

Regulation of the audiovisual sector

CATALONIA

Digital Terrestrial Television Forum in Catalonia

The Directorate-General of Audiovisual Media at the Department of the Presidency recently established a Digital Terrestrial Television Forum in Catalonia to bring together representatives of the main parties involved in the sector, i.e., regulatory bodies, public and private broadcasters, content suppliers, network operators, installers and manufacturers. The purpose of the Forum was to promote and be able to guarantee the introduction of digital terrestrial television (DTT) in Catalonia, speed up the implementation process and develop an action plan for all the parties concerned to launch the new technology appropriately.

The Forum consists of the Directorate-General of Audiovisual Media, the Telecommunications and Information Society Secretariat, the Centre for Business Information and Development (CIDEM), the Catalonia Broadcasting Council (CAC), the Catalan Radio and Television Corporation (CCRTV) (through Catalonia Television (TVC), TVC Multimèdia and CCRTV Interactiva), the Catalan Federation of Telecommunications Installation Companies (FECEMINTE), the Tradia and Retevisión network operators, the Philips, Sony, Samsung, Panasonic and ADB television manufacturers, and the Mier company as a supplier of equipment for digital terrestrial television broadcasts. It also includes professional colleges, such as the Telecommunications Engineers College in Catalonia (COETC) and the Telecommunications Technicians College of Catalonia (COETTC), as well as the National Association of Electronic and Telecommunications Industries (ANIEL).

The Forum's discussion topics include the development and start-up of new interactive content and applications, the proposal to carry out a test plan to define the DTT model in

Catalonia, the analysis of measures for current collective antennas to adapt to the new medium of digital broadcasts, the manufacturers' launch schedule for DTT receivers, the type of research and training activities to be undertaken to promote DTT in society and to promote its advantages.

Other news:

Sentence from the Supreme Court of Catalonia: third section of the Court that hears appeals against administrative decisions, of 21 March 2003, on the appeal lodged by Editorial Catalan de Televisión y Radio S.A. (COPE), against the Government of the Generalitat's decision to deny renewal of the licence to manage an FM radio station (102.0 MHz). The Court felt that the motives alleged by the Government were not arbitrary and therefore upheld the decision and dismissed the appeal.

General Telecommunications Bill

On 7 March 2003, the Council of Ministers approved the General Telecommunications Bill, the text of which was published in the *Spanish Parliament's Official State Gazette* on 14 March (see <http://www.congreso.es/>, in particular the section on legislative initiatives). The bill is aimed at "the in-depth study of deregulatory measures for consolidating the telecommunications market in free competition, a process initiated in 1998". It transposes into Spanish law the Community Directives entitled, "New Regulatory Framework for Electronic Communications", i.e., a new regulatory framework that is the fruit of technological convergence based on the principles of minimum regulation and the separation of regulations on broadcast infrastructure and content. It excludes the system of content, and thus audiovisual content, as the purpose is to regulate signal carriers, even though aspects related to digital television reception, i.e., APIs, EPGs and conditional access are included, as well as must-carry regulations.

In particular, the bill determines the system to apply to network operation and the provision of electronic communications services in free competition, establishes public service obligations, regulates the administration of the broadcast space and the assessment of the conformity of equipment and apparatuses, defines the institutions that make up the telecommunications administration, establishes the tax system with regard to telecommunications and determines the applicable disciplinary system. An additional provision (provision no. 7), establishes obligations with respect to conditional access, access to particular radio and television services, wide-format television and broadcast obligations.

Novelties in the proposed new legal system for the sector include the following:

- **Market access:** replacement of licences and authorisations with notifications. Any company can act as an operator on the market without having to obtain administrative authorisation, simply by notifying the Telecommunications Market Commission (CMT) in advance.
- **Market regulation:** The CMT will carry out periodic analyses of the different telecommunications markets. The European Commission is the organisation that defines the markets (see the Recommendation of 1 February 2003 on this matter) and can impose specific obligations on dominant operators to promote competition (*ex ante* regulations, among others, on interconnection and access).
- **Definition of dominant operator on the market:** the provision of a particular share (currently 25% of market share) is replaced by the concept of "significant power on the market", with this concept belonging specifically to antitrust laws.
- **Universal service:** the concept of *universal service* is broadened with the provision of Internet access. In particular, the law establishes that the proposed concept of *universal service* include a reference to "enough speed to access the Internet in a functional manner".
- **Users' rights and interests:** new rights are anticipated, such as impeding call identification through a simple and free procedure and the right to not receive publicity through automatic calls, fax or email messages (spam) without the user's consent.
- **Delimitation of authority within the Spanish government:** telecommunications is regulated by the Government, the Ministry of Economy (with regard to price regulation), the Ministry of Science and Technology (with regard to public services, the protection of users and the public domain (spectrum)), and the CMT (with regard to the free market and operator relationships). These organs of the national administration will be called the National Authority on Telecommunications Regulations. Finally, it highlights that the legal system for the CMT will be determined by the new bill.
- **Disciplinary system:** the disciplinary system is reinforced and applicable sanctions increased (up to 20 million euros). The reinforcement is justified by reduced administrative intervention. A new violation is introduced for breach of broadcast limits by stations and a fine of 60,000 euros introduced, applicable to the legal representatives and members of boards of directors who intervene in violations committed by their companies.

Other news:

- The Council of Ministers agreed to formalise the extinction of the licence awarded to Quiero TV, which took effect on 17 July 2002, "for the unjustified suspension of broadcasts for two weeks". The government decided to requisition the 12-million euro guarantee the platform's partners had deposited to obtain the licence (2/5/2003).

- Act 2/2003 of 17 March on Social Communication Media, Autonomous Community of the Principality of Asturias (OSG No. 103 of 30/4/2003).

- TEC Order 662/2003 of 18 March, approving the National Plan for domain names with the country code corresponding to Spain (".es"). (OSG No. 73 of 26/3/2003).

- Decision of the Telecommunications Market Commission Council of 20 February 2003 authorising the organisation Banco Santander Central Hispano to freely exercise its corporate right to simultaneously vote and appoint administrators to the companies AUNA Operadores de Telecomunicaciones S.A. and the ONO S.A: Corporate

Group.

- Report on the study into contestants' and audiences' rights in relation to competitions and game shows established in the Senate's Commission on the Information and Knowledge Society (Official Cortes Gazette, Senate, series I, no. 563 of 20-12-2002).

- Appointments to the Telecommunications Market Commission. New president Carlos Bestelo García Real and board member Crisanto Plaza Bayón took over their new duties on 28 January 2003, while the mandate of the board members Gloria Clavo Díaz, Antoni Elias Fusté and Reinaldo Rodríguez Illera were renewed. On 27 February 2003, Jaime Velázquez Vioque was appointed new Secretary and State Attorney.

Note

1. At the time this article went to press, the matter was still being debated in Parliament. In principle, the final date for presenting amendments, after various extensions, was to be 30 April.

EUROPEAN UNION

Public consultation on the review of the Television Without Borders Directive

The European Commission began a public consultation, open **until the end of July 2003**, on the review of the Television Without Borders Directive. To this end, a number of public hearings were due to take place in Brussels. The 2-3 April hearing focussed on the protection of general interests in television advertising, teleshopping and self-promotion. The 4 April hearing addressed the question of access to events of major importance to society, and the 23-25 June hearing was into broadcast shares for European works and independent production, the promotion of cultural diversity and the competitiveness of the European industry,

the protection of minors and public order. Reflections were based on a number of documents available at:

http://europa.eu.int/comm/avpolicy/regul/review-twfb2003/consult_en.htm.

Stream-Telepiù Merger

On 2 April 2003, the European Commission gave the green light for Australian group NewsCorp (Rupert Murdoch) to acquire pay-per-view television company Telepiù from Vivendi Universal. Telecom Italia will have a minority stake in the new company not exceeding 19.9%. Except for the Telecom Italia shares, this is an inverse transaction to a prior (unsuccessful) operation in which Vivendi hoped to

acquire Stream and integrate it with Telepiù. The Italian trust authorities examined and authorised the operation with certain conditions on 13 May 2002, but the Vivendi group later abandoned the project.

The conditions imposed by the European Commission include the following:

- **Access to content:** Newscorp will waive exclusive rights to premium content for non-satellite transmission. Premium content may be bought from Newscorp through “wholesale offers” based on the retail minus principle. Contracts in force can be cancelled without penalties and the duration of future contracts shall be limited to two years for football clubs and three years for film producers.

- **Access to platform:** Newscorp shall permit access to its platform under fair and equal conditions, grant licences for the technology of its conditional access system under fair and non-discriminatory conditions and be obliged to reach simulcrypt agreements with any interested operators.

- **Divestitures:** Newscorp undertook to divest Telepiù digital terrestrial broadcasting activities and committed to not entering into further DTT activities either as network or retail operator.

Other news

- The European Commission addressed a decision, motivated in France, calling for equal treatment of cable networks in relation to the provision of telecommunication services (IP/03/520, of 9-4-2003).

- The European Investment Bank (EIB) awarded a loan of 500 million euros to Telefónica for the development of broadband technologies on the local loop (8-4-2003).

- Court of Justice sentence on criteria for determining equitable remuneration for authors and producers in the public broadcasting of musicals – ECJ Sentence of 6/2/2003 in case C-245/00 between Stichting ter Exploitatie van Naburige Rechten (SENA) and Nederlandse Omroep Stichting (NOS).

- Study on financial aspects of the film industry – identification and evaluation of economic and financial flows of European cinema in comparison with the American model, prepared by IMCA for the European Commission (March 2003)

http://europa.eu.int/comm/avpolicy/stat/studi_en.htm#film

- Study on the assessment of the Member States' measures aimed at fulfilling certain general interest objectives linked to broadcasting, imposed on providers of electronic communications networks and services, in the context of the new regulatory framework, Eurostrategies for the European Commission (March 2003).

http://europa.eu.int/information_society/topics/telecoms/regulatory/studies/documents/finrep_18_march_2003.pdf

- Study on Interoperability, Service Diversity and Business Models in Digital Broadcasting Markets, prepared by Oxera for the European Commission (March 2003).

http://europa.eu.int/information_society/topics/telecoms/regulatory/studies/documents/oxera_final_report

- Regulation Proposal from the European Parliament and Council establishing the European Agency for Information and Network Security, (MOC 2003 63 final) of 11/02/2003.

- Tender Proposal from the European Union for negotiating the General Agreement on Trade in Services (GATS) from the World Trade Organisation (WTO), presented by the European Commission (5/02/03).

[http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/03/186\[0\]AGED&lg=ES&type=PDF](http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action=getfile&gf&doc=IP/03/186[0]AGED&lg=ES&type=PDF)

With regard to the audiovisual sector, the proposal upheld the European Union's position, defended at the Uruguay Round, to make no commitment in relation to these services. Also see the Resolution of the European Parliament of 12 March 2003 and the speech by European Commissioner Vivian Reding (the first available at <http://www3.europarl.eu.int> and the second at <http://www.europa.eu.int/rapid> with reference SPEECH/03/117).

- Recommendation from the European Commission of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC from the European Parliament and Council on a common regulatory framework for electronic communication networks and services.

http://europa.eu.int/information_society/topics/telecoms/regulatory/maindocs/documents/recomes.pdf

- Proposal to relate standards and/or technical specifications for networks and electronic communications services and associated resources and services (31/12/2002). Chapter VI referred to the standards for

electronic communication networks established by the distribution of digital broadcast services, including associated resources.

http://europa.eu.int/information_society/topics/telecoms/regulatory/maindocs/documents/c_33120021231es00320049

- Electronic Communications in Europe. The Commission presented the Ministers with the Communication entitled, "Electronic Communication: The Road to the Knowledge Economy", as well as the Report on the eEurope 2002 Action Plan (Council of Telecommunications Ministers of 27 and 28 March 2003).
- The European Commission began a formal analysis procedure into the funding system of Danish public broadcaster TV2 (IP/03/91 of 21/01/2003).
- Council Resolution of 19 December 2002 on the content of interactive media in Europe (OD no. C-13, of 18/1/2003).

COUNCIL OF EUROPE

Pluralism in the communications media

The Consultative Panel on Diversity in the Media and European Council Task Force recently published a report on pluralism and diversity in the communications media. The conclusions confirmed the current state of concentration and convergence in the communications sector, along with the essential role of the public media and, more particularly, a "strong and independent public service to guarantee the broadcasting of diverse information and opinions". The report proposed that Member States adopt legal measures to preserve and promote pluralism and that the right to competition should only play a complementary role in analysing concentration in the broadcast media. Finally, it considered the potential audience indicator as a principal element in the analysis of pluralism.

http://www.coe.int/T/F/Droits_de_l'Homme/Media/5_Ressources_documentaires/2_Documentation_thematique

Germany: New Self-regulatory Commission on the Protection of Minors in the Media

The new interstate treaty on the protection of minors came into force on 1 April 2003. The treaty was expected to bring the regulatory activities of all electronic media (broadcasters and the Internet) into line and featured stricter regulations and more self-regulation. In particular, self-regulation will require a certificate and control from a new commission to protect minors in the media (Kommission Jugendmedienschutz/KJM) headquartered at Erfurt, with Wolf-Dieter Ring (President of the Bavarian Audiovisual Regulation Authority, BLM) as President.

EU Countries. Other news

Denmark

- The new Radio and Television Act (Act 1952 of 17 December 2002) came into effect on 1 January 2003.

<http://www.kum.dk/sw5345.asp>

United Kingdom

- The Independent Television Commission (ITC) published its annual report (8-4-2003).

http://www.itc.org.uk/uploads/ITC_Annual_Report_2002.pdf

- The government released a joint report from the ITC and BBC on progress in relation to digitalisation — A Report on Progress Towards Digital Switchover— (4/4/2003).

http://www.digitaltelevision.gov.uk/pdfs/ITC_BBC_switchover_report.pdf

- The Home Office's Protection of Children on the Internet Task Force published its good practice models (January 2003).

http://www.homeoffice.gov.uk/docs/ho_model.pdf

France

- Signing of conventions for DTT programme editors (6 May 2003).

http://www.csa.fr/actualite/communiqués/communiqués_detail.php?id=12430

- Decision by the Conseil d'État on the reorganisation of the analogue frequencies of TF1 and M6 for the implementation of DTT (March 2003).

http://www.csa.fr/actualite/dossiers/dossiers_detail.php?id=12242

- Recommendations from the CSA on the treatment of the war on Iraq (19/3/2003)

http://www.csa.fr/infos/textes/textes_detail.php?id=11876

- The CSA published the report entitled Chaînes locales hertziennes en métropole : un secteur dynamique mais vulnérable (27/3/2003)

http://www.csa.fr/actualite/dossiers/dossiers_detail.php?id=11886

- The CSA issued a preliminary report on the bill on televised broadcasts of events of major importance (25/3/2003).

- The CSA issued a preliminary report on the Act on the system applicable to cable and satellite television channels (28/1/2003).

- The Leclerc Report on the French system of support for film production (January 2003)

<http://www.culture.gouv.fr/culture/actualites/rapports/leclerc/rapportleclerc.pdf>

Italy

- On 29 January 2003, the Autorita per le Garanzie nelle Comunicazioni (AGCOM) adopted the DTT frequencies plan.

http://www.agcom.it/PNAF-DVB_2003/d_15_03_CONS.htm