of Ramadan constitutes a distinct market.

10 Article 5 of ECL provides that *"acts committed abroad should these acts result into the prevention, restriction or harm of the freedom of competition in Egypt and which constitute crimes under this Law (ECL)."*

2.1.2 Competition Between Free TV Market and Pay TV Market

46. Usually, Pay TV should be regarded as a distinct market from Free TV.

47. In Pay TV market, the TV broadcasters endeavor to acquire exclusive content, target specific segments with specific income and draw on heavily on the subscription fee.

48. As regards free TV market, the TV broadcasters strive to attract as many as viewers to attract advertisers. In this case, broadcasters rely on the profits realized from selling the spots advertizing.

49. Nevertheless, and especially after the revolution, Pay TV market is threatened by free TV market in many sub-markets (eg. Talk shows- serials- Arabic and foreign movies etc…) for several reasons. Chief among these reasons is the presence of large informal sector, as will be discussed later.

50. Basically, the two main sub-markets that Pay TV can be regarded as distinct markets are major sports events and first release of foreign movies.

2.1.3 Competition Among Different Types of Content

51. Two observations can be put forward in this sub-section:

- First, since the revolution and due to the hot political events, the political talk shows programs attracted a considerable stake of audience to the extent that specialized TV broadcasters (for instance movie channels) regard "General Entertainment" channels as their "direct" competitors.

- Second, competition in content broadcasting market is two sided where the TV broadcasters deal with two groups of customers, viewers and advertisers. The profits advertisers make from the platform (TV channel) increase in parallel with the increase of number of viewers on the other side of the market. The more viewers multiply, the greater the success of a channel grows and accordingly, advertisers multiply. When there is an increase of amount of advertising, the viewers tend to switch to another platform. Hence, TV broadcasters compete to find new and exclusive content.

52. It should be noted that, sometimes, media agencies buy the exclusive content for the platform (with which they have exclusive agreements and therefore own all the spots advertising on the platform) to enhance its content and attract more viewers, thus attracting more advertisers.

53. The best example to describe the relativity between content and advertising is the RTU case. As mentioned earlier, after the 25 Jan revolution, RTU encountered financial difficulties which resulted in its inability to buy broadcasting rights for content. Now, the lack of advertising on its channels is very apparent to the viewers.

54. As for making a balance between the spots advertising and the number of viewers, TV broadcasters tend to produce or buy new and exclusive content to create a new peak hour in order to attract new viewers and to lessen the density of advertising in other peak hours.

55. As such, competition in the market is mostly based on accessing to the most exclusive and newest content.

2.2 Competition in the Content Broadcasting Market: Case Study and Challenges

56. Usually, TV broadcasters, in their attempt to attract the larger viewer share, compete by trying to access to the newest and most exclusive content. This section will focus on two content broadcasting markets: First release of Arabic movies and football events.

2.2.1 First Release of Arabic Movies

57. Usually film producers, when considering the distribution of their products, approach first the pay-TV; the latter redistributes such movies to other TV broadcasters (usually free TV).

58. Hence, free TV broadcasters used to buy the right to broadcast first release of Arabic movies from the pay TV. Nonetheless, with the rise of the informal sector (discussed below), especially after the 25 Jan revolution, free TV broadcasters compete nowadays in acquiring exclusively the right to broadcast first release of Arabic movies directly from the producer (direct TV) and then redistribute it to other pay TV or free TV broadcasters. Consequently, both pay TV and free TV compete in the direct TV market.[11]

59. The duration of the contract between the free TV broadcasters and the content provider is usually three years; but the exclusivity of the first run can lapse up to six months. Afterwards, the content is forwarded to other competitors (free TV or pay TV), which is called the "second run of distribution." In the redistribution phase, the owner of the broadcasting rights abstains from broadcasting the content on his platform for a period of one month to give the competitor the chance to create his advertising campaign for the new content.

60. It is noteworthy to mention that the broadcasting rights given by the producer to any market player are limited to a specific number of movie runs throughout the year. This limitation aims to protect the value of the content. If the movie was seen so many times by the viewers, they will lose interest in the movie. Thus, the bargaining power of the producer will be weakened when renewing his contract with the distributor. In addition, the TV broadcaster will not have the ability to attract as many advertisers as with a more valued content, therefore his willingness to reacquire the right to broadcast the content will depend, this time, more on the price than the quality.

61. The competition in first release movie market faces several constraints because of the emergence of the informal sector and piracy. Such constraints can be divided, as follows:

- *First*, pirate decryption: As illustrated above, pay TV had, most of the time, the priority in accessing to premium content. However, the widespread of pirate decryption resulted in the "unduly" increase of the number of pay TV viewers. Hence, decreasing the value of the premium content. Such piracy drove free TV broadcasters to compete in the direct TV market. It should also be noted that such piracy compelled one of encrypting companies in Egypt to exit the market. Today, only one company in Egypt (it is an SOE) is responsible of encrypting the pay TV content.[12]

---

11 It should be noted that competition in Direct-TV market is very costly; therefore, not all free TV broadcasters have the ability to enter such market.

12 Originally, three undertakings operated in the TV encryption market. Two of those undertakings exited the market. The first exited the market because of its failure in protecting its encryption from the informal sector. The other exited the market because of the merger of two pay TV.

Today the only operating undertaking in the encryption market is fully owned by the State. It should be noted that a regulatory barrier exists preventing other undertakings to enter the encryption market: The

- *Second,* broadcasting piracy through the breach of contractual obligations: All TV broadcasters, where buying broadcasting rights, are limited to a specific number of runs. Currently, such contractual obligation is breached by several TV broadcasters, which resulted in the decrease of the value of the content. Such practice could be avoided by imposing a monitoring system and a robust enforcement to detect IP rights' breach.

- *Third,* broadcasting piracy on non-Nile TV broadcasters: It should be noted that several satellites are circling on the same orbit of Nile Sat. As such, numerous TV broadcasters having spectrums on those satellites are able to broadcast without a license on the Nile Sat. This kind of free riding broadcasting is accidental, accordingly, it is not considered illegal.

62. Nevertheless, some of the TV broadcasters are broadcasting illegally acquired first release movies on their platforms. This piracy has the effect of disrupting the marketing process of broadcasters who legally acquired the broadcasting rights. The latter has no longer the ability to describe the content by "*exclusive"*. Such piracy also affects the value of the content *vis-a-vis* the viewers.

63. The TV broadcasters on Nile Sat complain of the lack of IP and competition enforcement to fighting such type of "unfair" competition. In effect, the remedy to crack down such illegal practices is a vigorous international cooperation.

64. Relatedly, TV broadcasters of movies contend that internet piracy does not significantly affect the market in comparison to the broadcasting piracy. The reasoning behind this is that the Egyptian population is family oriented, they prefer to watch movies in family or groups, which is easily achieved via television. Further, watching movies on the television is much less costly than watching them over the internet where the viewer needs access to a computer/tablet as well as a high-speed internet connection.

2.2.2 Football Events

65. The sport broadcasting market is one of the most important markets in the broadcasting business. This is due to the popularity of sports (especially football Leagues and Cups) and to its timeliness factor, as sporting event are preferably seen live.

66. In Egypt, Football events market is divided into national, continental and international leagues/cups.

67. Concerning national leagues, the broadcasting rights are awarded through yearly bids and several free TV broadcasters could acquire those rights simultaneously. Hence, there are no major competition constraints in this national market. Besides, there is a Decree imposing the broadcast of the national football league, for free, on the terrestrial TV. The Government perceives national league as a "Public Good".

68. As regards the continental and international leagues/cups, ECA conducted a study on the football championships broadcasting market according to the Prime Minister decree issued in meeting (81) on 10/1/2010 to form a committee made up of the Ministry of Information, the Ministry of Trade and Industry (Egyptian Competition Authority), the National Sports Council, and other concerned bodies. The committee is entrusted with the mission of studying the monopolization of broadcasting African football championships and other championships.

Prime Ministerial Decree no. 1702 for the year 1995 provides that "the reception and distribution of Satellite Pay TV Channels are subject to the prior approval of the Cabinet of ministers." In Egypt, TV encryption companies are the ones responsible of "receiving and distributing satellite Pay-TV channels".

69. It should be noted that before 2002, the Arab States Broadcasting Union used to buy, on behalf of the Arab RTUs, the broadcasting rights of sporting events to be distributed to each Arab RTU afterwards. However, the media agency of a pay TV bid on the 2002 World Cup as well as the African Cup of Nations and was awarded exclusively the broadcasting rights. The African Cup was awarded for the duration of 6 years (2010 – 2016). Those rights were then resold to a competitor who already had exclusive rights of other regional leagues. Therefore, the latter owns all exclusive broadcasting rights of regional and international leagues including the World Cup and the African Cup of Nations.

70. ECA has focused its study on the African Cup of Nations and concluded that those long term exclusive contracts (6 years) may have created a barrier to entry due to the fact that each contract covered several championships (African Champions League).

71. ECA, however, encountered immense difficulties to get the requested documents and data from the Pay TV that is located outside Egypt. Hence, the lack of international co-operation in competition matters was a distinctive feature of this study.

72. Another distinctive feature of the study is the presence of tremendous pirate decryption; of 12 million viewers, there were 100 thousands subscribers only!

73. Accordingly, ECA Board issued several recommendations to be considered in the local market when concluding any future contracts:

- Concerning annual leagues; the duration of the contract should not exceed three years;
- Concerning periodical championships; the contract should be for one season; and
- The contract should not include several championships simultaneously.

74. Those recommendations aim to minimize the harmful effect rising from the exclusive dealing.

75. In light of the above, one of the main competition constraints that occurred in the TV broadcasting market has extraterritorial dimension. Thus, international cooperation in enforcement activities is key and pivotal to enhance competition and to fight any malpractice in the broadcasting market.

3. Conclusion

76. The TV broadcasting industry in Egypt is promising and can have a significant impact on economic development alongside the non-economic goals.

77. Despite the fact that ECA did not delve into the economics of this market, one can pinpoint the main competition concerns that may halt its growth, namely, large informal sector, piracy and lack of international enforcement cooperation in competition and IP related matters.