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Global Forum on Competition

COMPETITION ISSUES IN TELEVISION AND BROADCASTING

Contribution from Greece

-- Session II --

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COMPETITION ISSUES IN TELEVISION AND BROADCASTING

-- Greece --

1. What is the state of competition in the television broadcasting sector in your jurisdiction?

1.1 Product Markets and Level of Concentration

1. Through its judgments the HCC has distinguished several product submarkets of the Greek television market:

- Production and acquisition of TV content (in general) and acquisition of rights of other TV channels (specifically) are considered upstream markets to that of content broadcasting (free-to-air channels). Retransmission of content to consumers/viewers via pay per view platform and provision of technical equipment are considered to be downstream markets to that of content broadcasting. Acquisition of Greek TV channels' broadcasting rights by Pay TV platform providers is considered a separate relevant product market. In judgment 399/V/2008 concerning the agreement between Greece's national broadcaster (ERT) and UEFA for the exclusive broadcasting rights of UEFA's EURO 2008 competition the HCC viewed *"the TV broadcasting rights of events concerning football national teams that take place every four years"* as a separate product market.

2. Another major distinction in the Greek TV broadcasting market is that between the submarkets of **free-to-air TV** and **pay-TV**:

- **Free-to-air** TV market includes all free-to-air TV channels (both public service broadcasters and commercial advertising channels) that broadcast in national and regional range.

  Currently active in the Greek free-to-air broadcasting market are: the national broadcaster (ERT S.A.) transmitting three separate digital bouquets: a. ΒΟΥΛΗ, BBC World News, Deutsche Welle, PIKSat, b. NET, ET-1, ET-3, ERT HD and c. (in collaboration with NOVA) Euronews, TV5 Monde, as well as 6 major national private television networks (Mega, Antenna, Star, Alpha, Skai, Makedonia TV) transmitting on a national level. In addition, there exist approximately 150 local and regional television stations broadcasting across the country.

  Regarding the alternative broadcasting transmission methods of free-to-air TV market, those are:

  – <u>Analogue Terrestrial:</u> this is the most popular means of broadcasting in Greece. Basically it includes all free-to-air TV channels, both of national and regional range. However, by means of the Geneva 2006 Regional Agreement signed by Greece (in June 2006) in the framework of the International Telecommunication Union (ITU), the state ("Region 1" of the agreement) undertook the obligation to fully transition from analogue terrestrial to digital broadcasting by 2015. Furthermore, the European Commission communication *"on accelerating the transition from analogue to digital broadcasting"* considers the the end of 2012 to be the optimum timeframe for switchover of all member-states from analogue to digital (DBV-T) broadcasting. An extension of the above timeframe is possible taking into account the state of development of digital TV in each state. In Greece, switchover from analogue to digital with (temporary) simultaneous analogue and digital broadcasting officially commenced in 2009.

- Digital Terrestrial: In January 2006, ERT launched free-to-air Digital Terrestrial Television (DVB-T) with three "pilot" channels called Prisma+, Cine+ and Sport+, collectively branded as ERT Digital. The first channel, Prisma+, was targeted at disabled persons, Cine+ broadcasts movies, and Sport+ broadcasts a sports program. A fourth channel, the Cypriot national channel's satellite program RIK sat, is retransmitted on digital together with the three ERT Digital channels on the same frequency. As of September 2009, some private television stations in Greece (Alpha, Mega Channel, ANT1, Star, Alter, Makedonia TV, SKAI TV) have started broadcasting on a digital terrestrial signal through the DIGEA platform. DIGEA (established by the TV stations Alpha, Mega Channel, ANT1, Star, Alter, Makedonia TV, SKAI TV), has undertaken digital broadcasting of TV programs for private stations of national range, as well as any other stations choosing to use its services. Apart from DIGEA, a company called Digital Union undertakes digital broadcasting for private stations of regional range.

- Digital Satellite: A small number of Greek free-to-air TV channels transmit their signal though digital satellite transmission (ERT Sat).

- **Pay-TV** services were initially offered in Greece by Filmnet (provided by the company NetMed, which is now acquired by the Forthnet Group of Companies). This service broadcasted using the analogue terrestrial method and still exists, although it has been overshadowed by the same company's digital satellite platform (brand name: NOVA). At present, Hellenic Telecommunications Organization (OTE S.A.) also offers Pay-TV services (OTE TV).

  Regarding the technical means of Pay-TV transmission, those are:

  - Analogue Terrestrial: The channels NOVASPORTS 1 and NOVACINEMA 1 can be received by using a decoder and aerial antenna.

  - Digital Satellite: NOVA and OTE TV via Satellite use digital satellite transmission for broadcasting of their content.

  - Cable TV: There is currently no cable television system in Greece.

  - Internet Protocol TV (IPTV): In 2006, two companies launched television service via IPTV: Vivodi Telecom and On Telecoms. In 2011, On Telecoms acquired Vivodi. ON Telecoms offers its television service bundled with High-speed Internet & Telephony services, transmitting both Greek and international TV stations, but not producing its own content. In 2009, OTE S.A. (the former state-owned incumbent in telecommunications) launched an IPTV service called OTE TV via Conn-x TV. Conn-X offers some Greek channels, International TV stations and some own production TV channels, namely Conn-X TV Sports. In March 2009, Greek broadband provider Hellas On-Line (HOL) also launched an IPTV platform called HOL TV, offering a few Greek networks and some International channels. It is also the first provider in Greece to offer HDTV as well as Video on demand.

  - Mobile TV: All thee mobile operators in Greece (Cosmote, Vodafone and WIND) offer mobile TV services to its customers. They basically offer access to specific TV content of some free-to-air Greek nationwide channels of which they have acquired mobile TV broadcasting rights. Vodafone also offers access to the pay-tv channels NovaSports 1, 2, 3 which are made available to subscribers via an agreement with Greek DTH provider NOVA.

3. The new Digital Terrestrial Broadcasting Frequency Allocation Chart was recently released by the Ministry of State and the Ministry of Development, Competitiveness & Shipping (Joint Ministerial Decision no. 42800/2012 published in the Government Gazette issue B' 2704/5-10-12). The above Decision designates the 156 transmission centers in the Greek territory. The timeframe of complete switchover from analogue to digital broadcasting shall be announced in due course according to the provisions of Law no. 4038/2012 Art. 8 par. 3 and Law no. 4053/2012 Art. 37.

4. Regarding vertical integration:

- Free-to-air TV channels are partly vertically integrated. Apart from offering their content, nationwide free-to-air TV channels use a joint-venture non Pay-TV platform (DIGEA) in order to transmit their signal to consumers.

- NOVA and Conn-X TV are vertically integrated since they both offer channels of own production NOVACINEMA, NOVASPORTS and OTE Cinema, OTE Sports, respectively, whereas at the same time they also offer Pay-TV platform services. Further, they offer the additional technical equipment used to receive their signal.

- HOL and On Telecoms (IPTV providers) are not fully vertically integrated. They exclusively broadcast other TV channels through their platforms (see «Pay-TV Platform» above), but do offer the additional technical equipment used to receive their signal.

2011 - TV Market (Content) Market Shares

TV Channel - Platform	Market Share** (falls within range indicated below)
NOVA* (Multichoice)	[…]%
MEGA	[…]%
ANT1	[…]%
STAR	[…]%
ALPHA TV	[…]%
SKAI TV	[…]%
NET	[…]%
ET1	[…]%
ET3	[…]%
902 TV	[…]%
OTE TV	[…]%

(*) includes NOVA and Filmnet
(**) market shares' calculation was based on advertising expenditure and revenue from domestic program sales (law 3592/2007).

1.2 Legal Framework

5. Recent developments in the Greek competition law framework concerning the Media sector involve concentrations of Media undertakings, particularly conditions for their clearance with competition law.

6. Taking into account the significant, from a national economy point of view, role Media undertakings perform and the effect media mergers have on pluralism of information in a democratic society, Law no. 3592/2007[1] ("Concentration and Licensing of Media Undertakings and other provisions") was issued as *lex specialis* for mergers and acquisitions as well as for abuse of dominant position and concerted practices of Media undertakings, complementary to the Greek Competition Law (no. 3959/2011). The competent authority for the application and enforcement of the said provisions is the Hellenic Competition Commission (hereinafter the "HCC"). A special department "for the Control of the Media Market" was established within the HCC pursuant to the above Law in 2008.

7. Law 3592/2207 provides for a single market (the Media market), which can be further analyzed into four relevant product submarkets, each medium formulating a separate one (TV, Radio, Newspapers, Magazines) without allowing for any further definition of a narrower relevant market within each media sector. As far as geographic markets are concerned, the Law makes a distinction between nation-wide and regional range for all four relevant product markets.

8. As mentioned above, it was considered that the control of Media concentrations merited a special legal framework, due to the sector's significant impact on formulating public opinion through controlling information outlets and the danger of quality deterioration in media programs. The Law's targeting becomes apparent from the notion of "concentration" in its context not being defined by means of economic parameters but based on the percentage to which the public is affected by the relevant media, in combination with ownership or participation in media undertakings of any type (television, radio, newspapers and periodicals) in the relevant market, where such undertakings are active. Any natural or legal entity is deemed dominant if active (a) in media undertakings of the same type, when it has obtained at least a 35% market share in the relevant market of the range of each medium; (b) in media undertakings of different types, when it has obtained either at least a 35% market share in the relevant market of the range of each medium or at least 32% market share in the aggregate of two markets, when active in two different media undertaking types of the same range; at least 28% market share in the aggregate of three markets, when active in three different media undertaking types of the same range; at least 25% market share in the aggregate of four markets, when active in four different media undertaking types of the same range[2].

9. The above definition of "media concentration" falling within the scope of Law 3592/2007(dictated by the said concentration's possible effect on public opinion and based on advertising expenses and revenue from sale of programs and publications) leads to the conclusion that not all media concentrations are part of the special Law's subject-matter. Conversely, its provisions cover solely those concentrations that affect the relevant markets of television and radio broadcasting and the market for circulation and sale of publications for newspapers and magazines. On the other hand, concentrations affecting the content market, which relate not only to the quality but also to the type of effect that media exert on public opinion, as well as the pluralism in broadcasts, are exempt from the Law's provisions and fall within the general provisions of Competition Law.

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1 Entry into force 19 July 2007; transposing European Council Directives 2002/19 EC, 2002/20 EC, 2002/21 EC, 2002/22 EC and 2002/77 EC.

2 The percentages listed are computed in reference to the relevant product market corresponding to the type of medium in question.

2. What do you consider to be the most significant current and future challenges for competition policy in television broadcasting?

10. The television and broadcasting sectors in Greece are subject to a strict licensing procedure of free-to-air and pay-TV media stations (licence granted by the Minister for Press and Media upon opinion by the competent independent authority -National Council for Radio and Television (NRCTV)- after a review of conditions creating barriers to entry for new undertakings). Television transmission frequencies have traditionally been considered a public good in the Greek legal order; subsequently, also due to scarcity of frequencies for terrestrial transmission, public interest considerations are taken into account regarding the licensing procedure. Factors reviewed by the NRCTV in the licensing process, apart from technical details and the quality of programs (obligation of providing programs of high quality and objective information devoid of discrimination), mostly concern the set up, financing and ownership of media undertakings, given that the legal framework aims at restricting concentration in the relevant sector.

11. As far as free-to-air television is concerned, Law no. 2328/1995 sets the criteria for licensing private commercial TV stations. Inter alia, during the licensing process, the NCRTV reviews ownership of the station at issue with the aim of restricting concentration in the media sector. Thus, a joint stock company can obtain only one license for a television station and/or one license for a radio station. Ownership of more than one electronic information medium of the same kind is not permitted, and every physical or legal person can take part in just one company. The same rule applies to relatives (up to the fourth degree) of natural persons. As regards cross media ownership, a single company or individual cannot participate in more than two media categories. Holding a position in public administration or in a legal entity of the wider public sector which carries out works or supplies or provides services is deemed incompatible with being the owner, the partner, the main shareholder or the managing executive of an information media company. All types of related persons, such us spouses, relatives, financially dependent persons or companies, are also included in the said prohibition.

12. Law no. 2644/1998 constitutes the corresponding regulatory framework for private commercial Pay-TV stations. The said legislation regulates the provision of pay-radio and TV services through analogue or digital means, either terrestrially or via cable or satellite. For terrestrial transmission there is a competitive licensing procedure, due to scarcity of frequencies. At the same time, licenses for satellite transmission are submitted to the NCRTV. Licenses are granted only to limited companies (S.A.) the shares of which should be registered. In an effort to avoid the creation of dominant positions, the law limits the number of licenses allowed to be held by one party (i. e. an interested party can only take part in one company providing pay-services by the same means of distribution, and in one additional service using different means of distribution). Moreover, as another means of restricting concentration in the media sector, Art. 5 of Law 3592/2007 ("Concentration and Licensing of Media Undertakings and other provisions") prohibits the acquiring of control of more than one electronic medium of the same type; this is considered to create a presumption of decrease in plurality and impartiality of information.

13. As far as technological advancements and developments in the broadcasting field are concerned, digital terrestrial transmission has replaced (spectrum-consuming) analogue transmission to a great extent, offering more efficient broadcasting of a higher quality. It is also considered as a means of restricting or limiting frequency hacking.

14. Another positive development as far as effective competition is concerned, is the entry of a second undertaking (OTE-TV) in the Pay-TV broadcasting market.

15. In its first judgment concerning access to TV content (see *infra* OTE/Forthnet case) the HCC set standards for compliance with competition rules, ordering Forthnet/Multichoice to waive exclusivity clauses in its contracts with Greek free-to-air TV stations for content acquiring; this conctitutes a crucial

condition for guaranteeing unrestricted access of competitive media platforms to the Pay-TV market. Additionally, a new (formerly non-existant in the Greek geographic market) IPTV market has developed (see supra 1, i).

16. To recapitulate, given the economic and non-economic significance of the sector, social objectives and the specificities of the value chain for the development and delivery of broadcasting services, as well as the potential for exercise of market power, the most significant challenges competition policy has to face is opening up markets so that an effective competition process is safeguarded, keeping barriers to entry to a minimum extent necessary, coping with the scarcity of resources, and balancing public interest considerations with competition policy.

3. What has been your relevant experience in competition law enforcement relating to television and broadcasting?

17. A relatively small number of competition cases relating to the television and broadcasting sectors have arisen in the course of HCC enforcement.

18. Recent relevant cases are the OTE/FORTHNET case and the UEFA/ERT case, discussed below:

3.1 Commitments accepted in the OTE/FORTHNET case

19. Regarding the Greek Pay-TV broadcasting market, a Statement of Objections (SO) issued upon a complaint filed by the Hellenic Telecommunications Organization (OTE) regarding alleged infringements of Articles 1 and/or 2 of Law 703/1977 and 101 and 102 TFEU, by MULTICHOICE HELLAS S.A and FORTHNET S.A., which offer the digital satellite Pay-TV platform under the “NOVA” brand name, was submitted in October 2011 following an investigation undertaken by the Directorate General for Competition (hereinafter the “DGC”) of the HCC.

20. The complaint alleged that the contracts and in particular the exclusivity clauses concluded between Forthnet, its subsidiary Multichoice and all major private free-to-air Greek nationwide-broadcasting TV channels, in order for the latter to broadcast their content via its pay-TV platform «NOVA», constituted an infringement of Article 1 and/or Article 2 of Law 703/77 and Articles 101 and/or 102 TFEU. The aforementioned exclusivity refers only to digital satellite Pay TV transmission, and does not include all other transmission methods (i.e. analogue terrestrial, digital terrestrial, IPTV etc). The complainant maintained that the agreements in question resulted in the creation of barriers for undertakings wishing to enter the satellite Pay TV market, where NOVA operates, as any potential subscriber is more likely, *ceteris paribus*, to choose the NOVA pay-TV platform which offers access to private free-to-air Greek TV channels. Recent developments have indicated that -for the same reason- the agreements in question raised barriers to the creation of a level playing field for existing competitors within the Greek Pay TV market.

21. According to the statement of objections (SO) issued by the HCC in January 2011, the exclusivity clause for satellite retransmission of the private free-to-air TV stations via its NOVA platform secured in practice an advantage for Forthnet over its potential and actual competitors in the market for the provision of satellite pay TV platform, thus artificially raising barriers to entry.

22. In its reply to the SO, and prior to the oral hearing before the Grand Chamber of the HCC, Forthnet offered commitments to meet the concerns raised in the SO. On 26 March 2011, the HCC decided, by a majority vote, to accept a revised version of the proposed commitments, whereby Forthnet and its subsidiary Multichoice agreed to: (1) Waive the aforementioned exclusivity clause and amend the respective agreements accordingly, with immediate effect (as of 27 March 2012), (2) Maintain the rest of the terms of the agreements in question, as currently in force, and (3) Commit to refrain from seeking the

aforementioned exclusivity for an indefinite period. The said commitments were made binding on Forthnet and Multichoice by virtue of the HCC's decision. They were regarded as a way to immediately ensure more effective access of competitors to the relevant market. In the event of non-compliance, the HCC may impose a fine up to 10% of their aggregate turnover of the financial year preceding the decision in question.

3.2 Judgment 399/V/2008 (ERT/UEFA)

23. On 1.3.2006, the Greek national (public) broadcaster GREEK RADIO & TELEVISION S.A. ("ERT") notified to the HCC its licensing agreement with UNION DES ASSOCIATIONS EUROPEENNES DE FOOTBALL ("UEFA") regarding rights to radio and television broadcasting of matches pertaining to the final round of the 2008 UEFA European Football Championship (EURO 2008) with a view to receive a negative clearance under Art. 11 of the previous Competition Law no. 703/1977).

24. The HCC granted the said clearance after a thorough assessment of the aforementioned agreement on the following grounds:

a. Regarding Price-fixing:

   UEFA followed the necessary legal procedure of inviting all private and public radio and television undertakings to submit their offers and ERT was the highest bidder. Therefore, no procedure of price-fixing took place that would imply a violation or distortion of competition between participants.

b. Regarding limiting or controlling production, technical development, or investment:

   No such restriction of competition could be affirmed. The licensing of broadcast rights to a sole entity guarantees the product's consistency and homogeneity of quality.

c. Regarding sharing markets or sources of supply:

   No violation of competition could be attributed to the fact that UEFA chose to make contracts with each national broadcaster separately. Due to language and cultural differences between European countries, distribution of broadcasting rights on a territorial basis (to domestic companies) was considered more advantageous for the transmission of football matches.

d. Regarding discriminatory conditions (refusal to supply):

   Due to UEFA following a procedure of inviting all private and public broadcasting entities to submit offers and making a contract with the highest bidder, no competition infringement could be detected.

25. Finally, in recent years (2008-2012) the HCC has employed the above-mentioned criteria regarding concentrations in the media sector in a number of notified media merger cases [e.g. cases 415/V/2008 (Kontominas/ALPHA), 535/VI/2012 (ALPHA media group/SIXOMEN), 422/V/2008 (RTL/Wakerock), 409/V/2008 (Forthnet/Myriad)]. The Commission approved all the above mergers, which were found not to create dominant positions or materially restrict competition in the relevant markets.