

## **34<sup>th</sup> EPRA Meeting, Brussels (La Hulpe), 5-7 October 2011**

### **Working Group II:** **Digital TV: Regulation and the economic viability of DTT platforms**

Background paper by *Miha Krišelj*, Group coordinator

#### **Introduction**

The topic of Digital Terrestrial Television (DTT) has frequently been on the agenda of EPRA meetings. At the Belgrade meeting we learned that the regulatory model chosen by individual countries can vary widely. It depends on the different country media landscape and legislation, but it is also based on the separation between network and content aspects. Regulatory procedures have an impact on the successful implementation of DTT services. And without doubt, regulation is still needed despite the fact that digitalisation increases spectrum capacity from 4-5 national analogue to 40-50 digital television channels. In many countries digital transition is well on the way, in others analogue switch off is completed, while some countries have yet to begin this process.

The EPRA meeting working group will focus on the relationship between regulation and the economic viability of DTT platforms. The key question remains how to reach the point where content providers and network/multiplex operators can together develop a successful and sustainable DTT platform. The summary of the questionnaire on licensing models for DTT from the meeting in Belgrade reveals that countries are divided between (a) those selecting TV channels via a beauty contest organised by the regulatory authority and (b) those with a focus on the multiplex/network operator as gate keeper.

In the first case, content licensees should reach an agreement with the network/multiplex operator chosen by the regulatory authority. If such negotiations fail, it threatens the operator who may already have invested in the creation of the network. Or this could cause a delay or postponement in the development of the DTT network.

In the second case where network operators are acting as a gate keeper, public policy measures have to be adopted in order to protect pluralism, diversity and fair access to the network.

In the Working Group on Digital TV, we will hear presentations from Ireland, Italy and one of the Nordic countries. The following aspects will be discussed:

- pros and cons of different approaches,
- models chosen,
- obstacles, experiences and challenges.

#### **Short summary of the Working Group Belgrade meeting:**

For the Working Group at the EPRA meeting in Belgrade, an analysis was carried out by the EPRA Secretariat based on a questionnaire sent to the members, which looked at the regulatory structure and licensing systems for DTT<sup>1</sup>. The results highlighted legislative changes that were needed in the development of DTT strategies. Below is a brief summary of the responses regarding regulatory models for allocation of digital capacity and access to DTT networks – an issue relevant for the Working group at the Brussels meeting.

- The varied approaches show that that a licensing regime may be relevant for a) the network operator, b) the multiplex (MUX) operator and c) the TV channel, or a combination of the above. Also the responsible authorities may be a) the broadcasting regulator, b) the telecom regulator (or the convergent regulator) and c) the government.

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<sup>1</sup> See: EPRA Paper 2010/13: Regulatory and Licensing Models for DTT - Summary of the answers to the questionnaire. by Emmanuelle Machet, EPRA Secretariat for the 32nd EPRA Meeting, Belgrade, 6-8 October 2010

- Capacity (spectrum) allocation was in most cases directed to the one or more network/multiplex operators. Exceptions included Sweden where the capacity is allocated directly to channels.

- Mostly the process is done via "beauty contest procedure". Again some exceptions were noted where an auction system (Cyprus, Croatia) or a combination of auction and beauty contest are possible (Norway). In the case of Estonia the selection procedure was based on a political decision – to allow a monopoly of one operator for the development period.

The questionnaire also provided information on the very important issue of content – of vital importance to the success of the take-up of DTT. Firstly regarding licences/authorisations etc, channels receive these from the regulator, but they actual way they gain access to the Multiplex varies.

- Regarding the channels access to the Multiplexes, the analysis showed that there are two main approaches: For some (France, Belgium (French Community), Germany, Sweden, Finland, Slovenia) the line-up of channels is selected by the regulator via public procedures similar to those used in the analogue environment – or also via the direct allocation of frequencies to the broadcasters.

- In contrast, others (Czech Republic from 2012, Latvia, Slovakia, Denmark, Italy, UK, Norway, Portugal) have allowed the multiplex/network operator to manage the capacity and hence play a role in selecting channels for the line-up – and ask as gate-keeper. Channels must however still negotiate with the operator for access and distribution.

- Certain tools are used in the latter case in order to ensure diversity and pluralism such as must carry, or capacity reserved for special categories of broadcasters.

- Generally speaking the public service channels have been treated differently - for the same goals of diversity and pluralism – PSBs have frequently been granted entire MUXs and the additional spectrum has allowed public service providers to launch additional digital services and channels.

Also regarding content, the results also showed that:

"One of the factors, by no means the only one, driving the popularity of DTT in many countries was certainly the desire to retain some degree of national control on the overall composition of platform and thus on the national media landscape, and counterbalancing the development of the offers on satellite and cable. Hence having foreign channels on DTT was certainly not the main purpose".

- Very few countries restrict foreign channels on free-to-air DTT (Greece, Croatia, Slovenia, Latvia and the Czech Republic), but not on a potential Pay DTT platform. The majority allow channels licensed in another jurisdiction to be present on the free platform, although in Norway a licence from the national authority is required

## **Pay and Free**

According to recent data from the MAVISE database, Pay DTT has been launched in 14 (DE, DK, EE, ES, FI, FR, GB, HU, IT, LT, LV, MT, NL, SE) of the 27 EU countries (and also AL, CH, IS, NO and MK), with several countries have more than one Pay DTT package.

Pay DTT has faced challenges in several countries – most notably Portugal and Ireland (with failures to launch) – and also some packages which closed down (Italy, Spain and France). It is unclear whether the general economic crisis or the difficulty of establishing good business models is to blame for these problems.

## **Pros and cons of different approaches**

### Regulatory model

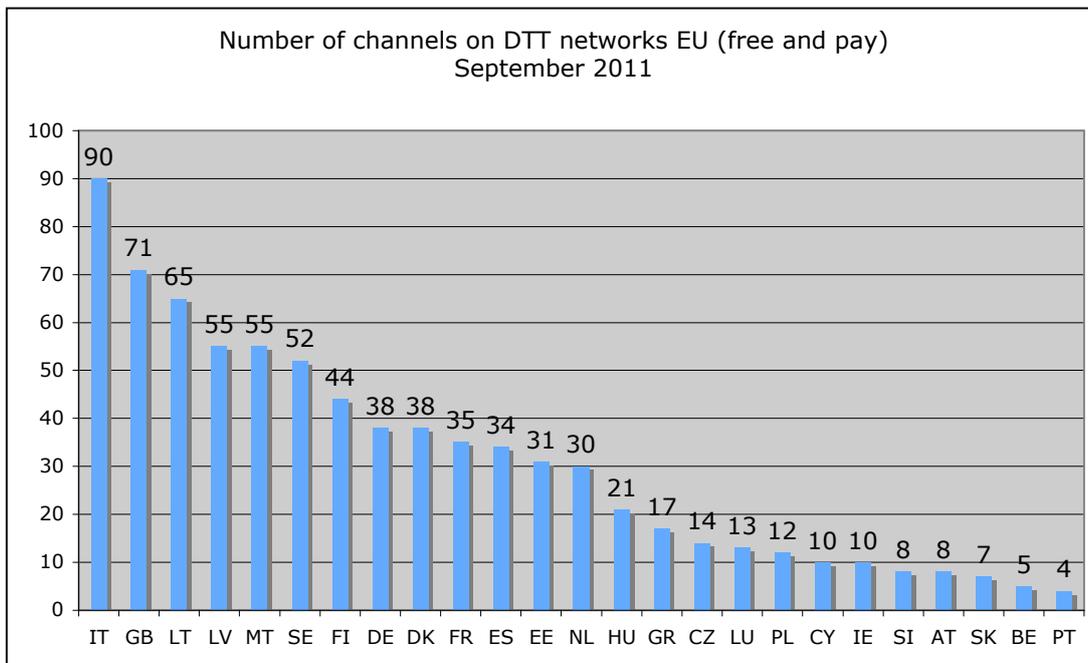
DTT business value chain is now divided between three main players: content provider, network provider and service provider (in case of conditional access services - Pay TV). Some countries place the multiplex operator at the core of the licensing process. This does not necessarily means that the content of the multiplex has been left completely to market forces, therefore public policy measures have been adopted for protecting pluralism, diversity and fair access to the network by imposing a set of obligations in the licences of the network/multiplex operator.

A different approach is to grant the licenses separately for the network and the content. TV channels are granted a right to disseminate their program on DTT via public tender. Later on they have to achieve an agreement with the multiplex operator. If they fail to reach an agreement a call for public tender is foreseen but in a case when agreement is not settled because of economic conditions, some additional remedies from the regulator are necessary.

The third option is to license the network operator and content provider simultaneously within the same procedure/tender. In this case agreements between all parties are arranged before the licenses are granted by the regulator. This approach is convenient for small television markets while it minimises the problem of later misunderstandings between the different parties.

Different market sizes

The sizes of television markets across the Europe are different from country to country. However the Regional Radio Conference RRC-06, where the new radio frequency spectrum for digital television was planned, was based on the principle of equitable access to the spectrum. Accordingly every country has approximately the same number (8) of digital television networks with national coverage. This could lead to a situation where in some countries the frequency spectrum is a more scarce resource as in other countries with less TV channels. The table below shows the wide variety in the number of channels available.



Source: MAVISE database

Pricing of DTT networks

The situation when TV channels can not reach an agreement with the network/multiplex operator on the economic basis is particularly difficult for the process of digitalisation of terrestrial broadcasting platform. Namely the cost of DTT transmission is divided between TV channels of the same multiplex. But when the capacity of the multiplex is not 100% used, the price of the DTT network can vary significantly. Should existing channels bare the cost of the whole multiplex or just the capacity they need for themselves? In countries with small television markets where capacity of DTT multiplexes supersedes the need of existing TV channels this could be a barrier to introducing a DTT service.

Should the price of the DTT multiplex be a result of supply and demand? What kind of a market is DTT? It seems that the DTT market is rather unique where it is not feasible to have a situation of multiple operators competing for TV channels with licenses for terrestrial digital dissemination.

In most EU countries DTT market is not ex-ante regulated according to the so-called three-criteria-test (TCT) which has been developed to identify those markets that in principle might be subject to regulatory

intervention. The test comprises three criteria which have to be fulfilled cumulatively to legitimise further regulatory action. The three criteria are:

1. the market shows high and non-transitory barriers to entry; and
2. market structures do not tend towards effective competition in a relevant time horizon; and
3. application of competition law alone does not adequately address market failure

DTT market is rather different from the rest of telecommunication markets although in principle we have network operators and content packagers/providers who sometimes tend to act as end users demanding the freedom of choice. The agreements between the network operators and the content packagers/providers are normally long-term based. The balance between the capacity of the DTT network and the number of TV channels is subject of regulation. However, from the economic point of view the regulator has chosen a DTT network/multiplex operator and this could lead to a natural monopoly. Therefore some kind of price regulation is normally provided through the tender/selection procedure.

According to data from the MAVISE database the operators in Europe include the following:

- Former analogue terrestrial transmitters
- TV broadcasters
- TV distributors
- Consortia of TV broadcasters/distributors
- Telecom operators
- New entrants

The number of DTT operators per county is variable and it seems not to be related to the size of the country. An important factor is the access to the infrastructure as digital terrestrial networks are in most cases using the existing transmitting sites and facilities. New entrants to the market are faced with the co-location situation where they should reach an agreement with the owner of infrastructure. See the table below on number of operators in some EU countries.

Sweden	
1	BOXER TV-ACCESS AB
2	TERACOM AB
Great Britain	
1	ARQIVA SERVICES LIMITED
2	BBC FREE TO VIEW LIMITED
3	BBC (PUBLIC SERVICE BROADCASTING)
4	BRITISH TELECOMMUNICATIONS PUBLIC LIMITED COMPANY
5	DIGITAL 3 AND 4 LIMITED
6	DTV SERVICES Ltd - ("Freeview")
7	SDN LIMITED
8	TOP UP TV LIMITED
Germany	
1	EUTELSAT VISAVISION GMBH ("Kabelkiosk")
2	MEDIA BROADCAST GmbH
France	
1	CANAL + DISTRIBUTION S.A.S
2	COMPAGNIE DU NUMERIQUE HERTZIEN
3	FNAC SA ("Le Pack TV")
4	MULTIPLEXE R5 - MR5
5	NOUVELLES TELEVISIONS NUMERIQUES
6	SOC EXPLOITATION MULTIPLEXE R6-
7	SOCIETE DE GESTION DU RESEAU R1
8	SOCIETE OPERATRICE DU MULTIPLEX R4
9	TV NUMERIC
10	VEST@VISION

*Table of number of operators in SE, GB, DE and FR. (Source MAVISE database, August 2011)*

#### Impact of ASO on successful business case of the network operator/distributor

The length of the analogue to digital switchover process or transitional period in EU countries varies from one to several years. This could be a threat to a business case especially to the new entrants to the DTT

market. Some certainty on the timing of the transition should be provided by the regulation of the process otherwise the new entrants could end up in an unfavourable economic situation.

### **Key Questions for the Working Group**

- Number of DTT operators
- Competition on DTT market
- The balance between the capacity and number of TV channels
- Price regulation of DTT networks