

Convergence and general audiovisual legislation in Spain

ÁNGEL GARCÍA CASTILLEJO

Member of the *Comisión del Mercado de las Telecomunicaciones*
(Telecommunications Market Commission)

agcastillejo@cmt.es

Abstract

Today, the phenomenon of convergence between the telecom and audiovisual industries is a market reality within both the international and Spanish context. The government's announcement of the imminent remission of a general audiovisual act, together with the fact that Spanish society has long demanded an independent regulatory authority for audiovisuals, have led to the possibility being considered of there finally being a convergent authority in Spain, based on the structure of the CMT.

In 1995 the Spanish senate unanimously passed a report asking for this to be created and, in 2000, the Council of Europe passed a recommendation, with Spain voting in favour, which urged member states to create independent audiovisual authorities, a mandate that some autonomous communities in Spain have already complied with, such as Catalonia, Navarre and Andalusia, but not the state authorities to date. This mandate becomes a requirement with the amendment of Directive 89/552/EEC.

Key words

Audiovisual, concentration, convergence, pluralism, regulation, telecommunications

Resum

El fenomen convergent entre el sector de les telecomunicacions i l'audiovisual és avui una realitat de mercat en el context internacional i espanyol. L'anunci per part del Govern de la imminent remissió d'un text de llei general audiovisual, juntament amb el fet que l'existència d'una autoritat reguladora independent en matèria audiovisual ha estat una demanda llargament estesa en la societat espanyola, porten a plantejar l'oportunitat de, finalment, disposar per a Espanya d'una autoritat convergent sobre la base de l'estructura de la CMT.

El 1995 el Senat espanyol va aprovar, per unanimitat, un informe sol·licitant-ne la creació i l'any 2000 el Consell d'Europa va aprovar una recomanació en què s'instava els estats membres a crear autoritats audiovisuals independents, mandat al qual han donat compliment algunes comunitats autònomes, com és el cas de Catalunya, Navarra o Andalusia, però encara no les autoritats estatals. Aquest mandat apareix com a imperatiu, amb la modificació de la Directiva 89/552/CEE

Paraules clau

Audiovisual, concentració, convergència, pluralitat, regulació, telecomunicacions.

The history of the telecom sector's liberalisation and its convergence with the audiovisual sector in Spain

It has been slightly over a decade now since the Spanish Government approved the Royal Decree-Law on the liberalisation of the telecommunications sector in 1996¹, which Parliament decided to enact as a bill after its approval. Today, with the regulatory knowledge and experience accumulated during this over 10-year period, we can look back and confirm Spanish society's capacity for incorporating revolutionary changes almost seamlessly into our daily lives at home, work, school, university and on the street.

However, the work accomplished during these years in the communications area has left highly relevant legislative and regulatory issues pending. An undoubtedly serious gap in Spain's democracy is the lack of a general framework for the audiovisual sector that offers a basic legislative framework or legal homogeneity and certainty, which has led to the governmental vice of legislative "patches" for television and radio.

This period of liberalisation in the electronic communications sector has taken place alongside the social and technological advances digitalisation has brought to our lives, which should doubtlessly be properly reflected in the legal framework for the telecom and audiovisual industries. Whereas yesterday we spoke of an approaching convergence, today we are living with it and enjoying its active presence in the market through services accessed via today's terminals and equipment. Nowadays, providers are offering us fixed and mobile voice services, broadband internet access and audiovisual content in a natural manner: converging providers with converging offers that we access via converging devices. Today, in 2009, the convergence between the telecom and audiovisual sector is a reality which requires suitable regulation providing appropriate solutions for the future and that is no longer fixated on the past.

During the processing of the above-mentioned Royal Decree-Law on the liberalisation of the telecommunications industry during the late 1990s, Spanish legislators introduced into the

text of the first Article (which created the Telecommunications Market Commission or TMC), a vision of converging regulations for the communications “hypersector” as a whole, and launched Spain on the path of convergence regulations already pioneered by other countries around us, such as the United Kingdom with Ofcom, Italy with AGCOM or the US with the FCC, among others.

Thus, the final text of Article 1.2.1. of Law 12/1997 laid down the TMC’s object as the body responsible for “[...] safeguarding conditions of effective competition in the telecommunications, audiovisual, telematic and interactive services market to benefit citizens, monitoring the proper setting of prices in this market and functioning as an arbitral body in any sector conflicts that may arise”. This perspective places citizens at the heart of telecom and audiovisual market regulation and competences and - in line with the current transitory situation established by the General Telecommunications Law 32/2003 of 3 November - now offers us the foundations for a future integrated regulation of the communications market capable of responding in a dynamic environment in which convergence and bundled services lead and will lead the way for users and the demand for final services, which will be a mix of telecom and audiovisual content.

The liberalisation process and slide towards convergence

The telecom and audiovisual markets have been undergoing deep structural changes since December 1998, the date set by EU institutions for introducing competition in the telecom sector, thus bringing the period of large national monopolies to a close. Although many people may think that the old monopolies, today’s “incumbents”, still have too much weight in the telecom and electronic communications markets, it is also true that today Spain is undeniably part of what we call the Information Society and that this sector’s panorama hardly resembles its prospects ten years ago.

In 1998, the different markets that went to make up and supported the Information Society in Spain accounted for 3.55% of the GNP, employed 96,105 workers and furnished internet access to 667,351 corporate and private users.

It is hard to pinpoint precisely how many internet users there were just ten years ago, but in any case, the figure was no higher than one million. Today, thanks to periodic reports issued by the TMC and specific yearly reports on the Information Society in Spain, more accurate data is now available on this sector’s profile: today, practically 57% of the population over 16 years of age are internet users – more than 24 million people in all, 17 million of whom use it frequently. In the corporate arena, more than 88% of all Spanish firms were connected to the internet by the end of 2008 and approximately 91% used computers at work.

Yet, speaking of the Information Society in Spain does not

only mean citing the number of direct users since, in practice, these services reach all of us through health services, public administrations, the school system and the media. The Information Society is a reality that has naturally and favourably impregnated our lives and corporate life in such a way that nowadays it is hard to conceive of a reality in which the facilities offered by these services are not available.

Spain’s inclusion in the Information Society also encompasses phenomena that were unthinkable ten years ago, such as the massive penetration of mobile telephones or digital television.

In the case of mobile telephony, it provides not only voice services but also smart phones, authentic access portals to a broad and diverse range of services that span text messaging, internet access, music, photography and obviously, voice.

After ten years of liberalisation, Spain is beginning to bid farewell to analogue television; the start of broadcasts on digital terrestrial television (DTT) from the Fonsagrada transmitter and the switch off or switchover (according to one’s point of view) in Soria is paving a new way of watching television that now covers 92.38% of the population and is accessed by 45.2% of all homes, according to data from Impulsa DTT. This higher quality, more plural and diverse television affords viewers access to interactive applications and Information Society services and in its way can guarantee all Spaniards practically universal access to the Information Society.

In 2009, in order to respond to the new converging services Spanish users are demanding - broader bandwidths and higher transmission speeds - new generation optical fibre networks are beginning to be deployed to buildings and homes. Along with cable infrastructures, these networks will provide support for new needs, once copper networks start to reflect symptoms of depletion and the lack of capacity to provide internet users with high and very high speeds, audiovisual services such as high definition television (HDT) or 3D in the future, pay-per-view programming or other applications, such as videophony, online games, etc., that users are demanding.

The general audiovisual law on the horizon

After the cabinet meeting of 14 August 2008, the president of the Spanish Government announced it would present the long-awaited general audiovisual law by the end of March 2009 and finally create an independent regulatory body for the Spanish audiovisual sector as one of twenty-four economic stimulus measures, in this case, as a part of the measures for the Information Society in the telecommunications sector². Thus, the time has come to consider the expediency of incorporating into the TMC - Spain’s independent communications regulatory body - the competences of this new converging environment, which must satisfy users and furnish them responses as well as protect their rights, and to offer the sector homogeneous regulations and the management of scarce resources and infrastruc-

tures, such as the bandwidth for Information Society services as a whole.

Within this converging context, in which electronic communications and telecom services are coming together with audiovisual services, old debates from more than ten years ago must be revived to achieve proper regulation of the communications sector. Convergence was an expectation ten years ago and today is a patent reality. Nowadays, users are asking for more and more bundled converging service offers and providers are seeking to supply them. In view of this new scenario, rational administration and budgeting should be the foundations for appropriate regulatory responses that the converging regulatory body should construct for the telecom and audiovisual sector within the TMC's environment, joining the wake of converging regulators such as Ofcom in the UK, Italy's Communications Authority or the FCC in the US.

In any case, one of the main novelties stemming from the approval of the general audiovisual law is that, for the first time, there will be a basic law in the audiovisual area that will affect the entire country at all levels, i.e., national, regional and local, and endow Spain as a whole with a stable, homogeneous legal framework that guarantees greater legal certainty in the sector. This tenacity must be conjugated with due coordination with the competent regional administrations in the diffuse radio and television services in their respective territories on the one hand, and the desirability for the text of the law to create an independent audiovisual authority and include it in a converging body alongside today's TMC, on the other.

Apart from the above, the law's approval will mean the television market's true liberalisation. Until now, Law 4/1980 on state-owned radio and television established television as an essential public service to be delivered directly or indirectly; in the latter case, it was to be furnished by private providers under a concessional regime. The future law guarantees the direct provision of public services by public companies with local, regional and national coverage created to that end; in the rest of the cases, radio and television services are considered services of general interest that private sector entities are to provide under a competitive regime, with the limitations inherent in their technical restrictions, which result from the spectrum's limited use. Furthermore, the concept of *public service* by public companies, i.e., Corporación RTVE and the various municipal and regional public televisions, which will be the only ones to provide it, must also be reinforced.

In practice, this liberalisation will mean that sector companies will be in a better position to offer new features and develop new services for their audiences. And it will also mean greater flexibility for companies, which will have fewer administrative and economic restrictions upon shifting from concessionaires to licence holders.

With respect to the data available for the GAL's eventual approval, no significant delay in the Government's commitment to present the draft bill by the end of March seems likely, despite a final example of the "patchwork" policy alluded to

above: the Government's approval of Royal Decree-Law 1/2009 of 23 February on urgent measures in the telecommunications field, which would never have been needed had the promised general audiovisual law been approved by the previous legislature; the supposed urgency of this executive legislative tool would undoubtedly not have arisen. A new delay would be deadly for the audiovisual sector as a whole - both public and private television providers - as well as for the consumer electronics industry and internet providers.

The draft bill for the General Audiovisual Law of 2005

The preliminary draft bill for the general audiovisual law announced by the Government in spring 2005 is an excellent starting point. Although the legal text is very detailed, this approach should be maintained, since leaving too many aspects open to future regulatory developments may once again generate a high degree of legal uncertainty about key aspects that should be made clear-cut as law. Moreover, approving regulatory principles for the audiovisual sector through a law means that the degree of consensus reached must be much higher than anything laid out in a subsequent regulatory development that would leave the government too broad of a discretionary margin in this sector, which is highly sensitive in social and economic terms. Furthermore, leaving key aspects of the audiovisual legal framework, such as accessibility for the disabled, multilingualism, public service elements or missions etc., in the hands of subsequent regulatory development actually means leaving the government in power in a "vulnerable" position, compared with television operators and their corporate groups. This exposure to the risk of "mediocracy" that threatens democracies is needless.

The Spanish audiovisual market

The audiovisual market in Spain, like on the rest of the planet, is not immune or isolated from the economic and social vicissitudes surrounding it. Today, in 2009, television and the advertising market that supports it are undergoing convulsions, which include at least three aspects related to public television, the advertising market and television content, in addition to the migration to digital terrestrial television (DTT).

In the first place, public television is the leader in viewers thanks to its repeated credibility in delivering the news and a new management inherited from the period in which Carmen Caffarel undertook indispensable structural reforms in the old public entity, the key to its popularity today; it is being managed in accordance with the mandates of the law on state-owned radio and television, which enables it to face the challenge of migration to DTT with a quality, multi-channel public service offer at the level of public providers in the rest of the European Union.

In the second place, the growing plurality in the number of television operators has increased advertising supports until the digital switchover takes place and each DTT provider with national coverage is re-assigned a complete multiplex that, together with the proper legal framework, will allow not only free-to-air and paid HDT services to be offered, but also pay event services on DTT.

Throughout this entire process, providers must offer differential content that encourages viewers to migrate to DTT. Without attractive content, viewers will not perceive the need to migrate their equipment, which will slow the whole process down. Multiple possibilities will be opening up for future licence holders. Taking into account the many future license holders who will be granted management of a complete multiplex with a four-channel broadcasting capacity, plus a 20% reserve for data, decisions on the content to be offered can be very diverse. These may include offering paid content or broadcasting two channels in "traditional" format and reserving the other half of the bandwidth for a high definition (HD) channel.

The combined scenario of DTT and a suitable legal framework enables not only up to half the number of open channels to be reduced, but would also allow a better segmented market to be offered for different advertising targets, democratising access to premium content by enabling a low-cost individualised offer without the need for multichannel platform subscription fees and sustaining the media system's plurality, which is undoubtedly healthy for the country's democracy.

In recent decades, Spain has made efforts to foster competition, seek plurality and offer viewers the chance to access different editorial lines. Thus, in the constant search for pluralism, it was decided in 2005 to promote the introduction of a new digital provider with two DTT channels and an analogue support, the latter with limited transitory coverage until the switchover. All these efforts would be threatened if scenarios of entrepreneurial concentration are now permitted. However, this does not mean that several regional or local projects will not end up being abandoned after the entire liberalisation process has concluded and in these cases, what should be done with this bandwidth and its potential use will then be determined.

Lastly, in the third place, the switchover that is to take place on 3 April 2010 is only comparable to the euro's transition process, because never before has there been an event with these characteristics, one which affects 100% of the population and is joined by the decisions on economic payments that must be made on this occasion.

Hence, meeting the goal of having all homes ready to receive the digital signal on 3 April 2010 will be a complicated, yet not impossible task. Much work is being accomplished in several areas, e.g., Catalonia is promoting volunteer workers to help ease migration. Guaranteeing 100% coverage is an ambitious goal and at least public television is expected to be able to provide universal service, even if it continues to use the synergies between DTT and satellite, for which Royal Decree-Law 1/2009 is a very positive factor.

Spain is in the best conditions to comply with the anticipated analogue switch off dates next 3 April 2010. The network already has extensive coverage and we know that it is perfectly prepared, since it has been broadcasting since 2000 and has proved to be a robust, tested network.

Therefore, there are no apparent reasons to consider delaying the switchover date. Furthermore, providers are currently suffering from overruns in the cost of broadcasting in analogue and digital; delaying the date would pose an added problem for operators, which have been making efforts for several years to provide the two kinds of broadcasts in simulcast. Moreover, the spectrum freed-up by releasing analogue frequencies cannot be reassigned and the anticipated "digital dividend" cannot be provided until the switchover has taken place.

The new regulatory environment and new operating models in the television market

It seems that the exploitation of paid content will be a reality in the new liberalised market, whenever open content is offered at the same time. Although the law has not yet been approved, many providers have already positioned themselves in the market by acquiring content to broadcast in paid formats, in the conviction that this will come to pass. As for the model they will follow, I would personally endorse broadcasting pay events instead of creating premium channels, except for high definition channels. Pay TV will not be the only new way to earn income; other formulas such as t-commerce, data services and even internet television will also open up a wide array of possibilities for the sector.

Moreover, this is very important, because it will be possible to "democratise content" from here on in. Until now, it has been necessary to subscribe to one of the paid television platforms before certain content that might be called premium, such as cinema premières or sport events, could be accessed. Therefore, televisions should have the option of offering all viewers access to this type of content, to the specific events they wish to see and only pay for without the need for a monthly subscription.

Aside from the above, it is slightly more complex, yet desirable, to make strenuous public efforts to foster the availability and harness the potential of the interactivity offered by DTT. First, users should be offered attractive interactive services that are useful to them. We should not allow the development of these services to wait until all viewers have the capacity to interact. As in other businesses, first the technology is developed, then the service is offered and, thanks to the offer's existence, finally a market is created by the demand. If televisions offer interactive services that viewers appreciate and demand, these viewers will no doubt choose to purchase the equipment that allows them to access these services and the market will be profitable. Without an interactive services offer, no one will be willing to pay ten or up to twenty times more for a decoder

that incorporates interactivity, whereas to the contrary, an interactive service that attracts viewers will significantly boost the penetration of interactive equipment.

Public services and the future General Audiovisual Law (GAL)

As for defining public television in Spain, the framework of this law needs to lay down the general principles that are to govern the provision of public service and the requirements for and a way to control public financing.

Law 17/2006 on state-owned radio and television originated in the draft bill for the above-mentioned General Audiovisual Law of 2005 and we should not forget that both laws started to be developed at the same time, although the GAL has yet to be approved. Thus, the law that specifically regulates state-owned radio and television already concretely covers many of the principles incorporated into the draft bill for the GAL; predictably, Corporación RTVE will not be greatly affected when the new general law comes into force in the future.

However, once the GAL has been approved, several regional governments may have to pass the opportune provisions to proceed in some cases, so as to launch a process with their autonomous networks similar to what took recently place in today's Corporación RTVE in order to re-establish their economic situations and define a new financing model.

As for the management and financing of public broadcasting services, a new legal framework requires it to be a benchmark of stability and sufficiency for the provision of public services on the one hand, and an independent authority that oversees adequate compliance with public service missions with respect to the rules of free competition on the other. Hence, I do not share the opinion that advertising must be generally limited in public television, which would undoubtedly negatively affect the public coffers without necessarily boosting the income of private television broadcasting. Nevertheless, it should be possible to establish a series of restrictions that would lead to less advertising pressure on public television related to specific content, such as Spanish cinema or children's programming, by seeking a more qualitative than quantitative reduction.

However, the Government already intends to cut advertising by one minute per year, until 9 minutes per hour has been reached in 2011, which will mean between 60 and 80 million euros less in revenue for each minute no longer broadcast. Logically, Corporación RTVE will have to be compensated for this loss of income by the general national budgets to guarantee the provision of quality public service, maintain a balanced budget and avoid exogenous losses.

The initiatives other countries, such as France, have adopted in the area of financing public broadcasting do not seem applicable *a priori*, since they would mean placing public television financing in the hands of other sectors. Spain has assumed

mixed funding through advertising and the general national budgets and this model should be sustained from my point of view, in line with the conclusions reached by the Board to reform state-owned media in 2005. Likewise, if a canon for DTT licence-holders is levied on the bandwidth, a canon already paid by mobile telecom providers for the same concept, it would be senseless to allocate it directly to financing public television; it should correspond to the national administration instead.

The Audiovisual Communication Services Directive approved by the European Commission establishes that state aid cannot exceed the cost of providing public service and that the maximum net cost must be the difference between the total costs to the company providing public service and other income after compensations, something that leaves the door open for each year's budget deficit to be covered by public resources. In this sense, the criterion that all public programming should be a public service needs reinforcing; thus, 100% of the costs could be financed, should there be no other compensation. Certain entertainment formats that are hits with the viewing public may be as much of a public service as the news is. Hence, I don't believe we need to describe additional mechanisms for establishing the cost of public service at this time, since that is its main activity.

In accordance with the above and in relation to content, it is unacceptable for a public television to have to renounce *ex ante* certain content, because content that is premium and very commercially attractive today may not be tomorrow and vice versa. We have seen several examples of this in previous years, e.g., basketball and Formula 1, which were broadcast thanks to the efforts of public television in the past when the private sector was not attracted to them and which today, however, are qualified as premium.

Convergence and an independent audiovisual media authority in Spain

Spain is the only EU country without an independent national media authority and in this sense, it has ignored the European Commission's recommendations. The time has undoubtedly come to create this body, especially since the Audiovisual Media without Frontiers Directive itself³, which was approved in December 2007, requires all Member States to have independent audiovisual authorities⁴.

As a precedent to encouraging its creation, public television in Spain has historically been handled by the Executive branch. However, in the preceding legislature it was the Parliament that unanimously approved the Law on state-owned radio and television and chose Corporación RTVE board members, which reveals a change in the sensibilities in governmental political power and the different parliamentary groups in connection with these aspects. Thus, conditions are ripe for the creation of a national audiovisual media board that looks towards the

future, an authority in step with the needs of a converging environment.

Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007, which amended Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative actions in Member States concerning the pursuit of television broadcasting activities, states in paragraph (65) of the preamble that "According to the duties conferred upon Member States by the Treaty, they are responsible for the transposition and effective implementation of this Directive. EU Member States are free to choose the appropriate instruments according to their legal traditions and established structures, and notably the form of their competent independent regulatory bodies, in order to be able to carry out their work in implementing this Directive impartially and transparently. More specifically, the instruments chosen by Member States should contribute to the promotion of media pluralism."

A new provision was inserted into the text of this Directive on cooperation among the Member States' regulatory bodies in the shape of Article 23.b, which lays down that "Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the applications of the provisions of this Directive, in particular, the Articles 2, 2a and 3 hereof, notably through their independent regulatory bodies."

The Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions of 14 December 1999 (COM 1999/657 final) already addressed different aspects of audiovisual policy, from the necessary promotion of content to the promotion of sector self-regulation, including the problem of defining public broadcasting's role in the new digital age.

Thus, along these lines, in paragraph 6 entitled "Regulatory authorities" of Section 3 in the Communication on principles for the regulation of the audiovisual sector in the digital age, the European Commission laid down the following common guidelines for the development of regulatory authorities in the audiovisual sector:

- 1) Regulatory authorities should be independent of government and operators;
- 2) Content issues are essentially national in nature, being directly and closely connected to the cultural, social and democratic needs of a particular society; in line with the principle of subsidiarity, therefore, content regulation is primarily the responsibility of Member States;
- 3) Technological convergence requires increased co-operation between the regulators concerned (communication infrastructures, audiovisual sector, competition);
- 4) Regulatory authorities can contribute to the development and implementation of self-regulation. In this respect, the Commission will examine the utility of establishing a specific forum for European-level co-operation between regulators, operators and consumers in the audiovisual sector.

Thus, we see that similar conclusions are drawn from different approaches to competence and all include the constitution of regulatory authorities independent from both governments and sector stakeholders. These suitable authorities should be conscious of the converging environment, since nothing more has been done since the Communication of 1999 was approved over a decade ago to penetrate this situation, one in which audiovisual and telecommunications services have ended up configuring a market which requires an independent authority that uses market homogeneity criteria to address the diverse services provided. In this point, this new body and these competences should be integrated as an authority within the TMC in order to provide a response to these market demands.

Additionally, as sustained by the report presented in 1998 by Grup d'Alt Nivell (upon the initiative of Marcelino Oreja, who would later be Audiovisual Commissioner), the Member States started from highly varied places and regulatory structures stemming from their own political and cultural heritages, for which there is no one exclusive formula in common to approach what is in itself a consensus among them all: the need for these bodies as the best legal vehicle for preserving pluralism of opinion and information and the cultural, social and democratic needs of a certain society, as well as for maintaining a free and effectively competitive and dynamic market. All the Member States except Spain have granted these regulatory authorities a lesser or greater degree of autonomy and independence from their respective governments and market stakeholders, which is the result of the adaptation to each country's needs and demands and the political decisions adopted within the framework of each national legal code.

Thus, the process of debating and approving the future General Audiovisual Law should consider the expediency of creating within the text of the law itself an independent body comparable in scope and functions to those in the countries around us, such as Italy, France or England, which view the convergence process between the audiovisual and telecom services market as a fact, and within this framework, everything related to what we now call electronic communications, of which the internet is a part. Thanks to the autonomy, independence and training of its board members and the services ascribed to them, this body can continue to assume the competences needed until our country is on the same level as the group of more developed states in this area and can coordinate the policies to be applied in the different regional communities through opportune agreements with each of their audiovisual boards.

Structure and competences of the independent audiovisual regulatory body in Spain

When the draft bill of the General Audiovisual Law was drawn up to create this board in 2005, it was suggested that it be

independent and work in coordination with the TMC, so that the boards could converge in the future. At present, there seems to be no reason for creating this board outside the TMC's scope, since there are many common fronts and synergies among the functions the two regulatory agencies are to exercise. One of the best options might include creating two complementary boards, one with telecom competences and the other with audiovisual ones, within the TMC's structure, i.e. models similar to those in the UK, Italy, the US or Canada. This organic proposal was already considered in the draft bill and did not manage to see the light in what would later be Law 22/1999 amending Law 25/1994, known as the Television without Frontiers Law.

Two boards in a single authority such as the TMC's, whose members would be designated by the Government through a procedure such as the one currently followed to appoint TMC board members and which would share the presidency, secretary and services, with the possibility of conducting joint sessions whenever needed for the issues, not only offers a simple solution that fits market needs at no cost to the public coffers, but also guarantees homogeneous regulation of the Spanish communications sector in accordance with the most advanced countries in this area in the heart of the EU framework and more relevantly, achieves a high degree of consensus.

Two aspects of the functions to be exercised stand out from the rest: in the first place, the proper application of regulations in the area of content (at the national level) must be independently monitored by specialised management coordinated with regional audiovisual authorities, and in the second place, clear administrative benchmarks for operators should be provided as far as coordination with the rest of the administration and regulatory bodies is concerned.

The board's action sphere should also include overseeing the public services provided by Corporación RTVE, monitoring proper market operations and intervening in the license renewal process.

An indispensable reference in the audiovisual board's development is respect for the values and principles proclaimed by the Spanish Constitution and especially the content of Article 20. The functions this independent audiovisual authority are to exercise within the TMC should include the following points:

- Guaranteeing and promoting respect for Constitutional values and especially, protecting pluralism, young people and children
- Guaranteeing the effective provision and universal access to audiovisual services
- Guaranteeing the exercise of users' rights to audiovisual services
- Monitoring transparency in the audiovisual market, guaranteeing social and political pluralism in access and the participations of citizens and different social groups in audiovisual media
- Promoting respect for free competition effectively among the different broadcasting channels, preventing the phenome-

na of concentration and overseeing transparency and advertising in the ownership of audiovisual media, as well as the free competition when granting licenses

- Guaranteeing a territorial, social and cultural balance in relation to the provision and reception of audiovisual services, promoting coordination between the different audiovisual authorities in each regional community
- Promoting respect for Constitutional values in the television and radio market
- Regulating audiovisual advertising
- Guaranteeing a framework for the stable financing of the audiovisual sector, be it managed directly or indirectly, above all working to ensure the provision of public service missions in radio and television broadcasting
- Promoting audiovisual production in Spain, including the different languages and cultures that exist there
- Promoting frameworks for co-regulation or self-regulation in the Spanish audiovisual sector

A new converging TMC for the telecom and audiovisual sectors

During the coming 15 months, we will be witnessing a series of changes that will transform the Spanish audiovisual sector for both users and providers. These changes will allow viewers to enjoy an audiovisual offer with a better quality; the level of citizens' access to the Information Society will make a qualitative leap as well, because of the new service offers and easy access that DTT technology will furnish companies, which will operate in a totally liberalised market once the GAL has been approved.

The existing body with market competences in the area of audiovisual, telecom, telematic and interactive services - the Telecommunications Market Commission created by Law 12/1997 - has been seen to be a suitable solution for this converging environment, a proposal generically present in the recent debate this issue has aroused.

This solution includes creating an audiovisual board within the TMC parallel to its telecom board. The audiovisual board, which should be representative of Spanish society, should have the same number of members as the telecom board (nine) and share a president with it. The same staff should serve both boards; this solution would homogenise the manner of appointing members to the two boards. In any case, appointments should be transparent and based on criteria related to the candidates' appropriateness and knowledge of the sector and reflect the country's political and social circumstances.

Since Spain's regions enjoy competences in the area of social media within the framework of their territories, it is indispensable to integrate into the audiovisual board an "audiovisual cooperation commission" that includes representatives of the audiovisual authorities in the regions and the autonomous cities of Ceuta and Melilla. The commission's goal would be to

guarantee cooperation and the coordination of all audiovisual regulatory policies throughout the country.

In conclusion, it cannot be overlooked that a converging environment such as ours is today, with bundled “triple play” telecom offers (fixed voice, broadband and audiovisual services) and even “quadruple play” offers (the previous offers, plus mobile telephony), makes it necessary for the regulatory telecom authority - the Telecommunications Market Commission - to have competences in a market that is now in fact a multitude of converging services. Turning one’s back and remaining ignorant of the current status of the market we must regulate is like legislating while looking back at the past and once again, adding a text born obsolete to the official gazette. After so many years of need, the Spanish people deserve an independent audiovisual authority, a regulator in accordance with its situation and needs.

Notes

- 1 Royal Decree-Law 6/1996 of 7 June on the liberalisation of telecoms. *Boletín Oficial del Estado* (BOE), of 8 June 1996 (No. 0139).
- 2 The eighth transitory provision of Law 32/2003 on the Telecommunications Market Commission’s competences in the area of encouraging competition in audiovisual services markets is as follows: “The Telecommunications Market Commission shall exercise competence functions in the area of encouraging competition in the audiovisual services markets pursuant to Law 12/1997 of 24 April on the liberalisation of telecommunications in the envisaged terms until new legislation on the audiovisual sector comes into force.”
- 3 See the reference by the Spanish Government’s Council of Ministers corresponding to the session of 14 August 2008 at <http://www.la-moncloa.es/ConsejodeMinistros/Referencias/_2008/refc20080814.htm>.
- 4 The reference literally reads as follows: “The Ministry of the Presidency will present before 31 March 2009 a draft bill for the general audiovisual law, as well as a draft bill for the law to create a National Audiovisual Media Board.”
- 5 Available at <<http://www.mpr.es/NR/rdonlyres/D03898BE-21B8-4CB8-BBD1-D1450E6FD7AD/73066/Informereformamedioistitularidaddelestado.pdf>>.
- 6 Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.
- 7 Directive 2007/65/EC, Article 3.1.