

Feasibility study
on the establishment of a single,
converged regulator for telecommunication
and broadcasting services in Tajikistan

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BBK

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List of Abbreviations

Bundesnetzagentur	Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway, Germany
CC	Collegial Council
CJSC	Close Joint Stock Company
CRA	Communications Regulatory Agency
CS	Communication Service under the Government of Tajikistan
CSO	Civil Society Organization
CTT	Convention on Transfrontier Television
DETEC	Department of Environment, Transport, Energy and Communications
EBRD	European Bank for Reconstruction and Development
ECHR	European Convention of Human Rights
FCC	Federal Communications Commission
FMEC	Federal Media Experts Commission
GATS	General Agreement on Trade in Services
ICA	Independent Complaints Authority for Radio and Television
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and Communication Technologies
IPTV	Television over IP
ISP	Internet Service Provider
LLC	Limited Liability Company
MEDT	Ministry of Economic Development and Trade
MFN	Most-favored nation
NGN	Next Generation Network
OFCOM	Federal Office of Communications
the Office	OSCE Office in Tajikistan
OSCE	Organization for Security and Co-operation in Europe
OSHC	Open Stock Holding Company
OSJC	Open Joint Stock Company
PSTN	Public Switch Telephone Network
PTT	Schweizerische Post-, Telefon- und Telegrafengebiete
SCRF	State Commission on Radio Frequencies of the Republic of Tajikistan
SRG SSR	Swiss Broadcasting Corporation
VoIP	Voice over IP
WTO	World Trade Organisation

I. Background and Objectives

On March 2, 2013 the Republic of Tajikistan became a member of the World Trade Organisation (WTO). Under the WTO Agreement, which includes the “Reference Paper for Telecommunication Services” (Annex I), Tajikistan is obliged to establish in the field of telecommunications an independent regulatory body, separate from and not accountable to any supplier of basic telecommunication services. By Governmental Decree No. 691 of 31 October 2014, the Ministry of Economic Development and Trade has been tasked to oversee the conducting of a feasibility study “with a view, of establishing a single agency responsible for telecommunication and broadcasting services.” If the results of the study demonstrate the feasibility of such a single agency, the Government of Tajikistan will establish such a single agency for telecommunication and broadcasting services. On April 15, 2015 the Ministry of Economic Development and Trade of the Republic of Tajikistan asked the OSCE Office in Tajikistan (the Office) to provide technical assistance in the preparation of the aforementioned feasibility study.

The Reference Paper for Telecommunication Services does not require a specific format for the regulatory authority. What matters is its genuine independence not only from operators but also from policy makers and from other interested parties in implementing the state policy set out in the national telecommunication legislation. In other words, it is entirely up to the individual WTO member to decide whether it will unite the regulatory competences under one single authority or to continue to regulate the telecommunication and broadcasting services, as is presently the case in Tajikistan, by two separate bodies. In any event, under its WTO commitments Tajikistan thus has to have an independent regulator in the field of telecommunication. Before discussing the question of a possible single regulator we will therefore have to look first whether the Communication Service under the Government of Tajikistan, the incumbent telecommunication regulator of Tajikistan, can be considered to be an independent regulator according to the WTO requirements.

Should the Government of Tajikistan decide to establish a single regulatory authority for both telecommunication and broadcasting services, the WTO requirements for independence of such a body would then of course also extend, *mutatis mutandis*, to broadcasting services. Under a separate section we will thus look at the structure and the work of the Committee on TV and Radio under the Government of Tajikistan, the incumbent broadcasting regulator of Tajikistan.

After discussing the question of the independence of the incumbent regulators we will then discuss the technical issue of convergence between telecommunication and broadcasting services which prompted numerous WTO members to establish one single regulator for both services. Representatives from Switzerland and Bosnia and Herzegovina will report about their experiences with operating a converged regulator and a representative from the German “Bundesnetzagentur” (the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway) will share with us his experience as a telecommunication regulator *sui generis*, with many additional tasks, which however do not include broadcasting.

In the light of our findings with regard to the two incumbent and the reports of the foreign regulators we will then discuss the pros and cons for the establishment of one single regulator in Tajikistan. Conclusions and recommendations will sum up the outcome of this study.

II. Executive Summary

This study explores the feasibility to converge the two regulators for telecommunication and broadcasting services presently operating in the Republic of Tajikistan (the Communication Service and the Committee on Television and Radio), into one single regulatory authority. The study was carried out by the OSCE Office in Tajikistan at the request of the Ministry of Economic Development and Trade. The study is part of several activities identified by the Government of the Republic of Tajikistan in the field of telecommunications in Decree No. 691 of 31 October 2014 “On the program of Adjustment of the Economy of the Republic of Tajikistan Related to the Membership in the World Trade Organisation.”

The study starts with an assessment of the legal and regulatory framework for the electronic communication market in the Republic of Tajikistan, but also looks at best international practices in the regulation of telecommunication and broadcasting services and the examples of other countries. While the authors of the study acknowledge an international trend among regulators for the electronic communication markets to merge their activities into one single regulatory authority, they are, at the same time, of the opinion, that under the political, economic and legal circumstances presently prevailing in the Republic of Tajikistan, such a move would be premature for the two incumbent regulators.

The study reminds the Government of the Republic of Tajikistan that the binding legal commitments resulting from Tajikistan’s WTO membership leave the institutional design of the telecommunication regulator entirely to the WTO members. The only binding legal requirement for regulators in the field of telecommunication, set out in the WTO Reference Paper for Telecommunication Services, is their independence from business and politics. Similar requirements do exist for broadcasting regulators under other international legal instruments. In their assessment of the existing regulatory frameworks for telecommunication and broadcasting services and best international practices in this field, the authors of the study come to the conclusion that neither of the two incumbent regulators in the Republic of Tajikistan can be considered independent in their functions from governmental influence.

The study is thus suggesting to focus, as a first step, on the establishment of two truly independent telecommunication and broadcasting regulators in the Republic of Tajikistan. In a second step a transformation of these two independent regulators into one single, converged regulator may be considered.

In its Recommendations addressed directly to the President and the Government of the Republic of Tajikistan the study suggests some immediate steps with a view of moving towards the functional independence of the two incumbent regulators during the course of this year. Parallel to these first steps the work on the creation of the necessary legal and regulatory framework for the creation of two truly independent and competent regulators for telecommunication and broadcasting services in the Republic of Tajikistan has to commence.

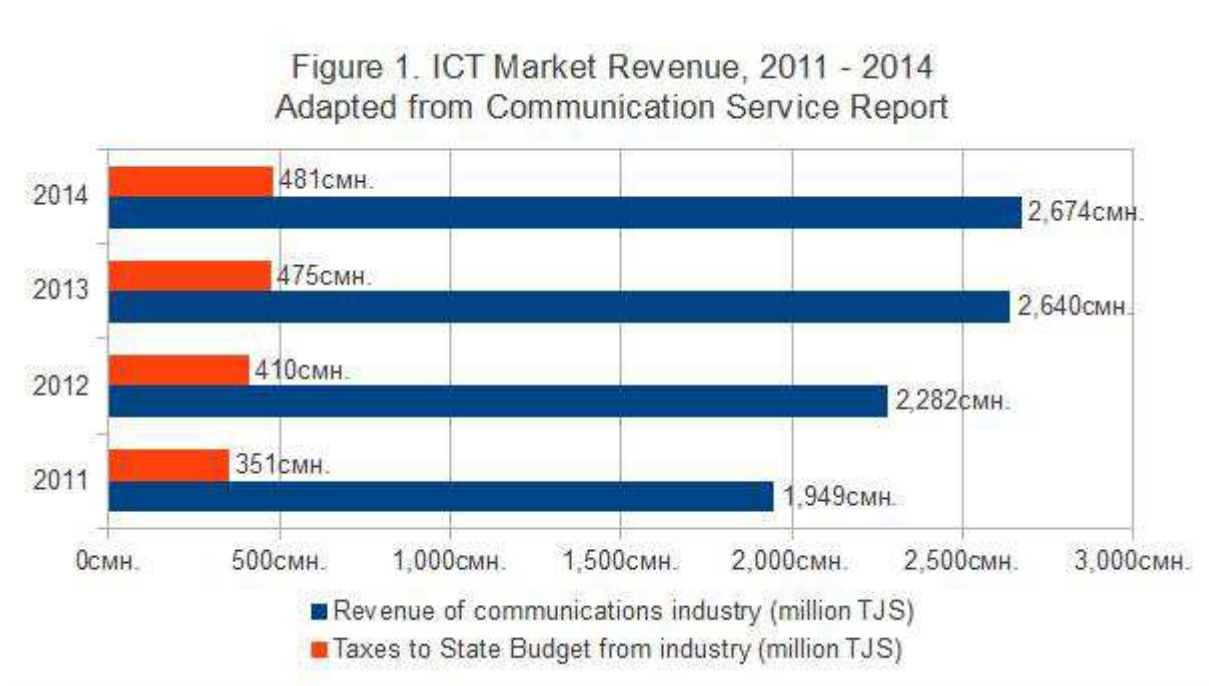
III. Overview of the Tajik Telecommunications Market (2015)

Telecommunications Market Snapshot: Key Statistics of the Market

Population	8,354 million (01.01.2015)
GDP	8.51 billion US dollars (2014)
Per capita GDP	481 US dollars (01.01.2014)
Per capita GDP (PPP)	2431.66 US dollars (01.01.2014)
Revenue of the telecommunication sector	2686 million somoni (2014) approx: 560 million dollars
Active mobile users	6.4 million (2014)
Mobile penetration	138% of the total population (2014)
Internet users	3.8 million (2014)

Introduction

The telecommunication sector, or in broader terms, the Information and Communication Technology (ICT) industry of Tajikistan, is one of the fastest growing sectors of the national economy. As the Communication Service (the Telecom Regulator) reported in February 2015, the growth of revenue of this industry was annually around 15% up to 2013 and 2% in 2014 (see Figure 1). In 2011 it was around \$450 million and at the end of 2013 gross revenue of the ICT industry reached over \$560 million. In 2013 private ICT companies provided 96% of total ICT industry revenue. The number of people employed in the ICT industry in Tajikistan amounts to approximately 20,000.



Tax contributions of ICT companies are a significant source of the state budget. In 2014 it amounted to approximately \$100 million.

Legal and Regulatory Framework

The ICT industry in Tajikistan is governed by the Law of the Republic of Tajikistan on Telecommunications (the Law) of 2002 with amendments made in 2006, 2008, and 2013. According to Article 8 of the Law the Government of Tajikistan can delegate its powers for the regulation of the telecommunications sector to an authorized agency. The agency presently in charge of the regulation of the telecommunication market in Tajikistan is the Communication Service (CS). The chair-

man of the CS and his deputies are appointed by the Government of Tajikistan and its budget is mainly funded by the government. The functions and powers of the CS are prescribed in Articles 9 and 10 of the Law according to which the CS is tasked with typical functions of a telecom regulator, inter alia, to provide:

- for fair competition between telecommunications operators;
- for high quality telecommunications services;
- for equal access of all users to telecommunications services, and
- to grant licenses for the use of radio frequencies, and
- to prevent, in cooperation with the Anti-Monopoly Authority, anti-competitive activities.

According to Article 7 of the Law and Article 3 of the Decree 1026 of 28 February 2011, the CS has also been given the task to develop and implement the state policy in the field of telecommunications, which includes the development and implementation of the state policy on Radio Frequency Spectrum. Furthermore, Decree 252, which approved the statute of the CS, grants the CS the right to manage state owned companies in the telecommunication sector.

In practical terms, that means that the CS combines policy, regulatory and management functions which leads to an inherent conflict of interests. Obviously, the CS cannot regulate private telecoms and, at the same time, compete with them via state owned operators, such as Tojiktelecom. This combination of political, regulatory and commercial powers does not only prevent a level playing field for private operators, but also allows for political interferences which are not compatible with either national or international law.

The positive obligations of the Communication Service to ensure access to the Internet for the public result directly from Tajikistan's national and international legal commitments.

A case in point is the practice of the recurrent blocking of websites with unwanted political content, a practice criticized not only by the OSCE Representative on the Freedom of the Media, but also by the UN Human Rights Committee in its second periodic report of Tajikistan in August 2014. The blocking of websites does not only deprive Tajik citizens of their right of access to information but also causes serious economic harm to internet service providers and commercial companies like Asia Plus, Ozodagon and Tojnews, who are offering news and other services on these platforms.

While the CS until the end of 2012 expressly instructed internet service providers and mobile operators, in writing, to block certain websites, in the last 2 ½ years the CS denies any responsibility for these blockings. This raises the interesting question - who is behind these coordinated activities which, in October 2014 alone, led to the blocking of hundreds of websites and the closing down of SMS services in the entire country. In this context it has to be recalled that under both, the Tajik Telecommunications Law and the WTO Reference Paper for Telecommunications Services, the incumbent telecommunications regulator is obliged to provide Universal Telecommunications Services for the public. Furthermore, Article 2 of the International Covenant on Civil and Political Rights, ratified by Tajikistan, requires that each State Party to the Covenant undertakes to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant (e.g.: free access to information). In the light of these *positive* obligations it is simply not good enough for the incumbent regulator to reject any responsibilities for the complete dysfunction of parts of the telecommunication market in Tajikistan.

Obviously, this state of affairs is not conducive to the development of a viable domestic ICT industry and to foreign investment. This is why the World Trade Organization in its regulatory framework for basic telecommunications services (“Reference Paper”) requires the establishment of a regulator who is independent not only from commercial operators but also from interferences by state authorities. By joining the WTO in March 2013, Tajikistan committed itself to comply with the obligations set out in the aforementioned Reference Paper.

The incumbent telecommunications regulator combines policy, regulatory and operational functions managing state owned enterprises.

Taxation and fees

The level of taxation of the industry is one of the highest in the national tax system. In addition to common taxes, operators of telecommunication services pay a higher profit-tax rate (25%), a special tax and a so-called "license fee" which is calculated as 2.5% of operator revenues. The special tax, introduced in January 2011 at a level of 3% and increased to 5% in April 2015, is imposed on all mobile communication operators and Internet service providers. The ICT industry is also subject to payments of all kind of fees for licenses, technical authorizations, equipment certifications and services provided by the CS and its affiliated organizations. Furthermore, the market players also have to make special payments "outside the regulatory regime"¹ to compensate Tojiktelecom for its significant losses in international call traffic revenues cost by competition.

Market developments

Tajikistan inherited a very poor telecommunication infrastructure, consisting of a public switch telephone network (PSTN) with slightly over 320,000 numbering capacity, a combination of copper and radio-wave networks within the country, and a connection to the outside world via Uzbekistan. In the former USSR all long-distance calls from and to Tajikistan were routed via central offices in Tashkent and Moscow. Today the majority of long-distance calls are distributed among several local operators.

In 1996, a policy of liberalization led to the emergence of a large number of private telecommunications companies, allowing for competition and development of the latest technologies. A state strategy on "Information and Communication Technologies for Development of the Republic of Tajikistan" was adopted and approved by Presidential Decree No 1174 in November 2003. This new policy of liberalization in the telecom sector is still reflected in Article 6 of the Telecommunication Law, which requires the de-monopolization and privatization of telecom operators.

The competitive market encouraged private local companies to build high-capacity converged networks capable of delivering data, audio, and video services such as IP-telephony, cellular communications, NGN, Internet/mobile banking, IPTV, payment systems. Private mobile communications operator Babilon-Mobile launched 3G services in Dushanbe in July 2005. All the other mobile operators have launched 3G services since 2006 and these are gradually expanding outside the capital Dushanbe. Babilon-Mobile launched 4G services in Dushanbe in October 2012. Indigo Tajikistan set up 4G services in Dushanbe, Khujand and a few towns around it in April 2014.

The development of the Internet and other digital technologies rapidly transformed the traditional market for telecommunications and broadcasting services. In particular, the traditional model of state-owned monopoly of telecommunications has been largely replaced by more sophisticated competitive supply of fixed and mobile services which met the more sophisticated consumer demands for better quality services, mobility and higher speed of internet access.

Today's overall ICT market consists of seven first-tier Internet Service providers (ISPs), five mobile communication operators, and a number of content providers, web studios, domain name registrars and other ICT-oriented companies. The total number of licensees that provide basic communication and value-added services as of 2015 is 205. The private telecommunication industry is covering with its mobile communications over 90% of the inhabited territory of Tajikistan. Competition in the market and declining tariffs made technologies such as cellular communications and the Internet accessible to a large number of people (6.4 million mobile users and 3.8 million Internet users) allowing them to use communications services on a daily basis. Given the fact that customers subscribe to several companies at the same time the cellular market share represents today 138% of the total population of Tajikistan, compared to the basic fixed-line penetration that only represents 4.9% of the population.

The relative openness of the market helped to attract a significant amount of foreign investment to the telecommunications sector. Many ICT companies were set up with the participation of foreign capital in particular in the mobile communications market. The telecommunications indus-

¹. EBRD (2012, page 35-36), Electronic Communication Sector Comparative Assessment, <http://www.ebrd.com/downloads/legal/telecomms/comparative-assessment-2012.pdf>

try is thus in the top-5 list in terms of attracting investment, behind only traditionally investment-attractive sectors as the financial sector, energy and construction. The deployment of information and communication technologies since the beginning of the 2000s also contributed to the economic growth and employment in Tajikistan (see figure 1).

Unfortunately, this competitive market model has been gradually replaced by an oligopoly, with most of its segments (cellular communications, Internet, payment systems) being concentrated to a few companies. Thus, the cellular communications segment is basically dominated by four companies: CJSC Babilon-Mobile, CJSC “Indigo Tajikistan” (trademark Tcell), CJSC “TT Mobile” (trademark Megafon-Tajikistan) and LLC “Tacom” (trademark “Beeline”). According to the Anti-monopoly Service, which regulates and approves tariffs for dominant companies, each of these four operators represent a significant market power which in Tajikistan corresponds to 25% and more of the market share. The market of fixed Internet is more competitive. Only one ISP Company, LLC Babilon-T, has a dominant position of approximately 35%.

The telecommunications industry is in the top-5 list of investment-attractive sectors.

Leading service providers

Mobile communication operators	First-tier Internet service providers
CJSC “Babilon-Mobile”	CJSC “Babilon-T”
CJSC “Indigo Tajikistan” (trademark “Tcell”)	CJSC “Telecom Technology”
CJSC “TT Mobile” (trademark “Megafon-Tajikistan”)	LLC “Eastera”
LLC “Tacom” (trademark “Beeline”)	LLC “Intercom”
	LLC “Saturn-online”
	JSC “Tojiktelecom” (trademark “TojNET”)
	TARENA (Tajik Academic Research and Educational Networking Association)

Note: Companies dominating the market (market share 25% or more) highlighted in grey

In 2007 also the liberal policies in the telecom sector came to an end. The number of new licenses dropped and very few new companies entered the market. But the most worrying evidence of the advent of a new policy was the emergence of the state-owned telecommunication operator, OJSC “Tojiktelecom”, as a monopolist. Over the years OJSC “Tojiktelecom” expanded its activities in most sections of the market by using its privileged position as a state-owned company, e.g: the application of lower tariffs for outgoing calls from its network (calling party pays principle). Another significant market distortion results from the fact that mobile operators have to make special payments “outside the regulatory regime” to compensate “Tojiktelecom” for its “significant reductions in international call traffic revenues caused by competition”. These payments (0.03 Euro per minute) amount presently to an additional income for “Tojiktelecom” of approximately 1.2 million USD per month². Many initiatives of the CS are planned and implemented with and around “Tojiktelecom” without any consultations with other stakeholders.

Such a direct affiliation between the regulator and a state-owned Telecom Operator is leading to market distortions and poses a serious obstacle to the development of the industry. These interferences of the regulator in the market contradicts the state policy of Tajikistan to strengthen the telecommunications transit capacity of the country in Central Asia³ and resulted in an immediate decline of revenues. Compared with a growth of 15% in 2013, the revenues in the ICT market increased in 2014 by less than 2%.

² EBRD (2012, page 35-36), Electronic Communication Sector Comparative Assessment, <http://www.ebrd.com/downloads/legal/telecomms/comparative-assessment-2012.pdf>

³. Decision of the 1st Session of the ICT Council under the President of Tajikistan, February 04 2011.

Due to the accelerating process of convergence of telecommunications, broadcasting and information technologies the CS is faced with new regulatory challenges. The Tajik Government addressed this issue in 2008 with a Concept Paper on State Information Policy. The Concept Paper considered the establishment of a single regulator in the field of telecommunications and broadcasting as an efficient and appropriate means to convert Tajikistan into a genuine Information Society. But, for whatever reason, this objective was never followed up.

Presently, service providers in the telecommunications and broadcasting sector need different licenses from the two incumbent regulators and in some cases even from different state bodies. ISPs need up to 9 licenses, depending on the range of their services. New services which do not fit in the traditional licensing scheme risk getting lost in the regulatory bureaucracy. A case in point is IPTV. Starting from mid-2007 two state TV channels, 1TV and Safina were accessible through the Babilon-M mobile network until the end of 2008 as part of a pilot project⁴. But after months of bureaucratic wrangling and protraction Babilon –M abandoned the project.

In 2015 IPTV is back on the agenda again for commercial companies. Currently the ISP CJSC “Telecom Technology” is ready to provide IPTV services and has already obtained a license from the Regulator for Broadcasting Services, the Committee on TV and Radio. However, this service is currently not yet available to users, but has been announced on the company’s websites (http://www.ttl.tj/individuals/internet_tv/). Unlike the commercial companies the four national state broadcasters are already benefiting from the IPTV technology. All of them are transmitted since 2014 online by OJSC “Teleradiocom”, a subsidiary of the Committee on TV and Radio.

In 2015 the telecom industry will face serious challenges. The deterioration of the overall economic situation in Tajikistan, a significant devaluation of the national currency and an increase of taxes will lead to a drop in the demand for ICT services, to less revenue, less employment, less tax income, and less investments.

The deterioration of the economic situation and the dependence of the ICT regulator from politics lead to a standstill of the Tajik telecommunication industry.

By adopting the Action Plan⁵ for the implementation of Tajikistan’s WTO commitments, the Government has made a first important step in creating a favorable environment for the development of the ICT sector in Tajikistan. An independent regulator for the ICT market will result in greater economic growth, increased investment, lower prices, better quality of service, higher penetration, and more rapid technological innovation in the sector. With this perspective in mind, the question whether the remit of this independent regulator should also include broadcasting services is, after all, of secondary importance.

⁴. GIS Watch (2009), Access to Online Information and Knowledge, <http://www.giswatch.org/country-report/tajikistan>

⁵. Post-WTO Accession Action Plan approved by the Government Decree 691 from October 31, 2014.

IV. Overview of the Tajik Broadcasting Market

For a country of just eight million people the number of Radio and TV channels operating in Tajikistan is quite impressive. According to the “Committee on TV and Radio under the Government of Tajikistan” (the Committee), the incumbent broadcasting regulator in Tajikistan, in 2013 57 private and state TV and Radio broadcasting companies were registered in the country. A closer look shows a somewhat different picture. A study on the TV Market in Tajikistan, published in 2014 (Annex II) by the Tajik Non-Governmental Organisation “KHOMA”, concluded that out of the 57 registered broadcasters only 55 were indeed operational. They consist of 33 TV and 22 Radio companies. Out of the 33 TV companies 24 are private and 9 state owned. The 22 radio companies are split up in 7 state and 15 private companies. Public service broadcasters do not exist in Tajikistan.

If it comes to the technical coverage of the broadcasters things look different again. Only the four state channels “TV Shabakai 1”, “TV Safina”, “TV Bahoriston” and “TV Jahonnamo” enjoy a national coverage and reach over 95%, or 7 million of the population. Private broadcasters are granted only regional licenses, restricting their coverage to approximately 44%, or 3.5 million of the population. With the exception of 5 cable channels all private broadcasters transmit their programs via terrestrial networks. The national state programs are transmitted via terrestrial networks and satellite.

In addition to the funding from the state budget state broadcasters also compete with private broadcasters for income from advertising and sponsoring. Due to their national coverage the state broadcasters attract the largest share of this income. According to the Tajik Research Agency KTM out of the approximately 3 million US Dollars revenues generated by the TV advertising market in 2013 nearly 90% went to state broadcasters.

This precarious economic situation of private broadcasters is the immediate result of the licensing practice of the Committee which, according to Article 50 of the Regulation on Licensing (No. 172 of 3 April 2007), is granting broadcasting licenses to private broadcasters. State broadcasters are exempted from the requirement to obtain a license from the Committee.

Article 50 VIII of the aforementioned regulation stipulates that licenses are granted on a competitive basis without providing any specific criteria for this competitive process beyond the basic technical requirements all applicants have to meet. While the applicant may appeal against the decision of the Committee to the court, the law does not provide for a review of the decision within the Committee structures itself. The licensing practice of the Committee is the subject of continuing criticism by civil societies and media outlets seeking a broadcasting license (Annex II). Unsuccessful applicants complain about arbitrary decision making and a lack of reasoning in the decision itself. From the absence of court proceedings against the decisions of the Committee it can be concluded that there is not much confidence on the side of the rejected applicants in an objective review of these decisions by the Tajik judiciary either.

The absence of a level playing field for private broadcasters is exacerbated by the fact that also the production of domestic content requires a special license by the Committee on TV and Radio. Without attractive domestic audio-visual content private broadcasters will not be able to compete against the dominant state broadcasters and without a viable private broadcasting market there is no sufficient demand for the production of local content by over-regulated audio-visual production companies.

The crucial role of the Committee on TV and Radio in shaping the broadcasting and audio-visual market in Tajikistan becomes particularly evident in the transition from analogue to digital television. Under Resolution 529 of 1 October 2009 the Committee on TV and Radio Broadcasting developed a concept for the introduction of digital television in Tajikistan. While the digitalisation process allows for more broadcasters to use the same frequency, the State Concept does not envisage the involvement of private broadcasters. After many meetings of a joint working group of government and civil society representatives, draft amendments to the State Program for Development of Digital Television Broadcasting in the Republic of Tajikistan for 2015 –2017 were drawn up in February 2015 which, for the first time, include a reference to private broadcasters, albeit without any definition of their legal status. The exclusion of private broadcasters and other private stakeholders from the digitalisation process was no doubt one of the reasons why Tajikistan missed the deadline for the switch off of analogue terrestrial broadcasts set by International Telecommunication Union for 17 June this year.

V. Overview of the Structure of the Two Incumbent Regulators

I. The Communications Service under the Government of Tajikistan

Legal status and Responsibilities

The body presently in charge of the regulation of the telecommunication market in Tajik-

The Communication Service combines policy, regulatory and management functions.

istan is the “Communications Service under the Government of Tajikistan” (CS). The CS was established in May 2011 by Decree No. 252. The CS is a state agency which is directly reporting to the Government of Tajikistan. The Chairperson of the CS and his/her two deputies are appointed and dismissed by the Government of Tajikistan. The funding of the CS is provided by the state budget and other resources. In 2014 the state budget provided the CS with 1,133,350 TJS. Additional funding in the amount of 1,897,180 TJS was provided from “Special Resources” within the state budget. The income directly generated by the CS itself in the first half of 2014 (7,300.000 TJS) has been transferred to the state budget. The total number of staff employed by the CS, including its subordinated structures, is presently about 4,700.

The main responsibilities of the CS are set out in the Law on Telecommunications (the Law) of 10 April 2002 (as amended in 2006, 2008, and 2013), in Chapter 58 of the Regulation on Licensing⁶ (Regulation), in Decree No. 1026 of 28 February 2011 and the Statute of the CS. Functions and powers of the CS are prescribed in Article 9 and 10 of the Law according to which, the CS is tasked with typical functions of a telecom regulator, inter alia, to provide:

- for fair competition between telecommunication operators;
- for high quality telecommunication services;
- for equal access of all users to telecommunication services;
- to grant licenses for the use of radio frequencies, and
- to prevent, in cooperation with the Anti-Monopoly Authority, anti-competitive activities.

According to article 7 of the Law and Article 3 of Decree No.1026, the CS is also responsible for the development and the implementation of the state policy in the field of telecommunications, which include the development and implementation of the state policy on Radio Frequency Spectrum. Furthermore, Decree No. 252 grants the CS the right to manage state owned companies in the telecommunications sector. In practical terms, that means that the CS combines policy, regulatory and management functions.

Ironically, the Communication Service, who is tasked to provide the Tajik population with an information and communication infrastructure, is not operating a website of its own. An omission, which is also incompatible with the requirement of Decree No 166 of April 2011, according to which, all state agencies have to establish their own websites. This lack of transparency is not conducive to an open and competitive telecommunication market.

Licensing of telecommunications services

The CS is the Licensing Authority in the field of telecommunications. Chapter 58 II of the Regulation provides for two categories of licenses: general and individual licenses. Each category of license consists of 9 different types of sub-licenses, which also include a license for broadcasters. The duration of the license varies from 3 to 7 years. While individual licenses can be issued for companies that have their own communication infrastructure, general licenses can be issued for any operator that rents infrastructure facilities in the market. The total number of licenses in the field of telecommunications in 2015 amount to 205. The state-owned company OSJC Tojiktelecom is in the possession of all 9 licenses of the second category. The Law provides for competitive tender in the case of the licensing of telecommunication services. But to our knowledge the CS did not make use of this possibility yet. The decisions of the CS can be appealed against to the court.

⁶. Regulation on Licensing of Specific Types of Activities was approved by the governmental Decree No. 172 of April 2007 and amended in 2008, 2009, 2010, 2011, 2012, 2013 and 2014.

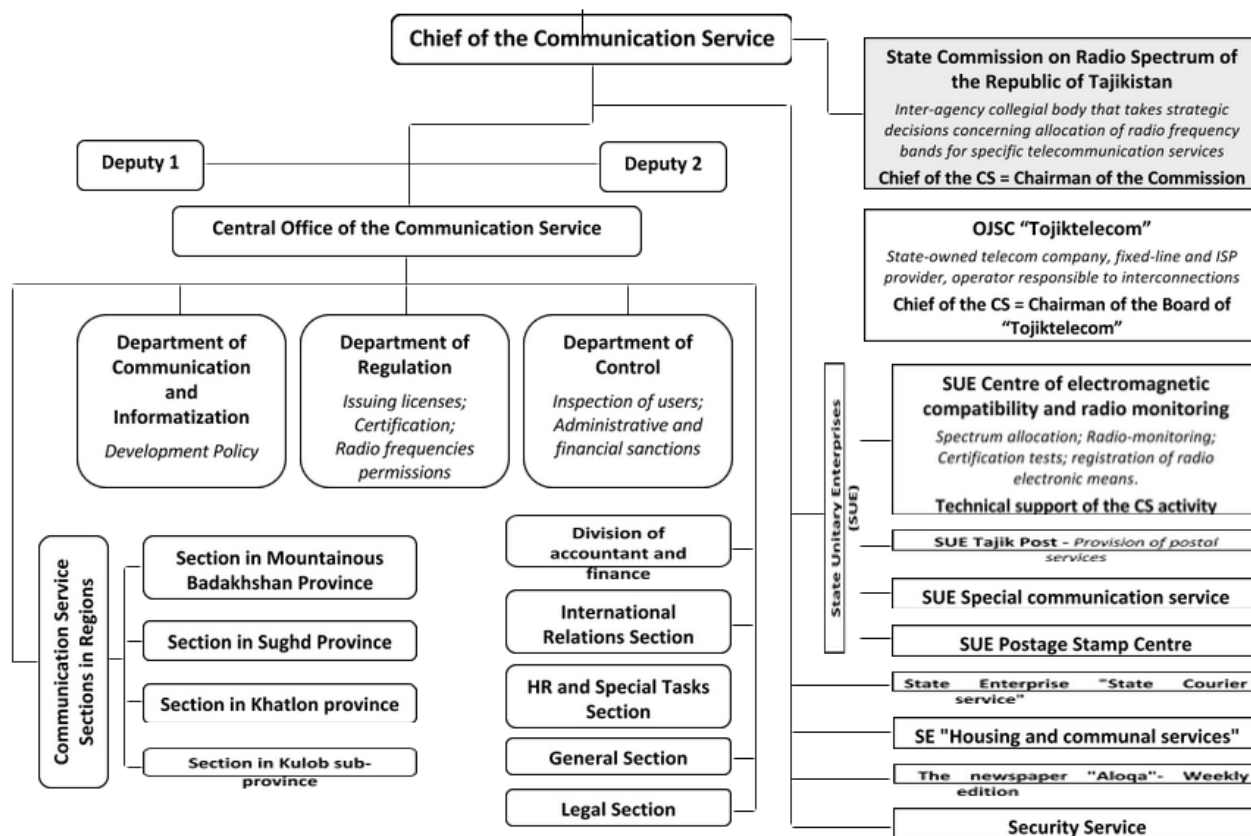
The licensee is obliged to start with the delivery of his services within three months after the license is issued. The licensee is also obliged to submit financial and statistical reports every three months to the authorized agency. The fee to be paid for the obtained license amounts to 2.5% from the income of the licensees.

Frequency Assignment

In close cooperation with the State Commission on Radio Frequency Spectrum (RFSC) the CS is entitled to assign frequencies, to revoke frequencies, to monitor the usage of frequencies and to issue the corresponding licenses to telecom operators. The RFSC is responsible for the development and implementation of a single policy on spectrum management within the country and the representation of the interests of Tajikistan at the international level. As a state body the RFSC is reporting to the Government of Tajikistan. The incumbent chairperson of the CS also holds the chair of the RFSC. In addition, the CS is also responsible for the management of and the administrative and technical support for the RFSC.

Management structure

FIGURE 1. STRUCTURE AND MANAGEMENT SCHEME OF THE COMMUNICATION SERVICE UNDER THE GOVERNMENT OF TAJIKISTAN



The CS consists of the following departments and divisions:

- Management (Chairperson and two deputies);
- Department of Communications and Information;
- Department of Regulation;
- Department of Control;
- Division of Accounting and Finance;
- Subdivision: International Relations;
- Subdivision: Legal;
- Subdivision: HR and Special Tasks;
- Subdivision: General Issues

As illustrated in Figure 1 the CS includes 4 provincial subsections located in Sughd, Khatlon, Badakhshan and the Kulob sub-province. The numerous subordinated bodies of the CS include state-owned enterprises, institutions and organizations like:

- Open Joint Stock Company "Tojiktelecom"
- State Unitary Enterprise "Center on electromagnetic compatibility and radio monitoring"
- State Unitary Enterprise "PochtaiTojik" (Tajik Postal Service)
- State Unitary Enterprise "Aloqaimakhsus" (special communications)
- State Unitary Enterprise "Markazimarka" (Postage Stamp Centre)
- The State Enterprise "State Courier Service"
- The State Enterprise "Housing and communal services"
- Weekly outlet "Aloqa" (Communications)
- Security service

The CS Chairperson is in charge of all subordinated bodies, the appointment and dismissal of CS staff, and the overall management of their activities. He also holds the Chairmanship of "Tojik-telecom".

Conclusion

The Tajik telecommunications market, a dynamically growing sector of the national economy in the first decade of 2000, has lately been facing serious challenges resulting from the incumbent regulator lacking independence from the government and state companies. For further details see item III "Overview of the Tajik Telecommunication Market". Even without considering the legal obligations resulting from the WTO membership of Tajikistan, the speedy establishment of a truly independent and competent regulator is indispensable for the development of a healthy domestic ICT industry, together with all the competitiveness, growth and wealth creation a knowledge-based economy in Tajikistan can provide.

The speedy establishment of a truly independent and competent regulator is of crucial importance not only for the ICT industry but also for the entire Tajik economy.

II. The Committee on TV and Radio-broadcasting under the Government of Tajikistan

Legal Status and Responsibilities

The Committee on TV and Radio under the Government of Tajikistan (the Committee) is the regulatory authority in the field of broadcasting and the production of audiovisual works in Tajikistan. The Committee was set up by governmental Decree No. 348 of August 1997. The Committee is a state agency which is directly reporting to the Government of Tajikistan. According to article 5¹ of the Law on TV and Radio-Broadcasting (No. 382) of 14 December 1996 (as amended in 1998, 1999, 2000, 2001, 2004, and 2013), the Committee is responsible for the development and the implementation of the state policy in the field of TV and radio broadcasting. The main responsibilities of the Committee are set out in the broadcasting law, in Chapter 50 of the Regulation on licensing (No.172, of 3 of April 2007) and in the Statute of the Committee on TV and Radio (Decree No.610 of 2006). In the field of licensing of private broadcasters and audiovisual works the Committee delegated its rights, in line with Chapter 50 IV of the Regulation, to a Licensing Commission. According to paragraph 12 of the Statute of the Committee the chairperson of the Committee appoints and chairs the Licensing Commission. State broadcasters do not need a license and are directly administered by the Committee⁷.

State broadcasters do not need a license and are directly administered by the Committee.

⁷. Paragraph 1 of governmental Decree No 610 of December 2006, Attachment 4 on "List of Organizations governed by the Committee"

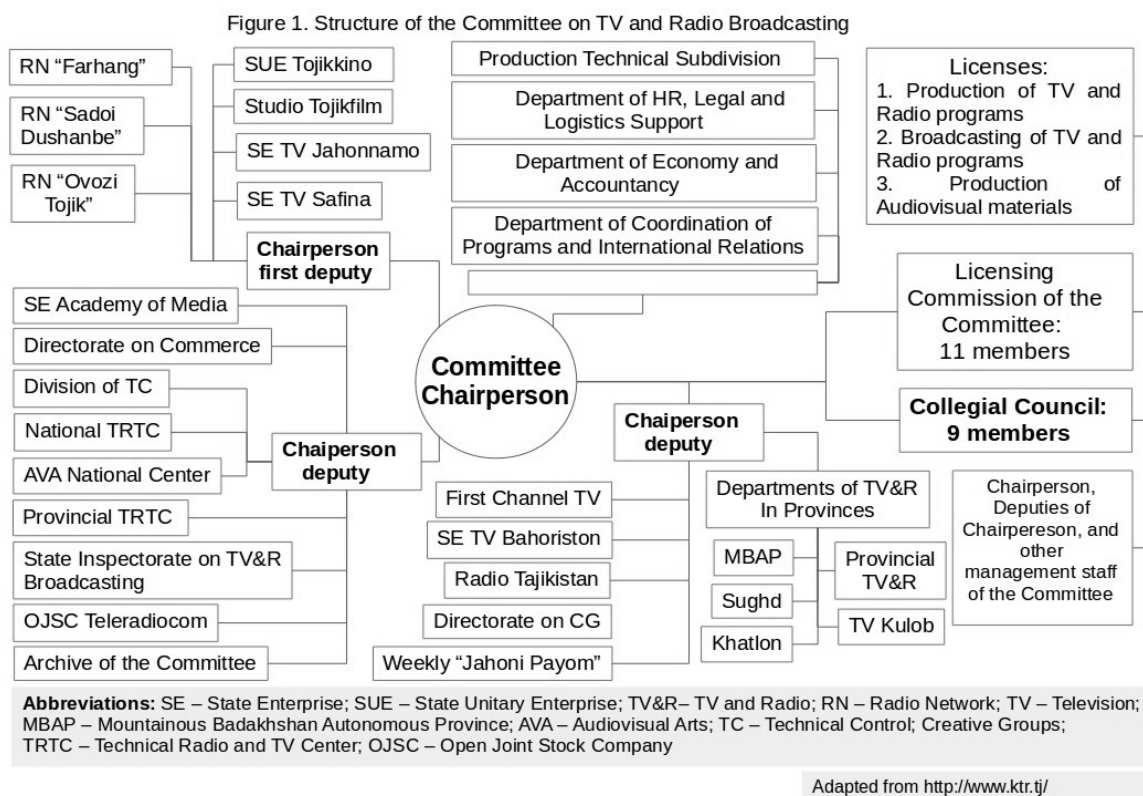
According to the Concept on State Policy of Tajikistan in the field of TV and Radio-broadcasting for 2010-2025 (Decree No 529 of October 2009) and the State Action Plan on Development of Digital Broadcasting in 2010-2015 (Decree No 76 of February 2010), the Committee and “Teleradiocom”, a subsidiary body of the Committee, are in charge of implementing the digital switchover policy of the Government of Tajikistan.

The chairperson of the Committee is appointed and dismissed by the Government of Tajikistan and the funding is provided by the state budget. The state budget provided in 2014 to the Committee 1,294,130 TJS for its Central Administration. The total number of staff employed by the Committee is about 2000. These are only approximate figures. Neither the website nor the annual report of the Committee provides these kinds of data.

In short, the Committee on TV and Radio under the Government of Tajikistan (its official title) is appointed by the government, reports to the government and is funded by the state budget. In addition to its comprehensive regulatory powers over the private broadcasters and the audiovisual producers, it is managing the dominant state broadcasters. This de facto State monopoly over the broadcasting media is also incompatible with the obligation of the Member States of the International Covenant on Civil and Political Rights to promote plurality of the media⁸.

This combination of powers and the total lack of independence from the government prevents the Committee to act as an independent broadcasting regulator and thus precludes a level playing field among private and state broadcasters.

Management structure



As illustrated in Figure 1 the Committee consists of the central administration, a Collegial Council, the Licensing Commission, departments in provinces, and numerous subordinated bodies. The central administration itself is composed of the following departments:

- Management (Chairperson and three deputies);
- Department of Coordination of Programs and International Relations;

⁸. General comment No.34 of the Human Rights Committee on Article 19 of the ICCPR (Item 40).

- Department of Economy and Accountancy;
- Department of HR, Legal and Logistics Support;
- Subdivision: Production & Technical Support.

The management is supported by a Collegial Council (CC) consisting of 9 members. The CC is responsible for the strategic management and development. The members of the CC are appointed and dismissed by the Government. Decisions of the CC are subject to the approval of the Chairman of the Committee. If the Chairperson and the CC disagree, the views of the Chairman prevail.

One of the main responsibilities of the Committee is the granting of licenses to broadcasters which de facto is carried out by the Licensing Commission (see Figure 1).

The structure of the Committee also includes three provincial departments on TV and Radio Broadcasting, three provincial technical radio and TV centers (TRTC), a division of technical control, and State Inspectorate on TV and Radio Broadcasting.

The Committee's subordinated bodies include, inter alia, state-owned TV and Radio companies, enterprises, institutions and organizations like:

- First TV Channel;
- The State Enterprise TV Safina;
- The State Enterprise TV Jahonnamo;
- The State Enterprise TV Bahoriston;
- State Unitary Enterprise Tojik kino;
- Studio Tojikfilm;
- Radio Tajikistan;
- Radio Network “Farhang” (Culture);
- Radio Network “Sadio Dushanbe” (Voice of Dushanbe);
- Radio Network “Ovozi Tojik” (Voice of Tajik);
- The State Enterprise Academy of Media;
- Directorate on Commerce;
- Directorate on Recruiting Creative Groups;
- TV Kulob (sub-provincial TV channel available in Kulob region);
- Archive of the Committee;
- National TRTC;
- Open Joint Stock Company "Teleradiocom";
- Weekly outlet “Jahoni Payom” (World of Message).

The Chairperson of the Committee approves the statutes of all subordinated bodies and appoints and dismisses their management staff. He is also the Chairman of the OJSC “Teleradiocom”. Teleradiocom is a state-owned company that provides technical infrastructure for state and private broadcasters and plays a crucial role in the digital switchover process in Tajikistan.

VI. Challenges for Broadcasting and Telecommunication Regulators Posed by Digital Technology

The advent of digital technologies allows different network platforms to carry essentially similar kinds of services. This process of fusion of content, service, infrastructure and end user equipment is denoted as convergence. According to the European Commission's Green Paper on convergence, it can be expressed as: "*the coming together of consumer devices such as the telephone, television and personal computer*". In the Green Paper it is furthermore stated that "*Convergence is not just about technology. It is about services and about new ways of doing business and of interacting with society.*" In practical terms, that means the ability to provide a range of services over a single network, such as the so-called "triple play" (internet, broadcasting and telephony).

Traditionally, telecommunication and broadcasting services have been regulated separately by different regulatory authorities. However, new services resulting from convergence such as IPTV (audiovisual content offered through the Internet or a mobile phone) raise the question of how to classify and how to accommodate the regulation of these new technologies. Should they be defined as telecommunication or broadcasting services? Some countries regulate all IPTV services as broadcasting, while other countries do not classify IPTV at all.

In order to address the challenges of convergence some countries like Switzerland, Bosnia and Herzegovina, the UK and Italy have established a common regulator with responsibilities over the broadcasting and telecommunication sector. According to Rajendra Singh and Siddhartha Raja, the authors of a World Bank publication on "Convergence in Information and Communication Technology: Strategic and Regulatory Considerations" there is a growing trend toward creating converged regulators. However, as the attached case study of the German "Bundesnetzagentur" (Annex III) shows, the challenges of converged technologies and services can also be dealt with adequately by separate regulators.

Obviously, the regulatory framework governing these industries needs to be modified and coordinated in order to respond to the new challenges. The pros and cons of a single, converged regulator versus separate regulators will be dealt with in greater detail under item VIII of the table of contents.

VII. Response of Regulators in Switzerland, Germany and Bosnia and Herzegovina to the Challenges of Convergence

While Tajikistan will have to find its own way of how best to respond to the challenges of convergence by complying with international obligations and best standards, examples from other countries may provide useful guidance in establishing its own ICT Regulation. For the purpose of this study we choose the examples of Switzerland, Germany and Bosnia and Herzegovina. An outline of their ICT regulatory systems is attached as Annexes III-V to this study.

In the following we will briefly summarize the most salient points of these reports. We will start with the German example (Annex III). Unlike the Swiss and the Bosnia and Herzegovinian example the German “Bundesnetzagentur” does not encompass broadcasting activities. However, this restricted remit of the German regulator is not a decision against a convergence of telecommunication and broadcasting regulators, but the result of the way the German Constitution regulated the legislative powers between the federal government and the 16 federal states. Whereas telecommunication falls into the remit of the federal government, the media is governed by the federal states. Notwithstanding these constitutional restraints the German report sets out in great detail the regulatory challenges posed by the convergence of the telecommunication and broadcasting markets. The answer of the “Bundesnetzagentur” to this challenge, i.e. a close cooperation with the German media regulators, may also constitute a solution, albeit a transitional one, for Tajikistan. Another lesson which might be learned from the German example is the way how the German legislator has secured the independence of the “Bundesnetzagentur” from political and commercial influences. The acting head of “International Policy Issues and Regulatory Strategy” of the “Bundesnetzagentur”, Mr. Sören Nübel, visited Tajikistan and met with representatives from the two incumbent regulators and other stakeholders. The main findings of his discussions are reflected in his report.

The Swiss example (Annex IV) shows us a model of a converged regulator. The Federal Office of Communication (OFCOM), which also assisted Tajikistan in the frequency planning for the transition to digital broadcasting, regulates both, telecommunication and broadcasting services. After explaining the different rationale for the regulation of these two sectors and the need for the independence of the authority regulating electronic communication services, the Swiss report set out the legal framework of OFCOM. For the Swiss government the main reasons for assigning the regulation of all electronic communication services to one single authority were considerations of efficiency and synergy, in particular in the field of spectrum management. By establishing one single regulator for all forms of electronic communication services the Swiss government responded to the technological convergence of networks and the ensuing convergence of services in the electronic communication market. In its concluding remarks (“Lessons for Tajikistan”) the report re-emphasises the importance of the independence of the regulator in order for the system to work and to encourage investments into the sector.

Bosnia and Herzegovina (Annex V), which like Tajikistan, experienced a civil war after its declaration of independence (from the former Socialist Republic of Yugoslavia) in 1992, was never the less able to establish only less than ten years later one of the first converged regulators (Communications Regulatory Agency = CRA) in Europe. While there were already in 2001 very good reasons to establish a converged regulator, the establishment of CRA was clearly facilitated by the authority of the High Representative, a position created in 1995 immediately after the signing of the Dayton Agreement and endowed with extensive legislative and executive powers. The report, which contains a very detailed description of the legal framework, the organisational structure of the CRA and its regulatory mechanisms, also identifies shortcomings, which any new regulatory authority should try to avoid. The report concludes with a powerful appeal for a converged regulator and all the advantages it provides for consumers, service providers, foreign and local investors and the overall economy of the country. The author of the report, Helena Mandic, the Director of Broadcasting at the CRA, is presently also chairing EPRA, the European Platform of Regulatory Authorities.

VIII. Can a Converged Regulator be an Option for Tajikistan?

Given the different nature of telecommunication and broadcasting services both sectors are governed by different national and international regulations. In order to ensure compliance with their respective legal framework and in order to achieve their different goals, independence of their respective regulatory authorities is indispensable.

I. International Requirements and Best Standards for Telecommunications Regulators

By joining the World Trade Organisation (WTO) in March 2013, Tajikistan undertook obligations which directly affect the telecommunication sector. WTO commitments constitute legally binding obligations on members, enforceable through the WTO's binding dispute settlement process. The General Agreement on Trade in Services (GATS) is the most relevant among the WTO instruments to telecommunications. The purpose of GATS is to facilitate liberalisation of trade in services. Two types of obligations exist under GATS: (i) general obligations that apply to all members and service sectors covered under GATS and (ii) sector-specific commitments regarding market access and national treatment in international trade.

The general obligations of GATS consist of two main principles: (i) WTO member countries must afford each other most favoured nation (MFN) treatment (i.e. prohibition on discrimination that requires countries to afford "treatment no less favourable than that accorded to like services and service suppliers of any other country"); and (ii) countries must ensure transparency of local regulations (e.g.: countries should publish measures of general application, and allow a period of public comment prior to their issuance).

In addition to the basic text, GATS on Telecommunications consists of annexes, such as the "Reference Paper on Regulatory Principles" (Reference Paper). This paper, which is part of Tajikistan's contractual WTO commitments, reflects "Best Standards" in the regulation of telecommunication services. Its six principles relate to: (i) competitive safeguards; (ii) interconnection guarantees; (iii) transparent and competition-neutral universal service mechanisms; (iv) public availability of licensing criteria; (v) independence of regulators; and (vi) equitable procedures for allocation and use of scarce resources.

While the provision on the establishment of an independent regulator (item v of the Reference Paper) only speaks about the independence from all market participants, it is generally accepted that a truly independent regulator also requires independence from politics. In order to achieve this independence in its daily decision making process, the following formal safeguards are suggested:

- Providing the regulator with a distinct statutory authority, free of ministerial control;
- Prescribing well-defined professional criteria for appointments;
- Involving both the executive and the legislative branches of government in the appointment process;
- Appointing regulators (the Director General or Board/Commission members) for a fixed period and prohibiting their removal (subject to formal review), except for clearly defined due cause;
- Where a collegiate (Board/Commission) structure has been chosen, staggering the terms of members so that they can be replaced only gradually by each successive government;
- Providing the agency with a reliable and adequate source of funding. Optimally, charges for specific services or levies on the sector can be used to fund the regulator to insulate it from political interference through the budget process;
- Exempting the regulator from civil service salary limits to attract and retain the best qualified staff and to ensure adequate good governance incentives; and
- Prohibiting the executive from overturning the agency's decisions, except through carefully designed channels such as new legislation or appeals to the courts based on existing law.

Obviously, even an independent regulator is bound by general and sector specific laws of the country in question. In addition, transparency in interconnection, authorization and licensing practices, and universal service obligations are specific requirements of the Reference Paper. Transparency entails the regulator making available all relevant information in a timely fashion. Transparency enhances the confidence of interested parties in the effectiveness and independence of the regulator and strengthens the legitimacy of the regulator. Consequently, all regulatory rules and policies, the principles for making future regulations and all regulatory decisions and agreements should be a matter of public record. ICT regulation is an important policy issue, and all citizens need information about the policy to evaluate the performance of government.

Transparency is an important contributor to good governance in general. Importantly, transparency reduces the probability that interested parties, especially those adversely affected by a regulatory decision, will believe that decisions are biased, arbitrary or discriminatory. The reasoning behind regulatory decisions, including the principles and evidence that guided them, will be apparent when they are clearly presented in the public record. Discriminatory or corrupt decisions will become evident and more difficult to substantiate once transparent processes are in place.

A successful market that attracts investors requires a predictable regulatory process. Independent regulators are predictable if they adhere to the rule of law. The most important features of the rule of law are respect for precedent and the principle of *stare decisis*, particularly in common law jurisdictions. Respect for precedent means that regulators do not reverse policy decisions unless there is evidence that those decisions have led to significant problems or that new circumstances warrant a change in the rules. The principles of *stare decisis* require that cases with the same underlying facts be decided in the same way every time. This is of particular relevance in the resolution of disputes. Adherence to these principles enhances confidence in and the credibility of the regulator and reduces regulatory risk, which reverberates positively with investors.

To ensure the Accountability, Transparency and Predictability of the regulator towards the public, the government and other stakeholders, the following safeguards are suggested:

- Publishing the statutes of the regulator that clearly specify the duties, responsibilities, rights and obligations of the regulator, as well as differentiating between primary and secondary regulatory goals where there are multiple goals;
- Ensuring that the decisions of the regulator are subject to review by the courts or some other non-political entity although some “threshold” should be established to deter frivolous challenges that simply delay the implementation of decisions;
- Requiring the regulator to publish annual reports on its activities and requiring a formal review of its performance by independent auditors or oversight committees of the legislature;
- Establishing rules for the removal of regulators if they show evidence of misconduct or incompetence;
- Allowing all interested parties to make submissions to the regulator on matters under review; and
- Mandating that the regulator publishes its reasoned decisions.

Notwithstanding WTO commitments and Best Standards, Governments still have a range of options for regulating the telecommunication sector. When establishing a regulatory authority, governments must take into consideration the level of development and liberalization of the ICT sector, resources available within the country, as well as the historical context and the administrative and legal framework for regulating the sector.

Additional considerations concern the institutional design of the regulatory body. Presently there are three main institutional designs for telecommunication entities. First is the single-sector regulator which is the model presently prevailing in Tajikistan. The second design is known as the “converged regulator”, meaning those regulators which include telecommunications and broadcasting (e.g. BAKOM of Switzerland and CRA of Bosnia and Herzegovina). The third design, the multi-sector regulatory authority usually encompasses various industry sectors that are considered public utilities, e.g. telecommunication, water, electricity and transportation (Bundesnetzagentur of

Germany). In the following item the pros and cons for a converged regulator (second design) for Tajikistan will be looked at.

II. International Requirements and Best Standards for Broadcasting Regulators

The main reason for the regulation of broadcasting is the need of radio spectrum for broadcasting services. Radio spectrum is a public resource allocated to countries in accordance with complex international agreements. Another reason is the crucial importance of a free, independent and pluralistic broadcast media for a democratic society. As a democracy (Article 1 of the Constitution), Tajikistan thus guarantees in Article 30 of its Constitution freedom of expression and the right to receive information. Article 2 of the International Covenant on Civil and Political Rights (ICCPR), which Tajikistan ratified in 1999, places an obligation on States to “*adopt such legislative or other measures as may be necessary to give effect to the rights recognized by the Covenant.*” One of those rights, recognized by Article 19 of the Covenant, is the right to freedom of expression, a right which shall include “*freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*” In its General Comment No. 34 on Article 19 the UN Human Rights Committee, the body that monitors implementation of the ICCPR by its State parties, recommends the establishment of an independent regulatory authority for broadcasting services.

In a joint declaration on “Freedom of Expression and Responses to Conflict Situations” dated 4 May 2015, the OSCE Representative on Freedom of the Media, together with special rapporteurs on free expression from the United Nations, the Organisation of American States and the African Commission on Human and People’s Rights, emphasized that regulatory systems for the media should always be applied by an independent body.

In its Recommendation No. R (2000) 23, adopted on 20 December 2000, the Committee of Ministers of the Council of Europe emphasizes the need for the establishment of independent regulatory authorities for the broadcasting sector and issued guidelines aimed at protecting their independence. The Council of Europe is an international organization promoting co-operation between European countries in the areas of legal standards, human rights, democratic development, the rule of law and cultural co-operation. It was founded in 1949 and has 47 member states, which include Russia and many other CIS countries, representing altogether more than 800 million citizens. These guidelines, a summary of which is set out below, will serve as a benchmark against which the independence of the Tajik Broadcasting Regulator, the Committee on TV and Radio, can be assessed.

Council of Europe on the Independence of Broadcasting Regulators

i. General legislative framework

The duties and powers of regulatory authorities for the broadcasting sector, as well as the ways of making them accountable, the procedures for appointment of their members and the means of their funding should be clearly defined in law.

ii. Appointment, composition and functioning

The rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests. For this purpose, specific rules should be defined as regards incompatibilities in order to avoid that:

- regulatory authorities are under the influence of political power;
- members of regulatory authorities exercise functions or hold interests in enterprises or other organisations in the media or related sectors, which might lead to a conflict of interest in connection with membership of the regulatory authority.

Furthermore, rules should guarantee that the members of these authorities:

- are appointed in a democratic and transparent manner;
- may not receive any mandate or take any instructions from any person or body;

- do not make any statement or undertake any action which may prejudice the independence of their functions and do not take any advantage of them.

Finally, precise rules should be defined as regards the possibility to dismiss members of regulatory authorities so as to avoid that dismissal be used as a means of political pressure.

In particular, dismissal should only be possible in case of non-respect of the rules of incompatibility with which they must comply or incapacity to exercise their functions duly noted, without prejudice to the possibility for the person concerned to appeal to the courts against the dismissal. Furthermore, dismissal on the grounds of an offence connected or not with their functions should only be possible in serious instances clearly defined by law, subject to a final sentence by a court.

Given the broadcasting sector's specific nature and the peculiarities of their missions, regulatory authorities should include experts in the areas which fall within their competence.

iii. Financial independence

Arrangements for the funding of regulatory authorities - another key element in their independence – should be specified in law in accordance with a clearly defined plan, with reference to the estimated cost of the regulatory authorities' activities, so as to allow them to carry out their functions fully and independently.

Public authorities should not use their financial decision-making power to interfere with the independence of regulatory authorities. Furthermore, recourse to the services or expertise of the national administration or third parties should not affect their independence.

Funding arrangements should take advantage, where appropriate, of mechanisms which do not depend on ad-hoc decision-making of public or private bodies.

iv. Powers and competence

Regulatory powers

Subject to clearly defined delegation by the legislator, regulatory authorities should have the power to adopt regulations and guidelines concerning broadcasting activities. Within the framework of the law, they should also have the power to adopt internal rules.

Granting of licences

One of the essential tasks of regulatory authorities in the broadcasting sector is normally the granting of broadcasting licences. The basic conditions and criteria governing the granting and renewal of broadcasting licences should be clearly defined in the law.

The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity.

Regulatory authorities in the broadcasting sector should be involved in the process of planning the range of national frequencies allocated to broadcasting services. They should have the power to authorise broadcasters to provide programme services on frequencies allocated to broadcasting. This does not have a bearing on the allocation of frequencies to transmission network operators under telecommunications legislation.

Once a list of frequencies has been drawn up, a call for tenders should be made public in appropriate ways by regulatory authorities. Calls for tender should define a number of specifications, such as type of service, minimum duration of programmes, geographical coverage, type of funding, any licensing fees and, as far as necessary for those tenders, technical parameters to be met by the applicants.

Calls for tender should also specify the content of the licence application and the documents to be submitted by candidates. In particular, candidates should indicate their company's structure, owners and capital, and the content and duration of the programmes they are proposing.

Monitoring broadcasters' compliance with their commitments and obligations

Another essential function of regulatory authorities should be monitoring compliance with the conditions laid down in law and in the licences granted to broadcasters.

Regulatory authorities should not exercise *a priori* control over programming and the monitoring of programmes should therefore always take place after the broadcasting of programmes.

Regulatory authorities should be given the right to request and receive information from broadcasters in so far as this is necessary for the performance of their tasks.

Regulatory authorities should have the power to consider complaints, within their field of competence, concerning the broadcasters' activity and to publish their conclusions regularly.

When a broadcaster fails to respect the law or the conditions specified in his licence, the regulatory authorities should have the power to impose sanctions, in accordance with the law.

A range of sanctions which have to be prescribed by law should be available, starting with a warning. Sanctions should be proportionate and should not be decided upon until the broadcaster in question has been given an opportunity to be heard. All sanctions should also be open to review by the competent jurisdictions according to national law.

v. Accountability

Regulatory authorities should be accountable to the public for their activities, and should, for example, publish regular or ad hoc reports relevant to their work or the exercise of their missions.

In order to protect the regulatory authorities' independence, whilst at the same time making them accountable for their activities, it is necessary that they should be supervised only in respect of the lawfulness of their activities, and the correctness and transparency of their financial activities. With respect to the legality of their activities, this supervision should be exercised *a posteriori* only. The regulations on responsibility and supervision of the regulatory authorities should be clearly defined in the laws applying to them.

All decisions taken and regulations adopted by the regulatory authorities should be:

- duly reasoned, in accordance with national law;
- open to review by the competent jurisdictions according to national law; and
- made available to the public.

Lack of Independence of the Tajik Broadcasting Regulator

Broadcasting is regulated in the Republic of Tajikistan by the Broadcasting Law (No. 382 of 14 December 1996), the Law on Licensing (No.37 of 17 May 2004) and the Regulation on Licensing (No. 172 of 3 April 2007).

Article 5¹ of the Broadcasting Law stipulates that State regulation and control in the field of broadcasting are exercised by the Government of the Republic of Tajikistan through the "Committee on TV and Radio Broadcasting under the Government of the Republic of Tajikistan". In the absence of any specific guarantee for the independence of this Committee, this provision alone eliminates any possible doubt of who controls the broadcasting sector in Tajikistan.

In the field of licensing of broadcasters, one of the essential tasks of a broadcasting regulator, neither the law nor the Regulation on Licensing does contain any specific criteria to be applied in the case of competing applications. This lack of clarity and transparency in the granting of broadcasting licenses allows for political interference and fails to meet the requirements of Article 19 of the ICCPR for restrictions on the freedom of expression.

The absence of an independent broadcasting regulator led to a *de facto* total control of the airwaves by state broadcaster and a biased political reporting of state broadcasters during election campaigns, as has been repeatedly observed by International Election Observation Missions.

The total control of the airwaves and of the production of audiovisual works by the government constitutes a serious impediment for the economical, political and cultural development of Tajikistan. The fact that Tajikistan will miss the internationally agreed deadline for the completion of the transition from analogue to digital broadcasting in June this year is just one point in case. Many more examples to support this assessment could be given. But for the purpose of this study it suffices to state that the prevailing legal framework and the empirical evidence suggests that the regulatory authority for broadcasting services in the Republic of Tajikistan, the Committee on TV and Radio under the Government of Tajikistan, cannot be considered to be independent.

III. Pros and Cons for a Converged Regulator in Tajikistan

Today, digitalization allows content formerly dedicated to specific networks to be conveyed on different infrastructures and delivery platforms. This poses a potential conflict in regulation as different standards of content regulation are presently applied to telephony, sound and television broadcasting, print media and the Internet. The process of convergence may thus require a change of policy in order to achieve common objectives such as universal access, consumer protection, competitiveness and economic development. An increasing number of countries addressed the issue of convergence by establishing a converged regulator. In this section we will examine whether a converged regulator can be an option for Tajikistan.

Presently the broadcasting and the telecommunication markets in Tajikistan are regulated by two separate regulatory authorities, the Committee on TV and Radio under the Government of Tajikistan (the Committee) and the Communication Service under the Government of Tajikistan (the CS). As has been set out in the previous sections of this study none of them can be considered independent, as is required under international treaties Tajikistan has entered into. Before addressing the question of a converged regulator the government of Tajikistan has thus to focus on the issue of independence of the regulators. Theoretically, the government could of course take a short cut, dissolve the incumbent regulators and establish a new, independent, single, converged regulator. However, the implementation of all the necessary changes in the legal and institutional framework required in order to achieve both, the establishment of a converged *and* independent regulator in one single step does not seem to be very realistic in the present political and economical climate. But even in the best of circumstance such a radical change of the legal and regulatory framework cannot be rushed through but needs thorough planning and preparation. This is particularly true for countries like Tajikistan which traditionally relied on strong state intervention, which have not yet completed the transition to a liberalized market and an independent regulator, and thus lack legal precedent and experience in this area. It is therefore suggested to first establish two independent sector specific regulators, which in a second step, at a later stage, can be converged into one single agency.

In any event, for the sake of completeness, we will set out in the following the most salient arguments who speak for and those who speak against a converged regulator. With regard to international requirements and best standards for the independence of telecommunication and broadcasting regulators we refer to item VIII (i) and (ii) of this study.

Model 1 – Single sector independent regulator

This organizational structure focuses mainly on either the telecommunication or the broadcasting sector. A key advantage of a single-sector regulatory authority is its focus on the challenges and peculiarities of its respective sector. For example, incumbent telecommunication regulators possess, as a rule, an in-depth knowledge of the complex technical issues governing the dynamic telecommunication sector. The same applies of course, *mutatis mutandis*, to the broadcasting regulator with its specific content related issues. The key disadvantage of a single sector regulator is its adherence to a separation of services and platforms which no longer reflect the technological transformation in the market.

Model 2 – Converged independent regulator

In the case of a converged regulator all communication services including broadcasting and media are under the umbrella of one agency. The main advantage of a fully-fledged converged regulator is his ability to adequately respond to the new market realities with its overlap between telecommunication and broadcasting services. Additional advantages include: the streamlining of tasks previously carried out by different regulators and the establishment of a “one stop shop” for the industry. A converged regulator will furthermore lead to a reduction of staff and the cutting of administrative costs. During the transformation period a newly converged regulator may however experience some difficulties in the coordination of its numerous subsections.

IX. Conclusions

The feasibility study on the establishment of a converged regulator for telecommunications and broadcasting services was a useful and timely opportunity to take stock of the legal and regulatory framework presently prevailing in the electronic communication market in the Republic of Tajikistan. More than two years have passed since Tajikistan became a full member of the World Trade Organisation (WTO). At a joint conference with the OSCE Office in Tajikistan in March 2014 on Tajikistan's WTO commitments in the field of Telecommunication and Broadcasting the Ministry of Economic Development and Trade addressed for the first time the whole range of issues governed by GATS, the General Agreement on Trade Related Services, in the field of electronic communications. The participants of the conference adopted a set of Recommendations which are added to this study as Annex VI, which also can be found on the website of the Ministry of Economic Development and Trade⁹.

With Decree No 691 dated 31 October 2014 the Government of Tajikistan issued a Program aimed at the adaptation of the legislation of the Republic of Tajikistan to the WTO rules. In the field of telecommunications the Decree requires to consider the restructuring of the two incumbent telecommunications and broadcasting regulators and the preparation of a feasibility study with a view of establishing a single agency responsible of telecommunications and broadcasting services. At the request of the Ministry of Economic Development and Trade this study was carried out by the OSCE Office in Tajikistan (the Office). The work, which was coordinated by the Office, involved five national and three international experts from Switzerland, Germany and Bosnia and Herzegovina. After a thorough analysis of the prevailing legal and regulatory framework in Tajikistan, of the WTO commitments, best international practices and consultations with stakeholders, which included the incumbent regulators, the Communication Service and the Committee on TV and Radio, the Office working group reached the following **Conclusions**:

1. The legal and regulatory framework which governs the work of the two incumbent regulators is not in compliance with the international legal commitments of Tajikistan, which require the functional independence of these regulators.
2. While the technological developments in the field of broadcasting and telecommunications suggest the establishment of a single converged agency, the Office working group recommends, for the reasons set out in section VIII of the study, some immediate and practical measures with a view of moving towards the functional independence of the two incumbent regulators. In the meantime, comprehensive legislation for the establishment of two separate and truly independent regulators can commence. The Office stands ready to assist the Government in Tajikistan in this legislative and regulatory process.
3. Once the two independent regulators are fully operational and a close cooperation among them has been established, a convergence of the two regulatory authorities may be considered.

⁹. Conclusions and Recommendations of the International Conference „Telecommunication, Broadcasting and Tajikistan's WTO Commitments“, 18-19 March 2014, <http://www.wto.tj/upload/Docs/Conclusions%20and%20Recommendations%20Final%2004%20April%202014-English.doc>

X. Recommendations

This study which explored the feasibility of the establishment of a converged regulatory authority for broadcasting and telecommunication services in Tajikistan leads to the following recommendations.

While the establishment of a converged regulator for the entire electronic communication market in Tajikistan remains a long term objective, the OSCE Office in Tajikistan, tasked to carry out this study, suggests, as a first step, to review the prevailing legal and regulatory framework with a view to move towards the creation of two separate and truly independent regulators for the broadcasting and telecommunication markets and, in a second step, to converge the two independent regulators into one single, converged regulatory authority (see Section VIII “Can a Converged Regulator be an Option for Tajikistan?”).

Since the assessment of the legal and regulatory frameworks for the electronic communication market in Tajikistan clearly showed a lack of independence of the two incumbent regulators from governmental control, the recommendations are directly addressed to the President and the Government of the Republic of Tajikistan.

I. Recommendations in the Field of Telecommunications:

Immediate Action to be concluded by the end of 2015:

1. The Government of the Republic of Tajikistan will take all necessary measures to cease, with immediate effect, the indiscriminate and illegal blocking of access to Internet websites (see Section III, “Legal and regulatory framework”, pages 6 and 7) within its jurisdiction.
2. The Government of the Republic of Tajikistan will instruct the working group under the National Centre for Legislation under the President of Tajikistan to resume its work on the regulation of illegal content in the Internet with a view to create within a given deadline a legal basis which allows, in line with national and international legislation and best practice, to prevent access to illegal content in the Internet.
3. The Government of the Republic of Tajikistan will, with immediate effect, terminate the present requirement of mobile operators to make special, “outside of the regulatory regime”¹⁰ payments, to OJSC Tojiktelecom of 0.03 Euro per minute (see Section III, “Market Developments”, page 9).
4. The Government of the Republic of Tajikistan will transfer the responsibilities for OJSC Tojiktelekom from the Communication Service to the State Committee on Investment and State Property Management and prepare the privatization of this state owned operator.
5. The Government of Tajikistan will, with immediate effect, transfer the responsibilities of the Communication Service for the development of the state policy in the field of telecommunication to either the Ministry of Economic Development and Trade or the Ministry of Industry and New Technologies.
6. The Government of the Republic of Tajikistan will review the legal remit of both, the Communication Service and the Anti-Monopoly Service, with a view to avoid duplication of their activities and to ensure the mutual independence of these two bodies from each other.
7. The Government of the Republic of Tajikistan will allow private communication operators to provide technical infrastructure services for broadcasters which are presently restricted to OSJC Teleradiocom. In a second step the Government will start the privatization of OSJC Teleradiocom.
8. The Government of the Republic of Tajikistan will contribute to an efficient utilization of existing networks by allowing private communication operators to use, inter alia, the fibre-optic infrastructure of OSHC “Barki Tojik” and the existing fibre-optic links across borders (e.g.: Afghanistan).

¹⁰. EBRD (2012, page 35-36), Electronic Communication Sector Comparative Assessment, <http://www.ebrd.com/downloads/legal/telecomms/comparative-assessment-2012.pdf>

9. The Government of the Republic of Tajikistan will, by moving from an onerous ex-ante regulation to a lighter touch (ex-post) regulation, review the licensing requirements for communication operators with a view to reduce the number of licenses required for telecommunications services.

II. Recommendations in the Field of Broadcasting:

Immediate Action to be concluded by the end of 2015:

1. The Government of the Republic of Tajikistan will adopt “must carry rules” which will allow all presently operating private broadcasters to participate at reasonable costs in the digitalisation process.
2. The Government of the Republic of Tajikistan will, without any further delay, implement item 4 of Chapter V (Services) of the Decree No 691 of 31 October 2014 “On the Program of Adjustment of the Economy of the Republic of Tajikistan Related to the Membership in the World Trade Organisation”, i.e. remove the requirement to obtain a license for the production of audio-visual works.
3. The Government of the Republic of Tajikistan will establish a truly independent Licensing Commission, which is not subordinated to the regulator, i.e. the Committee on TV and Radio Broadcasting and which is composed of independent experts.
4. The Government of the Republic of Tajikistan will establish a separate body for the management of the state broadcasters which has to be completely independent from the Committee on TV and Radio.
5. The Government of the Republic of Tajikistan will oblige state broadcasters to share 50% of their income from advertisements with private broadcasters, which will facilitate the transition of private broadcasters to digital television.

III. Additional actions to be concluded during the course of 2015:

The President of the Republic of Tajikistan will, by way of a presidential decree, instruct the Government of Tajikistan to establish two working groups tasked to review the existing legal and regulatory frameworks for broadcasting and telecommunication services with the objective to draw up proposals for the speedy creation of two separate and truly independent regulatory authorities by taking into account best international standards for independent telecommunication and broadcasting regulatory authorities, as set out in this feasibility study under Section VIII. The two working groups will include all relevant stakeholders, consult widely with the public and will submit their findings to the Government by the end of June 2016.

Annexes

WTO Reference Paper on Telecommunications

TELECOMMUNICATIONS SERVICES: REFERENCE PAPER

https://www.wto.int/english/tratop_e/serv_e/telecom_e/tel23_e.htm

24 April 1996

Negotiating group on basic telecommunications

The following are definitions and principles on the regulatory framework for the basic telecommunications services.

Definitions

Users mean service consumers and service suppliers.

Essential facilities mean facilities of a public telecommunications transport network or service that

- (a) are exclusively or predominantly provided by a single or limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service.

A major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

- (a) control over essential facilities; or
- (b) use of its position in the market.

1. Competitive safeguards

1.1 Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

1.2 Safeguards

The anti-competitive practices referred to above shall include in particular:

- (a) engaging in anti-competitive cross-subsidization;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

2. Interconnection

2.1 This section applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken.

2.2 Interconnection to be ensured

Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided.

(a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;

(b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2.3 Public availability of the procedures for interconnection negotiations

The procedures applicable for interconnection to a major supplier will be made publicly available.

2.4 Transparency of interconnection arrangements

It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

2.5 Interconnection: dispute settlement

A service supplier requesting interconnection with a major supplier will have recourse, either:

(a) at any time or

(b) after a reasonable period of time which has been made publicly known

to an independent domestic body, which may be a regulatory body as referred to in paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

3. Universal service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.

4. Public availability of licensing criteria

Where a licence is required, the following will be made publicly available:

(a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence and

(b) the terms and conditions of individual licences.

The reasons for the denial of a licence will be made known to the applicant upon request.

5. Independent regulators

The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

6. Allocation and use of scarce resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

Khoma Study

PUBLIC ORGANIZATION «KHOMA»

**TAJIKISTAN TELEVISION
MARKET STUDY**

This study was completed within the project on «**Digital broadcasting switch over as an opportunity to strengthen status of the independent TV companies in the media market of electronic mass media**»

It is completed by the Public Organization Khoma with financial support of the US Embassy Democracy Commission Small Grants Program.

The research was published with support of the Internews Network in Tajikistan.

Time of the study: October 2012 – July 2013

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Terminology and Abbreviations

Television channel Audience – real viewers that prefer to watch a certain TV channel. Usually a special technology and a method are used to identify the exact number of viewers;

Audiovisual products — production consisting of interconnected system of frames (for video with or without voice) that are meant for broadcasting and receiving through the relevant technical devices (audio-video films, movies, productions, advertising, concerts etc). Article 1 of the Law of RT On TV and Radio Broadcasting;

Video art — type of contemporary visual (moving pictures) art. A branch in media art it uses the video equipment, PC and TV images capacity to introduce artistic concept;

MBAP – Mountainous Badakhshan Autonomous Province;

Cable TV – a model of TV broadcasting where television programs are distributed to subscribers via high frequency signals transmitted through pre-installed coaxial cables or light pulses through fiber-optic cables. It is an option to view a range of various entertaining channels;

Content – Any type of information such as image, text, video etc. Originated from English **content** means **the principal substance**;

Licensing – a process of issuing a specified permission. In this case it meant license on broadcasting or production of audio-video products;

Multiplex (or mux) — A piece of hardware or a function in software that is used for combining different programs of TV channels into one single transport stream in digital broadcasting. Package of TV and/or radio programs that are transmitted through single transport channel, frequency spectrum if transmission is through radio communications or digital packets. Construction of the first multiplex network as a rule starts with a plan to create networks of digital television;

PO – Public Organization;

LTD – a private company with limited liability;

OJSC – open joint-stock company;

Broadcasting Coverage – optimal coverage of the population by TV and Radio broadcasting though the technical means of transmission;

Prime time – air time in a day programming schedule of radio and TV with the most viewers (usually from 19:00 to 22:00); Generally advertising cost is much higher during this time compared to the rest of the day. In contrast off-primetime is the time with the least number of viewers;

Production – creating, development of products;

AVPS – Audio-Video production studio;

Market Regulator – In this case the Committee on TV and Radio Broadcasting under the Government of Tajikistan that controls and regulates electronic mass media activities;

Retransmission – Receive and transmission of radio or TV programs through an intermediary point of simultaneous receipt and transmit independent of deployed hardware, complete or permanent TV programs or essential parts of such programs broadcast for public use;

RTC (Radio Tele Centre) – Technical Support Centre for the state TV and Radio companies;

Mass Media – Mass Information Media;

CIS – Commonwealth of Independent States;

TV – Television;

TV Air – coverage of TV signals;

Telecommunication – communication at a distance by technological means. Transmission and reception of any signals, images and voice through electromagnetic means of satellite, cable, optical and radio communications;

Technical means of broadcasting – set of radio-electronic and technical equipment that helps to delivery programs to consumers;

TRC – TV and Radio Company;

Digital broadcasting – TV system that transmits signals as a stream of digital combination of electrical impulses. It provides high quality of TV images transmission and is more tolerant to interference.

Introduction

The study that you are holding is a pioneering on the television industry of Tajikistan. It is an attempt to identify and share trends of the television industry that can be used for making conclusions, developing strategies and taking firm actions for improvement of this industry.

There are various methods and approaches for studying electronic mass media (EMM).

Through conducting a survey based on “face-to-face” questionnaire our team developed its own method. Such an approach when researchers develop their own method of research is applied in various countries with different level of TV industry development.

Multifaceted approaches to study mass media are rooted to their complex nature. For example, television in the theory of journalism can be considered from an enterprise that is run under the laws of economics and management to a social phenomenon - channels for exchange of information among different parts of society and a field of applied art.

All in all this study is a quantitative research consisting of the following four components:

- creative capacity;
- technical capacity;
- legal regulation;
- advertising market.

This very study is unique due to its covering capacity of television channels as well as, for the first time, production studios. The latter could have contributed in improvement and diversification of the Tajik television channels, if their activities had been regulated properly. Indeed, the role of production studios is significant. Availability and applications of the information and communication technologies (ICTs) and functioning of production studios form the mass media infrastructure that interconnects the large set of media into a single unit. Producers of TV programs, video and movie studios – these are the production factories of TV products or content for TV channels.

Historically it happened that the TV products producers were only the TV channel workers. This is what the Tajik TV has also experienced since the beginning of its first TV studio launched on November 7 1959. However, since the 1990s of the last century with emergence of first independent local TV channels like “Jahonnamo”, “Temurmaliik”, “Mawji Ozod” and others the image of TV as a main agitator and propagandist of communism in the post-soviet countries has changed completely. The form of property changed and the market economy mechanisms started to work. This tendency has also effected the nationwide broadcasting. Large nationwide TV channels were launched as “Safina” in 2005, “Bahoriston” in 2006 and “Jahonnamo” in 2008.

Today the industry of information and entertainment plays significantly important role. Rapid development of ICT brings great opportunities for TV industry. Today image of TV is not restricted with broadcast TV. It also covers cable network and satellite telechannels as well as evolved Internet TV and IPTV.

The production of TB program might not be necessarily connected to activities of broadcasting TV signals. However, in current circumstances of Tajikistan, where Internet TV is not well developed and the public mostly prefer to watch satellite channels, it would be worth to speculate on how to attract viewers to the national channels in particular and to develop the TV industry in general.

Exploring the tendency of the Tajik TV evolution within this study we are confident that a national strategy for TV industry development in the country is required. We hope very much that this study could contribute its tiny investment for a big achievements in the TV industry of Tajikistan.

Shahlo Akobriova
leader of the research group

1. Method and phases of conducting the study

As a method to conduct this study **face-2-face** questionnaire based survey among state, both national and provincial, and independent TV companies and production studios was used. Geographically the survey covered all provinces of Tajikistan.

The study was run in 4 phases:

1. Questionnaire development
2. Survey
3. Data collection and processing
4. Results analysis

Overall results of the survey are categorized as follow:

- general information
- technical capacity
- creative capacity
- income sources
- legal issues
- TV advertisement

2. The study sample

There were surveyed 60 respondents in the study.

Including:

9 national and provincial state TV companies

15 independent TV companies

5 cable TV companies

31 production studios

Additional information from websites of the TV companies and production studios in a data collection phase was used.

List of surveyed organizations:

National and provincial state TV companies

First Channel “Shabakai 1”

TV Safina

TV Jahonnamo

TV Sughd

TV Khatlon

TV Kulob

TV Badakhshon

TV Poitakht

TV Bahoriston. Data for this TV channel for kids were taken from its website – <http://tvb.tj/> and other sources

Independent TV Companies

TV SMT (Simoi Mustaqili Tojikiston, Dushanbe)

TV Regar (Tursunzoda)

TV Mavji Ozod (Vose district, Khatlon province)

TV-5 Qurghonteppe (Qurghonteppe, Khatlon province)

TRK Asia (Khujand, Sughd province)

TV Anisi Konibodom (Konibodom, Sughd province)

TRK TV 5 LTD (Konibodom, Sughd province)
 TV Jahonoro (Khujand, Sughd province)
 TV Isfara (Isfara, Sughd province)
 TRK SM-1 (Khujand, Sughd province)
 TV Simo LTD (Panjakent, Sughd province)
 TV-Mastcho (Mastcho district, Sughd province)
 TV Diyor (Khujand, Sughd province)
 TRK Diyor LTD (Asht district, Sughd province)
 TV Ustrushan (Istravshan, Sughd province)

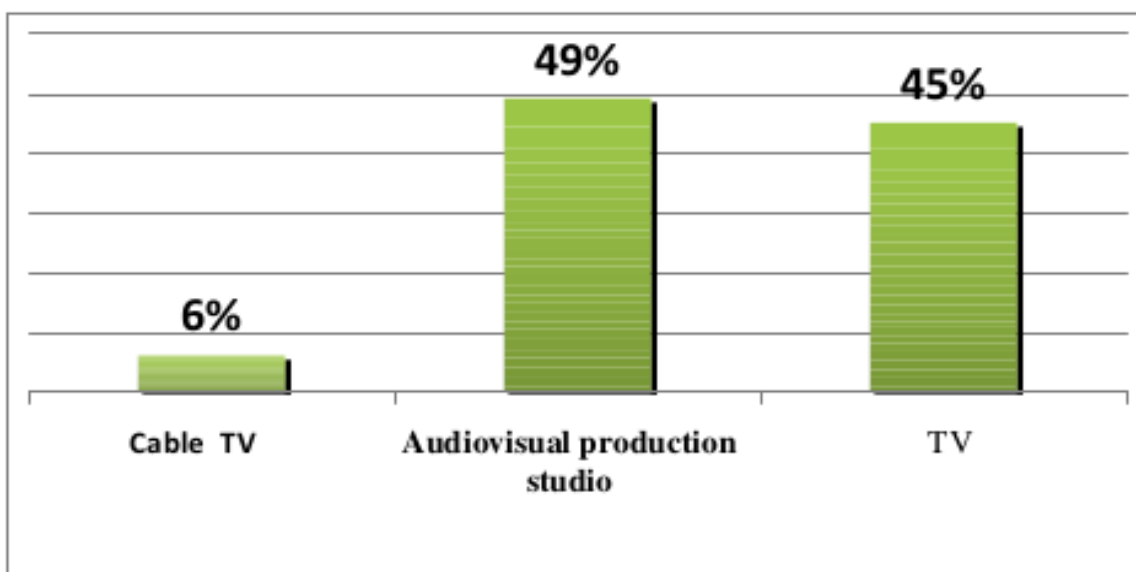
Cable TV

TV Mavji Istiqlol (Dushanbe)
 TV ANT (Khujand)
 TV Mavji Oriyono (Khujand)
 CJSC TV Servis (Dushanbe)
 TV Alliance LTD (Tursunzoda)

In addition, over 30 managers of the production studios that work in the market of audio-video production across the country.

Overall, the study covered all types of TV channels that are active across Tajikistan with the following taxonomoy: 31, 8% independent and 17, 2% cable TV channels. Out of total number of respondents 49% were studios of audio-video production, 45% were TV channels, and 6% cable TV.

Figure 1. Coverage of Study



3. Analysis of data received on state (national and provincial), independent, cable TV companies

According to the Committee on TV and Radio Broadcasting of Tajikistan data, shared on the press conference on January 11 2013, there are «57 private and state TV and Radio broadcasting companies» registered in the country.

However, the study in reality found 31 TV companies with 29 of them acting. They are 9 state, 15 independent, and 5 cable TV broadcasters.

Additionally collected data on radio companies during the study revealed 7 state and 11 independent radio companies. Thus, the number of TV and radio companies altogether is 47.

In terms of types of ownership the Tajik TV companies can be divided into two categories: state and independent. Consequently, there are 9 state and 20 independent TV channels in Tajikistan.

• **Broadcasting Coverage**

The geographical coverage of the state channels broadcasting in accordance with the official data is:

- TV «Shabakai 1» - **99, 72 %**
- TV Safina - **84,64%**
- TV «Bahoriston» - **84,20%**
- TV «Jahonnamo» - **75, 71%**

Provincial channels (*illustrated data are provided by managers of TV channels*):

- TV «Khatlon» - **63% of Khatlon province, over 1,5 million population**
- TV «Kulob» - **over 90% cities and districts of the Kulob subprovince, about 800000 people.**
- TV «Sughd» - **80% Sughd province.**
- TV «Badakhshon» - **14% of MBAP population.**
- TV «Poitakht» - **Dushanbe and Republic subordinate districts, from 500 to 800 thousands people.**

The state TV channels with covering almost 95% or over 7 million of population have the widest broadcasting coverage.

At the same time the independent TV channels cover approximately over 3,5 million population that makes about 44%.

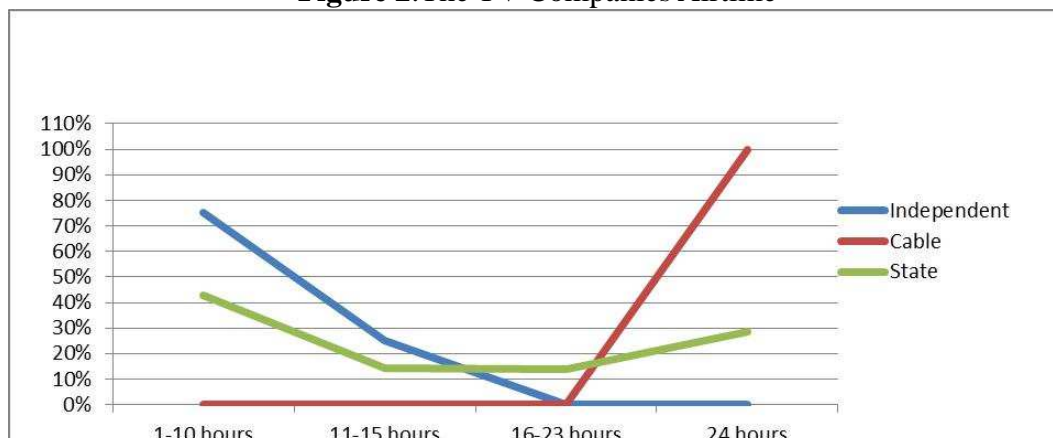
The cable TV channels cover about 800 thousand people across the country that make about 10% of population.

Sadly there is no exact data on TV channels viewers. To collect this kind of data special technology and method of calculation are needed.

• **Airtime of TV companies**

The study found that the airtime of the state channels varies from 6 to 24 hours. Two out of 9 state TV channels, Shabakai 1 and Jahonnamo, broadcast 24 hours a day. In average the state channels broadcast 14,5 hours.

Figure 2. The TV Companies Airtime



The independent TV companies broadcast from 3,5 to 14 hours a day. However, in 40% of independent TV companies a tendency to reduce the licensed airtime has been observed in winter time due to shortage of electricity. In average, independent television stations broadcast 6.5 hours per day.

Cable television companies broadcast 24 hours a day, as provided by the license, but in winter period their airtime is also reduced.

• **The Television Channels Broadcasting Language**

The state channels, as the study revealed, broadcast in more languages than the other broadcasters. The language of their broadcasting is mainly Tajik, and then Russian, Uzbek, English and Arabic. While the independent companies mainly broadcast in two languages Tajik and Russian. However, 39% of these channels airtime is in Russian that is much more compared to the same in the state channels.

Programs broadcast in Russian language in the Tajik TV are informational, social, musical as well as movies and documentaries and animation films. Only one state television channel (Shabakai 1) release programs in the Uzbek language and they are mostly news. As among the independent TV channels also one (TV Regar) broadcasts in Uzbek language.

Figure 3. The state TV channels broadcasting languages

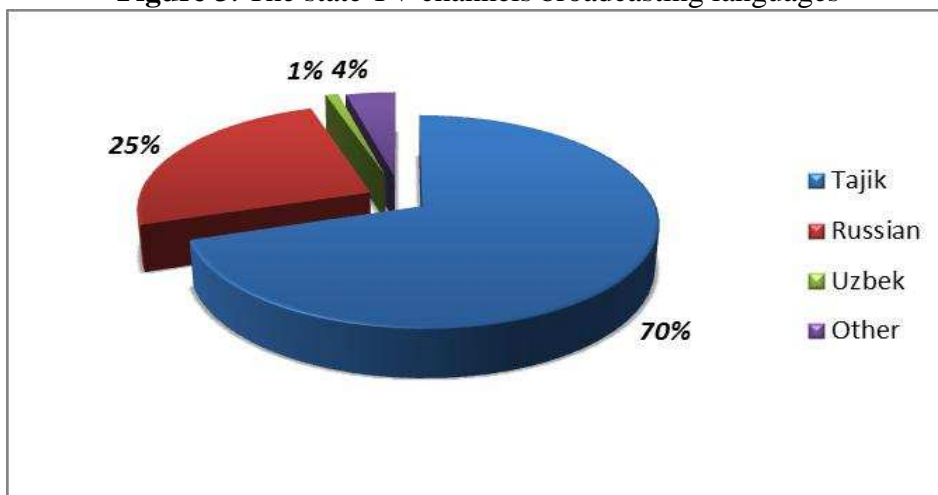
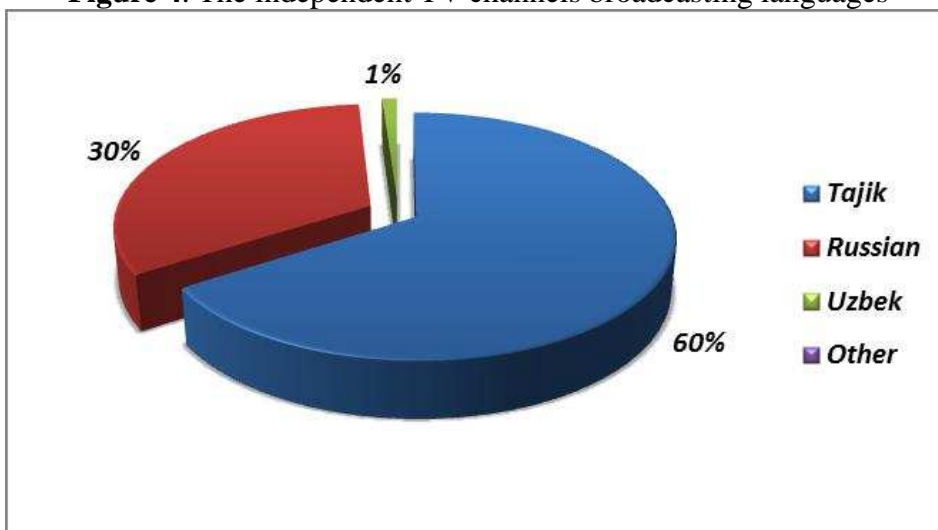
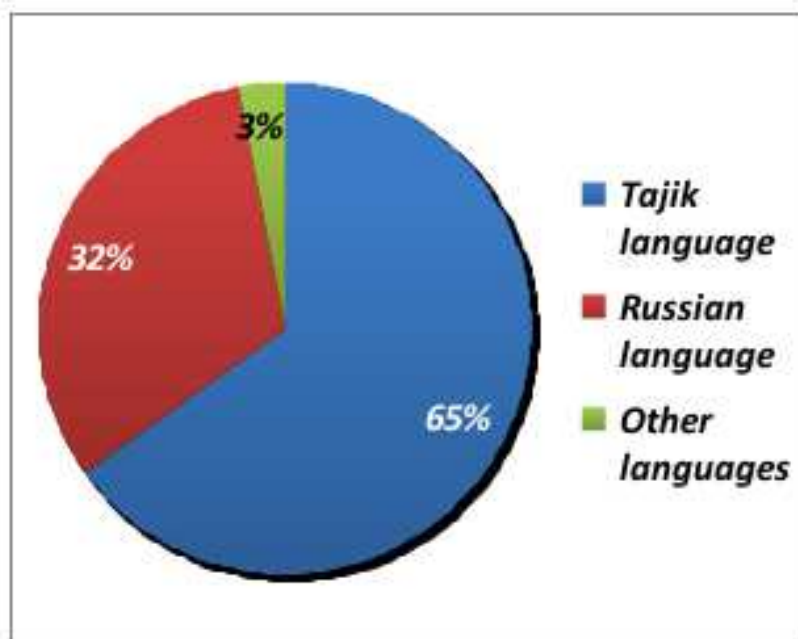


Figure 4. The independent TV channels broadcasting languages



Overall the situation in the Tajik TV (including broadcasting films, documentaries and animation in Russian language across all TV channels) can be summed up as described Figure 5.

Figure 5. Language television programs



Based on these data, a conclusion can be made that main languages of broadcasting in the Tajik TV companies are Tajik and Russian. Other languages like Uzbek, English and Arabic are mostly language of information programs.

• **Technical capacity of companies**

Technical capacity is a significant factor for the development of television companies. The study revealed that the technical capacity of independent television companies is much lower than technical capacity of state ones.

Table 1 Transparency of the Licensing Commission procedures to review applications

Form of ownership	Number of cameras	Number of editing techniques	Number of TV studios
State TV channels	161 (time of usage from 1 to 10 years) Digital format	80 (time of usage from 1 to 10 years) 10 linear	21
Independent TV channels	75 (time of usage from 1 to 12 years) Digital format	35 (time of usage from 1 to 7 years) 4 linear	19

As it is shown in Table 1, the technical facilities of 9 state channels are twice more than 15 independent channels.

We will analyze these data in more details for certain types of equipment available in companies. In most state TV companies the average number of available cameras from 5 to 20, while the same indicator for independent TV is from 2 to 5. Terms of usage of cameras in the state television channels range from 1 to 10 years and in the independent television channels with slight difference from 1 to 12 years.

In terms of format of camera all channels use digital format. Only one independent TV channel uses digital cameras and the camera of VHS format.

Table 2.The format of television camera

State TV	Independents TV
HD	HD, HDV ,
DVCAM	DSR 150, 170, 190,
DV	DVCAM , DCR CD 1000
DSR 450, 175, 190;	DV -1, DV3, PDR 170,
	Camera MARS 2, CANON 2,
	VHS

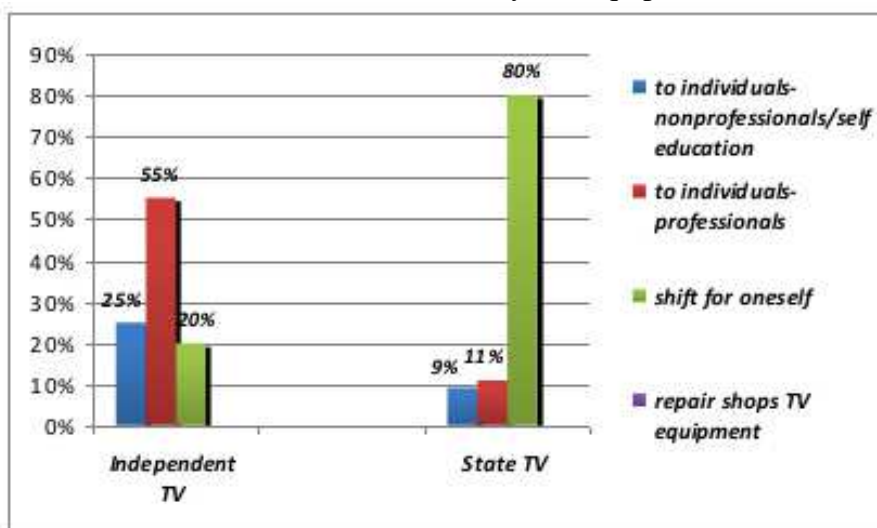
The same large differences can be observed on availability of editing technique desks. From 1 to 4 units of the editing desks are available in independent TV companies, while from 4 to 21 units are for the state TV channels. Along with nonlinear editing desks in both the state and independent TV channels linear editing desks are also used. Term of usage of nonlinear editing desks in all TV channels in average is over 5 years, and linear over 10 years.

There are significant differences regarding the number of studios. Only two states TV have one studio each. 75% of them have 2-3 TV studios. This indicator is much lower for independent TV companies about 80% of which have one studio, the others use two to three studios (TV Regar, TV CM-1 and TV Isfara).

In terms of the lighting devices, the majority of respondents are not satisfied with their quality and quantity of them. The study revealed that in most of the independent television companies and some state companies besides the special lighting devices self-made lighting tools and energy-saving incandescent bulbs. According to some television executives, the use of in-house made lighting tools is primarily due to lack of funds to purchase new sets of tools. It is related to the issue of income, which is discussed in the section on sources of TV companies income.

The same question "Where do you go for repair in case of malfunction of devices and equipment?" was given to executives of all TV companies. Answers of respondents presented in Figure 6 showed that 80% of the state TV companies in most cases try to fix it on their own, while the independent TV refer to private professionals (55%).

Figure 6. Where do you go for repair in c of malfunction of machinery and equipment?



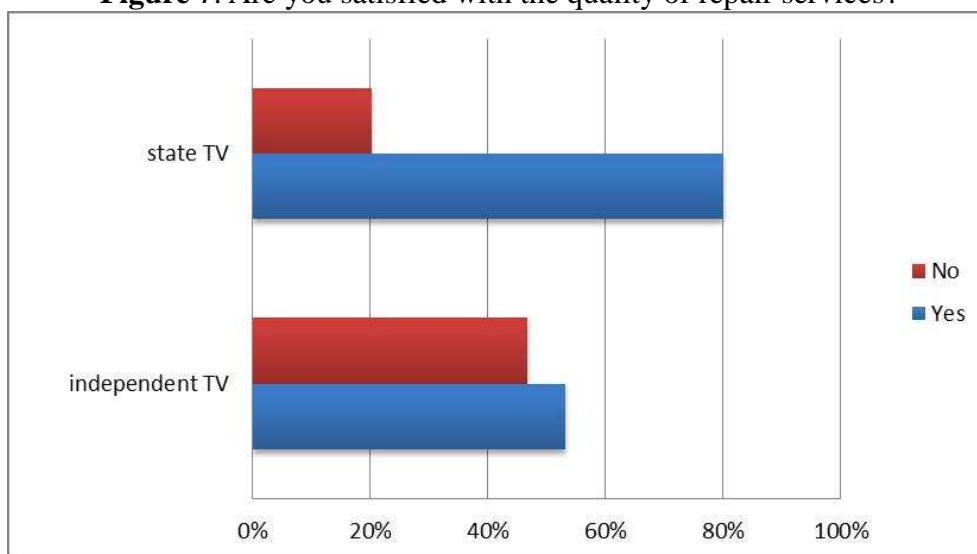
In options to answer this question we have deliberately listed workshops specialized in repairing television equipment, with a hope that they might be available, though unknown to us. As a result it turned out that none of companies went to a company or a workshop specialized in support of such equipment. The reason was that there is not such a workshop in Tajikistan.

The State television channels mostly repair their equipment in the Republican technical center (RTC) under the Committee on Television and Radio Broadcasting. Only one state channel sends its equipment for repair, in complicated cases to the equipment vendor, "Synchropro", a company in Moscow.

The survey revealed that **about 50% of independent television channels** while seeking the repair services remain unsatisfied with the quality of delivered services. Main reasons of such a situation respondents see as unqualified repair service caused by the lack of high-quality spare parts, their high costs, lack of qualified specialists and a long time required for repair. The second half of independent channels (50%) is satisfied with the quality of repair services.

At the same time, **80% of state televisions** are satisfied with the quality of their equipment repair services. Mostly provincial TV stations, about 20%, are dissatisfied with the quality of delivered services. Differences in responses can be seen in Figure 7.

Figure 7. Are you satisfied with the quality of repair services?



• Companies Creative Capacity

The study found that creativity capacity as well technical capacity of TV companies differs and related to the type of TV company. Total number of journalists, cameramen and editors of state TV companies is several times higher than the same indicator of the independent TV companies. This trend can be observed in Table 3.

Table 3. TV Companies Creative Capacity

Type of ownership	Total number of employees	Number of journalists and editors	Number of cameraman	Number of editors	Airtime of programs per day (hours)
State TV channels	1047	352	130	126	129
Independent TV channels	170	54	39	31	110
Overall in the television industry	1217	460	169	157	239

Exploring creativity capacity of TV channels made it clear that the employees qualification issue is a very acute one for all executives of television companies in Tajikistan. Almost all TV companies executives complained on poor professional skills and knowledge of graduates of journalism faculties, emphasized the shortage of technical workers for television, as well as shortage of directors, producers and screenwriters.

The survey included a question "Where do technical staff of TV company gain cameraman and editors skills?". The leaders of the 7 out of 9 state TV companies that makes 77.7% identified work for TV company as a source of knowledge and skills for cameramen and editors. At the same time, they emphasized that their cameramen and editors improve their knowledge through the courses of the Audiovisual Art Center (AVAC) under the Committee for Television and Radio, special courses of the Institute of Art and RTC. The state channels executives did not hide that among the cameramen and editors are self-trained ones.

About 60% of independent television indicated the Internews Network's training courses as a source of knowledge and skills improvement for their cameramen and editors. In addition, 40% of independent channels executives confirmed their technical staff also gained knowledge and skills on television through self-study.

All answers to the question about technical staff capacity building are illustrated in Figures 8 and 9.

Figure 8. Where to master cameraman skills?

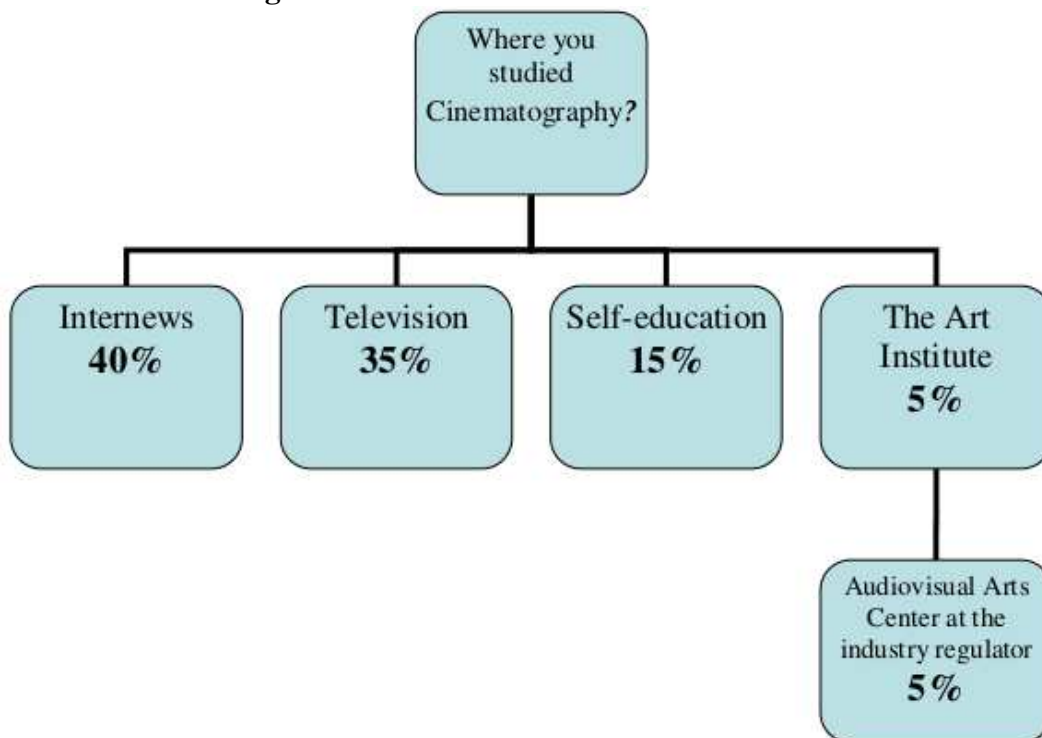
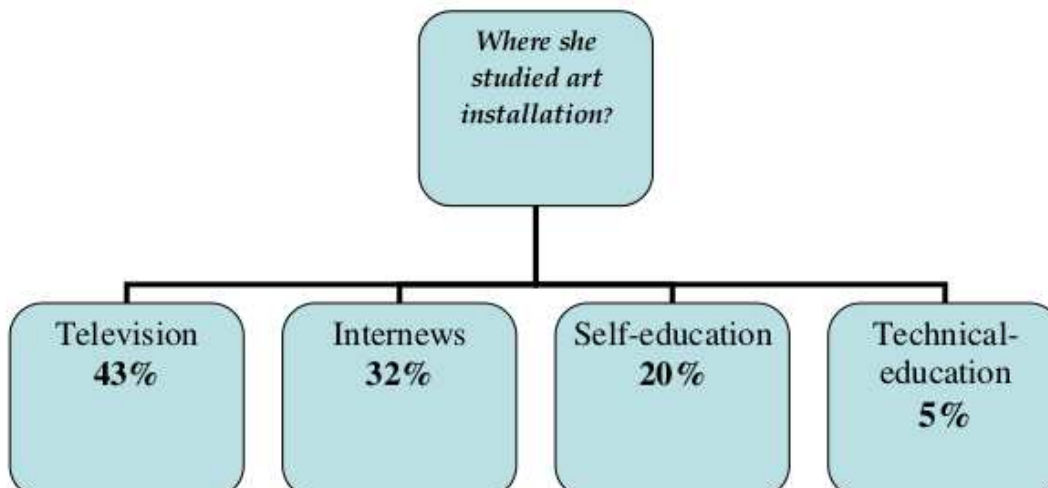


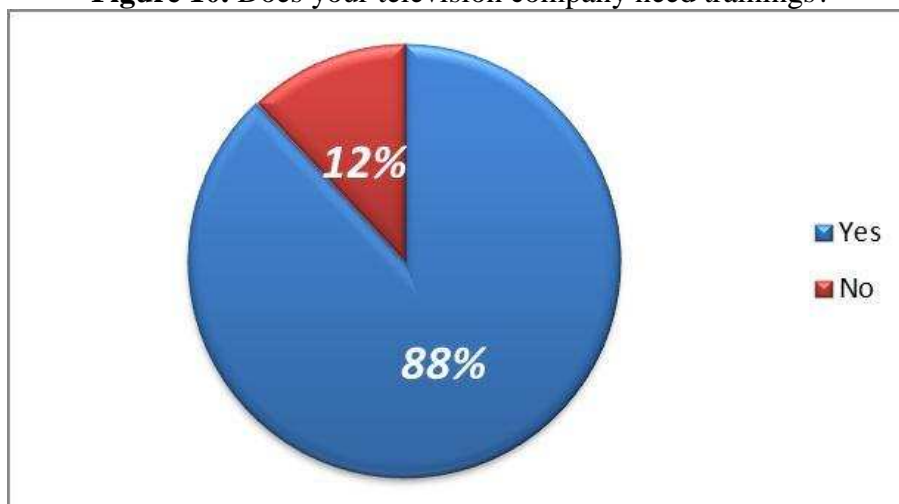
Figure 9. Where to learn editing skills?



Since all the television channels executives across the country acknowledge the need to improve the professional skills of their staff, they were asked this question -" Does your TV company need trainings?"

None of the questions of the survey had witnessed such a unity of responses as the ones to this question. Almost 90% of respondents from both state and independent TV companies, including cable TV ones, acknowledged this need. A few responses from cable TV companies do not see such a need. Nevertheless, about 60% of this category of respondents found these trainings essential for building their employees capacity. Similarly, one state channel does not need trainings. However, when trainings are needed they will be delivered by AVAC of the Committee for Television and Radio. Answers to this question are shown in Figure 10.

Figure 10. Does your television company need trainings?



The respondents preferences of the topics of trainings, depending on the type of company, are introduced in Table 4. It can be observed that for both state and independent broadcasters find it important hat their employees have expanded their knowledge, especially on television journalism and cameraman essentials. Next is coming trainings on computer design and graphics, as well as technical issues and repair of equipment.

Unlike the state broadcasters, the independent TV are also interested in trainings on marketing, management, creation of advertising products and mastering editing skills. Some leaders of independent broadcasters welcome all kinds of training related to television journalism.

This table also includes cable TV channels that are interested in trainings on technical issues, repair of equipment, marketing, management, market research and copyright issues. Respondents answers to this question depend on the type of TV. It is obvious that the cable TV is more interested in technical skills improvement, marketing issues understanding, and copyright management rather than in building creative creative capacity of its staff.

Table 4. Companies Trainings Demand

	Theme of training	State TV %	Independent TV %	Cable TV %
1	The technical issues, equipment repair	12,5	31,25	40
2	Computer aided design, graphics	37,5	18,75	–
3	Cameraman skills	62,5	68, 8	–
4	Television Journalism	50,0	62,5	–
5	Marketing, management	-	37,5	40
6	Editing skills	-	25,0%	–

	Theme of training	State TV %	Independent TV %	Cable TV %
7	All kinds of trainings on television journalism	-	12,5	-
8	Other (creation of advertising products, market research, copyright, etc.)	-	25,0%	20

• Departments of Television Companies

The study was also interested in exploring the number and diversity of television company departments. It turned out that in average from 6 to 15 departments are run in the TV channels. It revealed that 75% of state channels and 50% of independent television stations own information departments, while 40% of the state channels and 12.5% of independent television stations have department of political affairs.

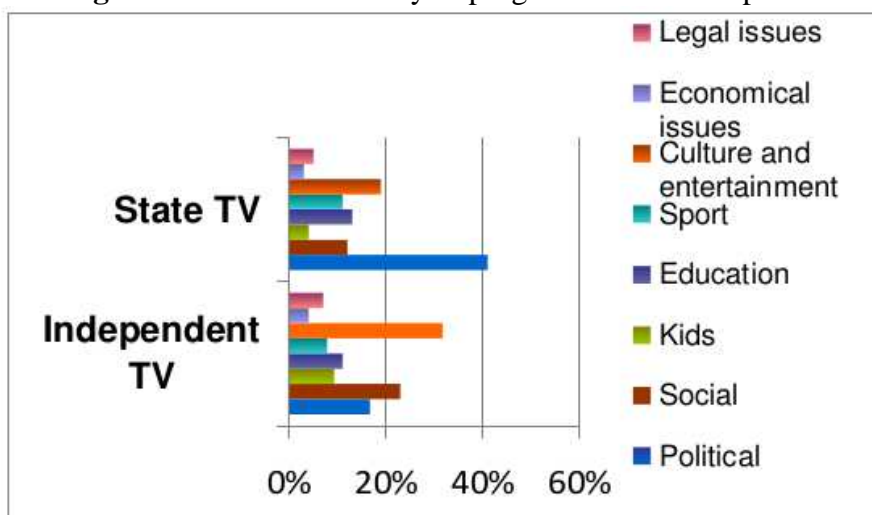
Departments of the TV Channels of the Country:

- Information
- Commercial
- Technical
- Cultural
- Politica
- Music
- Youth
- Producer
- Film and dubbing
- Economical
- Legal
- Sports
- Social
- Programming Department
- Human Resources Department:

• Thematic diversity of programs of TV Channels

The Tajik television channels programs have similar topics in general. They are mainly divided into informational, political, cultural, entertainment, social, legal, economical, sports, children's and educational programs.

Figure 11. Thematic variety of programs in TV Companies



The study revealed that the state TV channels programs are more focused on political (over 40%), cultural and entertainment (20%) issues. While the independent channels prefer cultural and entertainment issues (30%) and social issues (20%) as it is shown in Figure 11.

In general, the political issues cover about 60% and the cultural and entertainment about 50% of the Tajik TV airtime.

Content of the independent television differs from the state one, first of all, by raising more social issues. The former also provide greetings with musical component opportunities that mostly have a commercial-driven goal.

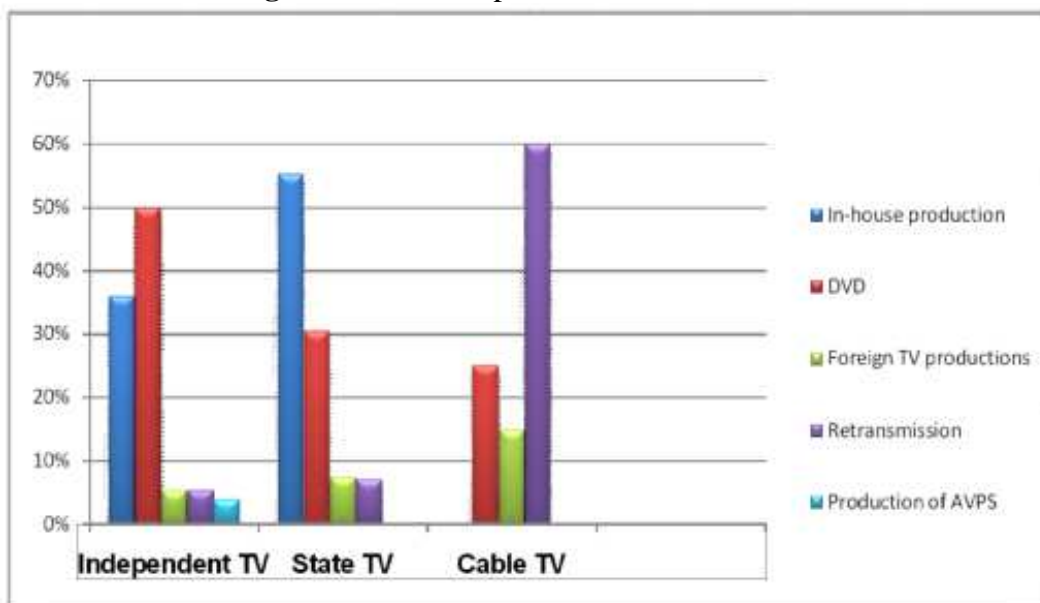
However, in general, the content of programs of the channels, regardless of ownership form, is very similar. In general, it consists of information programs, cultural and entertainment shows (concerts, movies, talk shows) and some economic and legal programs.

This is the conclusion of the study based on analysis of the scope of programs provided by respondents.

• TV Channels Airtime Formation

The survey respondents were asked about the formation of the television company airtime. The result of responses is illustrated in Figure 12.

Figure 12. TV Companies Airtime Formation



As it is shown in the diagram above, the formation of airtime of both independent and state television companies has significant similarities. Most of the airtime is made up of their own products and DVD followed by foreign TV products and retransmission. However, a significant difference can be observed in the cable TV airtime formation. Most of their time is devoted to retransmission, followed by DVD and foreign TV productions.

Revealed data show that production studios products, as a component to form the TV companies airtime, are used only in a small fraction of independent TV (4%). In this regard, the study raised a question to respondents on partnership with studios that generate audiovisual products and other TV channels of the country.

• Partnership

As illustrated in the table above, the state channels mostly cooperate among themselves, as well as with **two** independent channels, **two** foreign broadcasters (TV Jahonnamo) and **8** private production studios. These companies also cooperate with the State Unitary Enterprise "Tojikkino" and the State Film Production Studio "Tojikkfilm".

Table 5. Companies Partnership Capacity

Type of ownership	TELEVISION			PRODUCTION STUDIO
	state	independent	foreign	8
State television	9 (all states channel)	2 (TV «Mavji ozod», TRK «Asia»)	2 (TV Aljazeera, Persian service BBC)	
	State television	Independent		9
Independent television	TV Safina, TV Sugd, TV Khatlon, TV Kulob	With independent television companies within joint projects		
In summary				17

Cooperation of the state channels with 8 private production studios we have identified through the survey of the latter executives that named the channels they work with. Respondents, the state TV companies, do not reveal any other private production studios, but the «Sinamo» Kinostudio LLC.

At the same time, cooperation among state TV channels mostly happens through sharing of information, some important stories, mutual support on technical issues and so on.

When it comes to partnership with the independent TV channels, some of the state TV channels like TV Safina, TV Sughd, TV Khatlon and TV Kulob have a limited cooperation in terms of sharing news stories with two private TV channels like TV "Mavji ozod" from Vose district of Khatlon province and the TRK "Asia" from Khujand of Sughd province.

Independent TV companies cooperate more or less with 9 production studios. Among themselves this cooperation is restricted within joint projects.

Considering a very limited and passive partnership of TV companies with the studios for audiovisual production it is vitally important to emphasize that the production studios are the ones that develop and enrich the television airtime globally. Sadly, in Tajikistan the mechanism of mutual development of television companies and the production studios is completely undeveloped. Moreover, the audiovisual production studios not developed at all. This issue will be more discussed in more details the analysis of revealed from the production studios data of this study.

• TV Companies Sources of Income

The survey allowed to collect data on income of TV companies. Given the confidentiality of the received data, only summary of the data for those TV companies that did not refuse to answer this set of questions will be presented.

Certainly, one of the main sources of income for television companies is advertising. This will be discussed in the section on television advertising.

The research has shown that sponsored programs are available in most (63%) of the state TV companies, followed by half (50%) of the independent TV companies, while do not exist at all in the cable TV companies.

Sponsors support mainly covers the weather forecast, cultural - historical programs, as well as programs on youth, social issues, sports, celebrities, taxation and innovative ideas in both state and independent TV channels.

Besides income from sponsorship programs 50% of state, 67% of independent and 100% of cable TV companies have other sources of income. These include the monthly customer fee (for cable TV), services fees from private companies, mobile operators, banks, and pharmaceutical companies.

However, as the majority of respondents of independent TV companies believe, these incomes do not contribute to their development. For example, they can not afford new equipment with this

income. Only **3** independent television claim that their incomes partially contribute to the development of the channel.

At the same time the **national state TV companies** executives noted that TV companies incomes contribute to the development of TV channels. The **provincial state TV channels**, in contrast, noted that incomes do not contribute to their development.

Thus, a conclusion can be made that the allocated state budget funds to support state TV companies are mainly used by national TV channels leaving the provincial state channels with insufficient funds for their development.

As for the independent TV companies, according to their executives, they needed state support program, which they raise issue about in different events.

In general, the respondents believe that a single development program of entire TV and Radio broadcasting as a separate industry and essential information mechanism is needed.

Table 6. TV Companies Sources of Incomes

State channels	Independent channels
The state budget	Advertising
Advertising	Sponsorship programs
Creating advertising audiovisual products (commercials, music videos, etc.)	Creating audiovisual products (commercials, music videos, etc.)
Sponsorship programs	Support of local executive authorities

As it is shown in Table 6 the independent TV channels are also supported by the local executive authorities. According to respondents some local governments based on the contact contribute a certain amount of funding to the local independent TV channels every year in exchange for reflection of the local government activities through news stories and and other TV programs.

The survey revealed that only 6 independent TV companies are privileged to such a support of the local authorities. However, almost all these TV companies complained that the process of transferring money often is delayed.

Generally for these 6 independent TV channels, it can be summed up that the local government allocates each month from 700 to 1000 TJS to the respective channel. Annually it is from 8 to 12 thousand TJS. One channel even has a contract for 40,000 TJS with the local authority. However, as mentioned earlier, allocation of this amount is, as a rule, always delayed for months.

Overall, such a support of local authorities to the independent television does not make a significant change. TV companies reflect the activities of the local authorities regularly even without receiving of the agreed fund.

As it is shown in Table 6 one more source of income for TV channels is creating audiovisual products for advertising.

• **Cable television**

Cable TV is a model of television broadcasting, where TV programs are delivered via high frequency signals transmitted through cable laid to the consumer.

Today there are **5** cable TV companies in Tajikistan. They all are engaged in distribution of television programs through retransmission. The cable TV airtime is completely different from conventional TV channels. It is, as noted above from the retransmission, as well as the use of foreign DVD-based audiovisual products.

The cable TV in Tajikistan use professional cable TV headend for reception of satellite and air signals. The signal transmission is rendered through a single cable television network that provides the delivery of high quality image and sound directly to the TV set.

First cable TV operators in Tajikistan appeared at the end twentieth century. Cable broadcasting pioneer in the country is JSC "TV Services" that first launched broadcasting for the resi-

dents of Dushanbe. Earlier this year another cable broadcaster, LLC “Mavji Istiqlol”, entered the market in the capital. It provides services for the apartment blocks in Sino and Firdavsi, two districts of Dushanbe.

Cable television is well developed in the north of the country. The cable broadcasters in the northern province are "ANT" TV LLC and "Mavji Oriyono" LLC. These channels are very popular in Sughd province and the number of their subscribers are increasing year by year. Similarly in Tursunzoda TV "Alliance" LLC delivers services to more than 1,000 subscribers.

Overall, approximately 800,000 people use the services of cable television operators. At this stage, some cable TV will expand its range of coverage through modern technology of signal transmission.

Table 7. Cable television companies

№	Cable TV broadcasters	Broadcast coverage (cities and districts)
1.	CJC TV «Service»	Dushanbe, RSD (Republican Subordinate Districts)
2.	LLC TV «Mavji Istiqlol »	Dushanbe (established in early 2013 and only partially covers Sino and Firdavsi districts of of capital)
3.	LLC TV «Alliance»	Tursunzoda
4.	LLC TV «ANT»	Sughd province – Khujand, B.Ghafurov, Kayrakkum, Kanibadam Spitamen, Chkalov, Isfara, Mastchoh
5.	LLC «Mavji Oriyono »	Sughdprovince-Khujand,Chkalov, Kayrakkum.

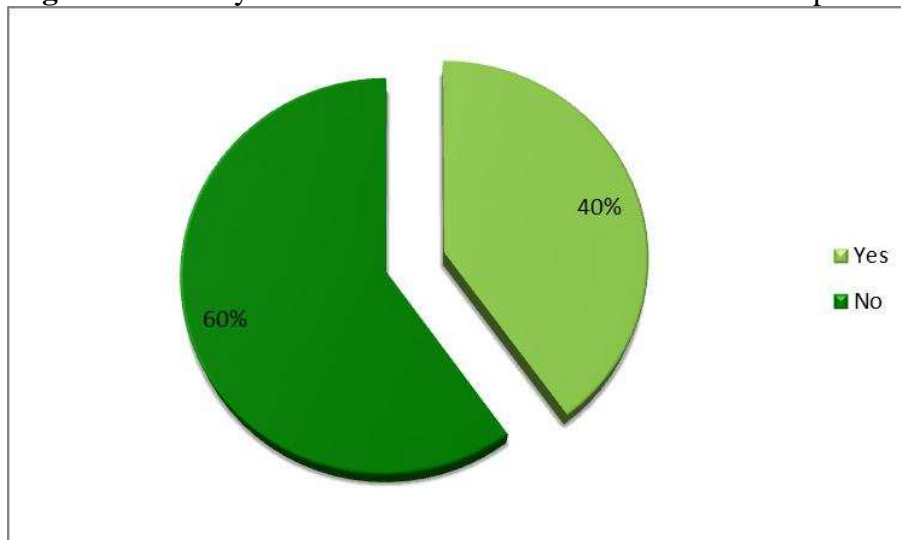
Table 8. TV Companies General Informatio

Sources of income of cable TV	Total number of employees	Duration of broadcasting	Broadcast coverage	Audience
<u>The subscription fee</u> Advertisement	88	20-24 hours	10% population	About 800 000

All cable channels are commercial. They charge one-time fee for installation and connection to the network and a monthly subscription fee that might cost from 10 to 30 Somoni.

List of channels retransmitted by cable TV mainly consists of four state-owned national channels, number of local and provincial TV channels and over 40 popular foreign channels. The cable channels have a few departments. They are technical, financial, customer service, personnel and advertising departments. Only one cable TV company has an advertising department.

Figure 13. Does your income contribute to the channel development?



Answers to the question "Does your income contribute to the channel development?" are as follow: 2 cable TV executives answered "Yes" that make 40% of respondents in this category, and the remained 60% noted that income is not enough for more active expansion and development. Some managers of cable TV pointed out that if their network's traffic flow capacity is fully used, an opportunity to earn will increase several times.

Answering the question about repairing equipment, managers of cable channels indicated that they have special equipment and it is still fairly new, and in case of failure, they are turning to private professionals or to equipment suppliers. And the quality of repair services always satisfies them.

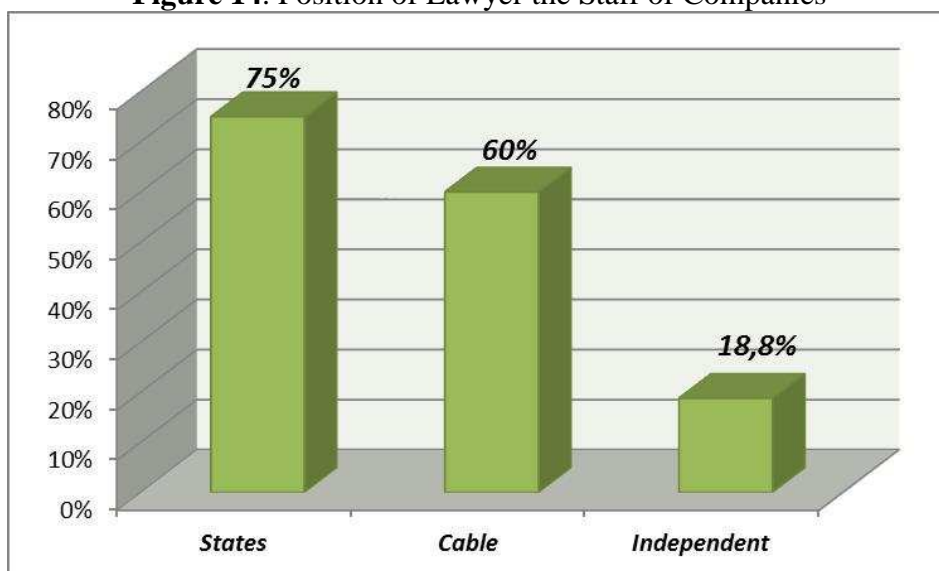
Most of the cable TV companies need trainings as it is confirmed by 60% of executives in their responds to the question "Does your channel need training?". As they believe the training topics that meet needs of their employees are issues of technical maintenance, repair of equipment, marketing, management, market research and copyright.

• Legal Regulation of the TV Companies Licensing

The legal regulation issues are of great significance in the activities of TV companies. That is why the survey questionnaire had a separate unit of questions on legal issues.

Analysis of the collected data showed that a lawyer position is available in the staff of 75% of the state, 60% of cable and only 18.8% of independent TV companies (see Figure 14).

Figure 14. Position of Lawyer the Staff of Companies



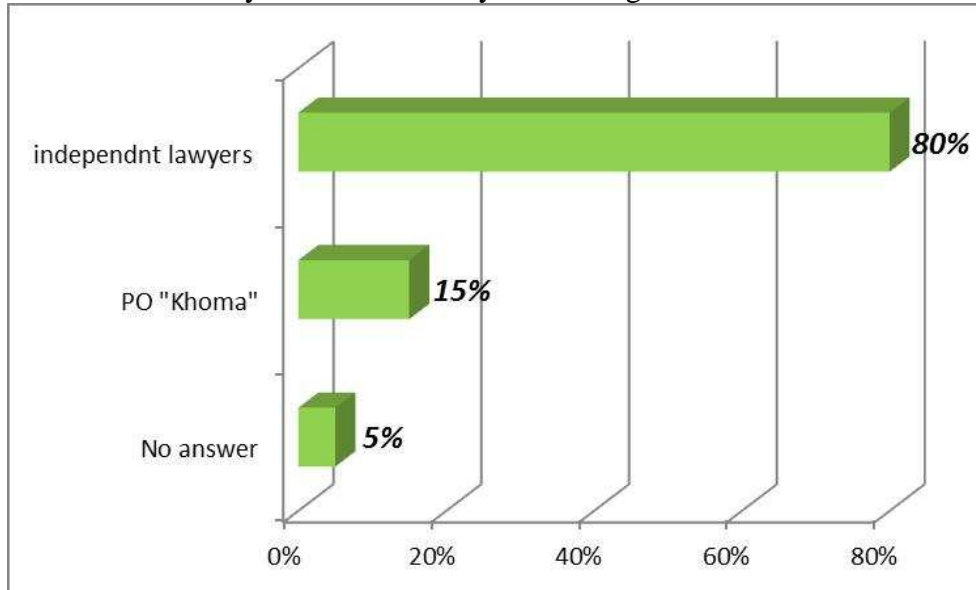
However, the current income of less than half of independent cable broadcasters does not allow them to have a lawyer in their staff. It is more efficient for them to cover costs of contracted lawyer services. The high rate of the state TV companies (see Figure 14) affordability of lawyer position indicates that it is supported by the state budget.

Thus, the independent TV companies incomes do not allow them to hire a lawyer as a staff member. And, in case of legal services need, executives contact an independent lawyer or friend-lawyer or lawyer of PO " Khoma.

Several years ago, the PO "Khoma" within its "Fourth authority needs a protection" project conducted training school for media lawyers. Selected through a competitive method 10 lawyers from across the country attended this school. The project aimed to train media lawyers that will help independent TV companies in legal matters and in business management. Some companies still seek advice and assistance from the graduates of this school. The companies also contact the Khoma media lawyer for legal advice regularly.

Since the state broadcasters are not required to have a license to run their activities the license relevant questions were addressed only to independent TV companies.

Figure 15. If you don't have a lawyer whom do you contact when you need legal services?



The survey revealed that the broadcasting license application procedure is not known only to 18.8% of respondents of independent TV (see Figure 16). Though it is interesting how one can have a license without knowing the procedure of its acquiring. A conclusion can be made that the head of the company was not involved in this process, and someone else mediated meeting the requirements of broadcasting license application. In other words, elements of corruption are obvious. The remaining 81.2% of respondents are well aware of the license application procedure.

Figure 16. Respondents Awareness of the Broadcasting License Application Procedure

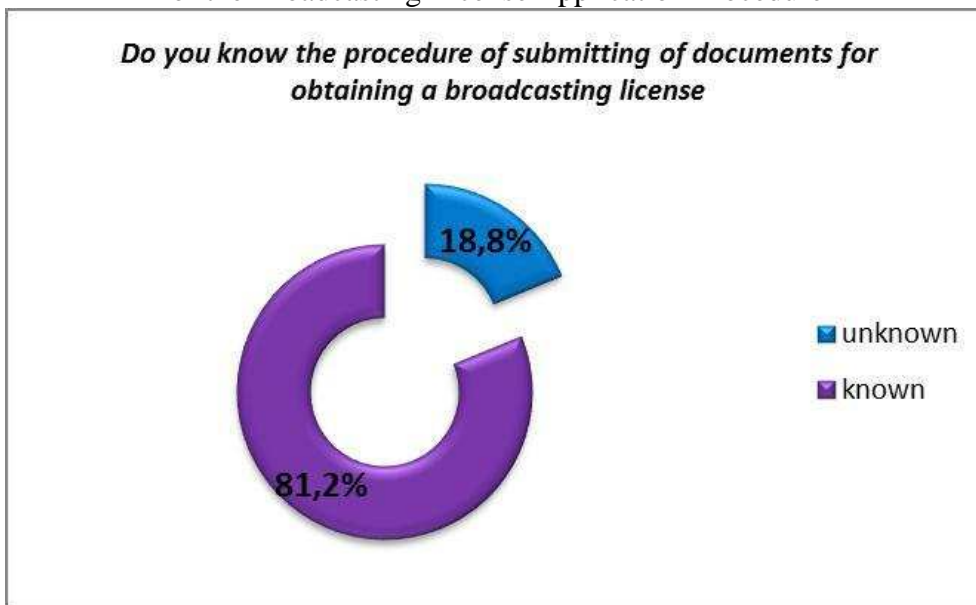


Table 9 shares the results of answers to the question "How many times have you applied for a license?" Based on analysis of the cable TV respondents answers 40% of them have applied for a license once and this license is still valid, given that the license is issued for 5 years. The remaining 40% are those who have applied twice for the license. Once received, they applied for the second time to prolong the license term upon its expiration. One of the respondents (20%) did not answer to the question.

Table 9. How many times have you applied

<i>TV company name</i>	<i>Number of Application</i>			
	1	2	3	3more times
Cable TVs independent	40%	40%		
Independent companies	46,6%	18,8%	18,8%	6,6%

Almost half or 46.6% of the independent television companies have applied for broadcasting licenses only once. The second half of them have applied for the license 2 and/or 3 times that make 18.8% of respondents. Among these companies is the “absolute champion” who has applied for a license for broadcasting as many as **15** times.

The study showed that the licenses are granted to most companies. However, the time of its provision can be much longer than it is set by law varying from 2 months to 1 year. According to the norms of the Law "On licensing certain types of activities" and the Regulation "On licensing of certain activities" according to Chapter 8, point 1: *"The licensing authority makes decision to grant or refuse to grant a license in a period not exceeding thirty days from the date of application submission for the license with all required documents, including consideration of documents, examinations, inspections and other necessary actions"*.

Though about 20% of applicants were refused in granting license verbally, reapplied companies received license on broadcasting. Nevertheless, none of the applicants filed any complaint to the court against this unjust refusal of application.

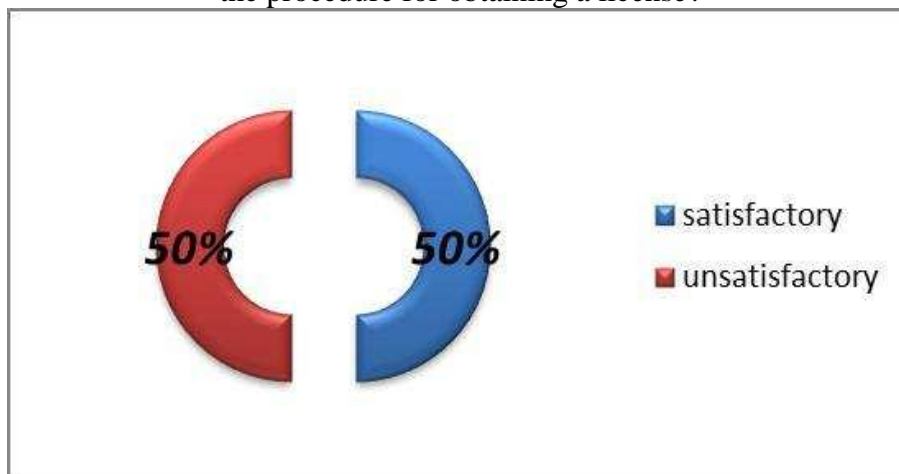
Based on the license-relevant answers of the respondents experienced actions of the competent authority might be considered as violation of the Article 42 of the Constitution that states:

"Everyone is obliged to observe the Constitution and laws, to respect the rights, freedoms, honor and dignity of the other people in Tajikistan."

These actions are also against the norms of Chapter 8, point 1 of the Regulation "On licensing of certain types of activities" in the Republic of Tajikistan.

The next question was aimed to identify the attitude of respondents to the existing procedure for applying for a broadcasting license.

Figure 17. Your attitude towards the procedure for obtaining a license?



The analysis of the received responses showed that the respondents' opinions, regardless of the type of TV, are divided equally. 50% of respondents find the existing procedure for broadcasting license application satisfactory. They argue that applicants have no problem with receiving the license. Terms are met, everything happens in accordance with the law and there are no problems. However, at the same time, respondents noted that "It is desirable that the Licensing Commission would be independent from the competent authority."

The remaining 50% of the respondents have a negative attitude to the existing licensing procedure and believe that it need to be simplified. And for the transparency of the licensing commission decision making they also suggest to make the commission independent from the authority.

Respondents evaluations of the transparency of applications review procedures by the Licensing Commission are presented in Table 10.

Table 10. Transparency of the Licensing Commission procedures to review applications (%)

	Evaluation	Independent TV	Cable TV
1	Not transparent	13,3%	20%
2	Partly transparent	53,3%	-
3	Transparent	26,7%	60%
4	No response	6,7%	20%

Interestingly enough, even those respondents who found no problem in the licensing procedures evaluated them not transparent.

"Does the Law on Licensing contribute to the development of broadcasting?" was the next question that 60% of respondents from independent TV companies gave a negative answer. They justified their answers by pointing out undeveloped competitiveness of the industry as an effect of existing complicated license issuing procedure. In this regard, the licensees demand to simplify the mechanism of license obtaining procedure.

Unlike the independent TV channels, the majority of respondents of the cable TV (60%) responded positively to this question.

Analysis of collected data revealed that 80% of respondents of independent and 40% respondents of cable TV companies believe that the changes in the legislation on licensing will contribute to the development of television and radio broadcasting companies. Expressing this view, many of them added this comment: "Given that the laws will be strictly followed..." and the procedure will be simplified to a minimum.

• **Television Channels Research Summary**

- In the country are actually functioning 29 TV channels;
- State television channels have the widest territorial coverage of broadcasting;
- The main languages of broadcasting TV programs in Tajikistan are Tajik and Russian;
- The total volume of airtime for the whole country is 239 hours per day. Out of this 129 hours 129 hours are broadcast by state and 110 hours are broadcast independent television channels;
- Broadcasting duration per day varies from 3.5 to 18 hours in average;
- Cable television channels all together broadcast 120 hours per day; Total number of the TV channels employees is 1217 people with 1047 of them working for the state TV and 170 people for the independent TV;
- Technical and creative capacity of TV companies, income sources and regulation of their activities largely depend on the type of television companies;
- Technical and creative capacity of the independent TV companies are much lower than the one of the state TV companies;
- Professional qualification of the TV industry employees is a critical issue;
- Almost 90% of broadcasters need trainings to improve skills and knowledge. Trainings for cameraman and TV journalists are of high priority;

- The channels airtime is mainly formed by own production and DVD;
- Scope of programs in the state TV companies with domination of the political, cultural and entertainment issues differs from the one of the independent companies focused on cultural, entertainment and social issues;
- Partnerships of channels among themselves and with the audiovisual production studios are poor;
- Independent sources of income do not contribute to development of the state provincial companies;
- Tajikistan has neither repair workshops for television equipment nor skilled professionals of the industry;
- Five cable television channels are available in the country;
- Despite the various sources of income the independent and cable TV companies can not contribute to their own development;
- Only 18.8% of independent TV companies can afford a lawyer in their staff;
- Interestingly enough, it happened that the same number of respondents, 18.8% of independent TV companies, are not aware of the procedure of applying for license on broadcasting. The remained respondents are well aware of this procedure;
- Only 25% of respondents from independent TV companies find the Licensing Commission procedures of the application review transparent.

4. Analysis of data received from survey of the audiovisual productions studios executives

As mentioned above, the survey included executives of **31** studios for the audio-visual productions (AVPS) across the country:

- 24 AVPS in Dushanbe
- 6 AVPS in Khujand
- 1 AVPS in Khorog

• Technical capacity of the audiovisual production studios

The AVPS technical capacity is diverse. The study revealed that among the production studios are those who are technically very advanced and possess good equipment for television, including cranes and rails for filming. In terms of format it happened that all cameras of AVPS in the sample are completely digital and mostly nonlinear editing desks.

Among the studios, we also found those who do not have their own television equipment. These 6 studios rent required for the work equipment from technically advanced production studios. The AVPS technical capacity is shown in Table 11.

Table 11. AVPS Technical Capacity

List of equipment	Quantity
Videocameras	51 (time of usage from 1.5 to 5 years)
Editing desks	42 (nonlinear, time of usage from 1,5 to 5 years)
Studios for videotaping or shooting video	1
Videocameras in the studios	25
Lighting devices	93 (time of usage from 1 to 10 years)
Crane for videotaping	6
Rails for videotaping	2

All cameras in AVPS are digital and their time of usage ranges from 1 to 5 years. However, only two AVPS have a full HD camera considered one of the best in quality.

Format of cameras in production studios
HDV 1000, HD CAM, HDV, HD, HDV, Full HD
DVC, DV CAM, FX1
DSR, DSR 170, DSR 175,
JVS 20i HO7, DVCAM
CANON MARC2, CANON D60, Mark II, CANON 5D

The research found that almost one third or 29% of respondents to address the failure of equipment generally contact professional repair masters, while only a small part of the respondents contact individual non-professional and/or self-made repair master or address the failure on their own. The majority of respondents are satisfied with the quality of repair services.

• **Creative capacity of audiovisual production studios**

Creative capacity of AVPS consists of a diverse number of employees as it is shown in Table 12.

Table 12. Creative capacity of production studios

Human resource for creativity	Quantity
AVPS total number of employees	195
Editors	36
Producers	12
Screenwriters	21
Directors	27
Cameramen	50
Film editors	49

The study found that the number of cameramen and editors in AVPS is the highest amongst studio's employees. Two cameramen and film editors work in about 30% of studios. Qualified cameramen with relevant education background work in 22% of studios, while 35% of cameramen were trained in television companies. The remaining 43% cameramen of the production studios took training courses of Internews or various other relevant courses elsewhere. There are those who passed internship in Russia and Germany.

The analysis of survey data revealed that only 9% of editors of studios have special education. The others learned the editor skills hard way through practice in television, as well as through training courses of Internews. Studio executives acknowledge that among them are self-made cameramen and editors.

• **Partnership with broadcasters**

Over 50% of production studios covered by this study cooperate with Tajik TV companies. One can not say the studios prefer one or another type of TV companies. As respondents believe studios collaborate equally with state and independent broadcasters.

The AVPS executives mentioned TV Safina, Shabakai 1, TV Bahoriston, TV Poytakht among the state TV companies, and TV Jahonnoro, TRK Asia, CM1, Mavji Ozod TV, CMT and others among independent TV companies.

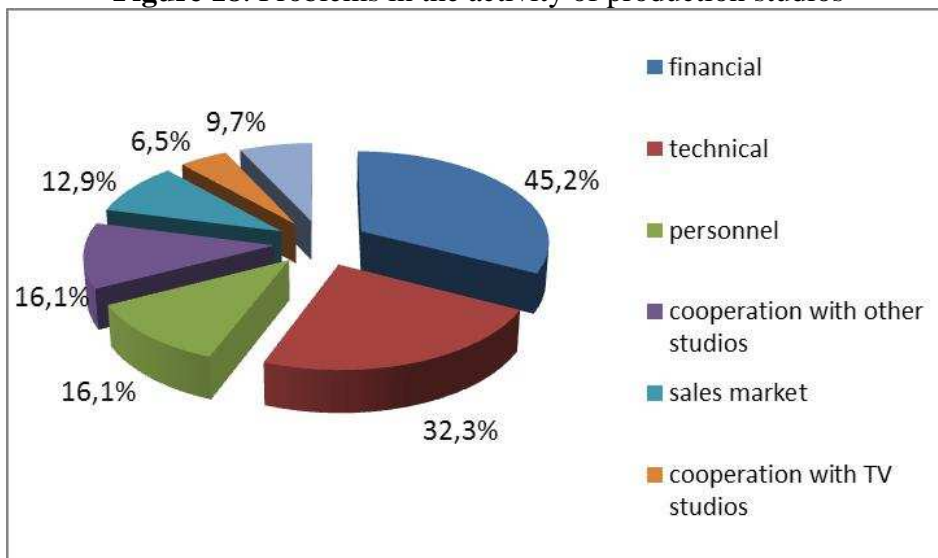
Sadly, this cooperation is very limited due to the lack of mutually beneficial system of partnership between broadcasters and production studios. Moreover, the government support is needed for meeting production studios development issues in Tajikistan. The market of domestic audiovisual production has not still formed.

The study found that television products, but movies, in our country are mainly produced by TV companies, whereas about 80% of television products globally are generated by the audio-visual

production studios. For example, 56 productions studios generate products to form the airtime for ORT, the Russian TV channel. In the modern world TV companies mainly produce news stories and are focused on branding, marketing and commercial activities.

Analysis of the answers to the question "What problems do you face in your work?" lead to a conclusion that financial, technical and human capacity issues are the most acute ones in the production studios.

Figure 18. Problems in the activity of production studios



As illustrated in Figure 18, most of the problems are rooted to financial, 45.2%, and technical, 32.3%, issues followed by human capacity and lack of cooperation with other studios, 16.1% each. Other 12.9% of respondents also mentioned issues like demand in the market and poor cooperation with TV companies.

Shared by executives the training needs for the production studios teams are deeply rooted to these problems or the desire to address them. Research has shown that AVPS need trainings for technical personnel, on marketing, management, producing, production of audiovisual products, television programs.

Table 13. Trainings needs of your studio

Training topic	Need
Trainings for technical personnel	48,3%
Marketing, management and producing skills	32,3%
Trainings for the production	27,9%
Design & Graphics	19,4%
Trainings on television journalism and the creation of TV programs	6,5%
Other topics	3,2%

As noted above, it is production studio that develops and enriches the content of broadcasters worldwide. Among surveyed studios only 22% are engaged in television products development. Unfortunately, it is often a few orders from broadcasters to create documentaries, famous performers clips, commercial ads, etc.

Studio executives complain that due to the lack of the state program for development of the domestic audiovisual products market there is no state order for production.

Majority of the AVSP managers are well aware and understand modern trends of TV content development and the role of the production studios in this in particular and the development of the television industry in general. They hope to the state support and mutually beneficial partnership with broadcasters of the country, especially now during the digital broadcasting switchover.

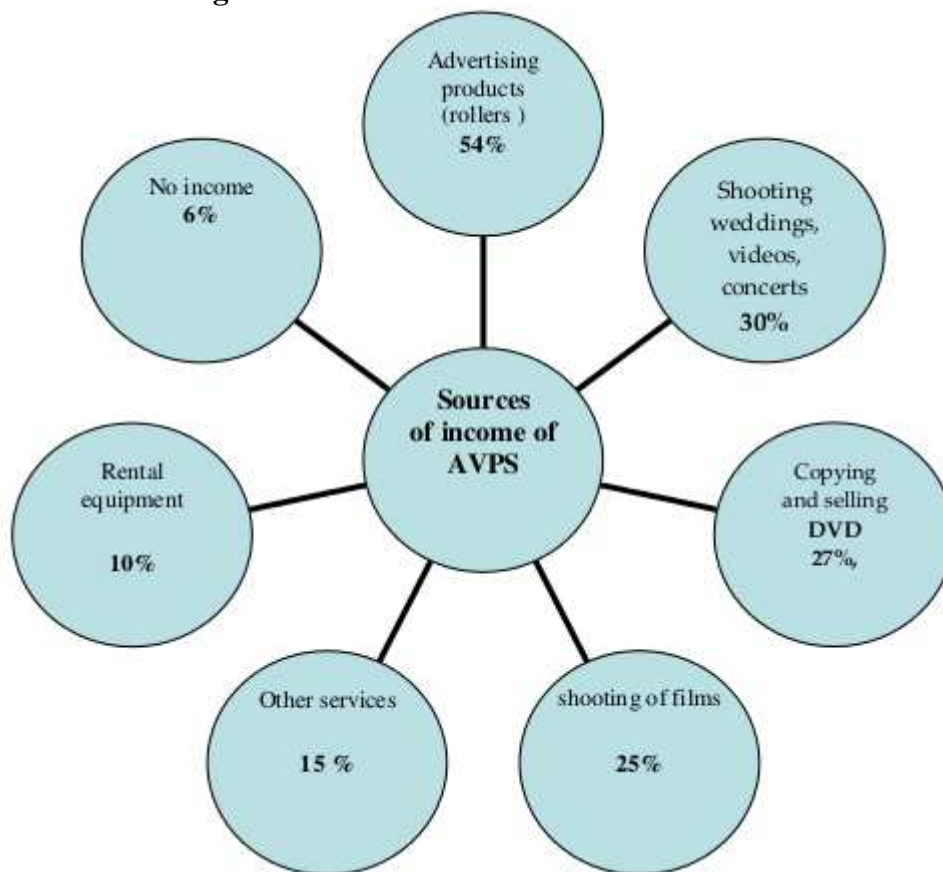
Meanwhile, the studio executives do their best to somehow survive financially. Their income is from a variety of orders from commercial, international, as well as government organizations.

• **Productions Studios Income**

A tremendous efforts need to be invested for the Tajik AVPS to compete in the market and find sources of income in a situation when the domestic market of audiovisual products is not developed and there is neither state program to support production studios nor any government order.

The sources of income of the production studios, based on respondents answers, are very diverse. Their responses are illustrated in Figure 20.

Figure 19. Production studio sources of income



Production of advertisements is the main source of income for more than 50% of respondents. It is primarily the television advertising of a wide range of goods, medicines, announcements of concerts, movies and so on.

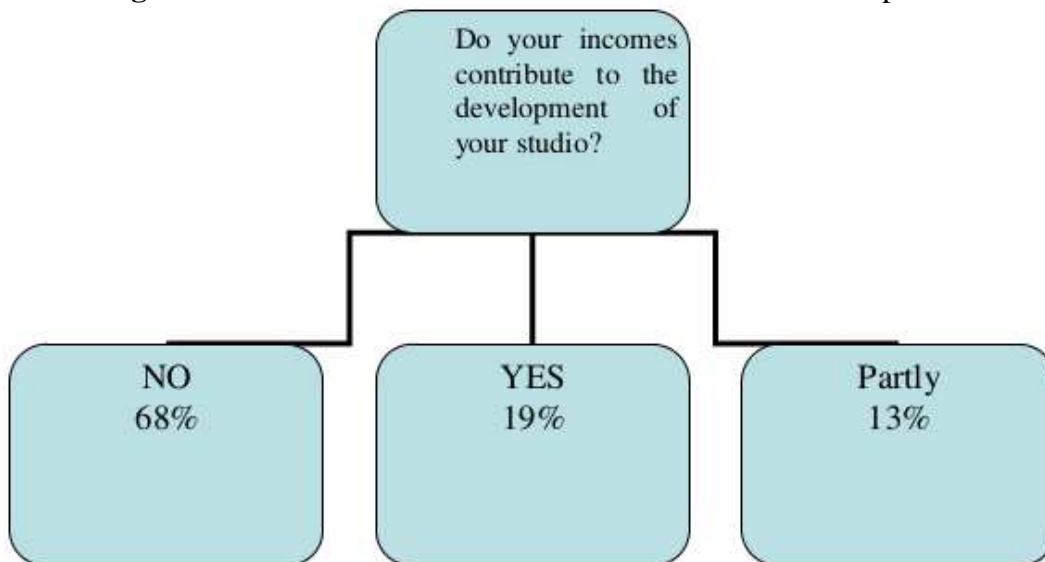
Shooting wedding vidoes, producing video clips and concerts of known performers are main sources of income for 30% of studios. These sources are very common among the production studios across the country. In particular shooting wedding videos some respondents believe, is merely major and only source of income. It is justified by the fact that videotaping wedding generates relatively good and regular income while there might be few creative orders only. Studio executives acknowledged that wedding-oriented services quality have significantly improved. Quite often in weddings, especially of the wealthy and VIP individuals, one can see 3-4 cameras, rails and crane for filming, and this is, as respondents pointed out, is luxury.

The third largest source of income is the copying and selling DVD. About 30% of respondents find this as a stable source of income. Those AVPS engaged in this activity, have a license to copy and sale of audiovisual products. Next source of income for 25% of respondents is also shooting films and documentaries, demand primarily driven by sponsored orders. Other services like editing,

design development, website development, video and castings are income source for 15% of respondents. Rent of equipment as a source of income was listed by 10% of respondents. Only 6% of respondents acknowledged that they have no income.

Despite the significant diversity of income sources of companies, the study revealed that only 19% of studios are privileged to their income for their own development, while 68% of studios do not have this opportunity. The other 13% of respondents can "partly" invest their income for development (see Figure 20).

Figure 20. Income as an investment source for studio development



The study succeeded in identifying the number of produced audiovisual productions of the sample studios for year 2012. It should be noted that the scope of work of successful in the market, especially in its advertising section, studios differs from those studios that get orders from time to time.

Table 14. AVPS Market Products in 2013

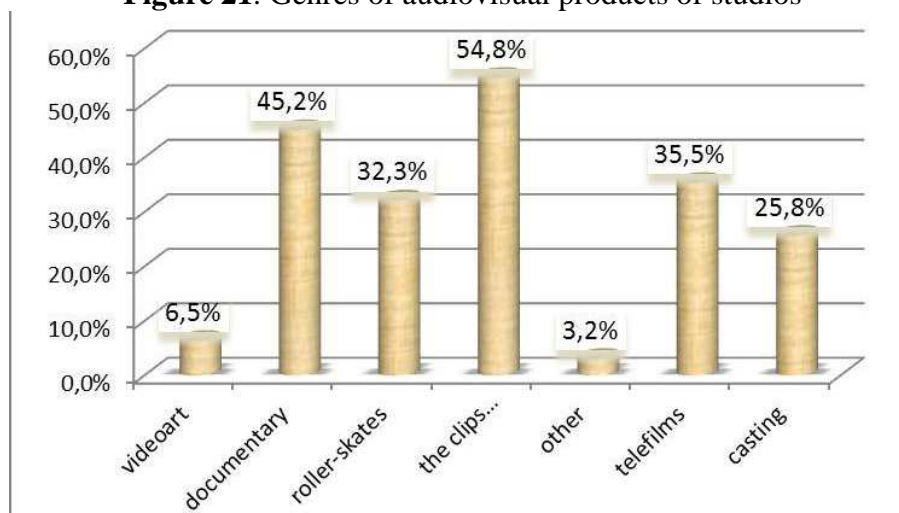
Quantity of the product	% studio
from 1 to 2 products	22,6
from 3 to 5 products	32,3
from 6 to 9 products	29
10 and more	13
No response	3,2

From the analysis of revealed data presented in Table 14 can be seen that only 13% of AVPS produce over 10 of audiovisual products in a year. More than 20% of them produce only 1-2 product, excluding wedding videos shooting, during this period.

It was revealed that a large percentage of studios actively earn on television advertising, which is not surprising. Television advertising is one of the main sources of income for domestic TV channels. More details on this point is introduced the section on the television advertising.

It is interesting to analyze answers relevant to genres of products generated by studios. It shows the diversity of products ranging from video art and documentaries to video clips and castings for the past 2 years. More often studios shot clips, 54.8%, followed by documentaries and feature films, 45.2%, Next is coming TV movies, 35.5%, then advertising and promotional clips with 32.3% portion, followed by castings with 25.8% and videoart with 6.5% portions ended by others category that makes 3.2% of products.

Figure 21. Genres of audiovisual products of studios



The study found that 37% of AVPS in parallel to the license for the production of audiovisual products, issued by the Committee on Television and Radio Broadcasting, have a license for copying and sale of audiovisual products from the State Unitary Enterprise "Tojikkino". This fact justifies the steps of including copying and selling disks of audiovisual products in the sources of income for studios.

In this context, the study revealed that "Tojikkino" in general issues the following four types of licenses:

- 1. Dubbing;*
- 2. Mass demonstration;*
- 3. Copying;*
- 4. Selling.*

"Tojikkino", as it was also revealed, supervises the work of shops that sell audiovisual products through issuing licenses for their activities. Though "Tojikkino" does not check import of disks through customs in Tajikistan, it inspects shops against selling banned films. The registry of these films is compiled by the "Tojikkino".

According to the "Tojikkino" managers sale of the audio-visual products is arranged within the legislation. However, the abundance of unlicensed products in the market is an indicator that questions a correctness of this activity mechanism.

We have tried to determine the number of such shops across the country and to find out how many of the AVPS are among them. In Sughd province, as the head of local office of the State Unitary Enterprise "Tojikkino" informed us, 250 points of sales of CDs are registered and have relevant registration certificates. While twenty out of these 250 have licenses for copying audio-visual products, only two are production studios. At least this is what the study revealed. Perhaps, there are more AVPS among these 250. The others work based on a license to sell audiovisual products.

There are 79 registered points of sales of CDs in Khatlon province, as informed by the head of the local office of State Unitary Enterprise "Tojikkino". The production studios among them are two. Both are located in Shahirtuz and are currently engaged in selling CDs only. The information was confirmed by the officers of the Shahrituz Hukumat (local government) in a phone interview.

Registered points of sales of disks in MBAP are 7. They are located across the province with 5 Khorugh, 1 in Rushon, and 1 Qalai Khumb. One among these copy-and-sell-licensees is also a production studio, the only one in MBAP as found by this study.

Unfortunately, the exact number of disks selling shops in Dushanbe and RSD is not available, since "Tojikkino" never responded to our official inquiry. Certainly there are many of these

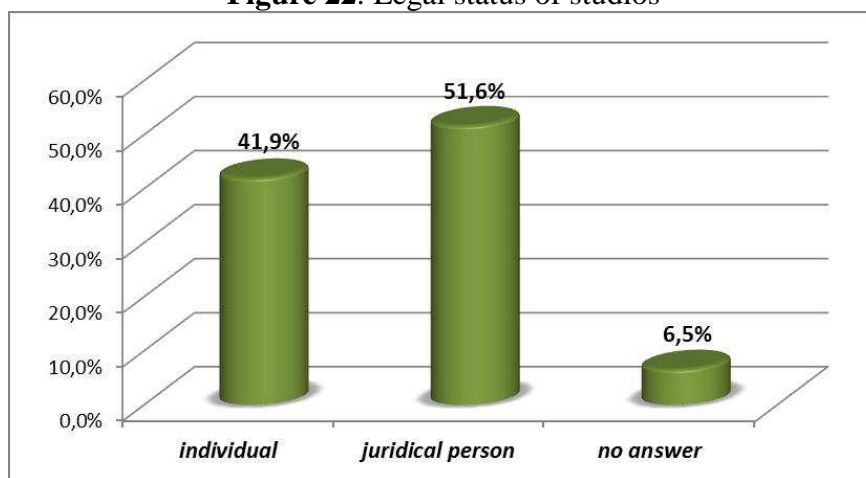
shops in these locations, given that one can easily buy audio or video disks in every corner in the capital city, especially in market places. We also assume that there are AVPS among these many sellers of audiovisual products. However, the data revealed through the survey indicate that 11 out of 31 AVPS have also the license for copy and sell of audiovisual products. Though only 8 or 25% of them currently have shops.

The study also observed cooperation between AVPS and the copy-and-sell-licensees of "Tojikkino". In this context, some AVPS deliver their products like video clips, music concerts, and movies both own production and copied ones, to these shops.

• **Audiovisual Production Legal Regulation Issues**

Identification of the legal status of producers of audiovisual products was top priority for the study. According to the Law "On registration of legal entities and individual entrepreneurs" a manufacturer of audiovisual products is eligible to register in tax authorities as a legal entity or as a private entrepreneur. The revealed data are presented in Figure 22.

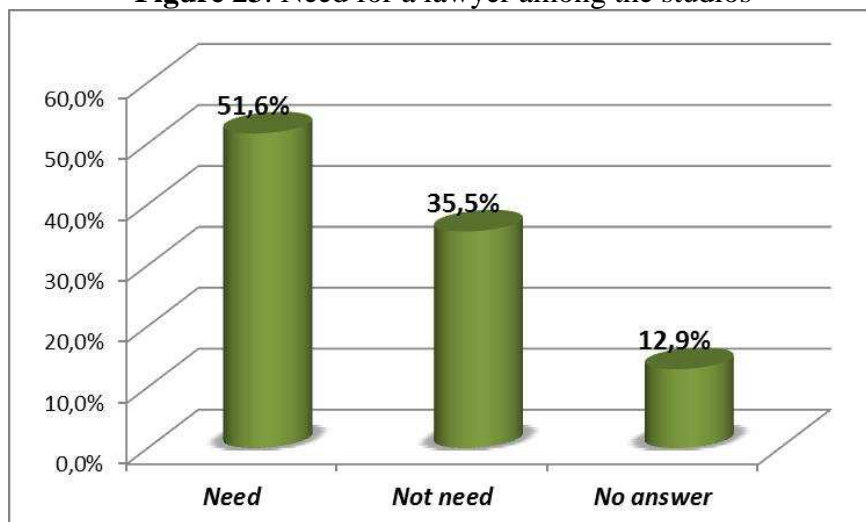
Figure 22. Legal status of studios



Through analysis of the respondents answers to the question "Does your studio need a lawyer?" the following result have been confirmed (see Figure 23):

- lawyer as a staff member is needed in 51.6% of the studios. It has to pointed out that private entities cannot afford a full time lawyer;
- 35.5% of respondents do not need a lawyer;
- 12.9% did not answer to this question.

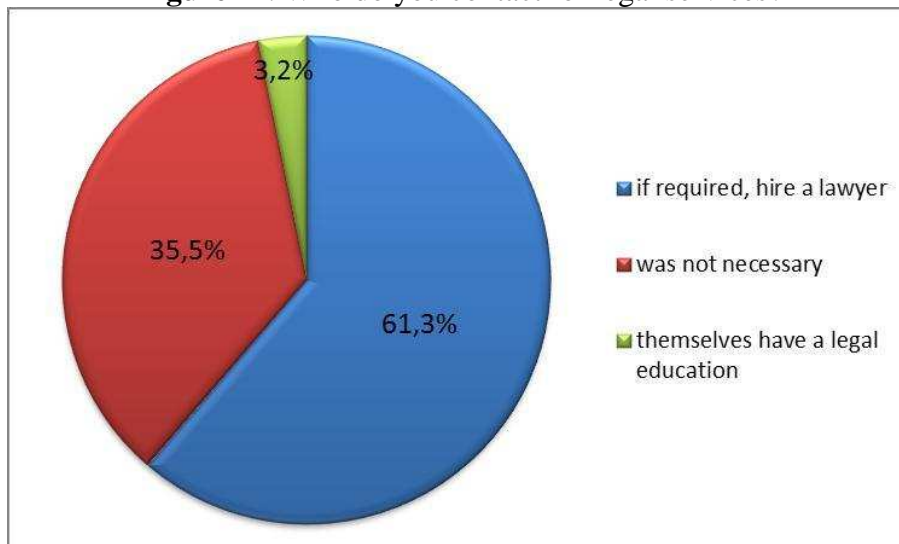
Figure 23. Need for a lawyer among the studios



How the studios deal with the legal issues was the point of this question "Who do you contact for legal services?". As it is illustrated in Figure 24, the analyzed responses revealed the following:

- 61.3% of respondents will hire a lawyer based on contract;
- 3.2% have a degree in law;
- 35.5% haven't yet faced the need to seek legal services.

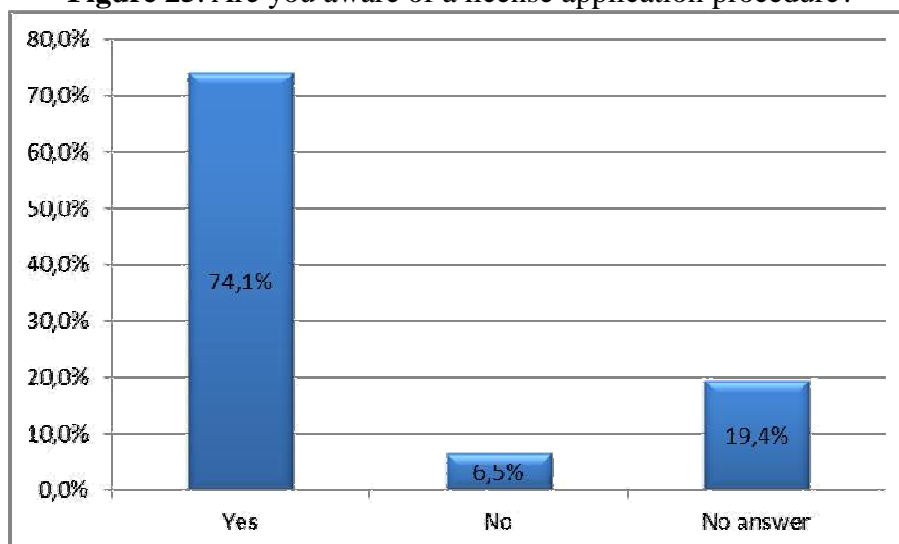
Figure 24. Who do you contact for legal services?



Registered as a private entity is enough for an entrepreneur to seek legal service on the basis of contract or from an independent lawyer. This is the reason for such a high number in favor to this option among respondents.

The procedure to apply for license is known to 74.1% of respondents that was revealed through the analysis of responses to the question «Are you aware of the license application procedure?». While 19.4% did not answer the question, only 6.5% of respondents does not know this procedure, though they have valid licenses for running their activity in question (see Figure 25).

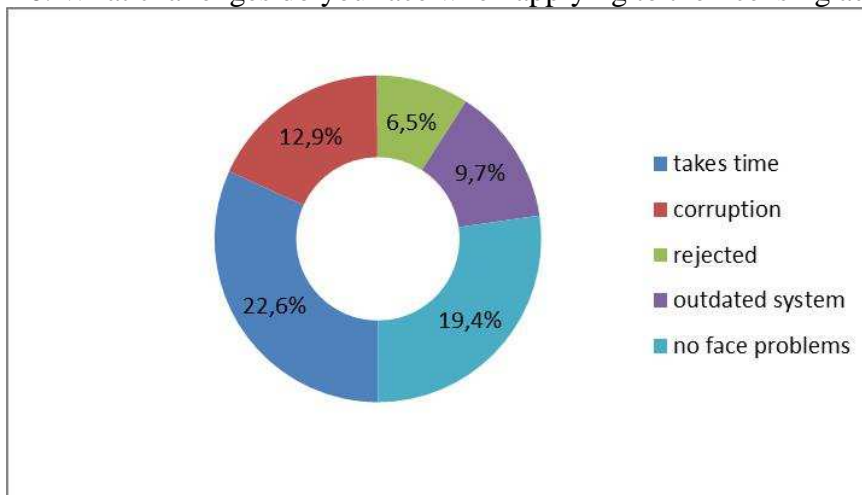
Figure 25. Are you aware of a license application procedure?



Based on this result (see Figure 25), a logical question can be how it is possible to have a license with no awareness on the legal procedure of applying for this license, i.e. a special permit for the very activity run by the entity? It is the rules of the Law "On licensing certain types of activities" and the Regulation "On licensing certain types of activities" that authorize agencies to require a certain list of necessary documents from an applicant for license.

Moreover, this procedure, shared by most studios executives, is very boring and cumbersome and therefore it is impossible to forget the list of required documents and the application procedure. A conclusion can be made that most likely persons who have no idea about the application procedure applied for license through so-called middle men. The challenges faced by respondents when contacting the licensing authority is illustrated in Figure 26.

Figure 26. What challenges do you face when applying to the licensing authority?



As it is illustrated in Figure 26, respondents waste lots of time and face corruption while seeking the services of the licensing agency. All the above mentioned challenges that respondents face violate that norm of the Constitution and regulating law. The authorized agency, based on the legislation, shall consider submitted applications and respond to them in written forms. It is also obligation of the agency to supply information board with complete details for licensees and/or new applicants.

If the application is rejected the authorized agency shall produce a written justification with pointing out causes of rejection and the terms of addressing these causes. The authorized agency has no right to charge the applicant any other fees but the state ones identified by the norms of the regulating law.

Respondents also indicated one more reasons of rejection. It is standardization of equipment for the second time that in its own turn is challenging in receiving license. (*Audio and video equipment purchased by broadcasters are products of globally recognized brands and their quality meets international standards. Despite this, the authorized agency requires an additional certificate on compliance to technologys standards from the "Tojikstandard". Though "Tojikstandard" does not have the appropriate technology to conduct assessments work in standards of these devices.*)

An obsolete system of licensing is one more challenge that respondents also added to the list of difficulties that they face in licensing procedure.

The study found that 80.6% of AVPS applied for production license, 22.6% - for copying license, 22.6% for selling audiovisual products license, and 9.7% for displaying in public license. Comparing these data in Table 15 shows that the license for producing audiovisual products is the most common type of license that applicants go for.

Table 15. Types of licenses that applicants applied for

Type of License	% of applications
Production of audiovisual products	80,6%
Copying audiovisual products	22,6%
Selling audiovisual products	22,6%
Displaying in public audiovisual products	9,7%

Applications of four out of 31 studios, respondents of the study, for the production of audiovisual products were rejected. And it was done verbally with no reasoning. None of these applicants file any complaint to the court. Paradoxically, re-applied 75% of them received the same licenses.

It happens again that the authorized body violates the norms of Law on licensing and the Regulation on licensing specific types of activities by responding verbally to a written application. In chapter 8 of the Regulation, specifically in its points 3 and 5, is identified as following:

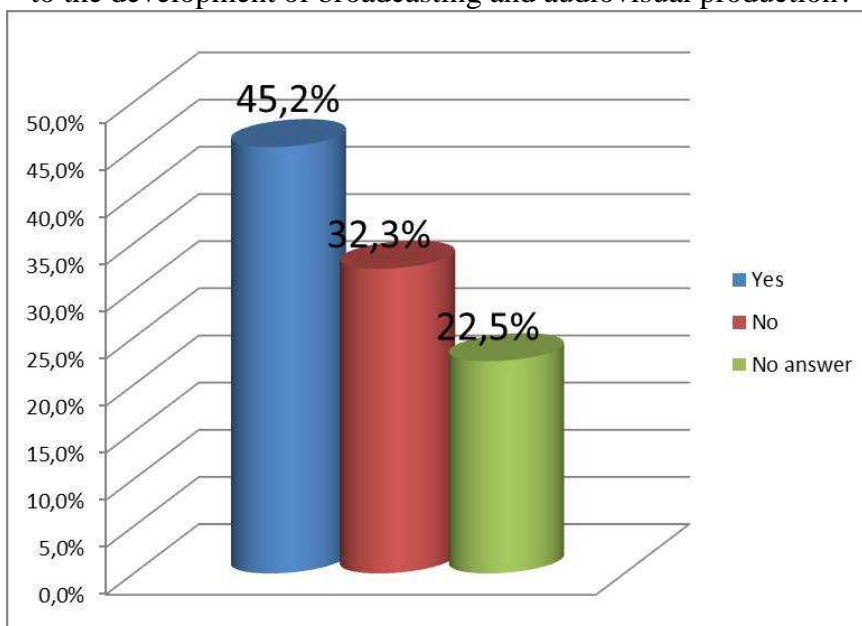
"The licensing authority is obliged to make a decision within 30 days to grant or reject to grant a license and inform the applicant about decision made in written form"; and;

"Note on rejection to grant the license and the reasons of such a decision is sent (delivered) to the license applicant in a written for m."

Thus, respondents had no opportunity to exercise their constitutional rights by seeking justice through the court due to the lack of a written rejection, an evidence of violation of their rights. However, even if this evidence is in place the acting mechanism is very protective of the agency. The licensees would think twice before taking actions to file complaint to this issue. Because the license is issued for a certain period of time, up to 5 years, and licensee's activity is under the control of the authorized agency. Licensees do try not to irritate the agency, knowing that sooner or later the time of re-application will make them contact the agency. Therefore, none of the respondents have ever tried to file a complaint to the court on this issue.

The analyzed answers to the question "Does the Licensing Law contribute to the development of broadcasting and audiovisual production?" are presented in Figure 27.

Figure 27. Does the" Licensing Law contribute to the development of broadcasting and audiovisual production?



Slightly less than half of respondents (45.2%) believe that the law promotes the industry development, while more than 30% sure that it is not. The remaining 22.5% did not give their answers. However, 57.1% of respondents left comments for the need to simplify the existing licensing procedure or even better to abolish this norm at all.

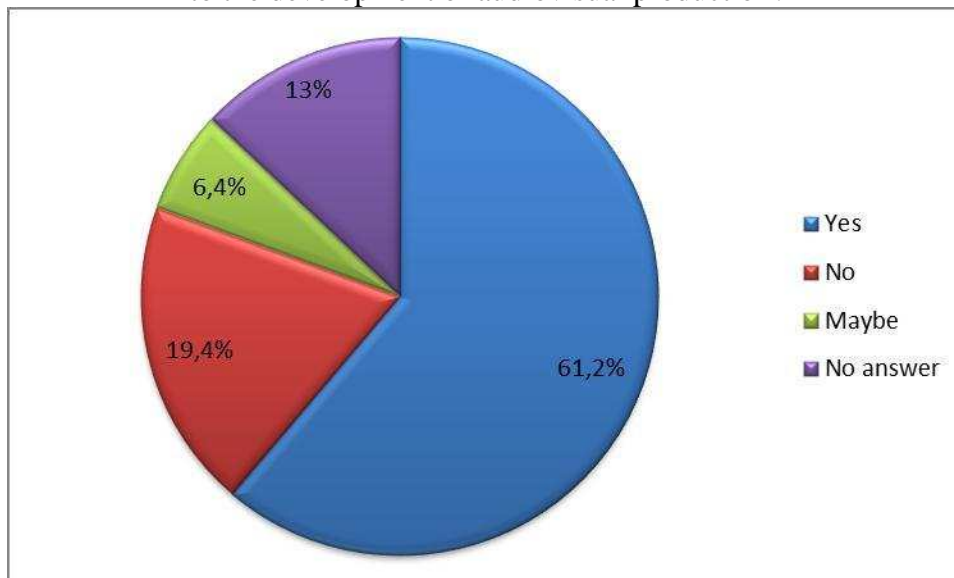
Table 16 shares the respondents' assessment of transparency degree of the licensing application review procedure used by the Licensing Commission. Only fifth of respondents finds this procedure transparent.

Table 16. How transparent do you find the licensing procedure?

Nº	Level of transparency	Respondents (%)
1	Not transparent	32,3
2	Partly transparent	29,0
3	Transparent	19,4
4	No answer	19,3

Despite the results of two previous questions more than half of respondents, 61.2%, are positive that abolishment of the licensing norm will contribute to the development of audiovisual production. This and other answers to the question "Will the licensing abolishment contribute to the development of audiovisual production?" are illustrated in Figure 28.

Figure 28. Will the licensing abolishment contribute to the development of audiovisual production?



The rapid development of electronic media around the world proves that the audiovisual industry should not be exposed to licensing. The licensing abolishment in this industry will give an opportunity to develop the national audiovisual content (TV production, film, television series, documentaries, entertainment, etc.). First of all, it is necessary for national ether (information society) security, development of the domestic market of the content products, and improved access of citizens of Tajikistan to high quality content.

The experience of CIS countries is a good evidence of impact of the licensing abolishment or simplification in providing a true opportunity for development of the national audiovisual products. In countries like Kyrgyzstan , Belarus, Ukraine , Moldova, Kazakhstan and other CIS members licensing was abolished many years ago, while others run its simplified procedure. In this context, only two countries – Tajikistan and Uzbekistan still have licensing regime for audiovisual production. However, Uzbekistan gradually simplifies the licensing regime of the industry that contributes in its development. This neighboring country have now about 600 studios of audiovisual production. The mechanism of licensing itself in Uzbekistan is simplified and time of procedures is minimized so that any application can register with and get this license from the authorized agency within 3 working days through a single window.

Table 17. AVPS of Neighbouring Uzbekistan

#	Province and Coverage	Number of AVPS
1.	Andijan Province	24
2.	Bukhara Province	14
3.	Navayi Province	19
4.	Samarkand Province	39
5.	Namangan Province	22
6.	Karakalpakistan Autonomous Republic	17
7.	Kashkadarya Province	12
8.	Surkhandarya Province	13
9.	Jizzakh Province	8

#	Province and Coverage	Number of AVPS
10.	Sirdarya Province	7
11.	Tahskent Province	35
12.	City of Tashkent	285
13.	Ferghana Province	14
14.	Khorazm Province	31
	Overall	540

Based on the study results a conclusion can be made that the market of domestic audiovisual products in Tajikistan is undeveloped. For formation of this market it is necessary to develop this area qualitatively and quantitatively in order to achieve modern standards for audiovisual products quality. Products available today, as it is known from media publications, satisfy neither the state nor the society. Television mostly retransmit foreign programs and films. Satellite TV channels compared to poor domestic TV programs are more popular. The situation happens to be that public in most provincial towns, districts and village's prefer to watch only satellite channels. In some place it is even worse where people prefer to watch foreign films only on DVD-player and are not interested in TV.

All of these are proofs for one thing – poor quality of national products with very small portion of national cultural works (movies, plays, etc.). Unfortunately, there is no order from the state authorities for the production of national audiovisual products.

For example, in Kazakhstan in the beginning of 2012, due to migration to digital broadcasting, the Law on «On Broadcasting»¹ was ratified. The article 28 of this law aims to protect the interests of the national TV and radio broadcasting and promotes certain amount of domestic content in for airtime of the Kazakh television and radio channels. Thus, the volume of domestic content (TV, radio, music) must be:

- Since 1 January 2014 - not less than 30% of the weekly volume of broadcasting;
- Since 1 January 2016 - not less than 40%;
- Since 1 January 2018 - not less than 50%.

Thus, regulating of the TV and radio channels content and legislative restriction on the foreign (non- domestic) content use in the air of television and radio channels is emerging as a form of legal regulation in the TV and radio broadcasting industry. However, a legislative restriction on the use of foreign content will not be effective if the state action is not taken to encourage domestic production of television content and to create a competitive Kazakhstan market of TV content. On its own turn the legislative restriction of the foreign content portion is destructive for Kazakh channels, because it may cause the these channels losing part of their audience and significant reduction of their programs viewers, and, as a consequence, advertising attractiveness of these channels.

Nevertheless, the Ministry of Culture and Information of the Republic of Kazakhstan justifies such a rigid legislative regulation as a necessary action to protect the national information space. Moreover, the presidential decree from February 8 2013 that approved the state program "Information Kazakhstan – 2020". One of the program priorities is encouraging domestic information content development. Further, this program is presented in more details.

The program aims to provide competitiveness the national information space. Its targeted indicators are:

- 1) television production volume of domestic products - 53% of airtime in 2017, and 60% - in the year of 2020;
- 2) number of domestic feature' films distribution - 8% in 2017, 10% - in 2020;
- 3) ratio of internal to external Internet traffic volume – 0.7/1 in 2017 year, 1/1 in 2020;
- 4) growth of Internet resources in domain zones of . kz and .kaz by 35% in 2017, and 50% in 2020;
- 5) volume of television products development through outsourcing it to the private TV channels with co-financing as a condition - not less than 10 projects in 2017, and at least 15 - in 2020;

- 6) increase in average attendance of Kazakhstan Internet resources by 40% in 2017, and 50% - in 2020;
- 7) Law of the Republic of Kazakhstan «On TV and Radio Broadcasting» was ratified on January 18 2012, #545
- 8) the volume Kazakh blogosphere - 100 Internet users per 1 personal online blog in 2017, and per 2 personal online blog by 2020;
- 9) producing not less than 10 domestic television series in 2017, and 20 - 2020 year;
- 10) migration of the state TV channels to outsourcing of production of 50% of content in 2017, and 60% - in 2020.

Challenges of the national audiovisual products industry of Tajikistan, primarily the issues of licensing among them, significantly hinder development in audiovisual production studios in the country. The practice of other countries shows that an active dialogue with the authorities and constructive partnership for the public interest serve best options to address these challenges.

• **Summary of the study on production studios**

- Technical capacity of AVPS is well developed. The main technical resource of studios consists of cameras, editing desks and lighting devices;
- All cameras are high digital format quality;
- The revealed that in case of failure of devices or equipment, one-third of respondents, 29%, are generally contact individual repairman for repair services;
- Number of cameramen and editors are the highest among the AVPS employees;
- AVPS are actively seek partnership with the state and independent TV companies;
- Problems that AVPS mostly face can be categorized as financial – 45.2%, and technical – 32.3%;
- An urgent issue is lack of the state support of domestic producers;
- AVPS need trainings for cameramen and editors, as well as on marketing, management and producing;
- TV companies are only developers of the television products, except movies;
- The AVPS main sources of income are production of television advertising - 54%, shooting weddings videos, video clips and concerts – 30%, and copying/selling of DVDs with audiovisual products – 27%;
- Incomes of AVPS do not contribute to their development;
- AVPS do not have a full-time lawyer position. If legal services are needed they hire a lawyer under a service contract;
- Study revealed that the legal status of audiovisual production studios is different. While 41.9% of studios are registered as private entities, the other 51.6% are registered as legal entities.
- Respondents as license applicants to the licensing authority often face with corruption and very long business processes;
- More than 30% of respondents believe that the Licensing Commission businesses processes are not transparent;
- More than 60% of AVPS leaders believe that the licensing abolishment for the production of audio-visual products will promote the national products development;
- AVPS have licenses for audiovisual production as well as 32% of them have licenses for dubbing, copying, selling and mass demonstration;
- Tajikistan and Uzbekistan are the only two countries of Central Asia that have licensing regime for audiovisual production.

5. TV advertising market

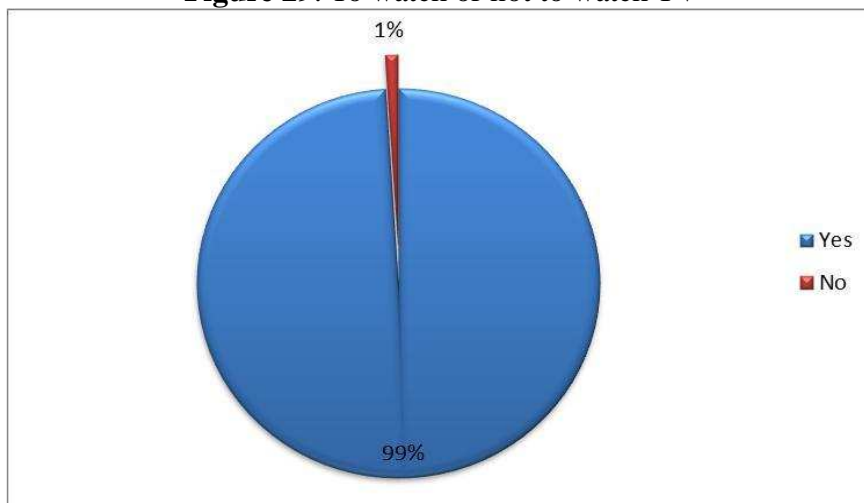
Advertising - information distributed by any method, in any form and through different media for attracting a specific group attention to the advertised subject, formation or maintenance of interest to it and its promotion in the market.

TV advertising is one of the most effective methods of delivering information to consumers. This form of advertising influences to several channels of human perception - visual, auditory, as well as the subconscious.

To explore the TV advertising market, the research company KTM was involved to the study. The company's research from February 2013 on media preferences revealed the following data:

- **99% of inhabitants of Tajikistan watch TV regularly (see Figure 29);**
- **90% of them watch TV every day.**

Figure 29. To watch or not to watch TV

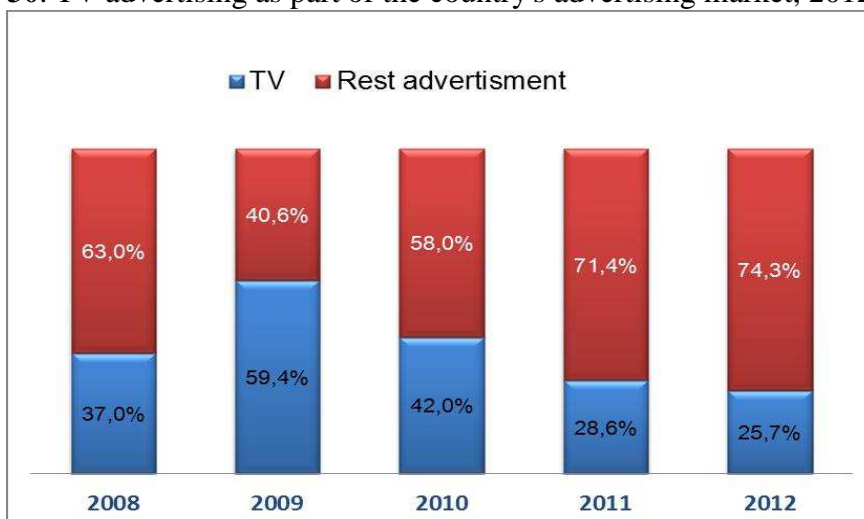


TV advertising is rapidly developing over the past decade in Tajikistan. However, experts and specialists of the Tajik advertising market point out that, despite this particular growth, the advertising industry of the country in general remains undeveloped compared with the CIS and Central Asian countries. For instance, the volume of the advertising market in countries for 2011 was:

- **in Russia - \$ 11 billion 273 million**
- **in Kazakhstan - \$ 1 billion 700 million**
- **in Uzbekistan - \$ 55.8 million**
- **in Kyrgyzstan - \$ 18.7 million**
- **in Tajikistan total - \$ 12.25 million**

TV advertising market in Tajikistan in 2012 was about 25.7% of the country's total advertising market (see Figure 30).

Figure 30. TV advertising as part of the country's advertising market, 2012 (KTM)



It should be noted that the TV advertising portion is reducing each year compared with 2009. Experts link this to an unofficial ban on the mobile operators advertising in the state TV channels. Though TV advertising has several types, the most common in the Tajik TV channels is television commercials.

To explore the status of individual TV companies in this market, all respondents were asked series of questions relevant to their business activities in the market like broadcast of advertising products, their production, the cost of air and the product itself, as well as income from advertising. Based on analysis of responses to the question "Do you have an advertising department?" was revealed that 78% of the state and 64% of independent television companies have advertising/commercial departments, which all together have over 60 employees and advertising agents.

The airtime for advertisements in a day varies from 10 minutes to 2.5 hours in the state channels (provincial and national) and from 2 to 25 minutes in the independent channels. One minute of air for advertising costs from 30 to 300 Somoni, subject to the time slot of broadcasting, in the state channels. In the Prime Time it may cost from 40 to 300 TJS and in off-prime-time from 20 to 100 Somoni. Thus, the maximum price is 300 TJS and the minimum is 20 TJS.

The cost of the same service in independent TB channels ranges from 1 to 100 Somoni for a minute of air. In the Prime Time it may cost from 3 to 100 TJS, while in off-prime-time it may cost from 1 to 50 Somoni. Thus, the maximum price is 100 and the minimum is 1 TJS.

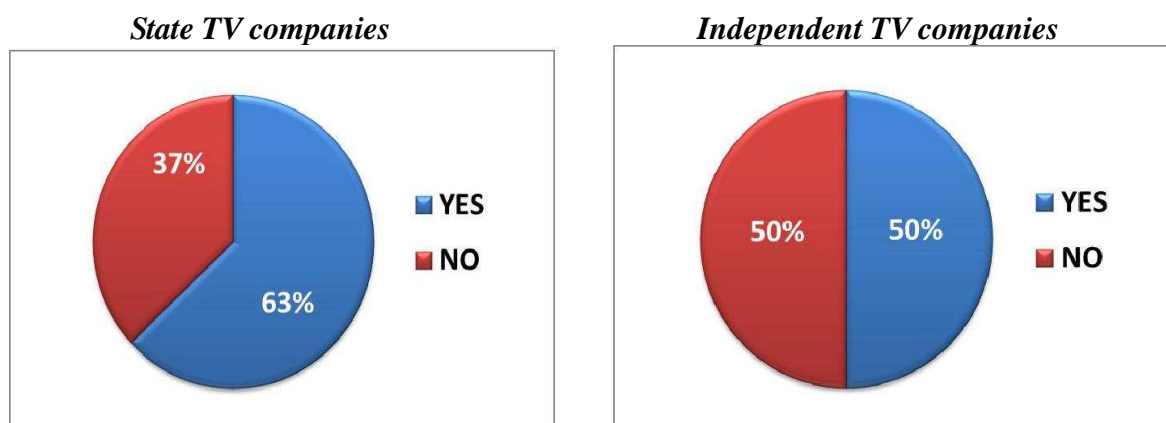
In general, the budget generated from advertising ranges from 500,000 to 3 million Somoni per year. The largest portion of it belongs to national TV channels, as they have a great coverage of audience. The independent channels in provinces get the smallest portion of this budget.

As mentioned earlier, there is a tendency of advertising income growth for the last two years in independent TV channels of the country. The reason behind it is limitation for advertising mobile companies in the state TV channels.

Along with incomes from the advertisement services, TV companies have a range of programs that are sponsored by national and international organizations, as well as representatives of commercial structures. As a rule such programs advertise logo of sponsor of product or activity at some point. In Shabakai 1 as the main logo can be seen the one of the popular resort «Bahoriston» along with video materials from this health resort. Frequently sponsored programs in the TV channels varies from news programs, weather and sports programs to documentaries and talk show on social issues.

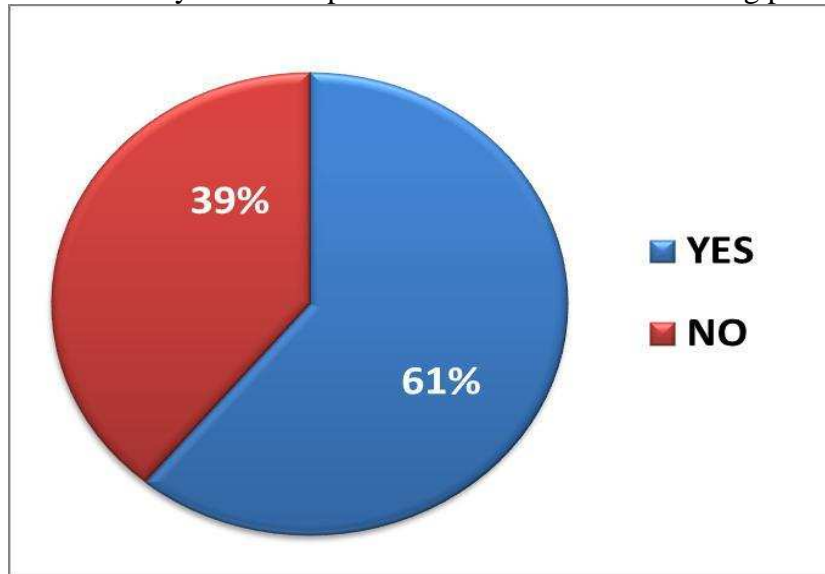
As the study found 63% of the state and 50% of independent television channels have sponsored programs. This is the result of answers to the question "Does your company have sponsored program?" illustrated in Figure 31.

Figure 31. Does your company have sponsored programs?



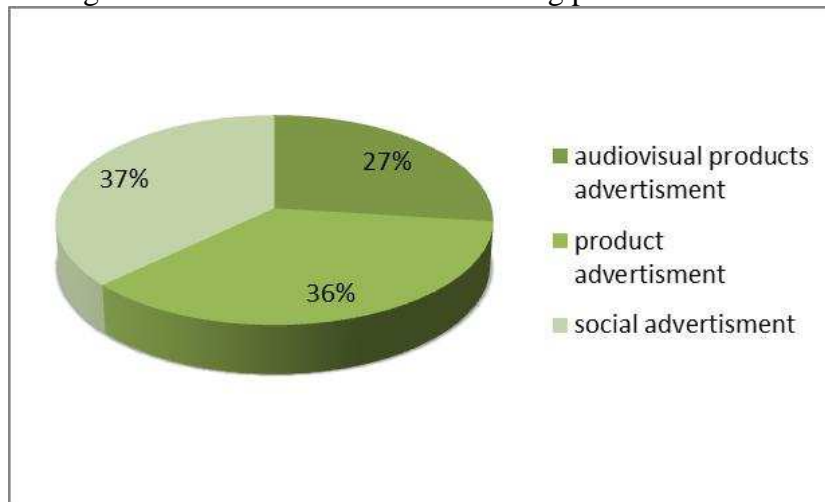
The audiovisual production studios were also included in the research on television advertising. Answers to the question: "Does your studio produce the television advertising products?" can be seen in Figure 32. Thus 61% of studios have and 39% do not have this type of activity.

Figure 32. Does your studio produce the television advertising products?



The range of topics for advertising products generated by studios is illustrated in Figure 33.

Figure 33. Range of themes of television advertising products that studios generate.



The range of themes of advertising products generated by AVPS (see Figure 33) consists of concerts announcement, new films and programs, food and social advertising.

Though social advertising in Tajikistan is not as developed as in other countries, its penetration in TV is growing with the support of national and international organizations. This kind of advertising is usually devoted to topics like fight against AIDS, drug addiction, tuberculosis, violence in family and raising labor migration issues and other social problems.

The AVPS executives were also asked about cost of producing a television commercial. As a result of their answers the minimum cost for a TV commercial was identified from 50 to 250 Somoni, depending on its size and complexity of the work required. Its maximum cost can range from 400 to 8000 TJS. AVPS, actively engaged in the production of commercials, usually own good technical and creative capacities and have their own clientele among business corporations, government agencies and international organizations. Work of such studios for its quality and professionalism costs significantly high. Studios with low technical and creative capacities develop medium quality products and charge minimum price.

The income from development of advertising products was the focus of the next question. It was optional for respondents to answer this question. Conclusions shared next were done based on received responses.

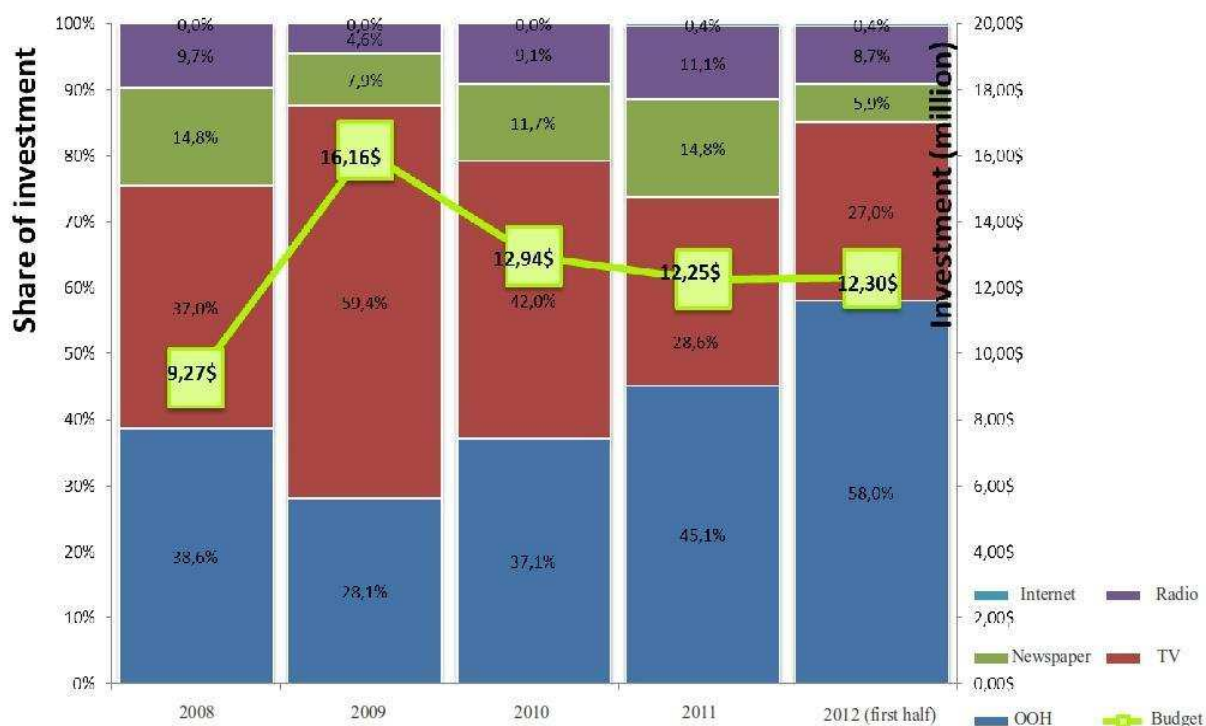
There are production studio among AVPS that earn from 2,000 to 15,000 TJS per year from production of advertising materials. At the same time the highest generated income among studios from advertising ranges from 50 000 to 520 000 TJS a year. These are those 19% studios that from this income can contribute to their development as mentioned above.

The analyzed result of the survey on television advertising among cable TV channels is introduced next. As with previous respondents it was optional to answer to income relevant questions.

- Executives of two out of five cable TV companies available in the country have indicated that they have advertising departments. The others pointed out that though they do not have such a department, their channels have a package of advertisements broadcasted regularly.
- Again, only two executives acknowledged that advertisement covers more than 10% of the their airtime. Considering the non-stop broadcast of cable TVs, this time is 2 hours and 40 minutes a day in average.
- Cost of 1 minute advertising on cable channel varies from 9 (minimum) to 36 (maximum) TJS.
- Income from advertisement on the only respondent was 150,000 TJS in 2011 and 80,000 TJS in the first half of 2012.

Data revealed on investments to mass media market in general and the TV position of it in particular are illustrated in Figure 34.

Figure 34. Dynamic of the distribution investments in the mass media from 2008 to 2012 (first half). Adapted from KTM.



As the KTM Department for Monitoring informs in 2012 it recorded 84087 minutes advertising released. This monitoring covered 5 state and 3 independent TV channels (see Table 18).

The volume of advertising investment, according to data shared by KTM, in 2012 is illustrated in Figure 35. Data were revealed from the channels price lists shared by TV companies.

The KTM research through interviewing 1,000 respondents across the regions of the country in 2013 found the following result on the population TV channels preferences (see Figure 36):

Table 18. Advertising in 2012. Adapted from KTM Research

TV CHANNEL	Minutes
Bahoriston	599
Jahonnamo	6370
SM-1	21666
TV Safina	16571
TV Poytakht	829
TV Sughd	6411
BC Asia	15420
Shabakai 1	16221
Total	84087

Figure 35. TV Advertisement investment in 2012. Adapted from KTM

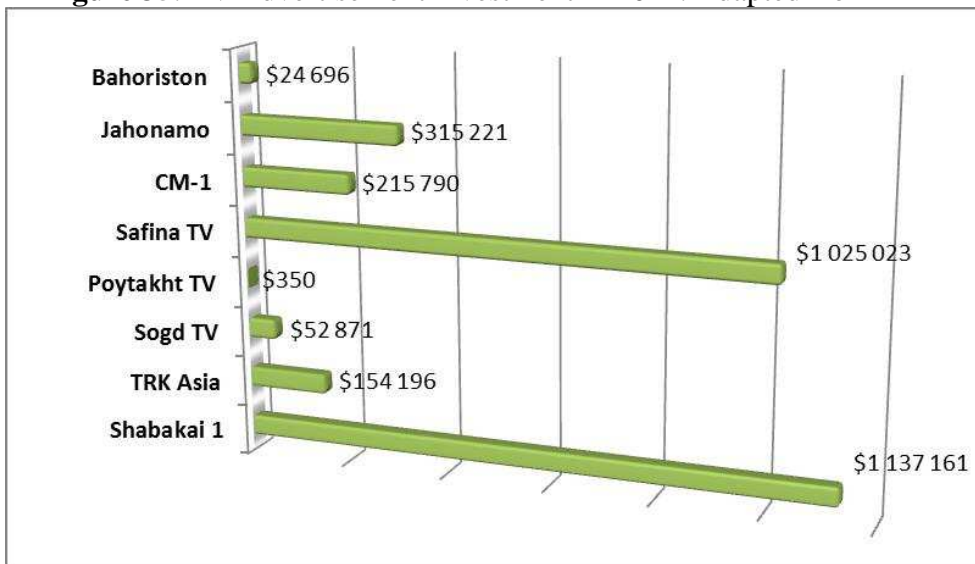
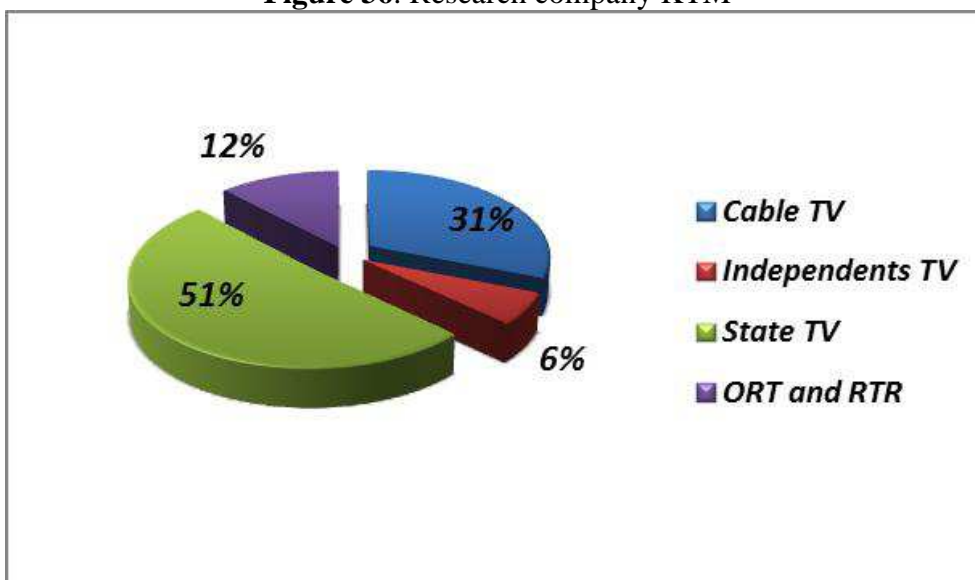


Figure 36. Research company KTM



- **Summary of television advertising**
- Despite the rapid growth of advertising industry in the country it is undeveloped compared with the CIS and Central Asian countries;
- Television advertising market in 2012 was about 25.7% of the whole advertising market in the country;
- Advertising/commercial departments are available in 78% of the state and 64% of independent television companies that all together more than 60 employees and advertising agents work for;
- The largest portion of income from advertising goes to the national TV companies, due to their large coverage. Consequently, the smallest portion of the income is received by few independent channels in provinces;
- There is a tendency of advertising income growth for the last two years in independent TV channels of the country due to limitation for advertising mobile companies in the state TV channels:
- AVPS, 61% of them, also produce television advertising product;
- The airtime for advertisements in a day varies from 10 minutes to 2.5 hours in the state channels (provincial and national) and from 2 to 25 minutes in the independent channels.
- 63% of the state and 50% of independent television channels, along with incomes from the advertisement services, have income from a range of programs that are sponsored by national and international organizations, as well as representatives of commercial structures.
- Executives of two out of five cable TV companies available in the country have indicated that they have advertising departments.
- Again, only two executives acknowledged that advertisement covers more than 10% of the their airtime. Considering the non-stop broadcast of cable TVs, this time is 2 hours and 40 minutes a day in average.

6. The Study General Conclusions

- Technical and creative capacity of the state TV channels several times is higher than the one of the independent TV companies;
- All TV companies use digital cameras and mainly non-linear editing desks;
- Almost 90% of TV stations and 100% AVPS need training to improve their professional capacity;
- Scope of programs in the state TV companies with domination of the political, cultural and entertainment issues differs from the one of the independent companies focused on cultural, entertainment and social issues;
- The TV channels air is mainly formed from their own production and DVD;
- Tajik television companies broadcast programs in 5 languages. The main part of the content is in the Tajik language (65%), followed by Russian (32%) and other languages (3% Arabic, Uzbek);
- The total volume of airtime for the whole country is 239 hours per day. Out of this 129 hours 129 hours are broadcast by state and 110 hours are broadcast independent television channels; Broadcasting duration per day varies from 3.5 to 18 hours in average;
- Cable television channels all together broadcast 120 hours per day; The widest broadcast coverage has the state television channels that includes 95% of inhabited territory of the country;
- Total number of the TV channels employees is 1217 specialists according to official staff of TV companies. In addition to this there are over 250 specialists are involved part time on contact basis;
- In general 1047 specialists work for the state TV and 170 people work for the independent TV;
- In average from 6 to 17 departments are available in TV companies;

- Partnerships of channels among themselves and with the audiovisual production studios are poor;
- Financial, technical and human capacity issues are the most acute ones in activities of TV companies and the production studios;
- Independent from sources of income many executives of TV companies and AVPS pointed out that they the income does not contribute to the company's development;
- KTM research revealed that 49% of population in the country do not watch the Tajik TV channels';
- Audiovisual products market has not formed yet in the country;
- There are 5 cable TV companies providing services in Tajikistan;
- Tajikistan has neither repair workshops for television equipment nor skilled professionals of the industry;
- Only 18.8% of independent TV companies can afford a lawyer in their staff;
- Interestingly enough, 18.8% of independent TV companies, are not aware of the licensing application procedure. The remained respondents are well aware of this procedure
- Only 25% of respondents from independent TV companies find the Licensing Commission procedures of the application review transparent.
- More than 60% of AVPS leaders believe that the licensing abolishment for the production of audio-visual products will promote the national products development;
- Despite the rapid growth of advertising industry in the country it is undeveloped compared with the CIS and Central Asian countries;
- Television advertising market in 2012 was about 25.7% of the whole advertising market in the country;
- 63% of the state and 50% of independent television channels, along with incomes from the advertisement services, have income from a range of programs that are sponsored by national and international organizations, as well as representatives of commercial structures.
- Advertising/commercial departments are available in 78% of the state and 64% of independent television companies that all together more than 60 employees and advertising agents work for;
- The largest portion of income from advertising goes to the national TV companies, due to their large coverage. Consequently, the smallest portion of the income is received by few independent channels in provinces;
- AVPS, 61% of them, also produce television advertising product;
- The airtime for advertisements in a day varies from 10 minutes to 2.5 hours in the state channels (provincial and national) and from 2 to 25 minutes in the independent channels.

7. Recommendations

The following recommendations of the study were developed based on the proposals of respondents. Thus, they are:

- Develop a national strategy for the development of the television industry in the country;
- Raise professional capacity of the industry workers through the short-term and long-term training courses with involvement of local and foreign experts;
- Encourage development of partnership among television companies and production studios;
- Abolish the licensing norm for the audiovisual production to develop national products market;
- Develop the state program of the national audiovisual product growth and domestic producers support;
- Simplify the mechanism for receiving licenses on broadcasting;
- Provide the transparency of the licensing commission business processes;
- Reduce the tax on the import of television equipment;

- Recognize the standards of the television equipment manufacturer and thus to avoid double standardization;
- Provide legislative support for private companies that deliver digital TV services;
- Include independent TV companies to the social package of digital TV (first multiplex);
- It is recommended to both advertisers and TV channels to conduct marketing research of the advertising market as a whole, and consumer preferences in particular. While TV channels might prefer research on programming and competitive media in general, advertisers might prefer research on category of goods/services, as well as in the competitive environment. It will help to optimize production, trade and information solutions;
- Develop rules and standards for the advertising market to improve the consumers protection from poor quality advertising and information, to enforce respect to the rules of law for copyrights neighboring rights, to respect professional ethics including the establishment of specialized authorities to monitor their implementation. Experts group to draft these rules can be established under the regulatory authority.

Contribution from the Bundesnetzagentur (Germany)

Mr. Sören Nübel, Acting Head of Unit International Policy Issues and Regulatory Strategy, 20 July 2015

This paper has been written at the request of the Office in Tajikistan of the Organization for Security and Co-operation (OSCE). The OSCE Office in Tajikistan has been asked by the Ministry of Economic Development and Trade to develop a feasibility study on the establishment of a converged regulatory authority for telecommunication and broadcasting services in Tajikistan.

Converged Telecommunication and Broadcasting Regulator

International experience of independent regulation of the telecommunications sector in the digital age? - The case of Germany's Bundesnetzagentur (BNetzA)

1. Introduction:

- (1) The German telecommunications sector has been fully liberalized on the 1 January 1998. At this date all former exclusive and special rights for the provision of telecommunications services expired and alternative electronic communications network operators and electronic communications service providers were allowed to enter the market.
- (2) However, it was also understood that the former state monopolist, Deutsche Telekom (the incumbent operator), still possessed a superior market position, that included the control over 100% of the access network (the so called last mile) and of almost 100% of all contractual relationships with businesses and end-customers. The market showed a presence of high and non-transitory structural barriers. A tendency towards effective competition could not be observed. Under these circumstances it was considered that general competition law was not sufficient and it was unlikely that efficient competition would develop without additional measures. It was therefore concluded that a sector-specific regulation is required to supplement general competition law. In the following the telecommunications sector was subjected to ex-ante regulation and a regulatory authority was trusted for its enforcement.
- (3) In the last 17 years the market has made important steps towards effective competition. While originally almost all services had to be ex-ante regulated to ensure a so called level playing field for alternative operators. In Germany the regulatory activities could be gradually reduced. Particularly, many retail markets could be deregulated over time and regulation is now focused on wholesale markets and the elimination of bottle necks for alternative operators, such as the access to the unbundled local loop. Yet, ex-ante regulation is still required to ensure effective competition in the electronic communications sector.

2. BNetzA – an independent multisector regulator:

a. Background

- (4) The Bundesnetzagentur is a separate higher federal authority in the remit of the Federal Ministry of Economic Affairs and Energy. It was founded on 1 January 1998 as Regulatory Authority for Telecommunications and Post. At the same time the Federal Ministry of Posts and Telecommunications and the Federal Office for Posts and Telecommunications were dissolved. On being assigned responsibilities under the Energy Act (EnWG) and the General Railway Act (AEG), the Regulatory Authority for Telecommunications and Post was renamed the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen in 2005.
- (5) First and foremost, the Bundesnetzagentur's remit is to promote competition through regulation in the energy, telecommunications, postal and rail sectors and to guarantee

non-discriminatory network access. Alongside regulatory measures in the energy sector, as the national planning authority the Bundesnetzagentur is also responsible for electricity transmission lines crossing national or state borders in the context of the Energiewende. In the telecommunications and postal sectors it ensures appropriate, adequate and nationwide services and, on the basis of various pertinent laws and ordinances, provides regulations for the use of frequencies and numbers. Furthermore, the Bundesnetzagentur is the competent authority under the Electronic Signatures Act (SigG).

- (6) The Bundesnetzagentur's tasks are complex and highly diversified. They range from cases addressed in quasi-judicial proceedings in regulation areas, to reporting requirements and planning authority responsibilities, consumer protection and information activities in the regulated sectors, right down to the nationwide presence for investigating and processing frequency interference complaints.

b. Structure and Governance

- (7) The Bundesnetzagentur is headed by a President and two Vice-Presidents, who together also form the so called President's Chamber. The President and the Vice-President are nominated by the government upon a proposal by BNetzA's advisory board and are eventually appointed by the Federal President of Germany. They are employed in an official public law relationship (öffentlich-rechtliches Amtsverhältnis) that is limited to 5 years and can only be prolonged once for a period of up to another 5 years. The President and Vice President may only be dismissed because of an important reason such as the incapability to pursue the office or having been guilty of misconduct under national law.
- (8) Below the executive management level the Bundesnetzagentur comprises ruling chambers and departments. The President's Chamber takes decisions in particular on award proceedings for scarce radio spectrum resources and the imposition of universal service obligations. In the telecommunications sector it determines which markets require regulation and which companies have significant market power in these markets. On the basis of these determinations, the ruling chamber responsible independently decides on the regulatory measures to be imposed on companies with significant market power. Decisions of the ruling chambers also concern specific details of obligations, such as network access conditions or ex-ante price approvals. In the postal sector the ruling chamber focuses on (ex-ante and ex-post) rates approval and the control of anti-competitive practices, including the regulation of access to the postal network. In the energy sector the Energy Act gives the ruling chambers decision-making powers on issues of general and individual access to electricity and gas networks and on network tariffs.
- (9) The departments perform specialized and central administrative functions. These include economic and legal policy issues in the various areas of regulation and the relevant international coordination, as well as technical aspects of frequencies, standardization, numbering and public safety. Bundesnetzagentur is involved in international standardization bodies, cooperating in the development of next generation networks and new radio systems. In the energy sector, the Bundesnetzagentur has been assigned key market supervisory tasks from the gas and electricity network development planning, from the Market Transparency Unit for Wholesale Electricity and Gas Markets set up in 2013, and from its responsibility for safeguarding security of supply.
- (10) A major departmental function overall is to provide ruling chambers with specialist assistance in their decision-making. All relevant rail regulation tasks are performed by the rail department under the supervision of the President and Vice-Presidents, as the General Railway Act does not yet provide for a ruling chamber.
- (11) All of the Bundesnetzagentur's responsibilities have a strong international element. Coordination at European level, in particular, has always been an important aspect of

its regulatory activity. This is reflected by the fact that the international functions are mostly concentrated in one department.

- (12) A nationwide presence is vital for the Bundesnetzagentur to perform its duties well. To ensure consistency the Bundesnetzagentur's regional offices, the contact point with consumers and the industry, are managed and coordinated centrally by a single department. The regional offices are mainly responsible for technical matters. They provide information, for instance, on compliance with the Telecommunications Act, electromagnetic environmental compatibility provisions and the Electromagnetic Compatibility of Equipment Act (EMVG). They are also in charge of frequency assignment, for instance for private mobile radio systems, for granting site certificates and for sampling equipment under their market surveillance duties. Another important area is the investigation and processing of radio interference using state-of-the-art measuring equipment, monitoring compliance with regulations and carrying out radio monitoring and inspection orders under the Telecommunications Act and the Electromagnetic Compatibility of Equipment Act.
- (13) Additional executive tasks are carried out by specific regional offices. In particular this involves activities in number administration, number misuse and cold calls, consumer protection and information, the registration of photovoltaic systems and the registration of railway infrastructure. Moreover, they also carry out some personnel management functions for other government bodies and institutions, primarily those falling under the Federal Ministry for Economic Affairs and Energy.

c. Human resources management and Budget

- (14) Given its diverse areas of activity, the Bundesnetzagentur attaches particular importance to an interdisciplinary work approach. In total the Bundesnetzagentur employs about 2,900 specialists, including legal experts, economists, engineers and scientists from various fields, to ensure the efficient, proper performance of tasks in all areas.
- (15) The Bundesnetzagentur's income and expenditure is budgeted for in the federal budget in the departmental budget of the Federal Ministry for Economic Affairs and Energy. However it independently decides on the spending of its budget. Its overall budget in 2015 amounts to 207 million €.

d. Responsibilities concerning the telecommunications sector

- (16) In the telecommunications sector the Bundesnetzagentur is mainly responsible for the key decisions and objectives that promote investment, innovations and competition for the benefit of all citizens. Consumer protection remains another key focus area in the telecommunications sector. For this purpose, emphasis is placed on investigating problems that hinder a trouble-free change of supplier. In addition, the Bundesnetzagentur continues to vigorously combat misuse such as infringements of competition law, the unlawful use of telephone numbers and cold calling, for instance by carrying out searches. In protecting the consumer, particular attention is given to preventing the illegal billing of call queues. Another primary function is to ensure transparency of consumer contracts, in particular with respect to the bandwidth guaranteed in the contract.
- (17) The Bundesnetzagentur also maintains a database of sites of fixed transmitters operating above a specified power level. Also of particular importance for consumers are the resolution of radio frequency interference, the dispute resolution procedures under section 47a of the Telecommunications Act (TKG) and section 10 of the Postal Services Ordinance (PDLV) and the general consumer advice service. Under Part 7 of the Telecommunications Act, the Bundesnetzagentur plays an important role in ensuring public safety. Its tasks include checking the technical protection measures for critical telecommunications infrastructure, protecting personal data and telecommunications privacy, the technical implementation of interception measures, and implementing and safeguarding information procedures.

e. Bundesnetzagentur: a multi-sector regulator

- (18) Bundesnetzagentur is a multi-sector regulator, which is primarily responsible for promoting competition and ensuring non-discriminatory access to networks in the electricity, gas, telecommunications, post and railways areas. In doing so it profits from a task-oriented organizational structure, which meets the many and varied requirements. In fact, bundling the responsibility for the regulation for several network industries with similar competition related problems, such as the presence of structural barriers for market access, in one authority conveys several advantages. A multi-sector regulator particularly allows for achieving more with less.
- (19) Firstly, a multi-sector regulator is less costly than one regulator per sector. It requires overall fewer top level executives. Bundesnetzagentur, for instance, is headed by one President and two Vice-Presidents that oversee all the regulated areas, instead of several Presidents and Vice-Presidents per sector. Establishing a multi-sector regulator creates further organizational synergies. Compared to individual authorities' horizontal functions, such as HR, IT, Legal Department, International Relations, Public Relations, do not need to be duplicated and can be provided out of one hand.
- (20) A multi-sector regulator secondly creates synergies concerning the regulatory practice, primarily by means of transfer of experience between the sectors. For instance, BNetzA's experts for telecommunication standardization are strongly involved in the work and discussions on the development of smart grids in the energy sector. Other examples refers to regulatory experiences concerning the unbundling of access networks and the promotion of co-operations between utilities and telecoms network operators on the deployment of fibre lines. Creating a multi-sector regulators hence allows for the bundling of expert knowledge from several sectors, which proves particularly beneficial in highly dynamic market scenarios and where concerned products and services converge.

f. Bundesnetzagentur: an independent regulator

- (21) Independence of economic regulators is a well-established international best practice. The independence of the regulator is for example required by the WTO reference paper on telecoms services, the EU framework on electronic communications (Article 3 of the Framework Directive 2002/21/EC) and EU Directive 2009/72/EC concerning common rules for the internal market in electricity. Furthermore also the OECD stresses that "in order to support regulatory integrity through objective and impartial decision making, the governing body of a structurally independent regulator must be insulated from inappropriate stakeholder, ministerial or industry influence."¹¹
- (22) The independence of regulators is uniformly considered relevant since (i) it is necessary to maintain the public confidence in the objectivity and impartiality of decisions, i.e. it is a main building block for regulatory certainty; (ii) government owned and private entities are regulated under the same framework and competitive neutrality is therefore required; and (iii) decisions of the regulators can have a significant impact on particular interest and there is a need to protect its impartiality.
- (23) At the same time the independence of economic regulators lead to significant benefits for the concerned sector and the society as whole. It increases trust in the regulatory system and hence reduces legal and regulatory uncertainty of investors. Less potential for conflicts of interest and a more stable regulatory environment attract more investors and active investors are prone to invest higher amounts. Established operators usually face also lower lending costs, which often translates into higher earnings and more investments. Independence of the economic regulators is an important trigger for economic growth of the concerned sector.
- (24) The concept of an independent economic regulator comprises several common features. It can be firstly found that it implies a complete separation of the regulator and

¹¹. OECD, Best Practice Principles for Regulatory Policy - The Governance of Regulators, 2014, p. 72.

its key staff from the regulated undertakings, whether still (partly) state-owned or under private ownership. The regulator must particularly not be granted authority to manage state owned companies or to represent the government interest in state owned companies. Secondly, the regulators shall be free from any influence by politics and the Ministry on its daily business. Particularly, decisions of the regulator shall be only subject to judiciary control, while political institutions, such as the government, shall be excluded from overruling such decisions.

- (25) Concerning the separation of the regulator and its (key) staff from the regulated undertakings the WTO reference paper requires that “[t]he regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. Furthermore, Article 3 of the EU Framework Directive 2002/21/EC provides that the independence of national regulatory authorities shall be guaranteed by ensuring that they are legally distinct from and functionally independent of all organisations providing electronic communications networks, equipment or services. Countries that retain ownership or control of undertakings providing electronic communications networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control. And, Article 35(4) of Directive 2009/72/EC concerning common rules for the internal market in electricity establishes that it shall be ensured that the regulatory authority is legally distinct and functionally independent from any other public or private entity and that its staff and the persons responsible for its management act independently from any market interest.
- (26) In the case of Bundesnetzagentur its independence from market players is ensured by several structural measures. Although the Federal Government directly or indirectly still owns 31.9 % of Deutsche Telekom, which is the former state monopolist in the field of fixed electronic communications, the Government’s ownership interest in Deutsche Telekom has been structurally separated from the ministerial supervision of the regulatory authority. For this purpose the control of Germany’s 31.9% stake at Deutsche Telekom has been assigned to the Federal Ministry of Finance, while Bundesnetzagentur has been established as a higher Federal authority within the remit of the Federal Ministry of Economics and Energy.
- (27) The independence of the regulator from the regulated market players are further increased by legal requirements that prevent that the (key) staff of Bundesnetzagentur might become subject to conflicts of interest. In this regard Bundesnetzagentur and its personnel may not be involved in the management of state owned and/or private companies. The management of these companies lies solely in the responsibility of its top management, which has been appointed according to the law. The Bundesnetzagentur Act however prohibits that the President and Vice-Presidents participate in the management of any profit-seeking company, which includes the companies which are regulated by the authority. Bundesnetzagentur’s (key) staff is also prevented from being involved in the exercise of the ownership rights of the fully or partly state owned companies, which it regulates. The Law on Bundesnetzagentur Act sets out that BNetzA’s President and Vice-Presidents may not be part of the supervisory board of Deutsche Telekom and Deutsche Post, while their participation in other supervisory board would require the consent of the Federal Ministry of Economic Affairs and Energy.
- (28) Finally, up to five years after an employment with Bundesnetzagentur the Ex-President, the Ex-Vice-Presidents and the ex-staff have to give in advance notice of any professional and non-professional activity which has connection to the former duties at Bundesnetzagentur. If there is reason to believe that the professional or other activity would impair the interest of the Federal service, it shall be prohibited.
- (29) The second dimension of the independence of the regulators concerns independence from political influence on the day-to-day performance of the regulatory tasks. While

these of course does not exclude that the Government decides on overall political direction of regulation, it shall however refrain from influencing or even overruling the day-to-day decision of the regulator. Concerning the requirements for a political independent regulator, it again can be referred to international best practices. The WTO reference paper, for instance, stipulates that the decisions of and the procedures used by regulators shall be impartial with respect to all market participants. Article 3 of the EU Framework Directive 2002/21/EC sets out that “[...], national regulatory authorities responsible for ex-ante market regulation or for the resolution of disputes between undertakings [...] shall act independently and shall not seek or take instructions from any other body in relation to the exercise of these tasks assigned to them under national law implementing Community law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies [...] shall have the power to suspend or overturn decisions by the national regulatory authorities.” The Framework Directive supplements the obligation of EU member states to ensure the independence of regulators by minimum requirements concerning (i) the conditions for the dismissal of the head of a national regulatory authority or, if applicable, members of the collegiate body fulfilling that function within a national regulatory authority, (ii) a separate annual budget; and (iii) adequate financial and human resources. In the same way Article 35(4) of Directive 2009/72/EC establishes that “Member States shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For this purpose, Member State shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive and related legislation, the regulatory authority: (a) is legally distinct and functionally independent from any other public or private entity; (b) ensures that its staff and the persons responsible for its management: (i) act independently from any market interest; and (ii) do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks.[...]”. And Article 35(5) of Directive 2009/72/EC adds that “[i]n order to protect the independence of the regulatory authority, Member States shall in particular ensure that: (a) the regulatory authority can take autonomous decisions, independently from any political body, and has separate annual budget allocations, with autonomy in the implementation of the allocated budget, and adequate human and financial resources to carry out its duties; and (b) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority’s top management are appointed for a fixed term of five up to seven years, renewable once.[...]”. Finally the scope of political independence is also subject to the OECD principles on regulatory governance.

- (30) Bundesnetzagentur is a highly independent regulator and fully complies with all the requirements that have been set out above. In this regard the OECD¹² refers Bundesnetzagentur as an example of a highly independent regulator for all regulated sectors (cf. also the Regulatory Management of Network Sectors section of the OECD Product Market Survey 2013, which inter alia examined the electricity, gas and telecom sectors) and explains that its “independence is stated explicitly in the law (§ 1, Gesetz über die Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen), it has no dominant source of funding, and the regulator cannot receive instructions or guidance from government on its strategy, individual cases or appeals. The regulator’s decisions can only be appealed in court in the final instance.”

3. Media regulation in Germany

- (31) Broadcasting is not included in the remit of Bundesnetzagentur. Instead 14 media authorities are in charge of licensing and controlling as well as structuring and promoting commercial

¹². OECD, Best Practice Principles for Regulatory Policy - The Governance of Regulators, 2014, Table 2.1, p. 49

radio and television in Germany. The decentralized approach to media regulation results from the German constitution. Pursuant to Article 70(1) of the Grundgesetz (GG – Basic Law) the Federal States shall have the right to legislate insofar as this Basic Law does not confer legislative power on the Federation. The German constitution provides therefore that both public and commercial broadcasting are regulated by the state governments, rather than by the federal government. The exception is international broadcasting, such as Deutsch Welle, which is regulated by the federal government under its foreign affairs functions. Therefore, organization and social control of commercial (or private) broadcasting is regulated by media laws of the different federal states. Further, the constitution places contrasting obligations on the states to ensure the freedom of broadcasting from state interference, while also ensuring ‘... that a free and open process of forming public and individual opinion is given. This includes further objectives like guaranteeing variety and diversity, and the fair chance of participating in public communication.’¹³ The decision that media regulation is not pursued in a converged regulator but 14 media regulators at the level of the Federal States solely relies on historically based predisposition towards decentralized control of content. It is not grounded on a comparison of advantages and disadvantages of a converged regulator compared to separated telecoms and media regulators.

- (32) Commercial radio and commercial television broadcasters have to fulfil the requirements on content as specified in media laws of the Federal States while the independent media authorities of the states ensure that the provisions are adhered to. Additionally, the 14 media authorities also have responsibility that so called telemedia service meet specific requirements, for instance in relation to the protection of minors in the media. The term telemedia refers to all electronic information and communications services, insofar as they are not telecommunications services, which consist entirely of the transmission of signals through telecommunications networks or telecommunications supported services, or broadcasting. Telemedia are also television and radio text as well as teleshopping channels and include most of the internet services.
- (33) The difficulties of the German model are also reflected in the necessity to establish for a great number of issues relating to broadcasting, rules applicable across Germany as a whole, e.g. for licensing and supervising nationally-operated services. The 14 media authorities therefore cooperate in different decision-taking councils and commissions coordinating and aligning matters on a national level. They have therefore established a joint management office of the media authorities, which coordinates the day-to-day business of the decision-taking councils and commissions of the state media authorities.
- (34) Also coordination is necessary between the media regulators and Bundesnetzagentur. For this purpose Bundesnetzagentur is generally required to take into account broadcasting and comparable tele-media interests in the pursuit of its tasks. More precisely the German Telecommunications Acts requests Bundesnetzagentur to co-operate with media authorities of the Federal States where its regulatory activities relate to media / broadcasting issues. For instance, where Bundesnetzagentur pursues rates regulation procedures that concern broadcasting and comparable telemedia interests, it shall inform the state media authority with competence accordingly and include it in proceedings initiated. Another example relates Bundesnetzagentur’s responsibility for the allocation of spectrum, which includes the assignment of spectrum for the provision of terrestrial broadcasting. In such cases Bundesnetzagentur is has to hold consultations with the 14 state authority with competence, based on the broadcasting regulations.

4. Telecoms and media convergence, co-operation requirements

- (35) In the past, broadcasting and telecommunications were clearly separate markets. Distinct networks were used for the provisions of broadcasting and telecommunications services

¹³. Wolfgang Schulz, Thorsten Held and Stephan Dreyer, ‘Regulation of Broadcasting and Internet Services in Germany’, www.hans-bredow-institut.de/webfm_send/124, 2008, p. 6.

respectively as different technologies. The technological differentiation was reflected in distinct governance and regulatory frameworks. Public and private broadcasters are/were supervised by media regulators that have to pursue public policy interests that are often focused on safeguarding free speech as well as cultural diversity. In contrary, telecommunications markets are supervised by telecommunications regulators which are focusing on economic and technical issues, including network access; the main public interest relates to the promotion of competition. Telecommunications regulators are destined to ensure that neither the natural monopoly nor the technical characteristics of incumbent operator(s) would be used to restrict network access or otherwise be exploited to create and abuse significant market power.

- (36) Because of technological advances such as the development of very high speed broadband networks or standardisation the well-organised and segregated situation has changed. Previously separated networks and services are “converging”. Particularly audio-visual services are now being offered over different platforms (e.g. over cable, satellite, and telecommunication networks). Vice versa cable operators have started offering broadband access and other telecommunications services. They even have often assumed the role of an important competitor of the classic telecommunications operators.
- (37) Other aspects of convergence refer to the bundling of previously distinct services onto a single platform (triple and quadruple play). It can also be observed a growth in the importance of search and in social networking, an explosion in user-generated content (e.g. by using platforms such as Youtube or Clipfish) and the development of new kinds of content services, both managed by Internet Service Providers (ISPs) and delivered over-the-top (so called OTT services).
- (38) Convergence challenges the previous *modus vivendi* because new forms of competition by unregulated players tend to disrupt the existing governance model. The regulatory system could become compromised, if traditional telecoms regulators compete with new emerging competitors at the same market, but the market players do not have to comply with the same rules.
- (39) The arising interdependence between players in different sectors could also lead to problems in defining the scope of future audio-visual regulation, particularly because of the growing interaction with the telecoms framework.
- (40) Another problem might relate to finding the right balance between ensuring the continued availability of the “open internet” and ensuring continued investment in networks and services by telecommunications services. In this respect telecommunications operators experience significant revenue reductions due to OTT-services that start replacing traditional retail services, such as fixed voice and SMS services. At the same time OTT services increasingly require higher bandwidths and create the need of service and network investments by telecoms operators.
- (41) The traditionally fragmented regulatory approach that comprises distinct telecoms and media regulators might not be always best suited to effectively respond to a converged telecoms-media environment. The effectiveness of regulation might suffer if alternative providers in other networks and/or channels cannot be regulated. Competition between regulated and alternative providers could be distorted; traditional operators could face unfair competition or overregulation, if competitive constraints that are posed by new alternative providers are not sufficiently taken into account. The supply of bundled goods and services could be reduced or prevented by undue regulatory burden.

5. Lessons for Tadjikistan?

- (42) On invitation by the OSCE Office to Tadjikistan the author had the possibility to conduct an expert mission to Tadjikistan from 22 to 26 June 2015. The goal of the visit was to consult on the feasibility study on the establishment of a single, converged regulator for telecommunications and broadcasting services in Tadjikistan. This study is part of the

Post-WTO Action Plan that has been approved by Government of Tadjikistan as Decree No.691 of October 31 2014 on “Adjustment of the Economy of Tadjikistan Related to the WTO Membership”. It is the next joint effort of the Ministry of Economic Development and Trade of Tadjikistan and the OSCE Office in Dushanbe to help the country to be proactive in using advantages of the WTO membership by addressing national regulatory challenges.

- (43) During the expert mission the author had the opportunity to hold interviews and discussion with major stakeholder in the ICT and broadcasting markets of Tadjikistan, who included representatives from the Communications Service (CS) and Tadjik Telecom; the Committee on TV and Radio Broadcasting (RBC) and Teleradiocom; private owned Internet Service Providers (ISPs); the Association of mobile communications operators of Tadjikistan; and the civil society.
- (44) On 25 June 2015 he also participated in a roundtable discussion on “A Feasibility Study on the Establishment of a Single, Converged Regulator for Telecommunications and Broadcasting Services in Tadjikistan”.

a. Main findings from the expert interviews and the workshop

- (45) The Telecommunications market is mainly regulated by the Communications Service (CS). However, several interlocutors described that also the anti-monopoly commission (AMS) has responsibilities in the telecommunications sector and is tasked with ex-ante approving prices for retail telecommunications services but also charges for receiving numbers. For instance the AMS has found that each of the 4 mobile operators possess significant market power due to a market share of at least 25 %. This means that the MNOs have to get an ex ante approval of their retail tariffs by the AMS. One interviewee also referred to the Ministry of Economic Development and Trade (MEDT), while however it remained unclear whether the Ministry performs regulatory or only political functions. Furthermore the RBC is also involved in the regulation of the telecoms market. Particularly concerning IPTV the RBC is responsible for issuing licences. It seems also to be involved in the issuing of spectrum for broadcasting services.
- (46) The three regulators actively engage with the market. This lead particularly private operates to be often confronted with inspections.
- (47) The interlocutors generally described that the Communications Service (CS) manages at the same time Tadjik Telecom, which is by 95% owned by the Republic of Tadjikistan. Tadjik Telecom itself owns 25 % of one mobile operator. Furthermore the RBC manages Teleradiocom, which is by 95% owned by the Republic of Tadjikistan. Teleradiocom operates towers and masts for broadcasting transmissions services.
- (48) The provision of telecommunication services requires several licenses from various authorities. Particularly, for new converged services licenses have to be obtained from the CS and the RBC. The delineation of responsibilities concerning telecommunications and content services seems not to be always clear. The CS has for instance responsibilities concerning internet services. At the same time the RBC seems to consider itself competent for all audio-visual content, including if distributed via the internet.
- (49) Concerning converged services the RBC explained that the State Action Plan for digital switchover, which is supposed to be completed in 2015, is expected to be updated and prolonged till 2020; the future sale 750-860 MHz frequency band to the market upon a digital broadcasting coverage of over 80 % of the population shall serve the funding of the digital switchover process. The RBC furthermore confirmed that licenses for IPTV services can be obtained.
- (50) Views seem to vary on the question whether a single, converged regulator on telecom and broadcasting should be established. In this respect the RBC (Mr. Siddiq) confirmed that it will consider the outcome of the feasibility study. The CS (Mr. Beg

Sabur) explained that the formation of new organization would always bring losses and referred to the merger between the Ministry of Communications and the Ministry of Transport. The CS (Mr. Beg Sabur) also pointed out that it cooperates with the RBC in the same way as with any other state agencies but there are no special cooperation agreements between the two authorities. Some participants of the Roundtable however considered that the establishment of a converged regulator would be beneficial. For instance it was noted that one single regulator could be more cost-efficient than two separate regulator. It was also pointed out that the regulators have overlapping responsibilities, for instance in the field of spectrum regulation. On the other hand also sceptics were voiced towards the creation of a merged telecoms-broadcasting regulator. It was feared that a merger would concentrate too much power in one hand as well that the merger could lead to a regulatory race towards the bottom. The workshop compiled the following SWOT analysis:

SWOT Analysis of a Converged Independent Regulator for Telecommunications and Broadcasting Services in Tajikistan - June 25, 2015

OPPORTUNITIES	STRENGTHS
<ul style="list-style-type: none"> • Strong industry can help the development of a relatively poor industry. Media will provide content and the telecommunications will provide infrastructure for converged services; • Better profitability and efficiency in the provision of services and the use of operators infrastructure (use "in full"); • Most of the likelihood of independence for the media sector in the case of a converged regulator; • Provision of more democratic governance for both sectors. 	<ul style="list-style-type: none"> • Many similarities in two fields – telecommunication and broadcasting (in terms of the technology used), which continue to converge; • New trends in content production - Media can no longer exist without the Internet (online journalism); • Factor of digital broadcasting - 2 spheres are not separated; • Reduce administrative (horizontal) costs and the number of specialists with similar profile; • The reduction of fees related to the regulation and paid by market participants; • One Stop Shop – ease getting all the documents from one single body; • Common license (broadcasting, IPTV, etc.).
THREATS	WEAKNESSES:
<ul style="list-style-type: none"> • The fight with two groups of interest in the system, where all tied to personalities; • The increase in the concentration of power in one hands; • Bankruptcy of small media companies and absorption them by largest market players; • Existing regulators don't cope their responsibilities very well, would not it be the case if the converged regulator works even worse because of the wide range of tasks? • The ability to influence the converged regulator by antimonopoly agency, whose word will be the last? • If the converged regulator is under the government, it will not change anything; 	<ul style="list-style-type: none"> • Different levels of liberalization of the sector – telecommunication and broadcasting; • The difference in revenue of broadcasting and telecommunications industries, a poor industry will interfere to the development of the richer one; • Convergence in itself does not eliminate the conflict of interest.

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| <ul style="list-style-type: none"> • In a system where the judiciary is dependent, there are limits to the effectiveness of any (including converged) regulator; • The question of licensing fees - how much it will be differentiated? (the case of using one branch and paying for all the wood) | |
|--|--|

b. Possible Recommendations on converging the authorities

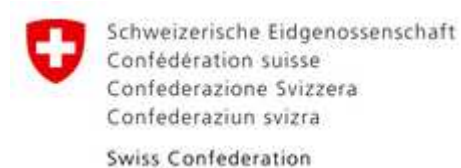
- (51) Converging markets and new offerings require a consistent approach across the information delivery chain. This is for instance reflected in the development of new internet based services such as IPTV. In the future the technical interventions could become less prominent. In this respect at least a close co-operation between CS and RBC seem to be desirable.
- (52) Also concerning spectrum policy co-operation between the two regulators seem to be natural. This firstly should be the case regarding the allocation of radio spectrum for broadcasting services. Furthermore the digital switch over offers a significant opportunity by freeing broadcasting spectrum for other radio communication services. To avoid unnecessary delays this process should be closely aligned between the RBC and the CS.
- (53) The SWOT analysis that has been performed during the workshop displays the several chances and risks attached to a possible merger of the RBC and the CS. To this end it can be concluded that the reality of convergence might not require that all functions have to be accrued in one organization. However convergence demands that RBC and CS (i) establish a coordination mechanism (governance structure) (ii) discuss opportunities to reduce overlapping responsibilities (ii) align and streamline their processes and policies (e.g. concerning licensing); (iii) coordinate the application of tools/instruments such as spectrum licensing for broadcasting.
- (54) Furthermore it could be also considered that a merged authority allows for the provision of more with less, since it is less costly and allows for raising synergies.

c. Additional considerations

- (55) The CS and the RBC do not seem to comply with the international best practice principles on independence. Both authorities control and manage at the same time state owned companies which compete with alternative providers that are subject to their regulation. The mixture of operative and regulatory functions is principally doomed to impair the regulators impartiality. A regulatory capture by market players can therefore not be excluded. It also could not be established that the regulators possess political independence.

The AMS seems to possess responsibilities for the regulation of the telecommunications market. The commitments of the WTO reference paper, particularly with respect to the independence of the regulator, might therefore also apply towards this authority.

Contribution from BAKOM/OFCOM (Switzerland)



Federal Department of the Environment,
Transport, Energy, and Communications DETEC
Federal Office of Communications OFCOM
International Relations

Dirk-Oliver von der Emden, Senior Councilor, 8 June 2015

Converged Telecommunication and Broadcasting Regulator

The Case of OFCOM

Background

This paper has been written at the request of the Office in Tajikistan of the Organization for Security and Co-operation (OSCE). The OSCE Office in Tajikistan has been asked by the Tajik Ministry of Economic Development and Trade to develop a feasibility study on the establishment of a converged regulatory authority for telecommunication and broadcasting services in Tajikistan.

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1.Goals of telecommunication and broadcasting legislations in Switzerland

1.1. Need for regulation of the telecommunication sector

Whilst one of the two key objective of telecommunications regulation is economic, the other one is social. From an economic perspective, the telecommunications¹⁴ services should satisfy the full range of consumer demand and be supplied under conditions of optimal efficiency. From a social/political perspective, these services should be made available to everyone on reasonable terms, whether or not it is profitable to do so. Accordingly, innovative, cost-effective, high quality, and nationally and internationally competitive telecommunication services should be offered to private individuals and the business community – and there should be no obstacles for the later to access them. Additionally, users of these services should not become victims of unfair or fraudulent practices that could arise in relation with their provision. Regulatory intervention is necessary to safeguard consumer interests, to maintain an effective competitive marketplace, and to foster the long-term development of the ICT sector. Effective regulation has resulted in many benefits, such as greater economic and technological growth, increased investment in the sector, better quality of service, lower prices and higher penetration rates.

In theory, perfect competition in the market of electronic communications services should warrant for realization of these goals and maximize users' welfare. By mean of the dynamism competition is injecting into the sector innovation should be spurred, choice should increase, availability should enhance, and tariffs should fall. In practice, however, regulatory oversight is necessary in order to:

- stimulate competition as electronic communications' are network economies that engender market deficiencies,
- provide essential electronic communications services at affordable prices, in particular when effective competition does not deliver these electronic communications services to some sections of the population or some parts of the country (this is a fundamental prerequisite in order to make it possible for everyone to participate in future information societies),
- ensure that electronic communications traffic fulfills defined quality standards (of particular importance as far as the services to be provided under universal service obligations),
- manage efficiently scarce public resources that are necessary for electronic communications (i.e. radio electric spectrum and numbering/addressing resources) in order to preclude advent of the tragedy of commons, and
- ensure compliance in relation to the placing on the market of electronic communications equipment and radio equipment.

¹⁴. The use of the broadly defined terms “electronic communications networks” and “electronic communications services” is becoming more frequent instead of the terms “telecommunications networks” and “telecommunications services”, respectively.

The need for regulation of the telecommunication sector can also result from international commitments. The WTO Basic Telecommunications Agreement requires a liberalization of entry into electronic communications markets and the stimulation of competitive markets. It entered into force for Switzerland on 5 February 1998 without any exceptions or reservations. No modifications of legislation and regulation were necessary at this date as legislation and regulations were made compliant before.

1.2. Need for regulation of the broadcasting sector

The Swiss Constitution guarantees the freedom of expression and of information of individuals living in Switzerland. Every person has the right to freely form, express, and impart his or her opinions, and to receive information and to disseminate it. The Constitution also safeguards the freedom of the press, radio and television and of other forms of dissemination of features and information by means of public telecommunications. Accordingly, the Swiss broadcasting legislation aims at guaranteeing the existence of a wide range of independent and autonomous media in the broadcasting sector and the freedom of the media while at the same time ensuring a balance between that freedom and other legitimate rights and interests. A substantial part of the Swiss broadcasting regulation is to substantiate the responsibility and independence of broadcasters (or media service providers) in programming matters. In particular, under due consideration of the framing principle of the freedom of expression, regulatory oversight of mass media – in their function to inform, entertain and educate the general public – is necessary in order to:

- ensure that all radio or television programmes respect fundamental rights and human dignity and do not contribute to racial hatred, prevent harm to children and young people from undesirable content, do not endanger public morals, and do not glorify or trivialize violence¹⁵,
- ensure that programmes do not jeopardize the internal or external security and the constitutional order of the Confederation and of the cantons,
- ensure universal availability to the general population of the country of broadcast services and diversity of the programmes in social, political, cultural and local/regional terms,
- promote, amongst others, high quality of content, with particular reference to information (facts and events must be presented fairly, so that the audiences can form their own opinion), education, advertising (advertising must be clearly separated from the editorial part of the programme and identifiable), culture, taste and decency,
- protect media pluralism, in particular by means of measures against media concentration,
- define which broadcasters should obtain a license from the State and those which must only register with the regulator before starting transmission and the rights (e.g. public funding, access to spectrum) and obligations (e.g. local, regional, cultural contents) associated with the licenses,
- ascertain that the Swiss Broadcasting Corporation SRG SSR, whose license is granted by the federal government (“Federal Council”), complies with its licensing and financial obligations, and upholds its “fairness”, political neutrality, independence from vested interests and from the state,
- assign broadcasting frequencies in a transparent, fair, reasonable and non-discriminatory manner,
- support the domestic production industry, and
- ensure that broadcasters conserve recordings of their programmes and make them available for the public.

The need for regulation of the broadcasting sector can also result from international commitments. Switzerland is bound by the European Convention of Human Rights (ECHR; in full “Convention for the Protection of Human Rights and Fundamental Freedoms”) that protects human

¹⁵. It must be underlined that general laws such as criminal law or intellectual property law are not superseded by broadcasting regulation.

rights and fundamental freedoms in Europe, in particular the freedoms of expression and information and the free flow of information and ideas. It has also to abide to the European Convention on Transfrontier Television (CTT) that confirms the guarantee of freedom of reception and establishes the principle of non-restriction of the retransmission of audiovisual programme services (e.g. of satellite programmes over CATV). The CTT lowers barriers to entry on markets for audiovisual media services and strengthens the free exchange of information and ideas by encouraging the transfrontier circulation of broadcasting services. Swiss regulation in the field of broadcasting took also consideration of the jurisprudence of the European Court of Human Rights. It is worth highlighting that Switzerland affirmed an exemption to the WTO GATS Article II Most-favored nation (MFN) obligation in relation with the obligation of Swiss licensed broadcasters to reserve at least 50% of their broadcasting time for Swiss or European productions.

1.3. Need for an independent telecommunication regulator

For the purpose of this section, regulatory institutions in the telecommunications sector will be defined as follows:

- Telecommunications Ministry: a branch of a government that is responsible for policy making in the telecommunications sector.
- Telecommunications regulator: a regulatory body that is responsible for the application and observance of telecommunication regulations.
- Independent telecommunication regulator: a sector specific regulator that is independent, separate from the Ministry as well as telecommunications operators.

Full privatization of the incumbent telecommunication service operator would achieve neutrality of the governmental/ministerial level when regulating the industry. However, when privatization is not complete (i.e. the government remains shareholder of the former incumbent operator), independent regulators should prevent or limit conflicts of interest resulting from the interest of the government in seeing the incumbent telecommunications services operator maximizing the payout of dividends. Dependent regulators could be ordered to shield the incumbent from competition or limit the competition it might be exposed to.

The fundamental prerequisites for the establishment of an independent institutional structure that defines separate and distinct roles for policymaking, regulation and management of the affairs of the incumbent operator are the following:

- Policy Development is directed to fundamental issues of long-term societal objectives and direction, rather than day-to-day implementation and problem-solving. It ensures attention to long run implications of developments and issues arising from them. The telecommunications ministry is responsible for developing the policy.
- Establishment of a telecommunications regulator that is independent both from the incumbent telecommunications services operator and from government influence. The regulator's task is to ensure that the incumbent telecommunications services operator and other service providers contribute to the attainment of the key economic and social objectives of the telecommunications regulation (see chapter 1 above).
- Management of the business operations of the incumbent telecommunication services operator has to be separate from the government so that neither politicians nor civil servants can interfere in day-to-day operational decisions. Ways of achieving these objectives include corporatizing and privatizing the incumbent telecommunications services operator and allowing market entry of additional players to create a more competitive market.

There are two fundamental reasons why independent regulation is particularly important to achieving the goals of telecommunications regulation. Firstly, regulatory decisions are taken on their substantive merits, not based on the influence at governmental/ministerial level of the most powerful industry players. Secondly, independence is needed in order to adapt effectively to changing conditions in a dynamic industry sector. Regulators must have the power to interpret policy and

adapt their approach and methods accordingly. These settings would generate confidence from investors that regulatory decisions affecting market opportunities will be made on their merits and on criteria for achieving economic and social policy objectives in the electronic communications sector.

However, in small countries with small administrations/regulatory bodies, it is not uncommon that policy functions are assigned to regulators. This requires that the boundaries between policy and regulatory functions are clearly set and disclosed. However, the close institutional relationship between a ministry and a regulator does not make it easy to set these boundaries.

Some WTO Member States have to establish an independent regulator of the telecommunication sector can also result from international commitments. If they committed to the Reference Paper on Basic Telecommunication Services annexed to the Fourth Protocol of the GATS of 1997, they have to establish “[a] regulatory body [that] is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants”.

The Swiss Confederation has remained as a major shareholder of Swisscom, the historic operator. Accordingly, it was necessary to establish an institutional structure for regulating the telecommunications sector that not only is separate from the industry but also maintains a distance from the Ministry or other government bodies that remain as a major shareholder of the incumbent.

The Federal Office of Communications (OFCOM) is a regulatory authority in the telecommunications sector and part of the Federal Department of the Environment, Transport, Energy and Communications (DETEC) that has ministerial functions. But the Federal Communications Commission (ComCom) is the independent regulatory authority for the telecommunications market. It consists of seven members – who must be independent specialists – nominated by the government. However, ComCom is not subject to any Federal Council (government) or DETEC (ministry) directives and can accordingly be considered independent.

What are the respective roles of ComCom and OFCOM? The main activities and competencies of ComCom are to:

- lay down the access conditions (unbundling, interconnection, leased lines, etc.) when service providers fail to reach an agreement,
- grant licenses for the use of radiocommunication frequencies when they have to be assigned following a public tender,
- approve of national numbering plans,
- fix the terms of application of number portability and carrier selection,
- award universal service licenses, and
- hand out supervisory measures and administrative sanctions against telecommunication services providers.

OFCOM seconds ComCom and supports the commission in its fact-finding and decision-making processes. It prepares the transactions of ComCom based on the instructions of the commission, makes the necessary applications, and implements its decisions. OFCOM assumes ancillary tasks delegated to it by ComCom. It is responsible for maintaining the register of telecommunications service providers, managing the radio frequency spectrum and ensuring compliance of telecommunications installations, amongst other things.

1.4. Need for an independent broadcasting regulator

Switzerland considers that in order to enable effectual debate for the proper operation of democracy there needs to be a plurality of broadcasting service providers in order to make possible access by viewers and listeners to a wide range of sources of news and information. An independent broadcasting industry requires an independent regulatory system to oversee this industry.

The supervision of their services is primarily the task of **ombudsman services** that are self-regulation bodies of the radio and television broadcasters for the editorial content of radio and television programmes. Independent ombudsman services are established for each region of the three

official languages (German, French, and Italian). The SRG SSR provides its own independent ombudsman services.

An ombudsman service deals with reports about editorial programmes that have been broadcasted, where the report relates to violations of the Swiss radio and television broadcasting Act or of international law binding on Swiss broadcasters. Anyone who is not satisfied with the decision of the ombudsman services can take their case to the Independent Complaints Authority for Radio and Television (ICA). The **Swiss Press Council**, which is a general self-regulation organ of the media sectors that elaborates directives in relation with the quality of programmes, in particular the „Declaration of the Duties and Rights of a Journalist“, can also administer grievances against radio and television broadcasters when the plaintiff alleges that a programme contravenes with the declaration.

The **Independent Complaints Authority for Radio and Television (ICA)** is the federal authority in charge of assessing complaints about the editorial content of radio and television programmes by listeners and viewers. The Complaints Authority is independent and is not bound by any directives from the Federal Assembly (parliament), the Federal Council (government) and the federal administration. The members of ICA are nominated by the government. This appeals body publishes its decisions, against which further appeal can be lodged with the Federal Supreme Court.

Whereas the **Department of Environment, Transport, Energy and Communications (DETEC)** awards the broadcasting licenses, **Federal Office for Communications (OFCOM)** organizes the tender preceding the formal award. OFCOM is responsible for the administrative and financial supervision of broadcasters. It ensures that the provisions of the law, the conditions provided by the licences and relevant international agreements are complied with. OFCOM publishes its decisions, against which appeals can be lodged with the Federal Supreme Court. The **Federal Communications Commission (ComCom)** is responsible for awarding the radiocommunication licenses to broadcasters having broadcasting licenses when they have to use terrestrial radio spectrum.

Roughly, OFCOM as the supervisory authority for radio and television broadcasters checks whether the license and especially the legal provisions relating to financing (advertising/sponsorship) are complied with, whereas the handling of complaints relating to editorial content of radio and television programmes falls within the competence of the ICA.

The Swiss government does not exercise any executive/operational control over the management of the Swiss Broadcasting Corporation (SRG SSR). However, DETEC grants a license to SRG SSR that contains obligations on diversity and quality of its programmes. SRG SSR is subject to legislative and regulatory constraints that are public and proportionate. Responsibility for the financial supervision of SRG SSR lies with the ministry DETEC.

Finally, a **Federal Media Experts Commission (FMEC)** that is an extra-parliamentary and independent experts commission has been set up in 2012. Its members are appointed by the government. The FMEC is responsible for monitoring and analyzing the Swiss media landscape and delivering recommendations on selected issues. The FMEC promotes public discourse about media-related issues and makes the results of its investigations and its recommendations public. The FMEC throughout Switzerland. In its advisory role, the FMEC contributes to sustainable solutions for shaping the future Swiss media landscape (that covers all media: radio, TV, print, etc.). The FMEC secretariat is administrated by OFCOM.

The need for an independent regulator in broadcasting matters can also result from international commitments. The Council of Europe¹⁶ – of which Switzerland is a member State – expressed the belief that in order to preserve broadcasting as part of the democratic process, governments should aim to create independent regulators for broadcasting. Even in very small jurisdic-

¹⁶. The Council of Europe works in the area of the protection of human rights, notably through the European Convention on Human Rights (ECHR).

tions, where the only broadcaster is State funded and budgets are limited, regulation that is independent of the State is vital to preserve the right to freedom of speech. Further, there are developments in the European Union (EU) that may have an impact on Switzerland subsequently. The relevant framework, the Audiovisual Media Services Directive (AVMSD) does not explicitly require EU Member States to set up an independent regulatory body or define the terms of this independence. Recital 94 and Article 30 of the same Directive presume that the regulatory entities responsible for implementing its provisions are “independent regulatory bodies”. It is expected, that the next review of the AVMSD, which shall start in 2016, will include new provisions on the independence of regulatory authorities. The European Commission already conducted a public consultation on the subject. In addition, the European Regulators Group on Audiovisual Media Services (ERGA) in October 2014. It urged the European Commission to help secure a common approach to regulatory independence in the audiovisual sector in the upcoming review of the AVMSD.

1.5. The impact of convergence with its new technologies and services (e.g. VOIP and IPTV) for regulators

The digitization of all types of signals facilitates duplication, transmission, and manipulation of any type of information and hence makes convergence possible. Thanks to digitization, it is conceivable that any type of terminal can access any type of data, which in turn can be transmitted over any type of electronic communications infrastructure (multiservice transport networks). Information that is transmitted is platform-independent, which means that there are several alternatives (traditional copper wire, wireless, cable or television antennae) to transmit the information and content. The blurring – even the abolishment – of the boundaries between types of service operation and means of delivery means the ability for consumers to access the same content, or type of content, over different platforms using a range of devices.

Convergence engendered a considerable challenge for regulators. Traditional broadcast regulation relied on the control of the means of transmission: either using terrestrial radio frequencies, satellite or fixed-wire (cable). In any case, it was possible to identify the broadcaster and license them. Barriers for accessing the market for unlicensed, uncontrolled broadcasters were significant. With the ability to transmit broadcasting programmes/content over the internet, the traditional models of broadcasting regulation face a challenge.

A converged regulator is one that regulates both broadcasting and telecommunications, at the least. One of the rationales for creating one new regulatory body with responsibility across sectors can be cost advantages, in that a single regulator avoids duplication of administrative and support costs. Another rationale is that a single regulator offers a one-stop shop to the industry, which becomes more important as ‘vertical integration’ occurs between content and platform providers.

The Swiss telecommunications legislation is technologically neutral and does not contain any specific definition regarding internet services, including voice over the internet, and therefore the telecommunications law covers these services. The broadcasting law defines its scope of application more precisely and provides explicitly that the law under certain circumstances covers radio and television programmes that are broadcasted over the Internet. Though there is separation in terms of laws and regulations of the telecommunications and broadcasting services that are subject to service specific regulations, as far as the organizational/institutional level is concerned the Swiss parliament chose to merge regulatory responsibilities for the broadcasting and telecommunications sectors and assign them to OFCOM (and ComCom and ICA).

2. Implementation of the legislative goals from the organizational perspective

2.1. Short history of OFCOM

The first federal law on telecommunications dates back to 1922 and established a vertically integrated (network, services, terminal equipment) monopoly on voice communications on fixed networks that has to be realized by PTT (“Schweizerische Post-, Telefon- und Telegrafbetriebe”). PTT as state-owned monopolistic provider of postal and telecommunications services provided a single focal point for effective implementation of government policy objectives.

The Swiss Broadcasting Corporation SRG SSR was founded in 1931. PTT Telecom has been in charge of the technical diffusion/broadcasting of the programmes of the Swiss Broadcasting Corporation SRG SSR.

The Independent Complaints Authority for Radio and Television (ICA) came into existence in 1984 in order to investigate complaints relating to the breach by SRG SSR of its obligations.

The first Federal Radio and Television Act (RTVA) dates back to 1991. The Department (Ministry) of Environment, Transport, Energy and Communications (DETEC) was – and still is – competent for all matters relating to the regulation of the media sectors, i.e. with putting into effect the RTVA.

In 1998 came the complete opening of the market, introduction of competition and a partial privatization of the telecommunications branch of PTT (nowadays Swisscom SA). The Federal Communications Commission (ComCom) has been active since 1998 as the licensing authority and market regulator in the telecommunications sector. As provided for in Swiss Federal Telecommunications Act (TCA), the Commission instructs the Federal Office of Communications (OFCOM) to prepare its business and implement its decisions. The Commission has moreover delegated some of its tasks to OFCOM. OFCOM that came into existence in 1998 is subordinated to DETEC. It supervises the compliance by broadcasters with their legal and regulatory obligations as well as with the requirements of their licenses – with the exception of obligations relating to the editorial content of radio and television programmes.

2.2. The decision to establish a converged regulatory framework with one single regulator in charge of all electronic communication networks and service

In Switzerland, the telecoms and media sectors are regulated by separate legal acts. Nevertheless, the Federal Act on Telecommunications (TCA) regulates the transmission of information by means of telecommunications techniques, including the transmission of radio and television programme services. Because of its technological neutrality, this framework supports technological and commercial convergence including convergence (and competition) between conventional public telecommunications networks and cable television distribution networks.

The Swiss parliament has implemented elements of the institutional aspects developed in theories pertaining to convergence in the field of electronic communications. Indeed, OFCOM is centrally involved in the implementation of and supervision of the compliance with both the Telecommunications Act and the Radio and Television Act and ComCom is responsible for the award of radio licenses to broadcasters in addition to its activities more closely linked to telecommunications.

Synergy creation was the principal merit that the legislator expected from the establishment of a “converged” regulator (ComCom associated with OFCOM). This synergy was especially obvious with respect to spectrum management that was not fragmented over several regulators or that might have required the establishment of a third regulator.

The institutional structure in Switzerland with respect to regulators of the telecommunications and audiovisual stem from the recognition that achieving positive outcomes for society, the environment or the economy hinges on the effective performance of regulators. Effectivity required the establishment of an organization that would be future-proof and that would not stifle innovation. Only a “converged” regulator (ComCom associated with OFCOM) was satisfying this requirement.

3. Strength and weaknesses of the variants chosen in Switzerland

3.1. The legal, institutional and financial framework for an independent, converged regulator

Market players are adapting quickly and continuously to the impact of the converged electronic communications environment on their business models. With the convergence of electronic communications services, it is becoming less and less sustainable for them to roll-out an infrastructure as being specific to a particular service. Legislators/governments should adapt their national systems of oversight and institutional setting (regulators) to the pressures of convergence in the sector of electronic communications. The telephony and broadcast regulations, the institutional struc-

ture, and the resource administration have to be adjusted to this state of affairs in order to remain effective.

Converged regulation and an independent and converged regulator are most likely to maximize users' welfare and foster growth and innovation of the telecommunications sector and of the radio broadcast and information technology sectors. Regulatory models ought to be horizontal and technology-neutral in order to cover the whole range of existing and future services in the electronic communications service sector and to guarantee consistency over the long-term. In a converged environment, where it becomes less definitive which player is the key actor or actors in managing a call (e.g. network provider, device manufacture, operating system provider, application provider), authorities should strive to provide service neutral regulation to meet public policy objectives.

The institutional, organizational features of the Swiss system in the field of broadcasting, though they may not conform with the theory of the principles of good regulatory policy in terms of independence, work out in practice to be effectual. In a certain sense the regulator (OFCOM) who was established in Switzerland for the broadcasting sector is not independent. Though formally OFCOM may not be considered as an independent regulator, it is nevertheless independent actually/de facto. In international comparison, OFCOM represents an exception as in Europe the regulatory authorities of the media are generally organized in order to be independent from government/ministries. In Switzerland, the government could take a strong influence on the regulation of the media sector by OFCOM. The reality that the Swiss government does not exploit this circumstance in practice is due to the fact that the ministers who have been in charge of the media sector up to now valued the freedom of media to the highest extent regardless of their political affiliations. The regulation of audiovisual services in Switzerland is unassertive/down-to-earth and has mainly as a goal to organize the media landscape, guarantee the "service public", deter needless experimentations, and protect the freedom of media. Accordingly, it relies on numerous bodies that are managed by the audiovisual services sector itself. The Swiss regulation trusts on self-regulation and co-regulation and relies on recommendations and warnings rather than bans and sanctions.

3.2. Lessons for Tajikistan?

Instead of separate "vertical" regulators for telecommunications and broadcasting with distinct regulations for telecommunications and broadcasting which license infrastructure, monitor content and enforce competition rules, the establishment of a cross-sectoral regulator has strong advantages.

Regulation and authorities that regulate facilities separately from the services provided over those facilities:

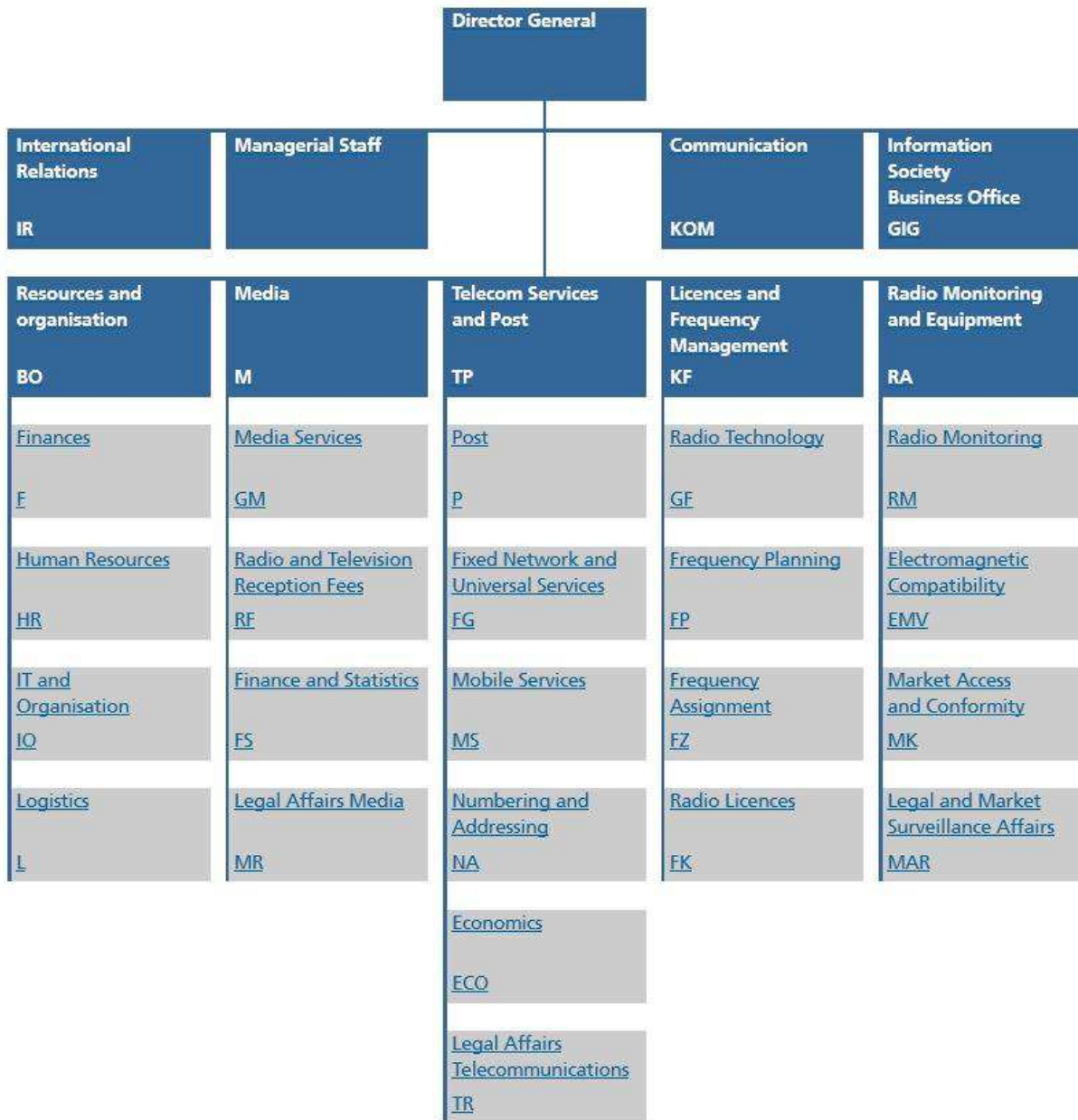
- reduce the risk of overlap and conflict between regulatory regimes and of incomplete regulatory coverage,
- augment the prospect of future proof regulation, and
- exploit synergies.

For a regulator to understand and fulfil its role effectively it is essential that its objectives, functions, and powers are clearly specified in the establishing legislation. Independence from the government and from the industry that is regulated is crucial to guarantee the quality of the regulatory outcomes by allowing the regulator to make decisions that are fair and impartial. This is fundamental for ensuring the rule of law and encouraging investment. Independent regulators require arrangements for their management and internal processes that ensure their effective functioning, preserve their regulatory integrity, and deliver the regulatory objectives of their mandate. Levels of funding for a regulator should be adequate. The amount and source of funding should not influence the regulatory decisions.

List of Abbreviations

AVMSD	Audiovisual Media Services Directive of the European Union
CTT	Convention on Transfrontier Television
ComCom	Federal Communications Commission
DETEC	Department of Environment, Transport, Energy and Communications
ECHR	European Convention of Human Rights
ERGA	European Regulators Group on Audiovisual Media Services
EU	European Union
FMEC	Federal Media Experts Commission
ICA	Independent Complaints Authority for Radio and Television
IPTV	Television over IP
MFN	Most-favored nation
OFCOM	Federal Office of Communications
RTVA	Federal Radio and Television Act
PTT	Schweizerische Post-, Telefon- und Telegrafbetriebe
SRG SSR	Swiss Broadcasting Corporation
TCA	Federal Telecommunications Act
VOIP	Voice-over-IP
WTO	World Trade Organisation

Annex 1: Organisation chart of OFCOM



Contribution from CRA (Bosnia & Herzegovina)

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This paper has been written at the request of the Office in Tajikistan of the Organization for Security and Co-operation (OSCE). The OSCE Office in Tajikistan has been asked by the Ministry of Economic Development and Trade to develop a feasibility study on the establishment of a converged regulatory authority for telecommunication and broadcasting services in Tajikistan.

Communications Regulatory Agency of Bosnia and Herzegovina

Regulation in Bosnia and Herzegovina

Introductory remarks

The electronic communications market is a highly technological sector, whose main features include fast technological evolution, the presence of “heavy” players, continuous introduction of innovative services, constant development of new business models and tendency towards vertical and horizontal integrations. It is also a sector dominated by “incumbent” players and former monopolists, still maintaining large market shares and significant market power.

The challenge for the regulator in this sector is to strike the right balance between conflicting interests of different stakeholders: consumers on one hand and the market on the other. Regulation of the communications sector is a complex and challenging tradeoff between protecting consumers’ interests and fostering competition, and the entry of new players in the market without, at the same time, discouraging investment by consolidated market actors.

In order to maintain a capability to regulate and overview such a complex market, a regulator must develop the capability to adapt to a changing environment and specifically to easily incorporate new functions identified by the legislator and, on the other hand, to quickly react to new needs emerging in the market, satisfying the needs of all citizens.

The effective development of regulatory functions requires the establishment of a body with a highly technical profile capable to maintain independence from both the political executive power and market players.

Independence of regulators from the regulated industry is crucial in order to reduce the risks, of the “regulatory capture”. Regulatory capture is a typical risk for a regulatory agency: a condition in which one or more regulated companies manage to control the regulatory agency’s policies: the regulated industries, in other words, pursue their interests in trying to influence the decisions of the regulatory agencies in order to maximise their results and obtain a more favourable regulatory environment. The risk of the regulatory capture is extremely high in competitive and dynamic sectors such as electronic communications and broadcasting, characterized by the presence of multinational and multi-business groups with remarkable financial resources and highly qualified staff.

"Regulatory space" defines the relationships with the main stakeholders in the sector as the Parliament, Government, ministerial structures and international institutions.

Political and Constitutional Background of Regulation in BiH

Bosnia and Herzegovina was a part of Socialist Federal Republic of Yugoslavia which fell apart in the 1990s. The fall of Yugoslavia resulted in a severe war in some of its former republics, BiH being hit the hardest.

The war that broke out in 1992 ended in 1995 by the Dayton Peace Agreement (DPA). The Annex IV of the DPA is actually the BiH Constitution – the Constitution that basically resolves ethnic division in BiH, dividing it in two entities, with just the basic competence at the state level. In such circumstances, it is not strange that the issues such as media did not find its place in the Constitution, while the telecommunications are just briefly referenced to as being in the state level.

The DPA however, in the Annex X, sets out the institute of the High Representative as the main enforcer and interpreter of the BiH Constitution.

One of the powers of the High Representative included setting up the commissions to provide assistance in carrying out his duties, which resulted in setting up the regulatory framework in BiH as is explained further on.

History of Regulation in BiH

The regulation of electronic media in line with European standards in Bosnia and Herzegovina begins with the Independent Media Committee (IMC) founded by the High representative in June 1998 http://www.ohr.int/decisions/mediadec/default.asp?content_id=95. In line with the principles of objectivity, transparency, non-discrimination and proportionality, IMC was in charge of establishing regulatory regime for electronic media in BiH. This primarily entailed issuing licenses to all RTV stations and other media as needed, managing and awarding frequency spectrum for broadcasting, passing relevant codes binding for all RTV stations and other media, and determining the level of compensation for license.

According to this decision, Director General and the Council were the top management of the IMC and both bodies were chosen by the Office of High Representative. Beside this, the Decision stipulated that the Implementation Board should be formed and it would decide on severe violations of the Code or of license conditions. However, in cases which required immediate reaction, such decisions could be made by Director General.

Communications Regulatory Agency - Converged Regulator

On 2 March 2001, the Decision of High Representative, http://www.ohr.int/decisions/mediadec/default.asp?content_id=75 merged the duties of Independent Media Committee and Telecommunications Regulatory Agency for (TRA) thus forming one of the first converged regulators in Europe.

There are several reasons for making such decision and in short, they come down to:

- the need to speed up the development of regulatory mechanisms at a state level;
- avoiding double or conflicting regulatory authorities no matter which level of government in BiH is in question;
- the key role of telecommunications in economic development of any country;
- the assumption that opening the market of telecommunications towards the competition brings benefits to both consumers and business sector;
- the fact that the trend in communications industry towards the convergence of technology and the way of transmission requires clear and comprehensive regulatory approach;
- the opinion that the unique regulator will enable a quick and efficient reaction to economic and business conditions.

Therefore, the Decision set a clear authority of the state of Bosnia and Herzegovina in the field of communications which would be realized through the Communications Regulatory Agency (the Agency).

The Agency would be managed by the executive director while its structure would include at least two sectors: one for broadcasting and one for telecommunications both lead by local experts. The Decision also stipulated the engagement of international consultants.

The Decision especially emphasized the independence of the Agency while keeping the Agency's authority to ensure that rules and decisions are enforced.

The Decision stipulated financing the Agency from licensing fees, the budget received from joined institutions of BiH and from donations. However, the Decision also stipulated that the budget of the Agency as a state-level body represented a part of the budget of institutions of BiH and that the Agency budget directly referred to sector policies of the Council of Ministers. In addition, after the approval of the Agency Council was received, the executive director was to submit the budget for the approval of the Council of Ministers and that state audit service would control finances.

Such solution, which was intended to strengthen the institution of the state of Bosnia and Herzegovina, brought negative consequences on the work and independence of the Agency later on. The decision ensured the continuity of all rules and procedures before IMC and CRA at the moment of joining the duties. Also, it is explicitly stated that in case there was no compliance, this decision would have the priority over all laws, rules and decisions at all levels of government in BiH.

On 21 October 2002, the High Representative made a Decision which regulated different issues of transitional nature which were the result of previous decisions of the High Representative. At the same time, the Law on Communications of Bosnia and Herzegovina was passed http://www.ohr.int/decisions/econdec/default.asp?content_id=28251 (Official Gazette of BiH 21/02)

The reasons for making such decisions are given in the preamble and they cover various issues and it is especially important to emphasize two points stating that:

‘Observing that the Communications Law of Bosnia and Herzegovina, which is a prerequisite for foreign investment and a necessary element for a fully functioning and empowered regulator, has yet to be adopted;

Recalling that the implementation of this Law and its objectives require a politically independent Communications Regulatory Agency that relies on the exceptional expertise and competence of the members of the Council of the Agency and the Director General, it is therefore necessary to ensure that the members of the Council of the Agency and the Director General are exclusively appointed on considerations based on their integrity, knowledge and professional merit..’

The given points from the Preamble are significant when the true independence of the Agency is observed in relation to the one stipulated by the Law on Communications which will be discussed further on.

Communications Law

On 21 October 2001, the High Representative passed the Communications Law of Bosnia and Herzegovina (Official Gazette of BiH 21/02). Later on the very same form of the Law was adopted by the Parliament of BiH (Official Gazette of BiH 31/03), and since then there have been only some slight changes (Official Gazette of BiH 75/06 and 32/10).

Formally, the Communications Law sets out a very firm basis for the independence of the Agency.

In chapter IX, Article 36, the Agency is defined as an independent and non-profit agency for the regulation of communications sector which carries out its duties in accordance with goals and regulatory principles in line with policies of the sector. These duties are carried out in accordance with the principles of objectivity, transparency and non-discrimination.

Article 3 makes a distinction between the duties of the Council of Ministers and the Agency. The duties of the Council of Ministers include producing and adopting the policy in line with the existing laws and determining the presentation of Bosnia and Herzegovina on international forums in the field of communications. On the other hand, the Agency has the authority over the regulation of broadcasting and public telecommunications networks and services. These services include issuing licenses, establishing prices, interconnectivity and defining the main conditions for ensuring joined and international means of communication, planning, coordinating, ensuring the purpose and awarding the radio-frequency spectrum.

Additional goals of both bodies are defined by the same article, paragraph 4 which states that the Council of Ministers and the Agency, in line with individual duties defined by this Law, take over all reasonable measures for reaching the following goals:

- (1) The promotion of fair competition in order that users derive maximum benefit in terms of choice, price and quality;
- (2) That there is no distortion or restriction of competition in the communications sector according to the Council of Ministers’ sector policies;
- (3) That efficient investment in infrastructure is encouraged and innovation promoted;

- (4) That copyright and other intellectual property as well as personal data and privacy is protected;
- (5) That efficient use and effective management of radio frequencies and numbering resources are ensured in accordance with the radio regulations and other recommendations of the International Telecommunication Union, and with other international agreements entered into by Bosnia and Herzegovina.

Article 4 of the Law gives regulatory principles of broadcasting and telecommunications.

Regulatory principles of broadcasting:

- The protection of freedom of expression and diversity of opinion;
- The development of professional and viable commercial and public broadcasters;
- That broadcasters shall be separate from political control and manipulation;
- That licenses shall be awarded on the basis of a process by which appropriate professional standards of program content, technical operation and financing are ensured;
- That broadcast advertising shall be regulated so as to be consistent with best European practice.

Regulatory principles of telecommunications:

- The protection of interest of users;
- That all users shall have access to telecommunications services on a transparent, objective and non-discriminatory basis;
- That the quality levels for the provision of telecommunications services and telecommunications equipment shall be compatible with standards generally adopted in the European Union;
- That tariffs charged for telecommunications services shall be transparent and non-discriminatory;
- That open entry into the provision of telecommunications services will be encouraged according to the Council of Ministers' sector policies.

As such, regulatory principles imply the independence of the Agency because based on the way they are defined by the Law they could not be fulfilled in case the Agency falls under any type of control.

Article 37 of the Law gives the duties of the Agency in the field of communications.

Agency duties:

- To promulgate rules on broadcasting and telecommunications;
- To license broadcasters and telecommunications operators;
- To plan, manage, allocate and assign frequency spectrum and monitor the use of it;
- To require the disclosure of such information as is necessary for the due performance of its regulatory obligations;
- To apply technical and quality standards;
- To establish and maintain a technical license fee system;
- Other duties in line with the Law on Communications or Sector Policy.

According to the Law, duties of the Agency include: planning, managing, the purpose and awarding the frequency spectrum, issuing licenses in broadcasting field and following the respect of license conditions and other rules and regulations passed by the Agency. The process of licensing is entirely non-discriminatory and transparent and it is conducted according to the principle of competition based on precise criteria and the best technical, program and financial results. Each electronic media and media service provider has to have the license of the Agency for the use of the spectrum and broadcasting without an adequate license is illegal and hence it is not allowed. The license for broadcasting includes the obligation of respecting rules and regulations of the Agency which in all cases protect the independence and the right of the media to freedom of expression and establish certain standards of broadcasting which media have to fulfill.

The Law on Communications stipulates mechanisms of protection of the Agency both through explicit provisions prescribing that officials at all levels of government cannot interfere in decision making process (Article 36 (3) of the Law: *The Council of Ministers, ministers or any other person cannot interfere in decision making process of the Agency in any way in individual cases*), and through provisions regulating the process of election of Director General and the Council of the Agency.

Competence and Composition of the Agency

The Council leads the Agency when it comes to strategic issues of applying laws and it consults with Director General from whom it receives reports. The Council of the Agency adopts the code of work and the rules for broadcasting and telecommunications. Beside this, the function of Council of the Agency is to serve as an appellate body for decisions made by Director General. The members choose the president and vice-president among themselves. The Council of the Agency meets at least four times a year. Director General submits reports to the Council with regard to strategic issues. Director General attends all meetings of the Council without a right to vote.

With regard to the election of the members of the Council, the original version of the Law defined a procedure which ensured the election without any political influence. Namely, according to the Law, only the Council of the Agency made a selection of new members and it determined the list of candidates which has to consist of at least double of the members which are chosen at that time. This list was then to be submitted to the Council of Ministers which chooses the candidates from an extended list and then it submits it to the Parliament of BiH which appoint them. The Parliament accepts or rejects proposed candidates within 30 days, and in the case of rejection, the Council of Ministers has to offer an alternative candidate from the list made by the Council of the Agency.

The concept based on who suggests the list of candidates for a new make-up of this body often caused confusion and it made the credibility of such procedure rather questionable. However, it is considered that the Law satisfactorily resolved every confusion that may occur. Namely, it has to be emphasized that the Council determined a list which consists of two candidates per each vacancy. There were no restrictions stating that the Council should not create a list of more candidates. Furthermore, the fact that the Council couldn't propose the current members does not leave any space for misconduct – namely, beside current members, the Council had to submit alternative members, too, and the mandate of Council members can be repeated only once, which is usual for duration of a mandate so that same persons cannot be the members of the Council all the time.

The Law also prescribes that the officials on legislative or executive positions at all levels of the government or members of bodies of political parties cannot be candidates for membership in the Council of the Agency. Also, the members of the Council have to report every interest they have with regard to the operator of telecommunications or broadcasters and they are exempted in cases of conflict of interest.

This procedure could possibly be additionally advanced if there was a provision introduced to define in a more detailed way the procedure of announcing the call for new Council members and the provision which could be binding in order for the Parliament to give a detailed explanation of rejection of any candidate which could be proven useful in case of multiple rejections.

However, there has been a change in the Law related to election of the Council in the manner that the Council members are now elected by the Parliament of BiH. The procedure includes the provision of creation of parliamentary ad hoc commission which is proposed by the Council of Ministers. This commission, consisting of equal number of representatives of governmental and non-governmental bodies leads the whole procedure and then proposes again the list of 14 candidates to the Council of Ministers, which then submits the list of 7 candidates to the Parliament. The procedure can be repeated on the request of the Parliament.

The provisions which state that the members of the Council are appointed based on their personal qualifications and as individuals which have legal, economic, technical or other relevant experience and who are experts in the field of telecommunications and broadcasting, but also taking care of balance of nationality in the composition are still the same after the latest changes to the Law.

The new composition of the Council has been elected following the changes to the Law. The practice has shown that the provisions are rather vague, particularly when it comes to the election and functioning of the ad hoc commission.

Director General

Director General is the head of the Agency and this person is responsible for all administrative activities of the Agency, which include the application of the Law on Communications and other relevant laws. Also, this person is responsible for all staff issues of the Agency as well as for establishing the rules about internal procedures.

There is a detailed description of the procedure of appointment of Director General in Article 40 of the Law on Communications.

The nomination of Director General shall be made following a public competition that has to be announced in the Official Gazette and allow at least four weeks for the submission of the application. Applicants shall have relevant experience in the fields of telecommunications and/or broadcasting and proven management skills. Officials in legislative or executive functions at any level of Government, or members of political party organs shall not be nominated as Director General. The Director General shall not have any financial relation with a telecommunications operator or a broadcaster

After the selection, the Council of the Agency proposes the Director General and then this is approved by the Council of Ministers within thirty days after submission of the nomination.

The Law provides a very clear definition of the position of Director General as well as the obligation of the Council of Ministers to appoint the Director General suggested by the Council of the Agency.

If it was an initial intention, the legislator would state for example, that the Council of the Agency forwards to the Council of Ministers the list of candidates for the position of director general or it would stipulate the conditions under which the Council of Ministers could return the proposal. However, as the Law states that the Council proposes Director General and not a candidate for Director General which is then approved by the Council of Ministers within a certain period of time, it is clear that in such circumstances there are no options for different interpretations.

However, problems occurred in the application of this Article. After the legally prescribed procedure, in 2007, the Council of the Agency submitted to the Council of Ministers a proposal for Director General. However, instead of the approval of nomination, the Council of Ministers repudiated the proposal and made a Conclusion ordering the Council of the Agency *"to announce a new call for the election of director general of Communications Regulatory Agency..."*

Therefore, even though the Council of the Agency conducted legally prescribed procedure and submitted the unanimously adopted proposal for the approval of appointing the selected candidate for the position of Director General to the Council of Ministers on time, the Council of Ministers refused to approve this election without any legal basis. Namely, the Law explicitly prescribes that the Council of the Agency is entirely in charge of the election and appointing while the Council of Ministers only approves the proposal. In addition, the Law does not enable the Council of Ministers to establish or conducts the procedure of appointing Director General of the Agency on its own, nor to have any other influence on the procedure of election and appointing Director General. The Council of Ministers cannot have any influence on the Council of the Agency when it makes individual decisions within its legal authorization (the above mentioned Article 36, paragraph 3 of the Law on Communications).

This same problem occurred in 2014 when the new Council proposed the candidate, which has never received the approval by the executive branch.

(In)Complete Financial Independence

Financial issues of the Agency are regulated by Article 44 of the Law on Communications. The budget of the Agency shall relate directly to the Council of Ministers' sector policies. The Director General shall submit a budget for each fiscal year, previously adopted by the Council of the

Agency, to the Council of Ministers for approval. Until the budget is approved or altered by the Council of Ministers, the Agency shall operate the budget adopted by the Council of the Agency.

The funding of the Agency comes from recurrent technical license fees for the regulation and supervision of the telecommunications operators and broadcasters and from grants or donations received by the Agency insofar as they are in conformity with general principles of law. When grants or donations are given for specific tasks or projects in the public interest, they shall be accounted for separately to the approved budget and not be included therein.

Funds received by the Agency shall be used in accordance with the Agency's budget as directed by the Director General. The Law also states that fines collected by the Agency in the performance of its right to apply enforcement measures, and levies invoiced as directed by the Council of Ministers shall be remitted to the Council of Ministers for inclusion in the budget of the institutions of Bosnia and Herzegovina.

The use of funds by the Agency shall be subject to review by the Supreme Audit Institution and in addition audited by an independent auditor every year. The Agency shall prepare an annual report of its finances and activities, and shall submit it to the Council of Ministers. The Council of Ministers shall consider the Agency's annual report and publish it not later than four (4) months after the end of each financial year.

The Council of Ministers can lower the proposed budget of the Agency to a certain percent which somewhat limits a direct impact on the budgetary policy of the Agency. However, the very fact that the Agency has the status of a budgetary user (Law on Funding the Institutions of Bosnia and Herzegovina, Official Gazette of BiH 61/04 and 49/09), makes it succumb to numerous laws related to budgetary users – Law on Salaries, Law on Ministries and Other Bodies of Administration, etc. which puts the Agency primarily under financial control.

Finally, the independence of the Agency is particularly jeopardized after there were amendments and additions to the Law on Ministries and Other Bodies of Administration (Official Gazette of BiH 103/09), which was adopted by both houses of the Parliament of BiH on 30 December 2009. The Agency was included in independent administration bodies. The concept of 'independence' in the context of this Law should not be mixed with the concept of autonomy as independence in this context refers only to the fact that the Agency is not a part of a ministry or any other body while the Law makes it succumb to numerous influences of executive rule which additionally endangers its independence having in mind that this is an independent regulator the activities of which are regulated by special legal acts.

Rules and Codes of the Agency

The Communications Law sets out the minimum provisions in the field of communications, but it gives the power to the Agency to adopt the rules as by-laws, regulating the filed in more details, This practice is very good as it gives an ample space to the Agency to swiftly react to the regulatory needs. The rules and codes follow the best European principles and standards.

The Agency shall, before making the rules provided for in the Communications Law:

- Publish the draft rule;
- Allow not less than fourteen (14) days for the filing of comments; and
- Give due consideration to all comments concerning the published draft rule.

Rules of the Agency enter into force on the eighth (8) day following the day of publication in the Official Gazette of Bosnia and Herzegovina.

There are currently 76 codes and rules regulating audiovisual media services, radio, telecommunications and radiofrequency spectrum.

Sanctions

The Agency is in charge of enforcing the codes and rules; the decisions on violations are made by the Director General. These decisions can be appealed to the Council of the Agency, whose decision in the appellate procedure is final in the administrative process. An administrative dispute can be initiated before the Court of Bosnia and Herzegovina.

Proportionally to established violations of relevant rules and regulations, the Law on Communications of BiH (Article 46) stipulates certain sanctions, or executive measures:

- a) Oral and written warnings;
- b) Inspection of licensed facilities;
- c) Concrete demands for action or cessation, to be complied with within a specified time limit;
- d) Assessment of a financial penalty not to exceed 150,000 KM in case of deliberate or negligent violation of individual provisions of the Law or of conditions specified in the license or in the codes of practice and rules of the Agency. The level of the financial imposition shall be commensurate with the gravity of the infringement and, where applicable, with the gross financial benefits derived from the infringement. In case of repeated violations, the financial imposition may not exceed 300,000 KM. The Agency shall devise a schedule of infractions and resulting penalties, which shall be adopted by the Council of Ministers.
- e) Orders to interrupt broadcasting or the provision of telecommunications services for a period not exceeding three months;
- f) Revocation of a license

Convergence - yes or no?

Increased competition within the national economy today undoubtedly represents a cornerstone for improvement of economic and social situation in a certain country. On the other hand, increasing competition is directly related to the implementation of information - communications technologies in all facets of human activities, including education, economy, health care, security, state administration etc. In order to achieve its full affirmation and become adequately represented in the society one of the necessary conditions to be fulfilled is efficient development of the electronic communications market. This requires a creation and implementation of adequate state strategic sector policies, with the aim to create an environment that would allow competition growth among service providers that would compete with tariffs, quality and variety of services offered to the users at the market. Consequently, a regulation occurs with competencies that include a wide set of mechanisms for opening up market competitions in various market areas in order to prevent disloyal competition at the market, to promote and incite richer offer to the end users, as well as to protect the overall interests of end users. Therefore, competition growth through shaping and development of regulatory bodies of the communications market should be one of the strategic goals of every country.

On this path of integrations, technological development and adoption of technological innovations and trends of convergence in communications sector is extremely important, as well as regulation that will face challenges the telecommunications and broadcasting markets imposes in the best possible manner. Service providers worldwide have accepted convergence of information-communications technologies in order to enter new markets, initiate their own development and improve their business possibilities and perspectives. Users have also responded to this with a plummeting increase of subscribers to the new services at lower prices. New technologies and globalization of the market are forcing development and convergence realizing at the same time big advantages for all sides involved in the process.

Converged regulatory regime increases the level of efficiency of regulation of the communications market unlike the one with separate competencies, especially having in mind that clear-cut borders between telecommunications and broadcasting cease to exist for modern service providers. Creating regulatory rules as well as the licensing process is significantly simplified and faster since there is a larger concentration of knowledge and experts in the field of regulation, which is again more relevant for converged regulators than with separate ones. It is also obvious that managing frequency spectrum is much easier and propulsive if conducted from one centre that is also relevant for the industries basing their work on spectrum use. Therefore, in all regulatory regimes' evaluations these elements should be taken into consideration and, based on this argument, larger values should be given to the converged regulators than to single sector's regulators. Equal treatment of all infrastructures, services and contents, especially from the aspect of licensing, is much easier to

achieve by a converged regulator rather than by two or more separate ones. This is the issue of technologically neutral regulation, which means that regulation of any service that is related to licensing, spectrum, interconnection, universal service or block of numbers is the same regardless of technology used. Converged approach to the regulation with mechanisms at its disposal can respond much easier to the challenges of shaping and structuring efficient regulatory bodies for the communications market. Governments, especially those of the developing countries, can be certain that potential investors and international network operators will carefully observe how the regulatory body is established and how it is developing, before they decide to enter the certain country market. Investors seek structural and institutional relations they can understand and relations that can ensure long term stability to their business projects.

The goal is to create a regulatory framework that will truly promote strengthening of the competition. Service providers may set in motion converged services only if the regulators set fewer barriers for entrance of the new services into the markets and allow innovations and, while doing this, enable increase of competition, lower tariffs and therefore support the overall growth. It is also important for regulators to prevent possible disturbance at the market and not allow monopolization by incumbent operators. Regulatory framework that succeeds to establish competition at the market will provide the biggest benefits for the users. It is also very desirable for the regulatory framework to be market oriented more than to the available regulatory measures. Keeping strong regulatory framework for too long could suffocate development of convergence and consequently development of the competition. Regulation should move towards facilitating occurrence of the new technologies at the market and convergence of services, to intervene as little as possible except in cases where healthy competition is endangered. Therefore, new technologies should be allowed to offer to the market everything they have at their disposal. Regulatory framework that is technologically neutral and enables flexibility in service provision, as a result will encourage investments into the communications sector as well as innovations in service provision. Service providers than may use their networks in full capacity and lower their operational costs, increasing that way their own business sustainability and making the market more efficient. Users will profit having lower tariffs, larger choice and increased competition. This is what could be called a win-win strategy. This trend of forming converged regulators seems to be a logical and realistic choice from the point of view of technological development and occurrence of the new technologies and services.

Conclusions and Recommendations of a joint OSCE/MEDT Conference

Conclusions and Recommendations of the International Conference “Telecommunication, Broadcasting and Tajikistan’s WTO Commitments”

Dushanbe, 18 - 19 March 2014

Conclusions

Tajikistan’s accession to the World Trade Organization (WTO) entails a series of reforms in many sectors which will positively impact on the national economic development of goods, services and protection of intellectual property rights.

In order to foster the timely and efficient implementation of these reforms the participants of the conference suggested the establishment of a working group, which would be chaired by the Ministry of Economic Development and Trade of Tajikistan. The main objective of this working group would be the drafting of an action plan with a view of implementing the recommendations set out below. Following its completion this action plan would then be submitted to the ICT Council under the President of Tajikistan for approval and implementation.

Recommendations

The participants of the Conference agreed on the following recommendations:

I. In the field of telecommunications

Establish a legal and institutional framework, which is indispensable for the implementation of Tajikistan’s WTO obligations regarding the telecommunication services. Such a framework must *inter alia* include the following:

- Compliance with the most favored nation principle: non-discrimination among other WTO members.
- Compliance with the national treatment principle: non-discrimination against foreign services and service providers from other WTO members.
- Ensuring competition safeguards: prevention of anti-competitive practices in telecommunications.
- Establishment of an independent regulator, who is separate from, not accountable to, and also not controlling or managing any supplier of basic telecommunication services. The decisions of and the procedures used by the regulator must be impartial with respect to all market participants. One of the tasks of the regulatory body would be the settlement of disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time.
- Regulation of allocation and use of scarce resources - any procedures for the allocation and use of scarce resources including frequencies will be carried out in an objective, timely, transparent and non-discriminatory manner.
- Ensuring public availability of licensing criteria: where a license is required, the following will be made available: a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a license and b) the terms and conditions of individual licenses. The reasons for the denial of a license must be made known to the applicant.
- Ratification of the Convention of the International Telecommunication Union (ITU) and its subsequent amendments by Tajikistan.
- Monitoring of the compliance of Tajikistan’s WTO commitments.

II. In the field of broadcasting

Establishment of a legal and institutional framework which is indispensable for the development of a free, independent, pluralistic and economically viable broadcasting sector in Tajikistan. Such a framework must *inter alia* include the following:

- Establishment of an independent broadcast regulator with the power to issue broadcasting licenses, whose decisions must be independent of the government and subject to judicial review. The legal status and the independence of this regulatory authority should be defined and guaranteed by law.
- Drafting a new broadcasting law and other legal instruments as may be required based on developments in information and communication technologies, international legal obligations of Tajikistan and best international practices.
- Regulation of allocation of broadcast licenses by law, with clear, objective and transparent criteria, which promote diversity and pluralism, whereas such decisions must be subject to judicial review.
- Ensuring access of broadcasters to multiplex platforms in a fair, transparent and non-discriminatory manner.
- Transformation of state broadcasters to a public service broadcaster.
- Establishment of a level playing field for both private broadcasters and the public service broadcaster.
- Ensuring protection of intellectual property rights in compliance with national and international legislation, including WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

III. Digital switch-over

In the absence of a comprehensive law regulating the digital switch-over process and with a view to ensure freedom of expression and pluralism in the media, the ultimate objectives should be the following:

- Establishment of a coordination body under the aegis of ICT Council, with a view to develop and implement a market strategy for the introduction of digital television in Tajikistan, which would require coordination between network operators, content providers, terminal equipment industry, traders, consumer associations on conversion timetables, program structures, technical parameters and a consumer friendly policy. The members of the coordination body would comprise the above stake holders.
- Ensuring access to digital broadcasting free of charge for the low income population.
- Ensuring free access of existing private broadcasters to multiplex platforms by must-carry obligations of multiplex operators and incentives for private analogue broadcasters to participate in the digitalization process which could include: increased coverage, longer license periods, no license fee.
- Ensuring that decisions on the use of the digital dividend resulting from the digitalization process reflect its public nature, its social, economic and political impact on society and involve all stakeholders.

IV. Audiovisual productions

In order to allow for the development of an economic and culturally vibrant and pluralistic audiovisual sector in Tajikistan the Government should abolish the licensing requirements for the production of audiovisual works, which constitutes an unnecessary burden which is not in line with the best international practices.

Action Plan (Government Decree No.691 of 31 October 2014)

No. 691
31.10.2014

D E C R E E

**On the Program of Adjustment of the Economy of the Republic of Tajikistan
Related to the Membership in the World Trade Organization**

In accordance with Article 14 of the Constitutional Law of the Republic of Tajikistan "On the Government of the Republic of Tajikistan" the Government of the Republic of Tajikistan on decrees:

1. Approve the Program of Adjustment of the Economy of the Republic of Tajikistan Related to the Membership in the World Trade Organization (attached).

2. The ministries and agencies shall ensure the timely and full implementation of the Program of Adjustment of the Economy of the Republic of Tajikistan Related to the Membership in the World Trade Organization.

3. The ministries and agencies shall review the progress of implementation of the Program of Adjustment of the Economy of the Republic of Tajikistan Related to the Membership in the World Trade Organization and provide the information on the results to the Ministry of Economic Development and Trade of the Republic of Tajikistan on a quarterly basis.

4. The Ministry of Economic Development and Trade of the Republic of Tajikistan shall provide the information on the implementation of this Program to the Government of the Republic of Tajikistan every six months.

**President of the Government
of the Republic Tajikistan**

Emomali Rahmon

PROGRAM OF ADJUSTMENT OF THE ECONOMY OF THE REPUBLIC OF TAJIKISTAN RELATED TO THE MEMBERSHIP IN THE WORLD TRADE ORGANIZATION

1. Introduction

The World Trade Organization (WTO) was founded on 1 January 1995 and its main purpose is facilitation of international trade, promotion of equality and transparency, promotion of sustainable economic development and, on this basis, improvement the welfare of the people. Countries - WTO members perform these tasks by monitoring compliance with the requirements of multilateral agreements, including multilateral negotiations, regulation of trade in line with WTO rules, support to developing countries and a general survey of the economic policies of member countries.

The WTO agreements cover a wide range of activities and consist of general and fundamental principles for all member countries of the organization. Only these principles form the basis of the multilateral trading system of the WTO. At present, 160 countries are members of this organization, and 27 other countries have the observers status.

The Republic of Tajikistan is the 159th member of this organization and our country has achieved of this goal after the long period of negotiations. World practice shows that the accession process is very complex and that observer countries must bring their current legislation into compliance with WTO rules and that negotiation on foreign trade regime, conditions allowing market access for goods and services, commercial aspects of intellectual property rights, protection of the rights of the manufacturer and other areas must be carried out with member countries.

In order to become a of this organization, in May 2001 the Government of the Republic of Tajikistan has submitted a letter of request to the WTO Secretariat, expressing the intention to join the WTO. At the session of the WTO General Council in July 2001, the request of the Government of the Republic of Tajikistan has been considered and the Working Party for the Accession of Tajikistan was established and Tajikistan acquired the observer status.

His Excellency, the President of the Republic of Tajikistan, Esteemed Emomali Rahmon and the Government of the Republic of Tajikistan provided the necessary conditions to accelerate the accession of the Republic of Tajikistan to the WTO. Pursuant to the instructions of the President and the Government of the Republic of Tajikistan, the Ministry of Economic Development and Trade, together with concerned agencies had carried out the necessary work.

In particular, the organization and coordination of the accession process of the Republic of Tajikistan to the WTO, as well as the coordination of the activities of executive authorities in the implementation of cooperation with the WTO was assigned to the Ministry of Economic Development and Trade of the Republic of Tajikistan.

By the Resolution of the Government of the Republic of Tajikistan of 7 September 2001, the Interdepartmental Commission for the Preparation of the Accession Process of the Republic of Tajikistan to the WTO was created. Huge amount of work was carried out in order to bring the legislation of the Republic of Tajikistan in compliance with WTO rules. The country has established a stable regulatory framework that meets the requirements of international law.

Negotiations and meetings of representatives of the Republic of Tajikistan with the countries members of the WTO on accession to the WTO have been carried out in two tracks: bilateral and multilateral. In the course of nine rounds of negotiations, the representatives of the Republic of Tajikistan have answered 1300 WTO member countries' questions and requests. In this process, the Republic of Tajikistan held 6 bilateral negotiations on market access for services and 13 bilateral negotiations on market access for goods, and subsequently signed the relevant protocols.

On December 10, 2012, the WTO General Council has considered and approved the Report of the Working Party and the documents related to the accession process of the Republic of Tajikistan to the WTO. Protocol for the accession of our country to the WTO was signed by the President and ratified by the Majlisi Oli of the Republic of Tajikistan. The Republic of Tajikistan became a full-fledged member of the World Trade Organization on March 2, 2013.

Tajikistan's WTO membership, first and foremost actively contributes to the process of integration into the global economy, has a positive effect on the country's rating at the global level, makes it possible to take advantage of international trade, contributes to the improvement of the structure of government administration and plays an important role in the training of highly qualified specialists in the sphere of economy and international trade.

Participation of the Republic of Tajikistan in the WTO activities is one of the priority issues of the economic development of the country. Membership in this organization Tajikistan allows the implementation in the country the system of transparency, predictability, and most importantly establishing compliance with the requirements of the global trade market access, and also increases the competitiveness in the domestic market.

2. The Need for the Program

In the current environment, with the accession of the Republic of Tajikistan to the WTO, the use of the benefits of the membership in this organization, preparation of the country's economy to a healthy competition in the transition period, harmonizing its economy within the framework of the commitments of the Republic of Tajikistan, protection of the economic interests of domestic manufacturers, and progressive development of foreign economic relations are of special importance, becoming a critical factor in the development of the national economy. In these conditions, the further gradual development of the economy is also a key prerequisite for long-term economic strategy of the country, with the aim to address issues of market updates and organization of a competitive economy. In this regard, appropriate organization of interaction between the Republic of Tajikistan and the countries members of the WTO, as well as with international institutions is a current requirement.

Bringing the legislation of the Republic in compliance with the rules and regulations of the WTO, which was fully implemented the WTO accession process, is the legal basis for the membership of the Republic of Tajikistan in the WTO. The Republic of Tajikistan has performed the work related to the harmonization of legislation of the Republic with the WTO rules and removal of inconsistencies of the national legislation with the national treatment and most favored nation treatment principles.

In the process of accession to the WTO more than 100 normative legal acts related to WTO issues have been adopted.

It should be noted that in relation to Tajikistan the members of the organization did not take restrictive measures to reduce trade in agricultural products. It should be also noted that in the course of the multilateral negotiations with WTO member countries on agricultural goods, Tajikistan was able to negotiate support for the agricultural sector at the level of 8% of the GDP. During the talks, Tajikistan was able to protect priority sectors, in particular the processing of cotton and light industry, food industry and processing of other agricultural products.

3. Objective of the Program

The main objective of the Program is creating a favorable environment for the development of small and medium enterprises, attracting foreign investment, strengthening bilateral and multilateral cooperation with the WTO members and providing the advantages of the WTO membership for the business community, by taking the necessary measures to accelerate reforms in various sectors. This program is aimed at reducing unemployment through the creation of appropriate conditions for the new jobs, reducing poverty and raising living standards of the population.

The emergence of new markets for exports of goods of domestic producers, strengthening bilateral and multilateral cooperation with WTO members, active participation in the process of improving trade relations are the comparative advantages of membership in the WTO. Because of these reasons the program of adaptation of the Tajik economy to WTO requirements was developed, allowing market access to goods and services of the WTO members and ensuring fair competition for domestic and foreign producers, which emanate from the Report of the Working Party on the accession of the Republic of Tajikistan to the WTO.

This program covers a variety of sectors, and its main objective is to organize a non-discriminatory environment, transparency, equality of foreign trade operators, ensuring uniform conditions of access to the services market and prepare the best conditions for the sustainable development of the economy.

The attached Action Plan is an integral part of this program, and consists of 9 sections. In order to implement the Action Plan, which is a consequence of the commitments of the Republic of Tajikistan in the framework of the WTO, the program addresses issues of technical barriers to trade, sanitary and phytosanitary measures, services, intellectual property, sectoral measures, including measures in agriculture and industry, increasing knowledge and awareness of the wide range of entrepreneurs of the WTO and the education sector.

4. Goals of the Program

In order to eliminate the any negative effects in respect of foreign economic relations and organize effective foreign trade system, the government of the Republic of Tajikistan has adopted a policy of gradual liberalization of foreign trade and WTO accession was designated as one of the priority areas. The adoption of the Decree of the President of the Republic of Tajikistan №261 of June 27, 1995, "On the Subsequent Liberalization of Foreign trade in the Republic of Tajikistan" is considered the first step in the implementation of reforms in this area. Today, it is encouraging to note that the chosen path of the Government of the Republic of Tajikistan in the socio-economic development of the country was correct and timely.

Implementation of the Program of measures aimed at simplifying the customs administration, reducing the paperwork for import and export; reducing the amount of information for customs supervision and authorization; limiting the time for the control in road border crossings; providing supervision at road border crossings; ensuring public safety and public health, preventing smuggling; review of the system of supervisory measures at border crossings, in order to transfer the supervision and investigative work from border crossing points to inland terminals; provision of preliminary information licensing authorities and their use in making decisions about the release of goods, taking into account risk management; development of new customs tariff arising from the obligations which were accepted in the process of accession to the WTO; development and application of protective measures (anti-dumping, countervailing, safeguard measures); obtaining the status of an observer country to the Agreement on Government Procurement and submitting the request for membership; accession to the WTO Agreement on Trade in Civil Aircraft; increasing the number of reference laboratories; construction of modern laboratories that meet international requirements; providing laboratories with modern equipment; training employees using the best international experience to ensure food safety; organization of information centers for services, which are aimed at strengthening the position of the Republic of Tajikistan in the world trade.

Increased integration of the economy into the global economy and the creation of a favorable environment, ensuring appropriate participation in the distribution of international labor market and the world trade, export promotion and investment, regular participation in the development of international trade rules and the achievement of sustainable development are the main goals of foreign trade policy of the country and the basis for the formation of a global partnership for development.

5. Priorities of the Program

The priority of this program in the first place is to use the existing WTO membership privileges, to establish optimal conditions for bilateral mutually beneficial cooperation, attracting foreign investment, transparency and equity in trade and economic relations, which would lead to the improvement of the image of our country before the member countries.

With the implementation of the Action Plan of the Program, the economy may also receive the following benefits:

- Use of the most favored nation regime, which eliminates the signing separately a large number of such agreements;
- Application of the principles of free trade in the international trade in relation to the Republic of Tajikistan, which is the basis for the elimination of negative and discriminatory barriers;

- Improving the rating of the country in the international arena as a reliable partner and the development of trade relations between domestic and foreign entrepreneurs and attracting foreign investment;
- Ability to use trade information system, which creates favorable conditions for the realization of economic and trade policies;
- Use by the Republic of Tajikistan of the WTO trade and economic dispute settlement mechanism;
- Participation of the Republic of Tajikistan in the development of new international trade rules, taking into account to national interests;
- Enhancing the participation of subjects of foreign economic activity of the country at the global level.

6. Results of the Program

Practical implementation of the Program's Action Plan will lead to the following results:

- Non-discriminatory access of domestic products to the world market;
- Creation of favorable conditions for attracting foreign investment;
- Adaptation of the legislation of the Republic of Tajikistan to the WTO rules;
- Creating conditions for improving the quality and competitiveness of domestic products with the increasing imports of foreign products, services and investment in the domestic market;
- Participation in the system of settlement of trade disputes at the international level;
- Participation in the development of international trade rules, taking into account to national interests;
- Use of a system of trade information, which creates favorable conditions for the realization of economic and trade policies.

**PROGRAM OF ADJUSTMENT OF THE ECONOMY OF
THE REPUBLIC OF TAJIKISTAN RELATED TO THE MEMBERSHIP IN THE WORLD TRADE ORGANIZATION**

V. SERVICES

	Action Item	Responsible Authority	Timeframe	WTO/Other Reference	Comment
1.	Establish Services Enquiry Point(s)	Ministry of Economic Development and Trade	Firs half of 2015	GATS Article III.4	In accordance with Article III.4 of the Services Agreement each WTO Member must establish one or more enquiry points to provide specific information to other Members, upon request, on any of its measures of general application or international agreements within the meaning of paragraph, as well as those subject to the notification requirement in paragraph 3.
2.	Ratification of the Convention of the International Telecommunication Union (ITU) and its subsequent amendments	Telecommunication Service, Ministry of Foreign Affairs	2015		Ratification of the Convention of the International Telecommunication Union and the accession of the Republic of Tajikistan to the organization will improve environment for providing telecommunications services and further development of the sector.
3.	<p>Consider the issue of restructuring of the Telecommunications service and the Committee on TV and Radio:</p> <p>a. Prepare a feasibility study with the view of establishing a single agency responsible for telecommunications and broadcast;</p> <p>b. If the results of the feasibility study demonstrate that it is feasible, establish a single agency responsible for telecommunications and broadcast.</p>	<p>Telecommunications service, Committee on TV and Radio</p> <p>Government of the Republic of Tajikistan</p>	<p>2015</p> <p>2015</p> <p>2015</p>	<p>WTO GATS Protocol on Accession to WTO</p>	<p>In accordance with the Government Regulation No. 252 of 11 may 2011 the Communication Service, which also functions as a telecommunications regulator agency, manages the Tojik-telecom, a telecommunications provider where the Government owns of 95% stock. This situation clearly shows the conflict of interests, which violates services commitments taken by Tajikistan in the course of WTO accession (Reference Paper-Annex I to Services Schedule WT/ACC/TJK/30/Add.2).</p> <p>Telecommunications regulator agency must be made independent and separate from any activity in any way related to providing telecommunications services.</p>

4.	<p>Amend Article 17 of the Law on Licensing of Separate Types of Activities (No.37 of 17 May 2004) and the Chapter 50 of the to the Regulation on Specifics of Licensing of Separate Types of Activities (approved by the Decree of the Government of the RT No.172 of 3 April 2007) to abolish the requirement of obtaining a license for the production of audiovisual works</p>	<p>Ministry of Economic Development and Trade, State Committee for Investments and Management of State Property Committee on TV and Radio</p>	2015		
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List of all stakeholders which have been consulted for the FS

#	Name	Organization	Position
State Authorities			
1.	Mr. Beg Sabur	Communication Service	Chairperson
2.	Mr. Saidali Siddiq	Committee on TV and Radio	First Deputy to Chairperson
3.	Mr. Ilhom Atoev	Communication Service	Deputy Chairperson
4.	Mr. Muzaffar Khikmatov	OJSC Tojiktelecom	General Director
5.	Mr. Khushed Habibov	OJSC Teleradiocom	General Director
6.	Mr. Suhrob Aliev	State Inspectorate on Monitoring for TV and Radio	Head
7.	Mr. Tolib Kholov	Committee on TV and Radio	Secretary of the Licensing Commission of the Committee
8.	Mr. Pulod Madaliev	Committee on TV and Radio	Head of Department on Coordination of Programs and International Relations
9.	Mrs. Sumangul Yakubova	Communication Service	Head of International Relations Sub-division
10.	Mr. Rajabali Nosirov	Postal Communication “Pochtai Tojik”	Deputy Director
11.	Mr. Inoyatullo Qosimov	Ministry of Economic Development and Trade	Head of WTO department
12.	Mr. P. Barotov	Anti-monopoly Service	
13.	Mr. S. Nazrulloev	Anti-monopoly Service	
Private sector and Business Associations			
14.	Ms. Jamila Emomnazarova	Babilon-T LLC	Head of PR Department
15.	Mr. Habibullo Hotamov	CJSC Babilon-Mobile	Deputy Technical Director
16.	Mr. Gafurjon Irkaev	Association of Mobile Communications Operators of Tajikistan	Chairperson
17.	Mr. Zinatullo Ismoilov	Association of Producers and Distributors of TV and Radio Materials	Chairperson
18.	Mr. Fakhriddin Muhitdinov	Intercom LLC	CEO
19.	Ms. Gulrukhsor Nurova	Association of ISPs and IT Companies (AISPITC)	Assistant
20.	Mr. Gulmahmad Qayumov	CJSC Telecom Technology	General Director
21.	Mr. Andrey Ryabikin	CJSC Telecom Technology	Deputy Technical Director
22.	Mr. Ravshan Valamatzade	Intercom LLC	General Director
23.	Mr. Asomudin Atoev	AISPITC	Chairperson
Civil Society Organizations			
24.	Mrs. Shahlo Akobirova	Public Organization Khoma	Director
25.	Mr. Konstantin Bondarenko	Tajikistan Free Market Centre	Chairperson
26.	Ms. Zarina Emomova	Public Organization Khoma	Media Lawyer
27.	Ms. Farishtamoh Gulova	Online Journal ICT4D.TJ	Journalist

#	Name	Organization	Position
28.	Ms. Parvina Ibodova	Public Fund Civil Internet Policy Initiative (CIPI)	Chairperson
29.	Mr. Muhammadi Ibodulloev	Public Fund CIPI	Director
30.	Mr. Rustami Joni	Media Expert	
31.	Mr. Rustam Kosimov	Public Fund Internet	Director
32.	Mr. Sherali Najmiddinov	Hamal-T LLC	CEO
33.	Mr. Suhrob Niyozov	Online Journal ICT4D.TJ	Chief-editor
34.	Mr. Talat Numanov	Public Organization Centre ICT	Executive Director
35.	Ms. Angelika Popova	Internews Network in Tajikistan	Deputy Director
36.	Mr. Nuriddin Qarshiboev	National Association of the Independent Mass Media of Tajikistan (NANSMIT)	Chairperson
37.	Mr. Suhrob Rustamov	Public Fund Internet	Programs Coordinator
38.	Mr. Abdufattoh Vohidov	NANSMIT	Deputy Chairperson
International Organizations and Consultants			
39.	Mr. Rajendra Singh	The World Bank Group, Transport & ICT	Senior Regulatory Specialist
40.	Mrs. Mavzuna Abdurakhmanova	Open Society Institute Assistance Foundation (OSIAF) in Tajikistan	Information Program Coordinator
41.	Mr. Esfandiyar Adina	BBC/Tajik Service	Country Director
42.	Mr. Farrukhsho Dzhunaydov	OSCE Office in Tajikistan	National Media Officer
43.	Mr. Dirk-Oliver von der Emden,	BAKOM/OFCOM	Senior Councilor
44.	Mr. Jovan N Jekic	Ministry of Economic Development and Trade	Consultant
45.	Mr. Saidmumin Kamolov	International Trade Centre	Country Director
46.	Ms. Helena Mandić	CRA	Director of Broadcasting
47.	Mr. Sören Nübel	Bundesnetzagentur	Acting Head of Unit International Policy Issues and Regulatory Strategy
48.	Mr. Ewald Orf	OSCE Office in Tajikistan	Media Officer
49.	Mr. Izzatmand Salomov	OSIAF in Tajikistan	Media Program Coordinator

ВЫХОДНЫЕ ДАННЫЕ