

REGULATING DIGITAL TV: THE GREEK EXPERIENCE

by

Dr. Petros Iosifides *

Since Autumn 1998 Greece has in place the regulatory basis for the development of digital television and pay-TV services. The legislative document, prepared by the Ministry of Press and the Mass Media, gained majority voting in Parliament on 29 September 1998 and became law in October (Law 2644/98 of 13 October 1998). Thus Greece has opened the way for the introduction of a wide range of new products and services that the technology promises, such as interactive TV, subscription TV, pay-per-view, transactional services like home banking and home shopping as well as Internet-style data services. In other words, Greece has provided a step towards the 'Information Society'.

The legislative document is the result of an earlier announcement of digital satellite television plans. In May last year, the Greek government proposed that there should be one national platform for digital services and that all interested parties are given equal access to it. At that time, Multichoice Hellas (a company jointly owned by Nethold and private channel Mega Channel) had announced its intention to launch its 'Nova' digital bouquet. The government however declined to grant a licence to that scheme with the explanation that a proper regulatory framework, which could both prevent potential market abuses and protect the public interest, was not enforced.

However, the new government proposals have been criticised by many sides. There are many (the opposition included) who argue that the government proposals are ill-prepared and disagree on the adequacy of the new provisions. In particular, the critics pointed out that the consultation process with the parties concerned, that is, political parties, the National Broadcasting Council (NBC), broadcasters and telecommunications operators, etc., was very short so that no fruitful discussion would take place. They also emphasised that, despite government's promises, the role of the NBC, the broadcasting regulatory body, has not been upgraded. They finally stressed that the forthcoming law is not capable of preventing undue concentration in the digital converged era.

Despite that, it is worth noting that the present law is the most significant piece of broadcasting legislation since the passing of Law 2328 in 1995 which covers issues concerning analogue private radio and television stations (such as licencing, advertising, etc.) operating on Greek territory. The new law not only addresses issues surrounding digital TV, but also tackles issues related to subscription TV and radio and pay-per-view. Also, by enforcing this law, Greece will be among the very few European Union countries which have designed and introduced a regulatory framework for digital TV at this very early stage of market development. In

* Lecturer, University of North London.

fact, it is only Britain and Sweden which have introduced a comprehensive piece of legislation for digital terrestrial television.

The drives for the introduction of a law covering digital services are twofold. Firstly, the government would not like to experience a repetition of a chaotic situation in the Greek digital terrestrial and satellite broadcasting scene, similar to that which followed radio and TV liberalisation in the late 1980s and early 1990s.¹ Secondly, it could be argued that the legislative document is the result of pressure from Multichoice Hellas, the only company which, at the time of writing, has released details of plans for its 'Nova' digital bouquet. The proposed satellite digital channels scheme is planned to be transmitted from Eutelsat's Hot Bird platform. The 'Nova' bouquet will consist of the Greek commercial free-to-air channels Antenna TV, Star and Kanali 5, the premium subscription channels FilmNet, Supersport and K-TV. There is also a plan to feature international channels such as BBC World subtitled in Greek.

Let us now consider the main provisions of the new Greek broadcasting law:

A. One national digital platform

The law provides that one national digital platform be set up in Greece with equal access to it by all players. Such a provision encourages potential players to enter the market and provide digital services without having to overcome barriers set by incumbents such as the public broadcaster ERT and the state telecoms organisation OTE. Under previous broadcasting law 2328/95, companies wishing to launch subscription channels should have permission from ERT. One of the innovations of the new provisions though is that ERT loses its exclusive right to determine the future subscription market. This provision is in line with the EC legislation concerning digital television platform policy as well as the broader deregulatory tendency in the EU telecoms and audiovisual sectors. The Commission, and DGXIII in particular, encourages the ending of statutory monopolies and the introduction of competition in the sectors. Public broadcaster ERT can in fact provide digital and pay-TV services through only a subsidiary company, in which other public and private operators could participate. That company should have the approval of the Minister of Press and the Mass Media. Apart from ERT, municipalities are also allowed to set up such subsidiaries for the provision of digital services.

B. Allocation of licences

The provision for one national digital platform means that all interested parties are given equal access to the digital era. However, licenses to digital radio or television programme services will be allocated only to those limited companies or public limited companies which can

¹ The weak point of broadcasting liberalisation in Greece is that it has not been a well-studied action but rather a matter of political convenience and the result of industry pressure. Law 1866/89 in 1989 that allowed private TV was ill-prepared and left many important issues, such as licensing and functioning of TV channels, to be arranged in the future. It was Law 2328/95 in 1995 which covered most of these issues and put an end to the then chaotic situation.

demonstrate transparency in ownership and control (i.e. the identities of owners or controllers are largely known). Both Greek and foreign broadcasters or telecom operators are encouraged to invest in the new advanced technology. However, foreign companies which have been providing telecom or broadcasting services for the last three years, are exempted from ownership disclosure requirements. This also applies to Greek companies which have entered the stock exchange market. In fact, it is only 'Teletypos', - a company jointly owned by five big Greek publishers who also have stakes in the leading private TV channel Mega Channel and radio stations - which has done so. For this reason, critics point out that the new provisions are tailor-made to serve the interests of that enterprise.

C. Responsible for granting the licences

The new proposals state that licences for digital services will be allocated by the Minister of Press and the Mass Media with the consent of the National Broadcasting Council (the Ministry of Transport and Communications is responsible for the technical specifications). The NBC appears to have more power because it will not only examine applications for a licence, but it will also assess the performance of the new broadcasting stations (quality of services offered, compliance with advertising restrictions, etc.). It will also be heavily involved in the issue of transparency in ownership and control. The role of the NBC's president is upgraded as s/he will have the power to postpone or interrupt a programme which does not abide to the content requirements (see below). Overall though the NBC's role will continue to be inferior to that of the Minister of Press and the Mass Media and its independence is open to question. For example, the new law states that, responsible for the allocation of licenses in the new era is still the Minister 'with the consent of the NBC'.

D. Content requirements

Regarding content requirements in digital and pay-TV services, the new law maintains the provisions of Law 2328/95 for the safeguarding of pluralism in the media, protection of minors from harmful content and advertising restrictions.² In addition, it is provided that at least 25% of each licensee's programming should be in Greek, whereas 30% of the foreign programming should either be subtitled or dubbed. Finally, the controllers of networks of five or more channels are obliged to allocate one for parliamentary coverage.

E. Ownership restrictions

A long standing goal of the government has been to impose new specific regulations on media ownership beyond those applied by general competition law. The aim is to safeguard plurality and diversity in the Greek digital broadcasting media. Restrictions thus are imposed on

² It should be noted that Law 2328/95 is in line with Article 22 of the Television Without Frontiers Directive which sets up specific content requirements for the protection of minors from harmful content.

the holding of broadcasting licences. Under the new provisions, each interested party can participate in one only company providing digital subscription broadcasting services by the same medium (for example, TV). However, the same player will be able to participate in another one company providing subscription broadcasting services (for example, radio) provided 's/he does not reduce pluralism in the broader communications industry'.³ Holdings in different media are limited to 25%. In addition, the proposals set out the regulations by which certain individuals and bodies (such as those which have been granted public contracts) are disqualified from holding certain digital broadcasting licences. Similar provisions had been introduced by law 2328/95 covering terrestrial free-to-air broadcasting services.

It is worth noting that concentration of media ownership in Greece had not been regarded as a major problem until the turning of this decade. Thus specific regulations for media concentrations were not deemed necessary. This was firstly because Greece belongs to a small linguistic minority. This, together with a continuing political and economic instability, prevented large foreign groups from taking over or creating alliances with Greek entities. The second reason was the late arrival of deregulation in the broadcasting market. The media industry has only been liberalised in 1990, leading to the fragmentation of the electronic media audiences. Public broadcaster ERT lost its dominant position and the range of media choice increased. However, the public monopoly has been replaced with a private TV duopoly created by the two established commercial channels Mega Channel and Antenna TV⁴ and an awesome level of cross-media ownership as publishers have moved to television. Mega Channel, for example, is owned by five big publishers who may also have stakes in other outlets such as radio. Responding to that situation, media ownership regulation came into effect for the first time in 1995 through law 2328/95.

F. Future prospects

So, what are the prospects for digital TV in Greece? In general, there are at least three necessary conditions for the success of digital TV. Firstly, a well designed and managed transition from analogue to digital is needed. All interested parties should be invited to an open dialogue to express their point of view. Potential issues that need to be addressed are the efficient allocation of digital licences, the need for compatible standards, the regulation of gate-way technologies and systems, the speed of transition to an all digital spectrum, the obligation to continue analogue transmissions to service the analogue only households, etc. The Greek govern-

³ This statement is quite vague though, since no definition of pluralism is provided explicitly so that the issue of what constitutes an abuse of pluralism cannot be determined.

⁴ Since the liberalisation of the Greek broadcasting market in 1990, these two channels have dominated the field in terms both of audience share and advertising revenue. Although they are still leaders, it has to be emphasised that today two more commercial channels, Star Channel and Sky TV occupy a significant market share. According to AGB Hellas, viewing shares in June 1998 were 22.5% for Antenna, 21% for Mega, 16% for Sky and 15% for Star. Public broadcaster ERT's share fell to just 8%, whereas 11% share enjoyed by a number of small TV channels.

ment proposals address most of these issues at an early stage. This is a positive step showing awareness of the importance of setting up a fresh legislative framework for digital TV with a dual objective: promote competition and safeguard the public interest in the digital converged era. As indicated above though, the government has been criticised both for preparing the new law without fully consulting the parties concerned, and for not tackling adequately the issue of media market concentration.

Secondly, set-top box compatibility needs to be promoted and the creation of a dominant position in the Electronic Programme Guides (EPGs) should be restricted. The government recognises that the transition to digital TV represents a major opportunity for Greek (and foreign) consumer electronics manufacturers to launch a new generation of digital household reception equipment (i.e. set top boxes and integrated digital TV sets). It is important, however, that manufacturers adopt common platforms and standards. Consumer demand will take off only in the case that users will not have to buy too many different TV sets and devices to unscramble digital programmes (of course, the content of digital programming and the quality of services offered are additional factors bound to determine consumer demand). The Greek government proposals are once again in line with the EC regulation, notably DGXIII, which encourages the adoption of compatible standards, so as to allow consumer access to all subscription services delivered by broadcasting or telecoms operators.

Concerning EPGs, i.e. the interface between the service provider and the user, the forthcoming law ensures that the control of an EPG does not distort competition among broadcasters. Whether the industry pursues both compatibility in set-top boxes and fair competition in EPGs, is a different story. The example of the analogue pay-TV market in Europe, in particular BskyB in Britain and Canal Plus in France, clearly shows that players entering the market first tend to gain and sustain a competitive advantage and often dominate the market. Regarding Greece, given the chaotic situation followed radio and TV liberalisation, one cannot afford to be optimistic. Many put forth that the lack of an appropriate regulatory framework at that time (i.e. early 1990s) had a negative effect on analogue broadcasting industry development. If that is the case, the fresh rules covering digital and pay-TV services provide a step towards the right direction.

Thirdly, future market demand for new digital services deserves careful examination. The greatest uncertainty that potential players face is that there is no way to know in advance whether consumers will pick up the new advanced services. Will it be viable for channels to go on air with a digital bouquet together, say, with interactive services such as home-banking and tele-shopping? The situation in other European countries cannot provide a definite answer to that, as it is still underdeveloped. For example, the Italian pay-TV service Telepiu, the French Canal Plus and the German Kirch Group, all introduced their digital packages in 1996,⁵ whereas the British BskyB and ONdigital (a joint venture between Carlton Communications and Granada) launched their digital services in September and November 1998 respectively.

⁵ The majority of those services, especially Kirch's digital satellite package DF1, have experienced slow start and huge losses.

Although it is still early days, thus making it problematic to make predictions concerning return of investment at this stage of market development, there are some indicators showing an increasing consumer demand for new services in Greece. First of all, small terrestrial TV channels in Greece, catering both for majorities and special interests, appear to enjoy growing market shares - from virtually zero market share in 1993 to 11% in June 1998. This reveals a gradual change in Greek audience preferences driven by technological advances, the availability of alternative means of communication, and change in life styles.

Let us also take the example of the analogue pay-TV market. Currently, analogue pay-TV services are offered by Greece's only pay-TV provider Nethold Hellas, with its three premium subscription channels FilmNet (which features new cinema releases), Supersport (which broadcasts live soccer for the Greek First Division)⁶ and K-TV (which features children programming), which are offered as a package. After just four years of operation, almost 300,000 consumers have subscribed and pay 10,500 drachmas (around 12 pounds) monthly subscription fee. Concerning another new service such as the Internet, although only around 3% of Greek citizens are using the Internet at work, and around 1% at home, growth rates in Internet services are impressive in Greece (similar to other EU countries). OTEnet, the leading Internet Service Provider, has 24,000 dial-up users in its three years of operation, while the next big three Hellas-on-Line, Compulink and FORTHnet have around 25,000 users combined. All these indicate that consumers are willing to pick up the new advanced services.

Then there arises the whole question of the market segments the new players will attempt to catch. Which is the target group? Which will be expected to pay for? One the one hand, there are those customers who live in rural areas as well as the many Greek islands. There is indeed an incentive for those people to purchase the new services since often they cannot access free terrestrial channels that are available in big cities. There are two disadvantages though: firstly, since these people are not normally exposed to external influences, it is difficult to be convinced to change viewing habits; secondly, the majority has limited spending power. One the other hand, there are those living in urban areas like Athens and Thessalonika, with more spending power. These, however, can access a large number of terrestrial commercial TV channels offering a variety of news, documentaries, sitcoms, soap operas, game shows, domestic drama, etc. The main factor that could possibly convince them to purchase digital services is the content. The example from the Greek analogue pay-TV market reveals that programming genres that are bound to attract subscribers are sports and movies.⁷ Documentaries and children programming might also be a plus. However, as channel availability grows, the acquisition of rights to premium content such as sports and new releases becomes increasingly very expensive.⁸ The only

⁶ Supersport has acquired the exclusive soccer rights for the Greek First Division until the year 2001.

⁷ Similar tendencies can be found elsewhere in Europe. For example, satellite TV in Britain and pay-TV in Germany and France have been driven both by live coverage of sports events (particularly soccer) and Hollywood movies.

⁸ See, among others, C. Cowie & M. Williams (1997) 'The Economics of Sports Rights' in *Telecommunications Policy*, vol.21, no.7, pp.619-634.

way to overcome the huge costs might be the creation of alliances which, however, will raise levels of media market concentration to reach those found in most EU industrialised countries.⁹

⁹ For an account of the level of media market concentration in the EU, see, among others, P. Iosifides (1997) 'Pluralism and Media Concentration Policy in the European Union' in *Javnost/The Public*, vol.4, no.1, pp.85-104; *Cardozo Arts & Entertainment Law Journal*, vol.16, nos.2-3, 1998.