

**Plenary Session 2: Regulatory and Licensing Models for DTT
Summary of the answers to the questionnaire
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(Revised version)**

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Introduction

The issues of digital television strategies, take-up of digital TV and progress of switch-over have been featuring prominently at EPRA meetings, most recently in Dublin in 2008¹. The topic of the regulation and licensing of DTT has also been recurrent. More than 10 years ago, the licensing models of the DTT pioneers Sweden and the UK were presented in detail to EPRA members². The high-point of EPRA activity with regard to DTT was however the production of a 115 pages comparative report in 2004 by the Italian AGCOM presenting the outcome of the work of the ad-hoc Digital Terrestrial Television Working Group³.

Six years after this very comprehensive snapshot of the DTT landscape, it is time for us to look back at experiences and lessons learned: have the original DTT licensing and regulation models evolved and if so, how? Is there a dominant model? Did the systems fulfil the original expectations of policy makers? This session will also provide an opportunity to look at the future DTT licensing strategy for the countries at different stages of the digitalisation process.

This document is based on the responses to a brief survey circulated by the EPRA Secretariat⁴. It aims at providing background information to facilitate the preparation of the plenary session.

It compiles answers from 29 regulatory authorities: Communications Regulatory Agency (BA), the CSA of the French Community of Belgium (BE), the Council for Electronic Media (BG), the OFCOM (CH), the Cyprus Radio and Television Authority (CY), the Council for Radio and TV Broadcasting (CZ), The Director's Conference of the Länder Media Authorities (DE), The Broadcasting Council (EE), the Catalan Audiovisual Council and the Audiovisual Council of Andalusia (ES), the FICORA (FI), The Conseil supérieur de l'audiovisuel (CSA), the Ofcom (GB), the National Radio and Television Council (GR), The Agency for Electronic Media (HR), the AGCOM (IT), the Radio and Television Commission of Lithuania (LT), the Conseil national des programmes (via the Service des Médias et des Communications) (LU), the Electronic Media Council of Latvia (LV), the Broadcasting Agency (ME), the Commissariaat voor de Media (NL), the Norwegian Media Authority (NO), the National Broadcasting Council - KRRIT (PL), the Entidade Reguladora para a Comunicação Social - ERC (PT), the National Audiovisual Council (RO), the Republic Broadcasting Agency of Serbia (RS), The Swedish Broadcasting Authority (SE), the Post and Electronic Communication Agency of the Republic of Slovenia - APEK (SI), and the Council for Broadcasting and Retransmission (SK).

Last but not least, an important caveat. This document is by no means to be considered as an exhaustive official reference document, but merely aims at presenting a snapshot of the rapidly evolving situation as of the beginning of October 2010.

1. Adapting the legal framework to digital terrestrial broadcasting

An adaptation of the legal framework generally considered necessary

In the vast majority of cases, the introduction of digital terrestrial television has required an adaptation of the legal framework governing broadcasting licensing. Only five countries (Finland, Germany, Lithuania, Luxembourg and Switzerland) report no adaptation of the legal framework for DTT. In Germany, the provisions concerning TV broadcasting licensing are the same for digital and analogue TV, as under German law broadcasting services are not distinguished according to their means of distribution. Similarly, in the Netherlands, no distinction is made between platforms as far as licensing is concerned. The same requirements of the Dutch Media Act apply, regardless of the analogue or digital signal or whether channels are offered via cable, terrestrial, satellite or IP networks. All channels need to be licensed by the Dutch Media Authority. The licensing of network and multiplexes is governed by the Dutch

¹ http://www.epra.org/content/english/members/working_papers/Dublin/WG3_Digital_final.pdf

² See the papers from Vevey (1999), Bratislava (2000) and Brussels (2002), available on the EPRA website: www.epra.org

³ http://www.epra.org/content/english/press/papers/DTTWG_finalreport.doc

The mandate of the DTT working group was to carry out a research in order to assess the state of the art of digital terrestrial television across EPRA countries and attempt an evaluation of the factors that can facilitate its take up within a specific broadcasting environment.

⁴ Very special thanks for Miha Kriselj for drafting it and Kerstin Morast for her valuable comments - also on this paper.

Telecommunications Act and Frequency Decision. In Portugal, no specific adaptation was required as the basic licensing procedure was already foreseen in the television act of 2007, complemented with the Electronic Communication Act of 2004.

How was the adaptation achieved?

In the vast majority of countries, this has generally been achieved through changes in the existing broadcasting legislation, rather than the adoption of a specific legal instrument.

In several countries, the required changes were not operated through a change of the main broadcasting act but through secondary legislation. As an example, in Croatia, specific digital licensing provisions are included in bylaws also transposing the AVMS Directive. In Sweden, whereas the radio and Television Act did include general rules concerning licensing, a special ordinance was issued regarding the procedures of licensing digital television.

In some countries however, complete new legislation was deemed necessary. In Slovakia a whole new Act on digitalization was adopted. In Poland, a new Act on digital terrestrial television (DVB-T), amending the Broadcasting and Telecommunications Acts is to be adopted.

What are the purposes of the main changes?

The changes of the licensing system from analogue to digital are multi-faceted. They account for:

The separation between transmission (carriage) and content aspects. Whereas in the analogue context, a broadcasting licence holder would often also be the holder of a radio frequency, this is not necessarily the case in the digital context. In the majority of cases, capacity is allocated to one or more network/multiplex operators (e.g. SI, ME (envisaged), BA (envisaged), DE, GB, IT, ES, LT). In Sweden and Finland, however, the capacity is allocated directly to individual channels. The countries which have the same system of capacity allocation do not nevertheless always have the same licensing arrangements for the content, as will be seen in the next paragraph.

As a consequence of this separation between transmission and content aspects, the licensing process may have been in need of a complete restructuring. In Italy, whereas with analogue licensing there was only one authorization title ("concessione") that the broadcaster had to obtain in order to broadcast analogue television channels, for DTT, the AGCOM makes a distinction between the network operator, the right of use, the content authorization and service authorization. This new framework aimed to be as close as possible to the DTT business value chain where three main players emerge: content provider, network provider and service provider (for conditional access services and in general pay TV services).

The development of cooperation procedures between the various authorities involved: The separation of the licensing procedures between transmission and content aspects may also imply regulatory adjustments and the development of cooperation procedures between the various regulators in charge – except where there is a convergent regulator. In Portugal, whereas analogue licensing was traditionally conducted by the ERC, DTT licensing has also demanded the intervention of ICP-ANACOM, the RA in charge of electronic communications. Particularities of the legal framework in force and the model envisaged for the introduction of DTT in Portugal have both required an intensive articulation and cooperation between these two regulatory entities.

A new licensing role for the broadcasting regulator: In Sweden, due to lack of spectrum, only three licences could be issued for analogue TV. Owing to scarcity, they were issued by the government. The digital licences are now issued by the RA (except for PSB). In the French Community of Belgium, the procedure for analogue TV was a simple request from the editor, subject to the availability of spectrum resources, whereas for DTT, the government launches a call for tender, the RA organises it and selects the editors (broadcasters).

With regard to content, the changes reflect and put into effect the policy options chosen by the countries as to whom is given a key role in the licensing procedure: the broadcasters or the multiplex operator. Some countries, such as the UK, Denmark, Norway, Slovakia, the Czech Republic (from 2012), and most recently Latvia, place the multiplex operator at the core of the new licensing process (gatekeeper model). In Norway, individual licenses are given *without content requirements* and with no correspondent individual facility licenses. The facility license is awarded to the multiplex operator and the licensee (broadcaster) has to negotiate distribution on the digital nationwide terrestrial transmission network. In many other countries, such as SI, ME, BA, while TV channels also do not apply for the assignment of each separate radio frequency as they did in analogue broadcasting, they are granted a right to disseminate their programme on DTT *via a public tender*. After obtaining this right via public tender, they have to achieve an agreement with the multiplex operator that holds a frequency intended for digital broadcasting. The Swedish system revolves around the TV broadcasters, who are also selected by beauty contest but who have to agree about whom should handle the multiplexing as well as about other technical issues. In Belgium (French Community), the TV channels, selected by beauty contest are also in charge of selecting a network operator. A call for tender is only foreseen, if they fail to come to an

agreement. In France, the TV channels (also selected by beauty contest) sharing the same multiplex are in charge of selecting (or creating) a multiplex operator. They need to jointly ask the CSA for a licence.

As further purposes of the legislative, regulatory and administrative changes have also been mentioned:

- A simplification of the licensing procedure (CZ)
- Adapting the call for application procedure, with the introduction of specific criteria⁵ (FR)
- The regulation of new business models (*Pay DTT, HDTV, Mobile TV*) (ES)
- Modification of must carry provisions: in Norway the previous must-carry obligations for distribution networks were repealed. In Slovenia, the must carry rule was abrogated for digital broadcasting networks. In France, specific provisions for the must carry of public channels have been introduced.
- the award of digital licence for unlimited time (SK)
- The termination of the licence fee (EE)
- The introduction of new provisions on the regulation of EPGs (HR)
- Setting a simulcasting period and/or the switch-off date (SI, FR)
- Setting specific ownership provisions: in France, up to seven DTT licences (compare to one maximum for analogue TV), may be owned by the same person or company. Up to 100 % (compare to 49% maximum for analogue TV) of a DTT channel ownership may be owned by the same person or company⁶ (FR)
- Introducing changes in the regional/local perspective: In Croatia, instead of concession areas used in analogue licensing, the digital licensing is based on a regional approach, reflecting the division of Croatia in nine digital regions. In Norway, an additional chapter on digital local TV was inserted in the Media Legislation (NO). In France, procedures for allocating frequencies to local communities that build their own transmitting facilities and licensing interactive services have been set.
- Setting coverage obligations: as an example, in France, DTT channels must cover 95% of the national population with a minimum rate for regional coverage set by the CSA.

Countries where legislation is still pending or with provisory frameworks for the transition

In Cyprus, legislation is currently being drafted. In Greece, the process for DTT licensing is still to be defined even if a legal framework governing the digital transition period has been established (see below). In Serbia, a strategy and Action plan have been adopted and they regulate the general work of the institutions on switch off. In Bosnia and Herzegovina, in line with the strategy on digital switchover, the CRA issued a decision establishing terms and condition for the usage of MUX A for DTT broadcasting of PSB. Other procedures such as the granting of rights of digital broadcasting to the existing channels and conducting a public tender for the selection of MUX B operator are pending.

Specific DTT procedures for historical channels:

The majority of countries have foreseen specific procedures for historical channels, i.e. the holders of analogue licences, at least during the transition period.

These procedures include:

- The award of DTT licences for the transition period:

In Bosnia and Herzegovina, the Strategy on Digital switchover stipulates that PSB and other existing holders of analogue licenses will all be awarded licenses for DTT in the transition period using MUX A (PSB) and MUX B (others).

In the UK, each public sector broadcaster holds a Digital Replacement licence which requires broadcast on both digital and analogue platforms. This process was carried out in 2004 and included the terms for digital switchover. They end in 2014.

In the Czech Republic, if a broadcaster terminates broadcasting before the expiration of his analogue licence, he will be granted a DTT licence and one so-called compensatory licence in addition.

In Romania, the law establishes an exception for the historical channels holding a terrestrial analogue licence that opt for broadcasting their programme service on a Digital terrestrial multiplex (direct attribution of the Audiovisual licence).

In Slovenia, the digital broadcasting law transformed the historical analogue licences into digital ones, but only within the existing analogue coverage area. For a wider coverage, a tender procedure was required.

In France, historical channels that applied for DTT were granted a five years extension of their analogue licence, a digital licence for simulcasting their historical channel and a second digital licence for a further channel of their choice.

⁵ Art. 30-1 of the modified Law n. 86-1067 of 30 September 1986

⁶ Art. 39 to 41 of the modified Law n. 86-1067 of 30 September 1986

- The extension of analogue licences to operate on digital frequencies:

In Estonia, the possibility to extend the existing national analogue licence for five years without any tender was offered to two main national broadcasters (Kanal 2 and TV3).

In Italy, several Italian norms (laws n. 66/01, law n. 112/2004 and Testo unico) have specified that existing (historical) analogue operators on terrestrial frequencies could continue their activities on DTT by requesting an extension of the Authorization titles in order to operate on terrestrial frequencies by using digital techniques. AGCOM has also recently defined the criteria for the digitalisation of the DTT Networks (AGCOM Resolution 181/09/CONS).

- Specific provisions allowing simulcast:

In Spain, the broadcasters with analogue licensed channels had the opportunity to have digital channels to simulcast their contents during the switch over.

In Greece, there are legal provisions governing the simulcast of PSB and private TV stations of national coverage.

In Slovenia, the digital Broadcasting Act stipulates that the analogue broadcasting licensees have the right to disseminate their TV channels on the digital terrestrial platform in the equivalent coverage area and for the period specified in their licence for analogue broadcasting, if there are suitable DTT networks in that particular geographical area. In order to ensure the option of using digital broadcasting technology also in local environments out of scope of current national DTT networks and secure the existence and operation of local TV channels after ASO, APEK launched public tenders for assignment of radio frequencies for local multiplexes that cover smaller areas of Slovenia, which were mainly won by the current holders of analogue TV broadcasting licences in that areas.

In Sweden, broadcasters with licences to broadcast analogue were given the opportunity to participate in digital broadcasting. They had nevertheless to apply for a licence.

- Other measures:

In Luxembourg, owing to the fact that terrestrial broadcasting is only a marginal means of TV reception (close to 100% of TV viewers receive TV through cable or satellite) and there is only one DTT licensee, there was no need for a selection procedure. The switchover was realized through the conversion from analogue to digital by the sole licensee

According to the answers to the questionnaire, such procedures were not considered necessary in Germany, Switzerland, Belgium (CSA), and Lithuania. In Belgium (French-speaking Community) only public channels were on analogue terrestrial TV (high satellite and cable penetration). Due to the obligation of universal service, the licences were automatically extended.

2. The DTT Licensing process: Regulatory models for allocation of digital capacity and access to DTT networks

With the advent of DTT, three different entities may be subject to the licensing process: the network operator, the multiplex (MUX) operator and the TV channel. The network operator and the multiplex operator may also often be the same entity (as in Latvia, Slovenia or Norway for example).

In Slovenia, the network operator and multiplex operator are not two different entities. Licenses are granted to the DTT network operator, which is as a rule also a multiplex operator. However, there are no legal provisions which would prevent separation of these roles, and in theory it would be possible to have a separate multiplex operator. In Norway, there is only one nationwide, digital terrestrial TV-network operating distribution for local as well as nationwide digital TV. Therefore the license comprises network as well as multiplex operation. In Italy, DTT network and MUX operators are considered synonymous and the same regulations apply.

Three different authorities are likely to play a role in the licensing process: the broadcasting regulator, the telecom regulator (alternatively the convergent regulator in UK, SI, BA, CH, FI, IT, GB) and the government.

As already mentioned, the regulatory model chosen by different countries for the allocation of digital capacity (spectrum) and the access to this capacity differs greatly.

With regard to capacity, in most cases (Germany, UK, Italy, Slovenia, Montenegro, Slovakia etc.) the capacity is allocated to one or more network/multiplex operators. In Sweden, however, the capacity is allocated directly to channels. The capacity is either granted by the telecom or convergent regulator or the government. With regard to the allocation procedure, it seems that the beauty contest procedure is widely used as a way to allocate capacity rather than auctions to the highest bidder. In Cyprus, however, it is envisaged to follow the procedure of an "ascending multiple round auction"⁷. In Romania it is

⁷ <http://merlin.obs.coe.int/iris/2010/2/article7.en.html>

foreseen to make use of auctions for selecting the DTT MUX operators. In Norway, according to the law, both auction and beauty contest are applicable, but in the recent allocation beauty contest was the chosen selection procedure. In Croatia, the selection procedure applicable to DTT multiplex/network operators is the auction. In the UK, DTT is licensed by the regulator, via a beauty parade. These took place in 2002, and if there were to be future release of spectrum suitable for DTT, there is a possibility that Ofcom would review this process and consider auction.

The selection procedure for DTT network/multiplex operator in Estonia was set up by a political decision: the DTT Telecom Company Levira was the granted platform and multiplex monopoly until 2015.

However, as was highlighted in the AGCOM DTT working group report, "*what appears to be relevant, rather than **who** has been assigned the capacity, is **how** access to this capacity is regulated*".

Two main regulatory approaches seem to emerge:

- in a first cluster of countries (such as France, Belgium (French Community), Germany, Finland, Slovenia) the overall television channels' line-up over the multiplexes is the result of a selection made by the regulator (or the government, e.g. the Ministry of Culture in Estonia) through public procedures that are rather similar to those used in the analogue environment; in this case whether the frequencies are allocated directly to the broadcaster or to a network operator, the line-up of channels that have access to the capacity is predefined by the regulatory authority (or government). Another related issue is whether regulators may dictate a precise channel-by-channel make-up of EACH multiplex. Sweden used to follow that model but has recently moved away from this system to avoid unnecessary formalisation and inflexibility. The current guiding principle is that broadcasting services should be placed in each of the multiplexes by broadcasters and relevant operators via a distribution agreement based on the licence terms. If an agreement proves impossible, the RA will however intervene.

- In a second cluster of countries (Czech Republic from 2012, Latvia, Slovakia, Denmark, Italy, UK, Norway, Portugal) the capacity is managed as a whole by a multiplex/network operator who enjoys some leeway in using the capacity and selecting the channels which compose the line-up. Broadcasters no longer have to take part in a tendering process. An authorisation (rather than a licence) is granted to every applicant fulfilling certain minimum requirements concerning professional and economic standards. However, such an authorisation does not secure the access to the digital terrestrial transmission network and the licensee must negotiate with the multiplex operator to get access and be distributed.

In this case, some limitations or constraints (must carry, capacity reserved to special categories of broadcasters, etc.) are as a rule imposed on the multiplex operator in order to preserve public interest objectives such as diversity and pluralism (see next paragraph).

The particular case of PSBs:

The regime applicable to PSB is usually different from that applicable to commercial television. This is worth mentioning as public channels continue to play an important role, especially on the FTA platforms (more than one third of these are public channels)⁸.

In many countries, part of the digital capacity (for example a whole MUX) has been directly allocated to PSBs. In France, eight channels have been reserved for PSBs. In the UK, there have been reservation of capacity orders – firstly to ensure reserved capacity provision for public service channels, and secondly to reserve capacity for public service channels to provide HD services on DTT. Some multiplexes were reserved entirely for the use of the existing public service providers. Each PSB had more capacity reserved for them which exceeded the requirements of the existing analogue channels, allowing the public service providers to launch additional digital services and channels. In the Netherlands, the national PSB is entitled to use one multiplex. In addition, in each region, the regional PSB has access to DVB-T.

3. Content regulation on DTT:

Two major models can be distinguished with regard to the regulation of content, they reflect major policy options.

Countries with selection of broadcasters via beauty contest: Cluster A: Finland, Germany, Sweden, Estonia, Croatia, Slovenia, Lithuania, France, Belgium (French Community)

A first group of countries (Cluster A) has chosen to keep an "analogue approach" to content licensing, by selecting the line-up of channels through beauty contest in order to be able to ensure the objectives of public interest, to guarantee pluralism and diversity of content.

This mechanism allows the highest degree of control over the composition of the platform even if the range of factors taken into account by the regulators when issuing the licences may vary greatly. As an example, in Slovenia, the regulator APEK, together with the Broadcasting Council, pursue the objectives

⁸ See MAVISE press release, 2010 a milestone year for DTT in Europe, 11 October 2010, retrieved under : http://www.obs.coe.int/about/oea/pr/mavise_oct2010.html

of pluralism, diversity and public interest by setting specific conditions with regard to programme content that are to be met by the applicants in the process of selecting TV channels through public tenders for granting the right to disseminate in digital broadcasting technology. In France, the law stipulates the specific criteria that must be taken into account by the regulator CSA when issuing the licences:

* The ability to meet the needs of a wide public and likelihood to encourage a rapid development of digital terrestrial television;

* The need to ensure effective competition and diversity of operators;

* Safeguarding pluralism and socio-cultural diversity;

* The experience of the candidates;

* Commitments on production and distribution of audiovisual and cinematographic works;

* Liabilities for the coverage of the territory;

* Coherence of proposals for consolidation of distributors and choice of services;

* Funding and prospects of the service.

In Finland, according to section 10 of the Act on Television and Radio operations *“when declaring licences open for application and granting them, the licensing authority shall, taking into consideration the television broadcasting of the area in question as a whole, aim at promoting freedom of speech as well as safeguarding the diversity of the provision of programmes as well as the needs of special groups of the public”*. In Croatia, local and regional channels will have to prove that they are ready to produce local news that relate to new coverage areas they reach due to digital broadcasting. The intention is to keep at least three levels of concession hierarchy: national, regional and local. PSB will be responsible for launching at least two channels, the content of which should have a high public value.

Countries with focus on Multiplex/network operators: Cluster B: UK, Norway, Italy, Portugal, Slovakia, Latvia

A second cluster of countries (Cluster B) has chosen the new approach of having the multiplex operator as a gatekeeper. As mentioned above, the authorisation granted to broadcasters do not usually contain any content obligation in the licences. It does not necessarily signify that the content of DTT has been left completely to market forces. Public policy measures have, as a rule, been adopted for protecting pluralism, diversity and fair access to network by imposing a set of obligations in the licences of the multiplex/network operator.

As an example, in Norway, the facility licence, which also comprises the multiplex operation, establishes a set of obligations concerning these considerations. The licence states for instance that the allotted frequencies shall help to ensure that the population gain access to a broad and diverse offer of TV channels. Furthermore the facility licence stipulates that if the demand for transmission capacity is larger than the capacity offered, the Ministry of Cultural Affairs can require that the network/multiplex operator establishes a system for user-participation.

In Italy, the AGCOM has defined a procedure - AGCOM (Resolution n. 449/08/CONS) - according to which network operators that have more than one analogue licence must reserve 40% of the transmission capacity in their digital multiplexes for third party content providers on transparent and non discriminatory terms. One of the main drivers of this 40% procedure was to increase pluralism in the DTT sector, to allow newcomers to broadcast new channels on DTT and avoid bottlenecks created by the vertical integration of the DTT network operators that have their own channels.

In Portugal, with regard to MUX B-F (planned for Pay TV), it is foreseen that the incumbent shall reserve network and distribution capacity for regional TV services and for the broadcast of educational activities pursuant to the television act, also the composition of the TV services' offer should take into account the production and broadcast of European works and creative works originally produced in the Portuguese language. Applications which contribute to a fast massive spread of DTT and adopt technically innovative solutions were particularly considered⁹.

In the UK, each multiplex operator has minimum core commitments which they are obliged to include in arrangements with content providers: these typically relate to genres of content, promised at the time of application in the beauty contest process. The multiplex licences contain a provision to ensure that the content provided appeals to a range of tastes and interests and that when a service is removed or replaced this does not unacceptably diminish the range of services available. However, in practice, “unacceptably diminish” may prove quite difficult to quantify.

Must carry obligations & PSB

In Norway, there is a must-carry obligation for the state public service broadcaster NRK, with the purpose of safeguarding the need for diverse content and Norwegian language content. This must-carry obligation will also eventually include other broadcasters that fulfil the requirements for being a public service broadcaster in Norway. In Portugal, the network operator is the holder of the right to use a frequency for DTT services allocated in a multiplex (MUX A) with national coverage aimed at the provision of FTA TV channels. This operator is bound to reserve capacity for the broadcast of certain national TV currently available in analogue mode, to reserve capacity for the broadcast of a new FTA channel to be licensed to

⁹ Note however that the incumbent having returned its frequencies recently to the telecom regulator, there is still no Pay TV at this date in Portugal.

a television operator under the terms of the Television Act and to reserve capacity for the HD broadcast of individual programme items of the channels until the switch off.

The imposition of such must-carry obligations is not necessary in other countries where part of the digital capacity (for example a whole MUX) has been directly allocated to PSBs, as in the UK or Italy (see supra. 5).

4. Foreign channels on DTT

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. However, reality may look different.

A recent MAVISE press release on DTT highlights that : 'almost 40 channels [appear] on the DTT networks in more than one country. Pan-European channels such as Euronews, the Discovery channels, the Eurosport channels, CNN, BBC World etc, are available in a wide range of countries. In addition, national channels are appearing in other countries on the DTT networks. For example, several FTA Italian channels are on the pay platform in Malta and the FTA Swedish channel TV4 is on the pay platform in Denmark¹⁰.

According to the results of the questionnaire, only a few countries do not allow channels which are under the jurisdiction of another Member State to broadcast on free-to-air DTT: Greece, Croatia, Slovenia, Latvia and the Czech Republic. Many of these would however allow such channels on Pay DTT.

Until now, in Slovenia, all TV channels that applied for the right to disseminate in digital broadcasting technology were also registered in Slovenia, since this was one of the conditions for gaining the licence for performing television activities, issued by APEK. Under current legislation it is not possible to gain the right for broadcasting on terrestrial platform without such a licence, regardless of whether it is a FTA or Pay TV service.

In contrast, the vast majority of countries seem to allow the broadcast of channels which are under the jurisdiction of another Member State on free to air DTT, such as Estonia, Norway, UK, Germany, Finland, Switzerland, Slovakia. In the Netherlands, there are no specific requirements applicable to such channels. They should however negotiate with KPN, the owner of the network/multiplexes in order to get access to the Digtenne package. It is, however, unclear from most responses whether there are specific regimes or requirements applicable to these channels. The Norwegian and Slovakian responses specify that these channels are only retransmitted. In Finland, a licence from the Government is required. In the UK, there are no specific regimes for DTT services licensed in other member states and they can acquire commercially available capacity on the same basis as any other provider. In Sweden, the only difference is that licences' issued to channels under another country's jurisdiction cannot include content provisions.

5. Pay TV vs. Free to Air: what are the successful business models?

Whereas most of the countries allow Pay TV on DTT, with the exception of the Czech Republic and Poland in the transition period, the majority of the offer is however composed of free-to-air channels in many countries. Many central and Eastern countries (such as Slovenia, Croatia, Slovakia), and Mediterranean countries (Greece, Portugal) as well the French Community of Belgium and Switzerland do not have any Pay TV on DTT, while in Nordic and Baltic countries, the majority of the offer is composed of pay TV channels (see table below and also the MAVISE press release).

As was highlighted in the AGCOM DTT report, two different DTT models with regard to the offer structure and the business model can be distinguished:

- a "free to air" model, where DTT is conceived as a technologically advanced version of the analogue TV offer, thus aiming at covering almost the entire population with an improved line-up and some additional services; (SI, CH, DE);
- a "pay-TV" model, where DTT is seen as alternative/complementary to TV offers provided by cable and satellite (Latvia, Lithuania, Estonia, Norway, Sweden, Finland, Italy). As was highlighted in the AGCOM DTT report, this model may originally have been adopted in some countries as a way to strengthen the "national" character of terrestrial broadcasting versus the increasing number of

¹⁰ See MAVISE press release, 2010 a milestone year for DTT in Europe, 11 October 2010, retrieved under : http://www.obs.coe.int/about/oea/pr/mavise_oct2010.html

foreign channel on satellite/cable TV channels. However, while this consideration may have been an important factor in the debate prior to the adoption of DTT, the focus slightly shifted to the question how the network should be competitive towards other platforms when DTT is up and running. Owing to spectrum scarcity, a competitive DTT is needed in order to justify its existence. A justification may still be the wish to protect the national character of the media landscape, but another reason are citizens' expectations to get interesting content, some of it originating from other countries.

The pay TV model has encountered difficulties in several countries.

The early history of DTT was marked by the collapse of some high-profile pay-TV consortia (ITV Digital in the UK and Quiero in Spain) in 2002.

In Portugal, the DTT model initially envisaged was based on the assumption of a dual free-to-air and pay TV offer, preceded by two separated public tenders. The licensed distribution operator for the Pay TV platform (Portugal Telecom) was committed to ensure the provision (retransmission) of 47 channels in the coastal region (3 of which, at least, in HD) and of 16 in the rest of the country (two of which, at least, in HD), and to reserve network capacity for the broadcasting of two regional TV programme services and to promote the development of regional audiovisual projects. However, in December 2009, the incumbent requested to return the frequencies granted by ICP-ANACOM, obtaining a positive response from this regulatory authority in July 2010. Therefore, and despite the possibility of pay TV services in the DTT Portuguese model, this is nowadays and in practice confined to FTA services.

In Ireland, the Broadcasting Authority (BAI), in a recent statement, considered that it will not be feasible to introduce commercial DTT as originally intended until after Analogue Switch Off (ASO) at the earliest. The position will be reviewed towards the end of 2011 and the Authority may seek expressions of interest in the provision of commercial DTT at that point¹¹. After many months of negotiations, three successive applicants (Boxer, OneVision, Easy TV) failed to agree terms with RTÉ for a transmission contract, which was a requirement of the BAI contract, or they declined the offer to pursue negotiations regarding the Commercial DTT Multiplex Licence.

	Pay TV	FTA
BA	None in transition period	Not yet operational
BE (CSA)	None	5 TV (including Euronews and BRF TV) 8 radio stations (including 2 BRF radios)
CH	None	4 or 5 public channels per linguistic area
DE	only 2 Pay TV (in two regions)	37 (based on the offer in the Berlin-Brandenburg region)
EE	25	5
ES	3	22 including HD channels in tests
FI	14 pay TV	13
FR	9 (and 2 pay-tv licences vacant)	23
GB	5 linear streams 2 pay-per-view	50 Free-to-air (not all 24 hours) 24 radio stations
GR	None (4 would allowed in the transition period)	7 free private TV national stations, 4 public channels 8 private regional stations (southern part of Attika),
HR	None (plan to build dedicated MUX in 2011)	6 national (14 regional channels licensed)
IT	less than 20	around 40
LT	26 (+12 available only in Vilnius)	14
LV	39	4
ME	None (though allowed)	unspecified
NL	23 TV, 19 radio (Digitenne package)	Only PSB channels
NO	26	7
PL	not allowed in first stage	7
PT	None	4
SE	46 pay TV channels	8
SI	None	6 TV channels with nationwide coverage (both PSB and commercial TV channels) and 5 regional TV channels
SK	None	7 (3 public, 4 private) (licenses have been issued for regional channels)

6. Licensing Other Digital Platforms

It turns out that in most countries the modes of licensing of digital platforms vary greatly.

- In some countries, no licensing is required for cable TV or IPTV

Cable TV do not require licensing, merely a registration (Norway, Sweden, Finland, the Czech Republic, CSA Belgium)

IPTV usually only requires a registration or a notification (Czech Republic, CSA Belgium) or neither notification nor licensing (Norway)

¹¹ http://www.bai.ie/about_news_art023.html

- In other countries (such as France, Slovenia, Bosnia and Herzegovina or Lithuania), irrespective of the digital platform, TV channels are subject to licensing, only that DTT licence requires a tender procedure while cable and IPTV licensing do not.

In Slovenia, all TV *channels of Slovenian origin* must obtain a licence for performing television activities, before they start to broadcast. If they decide to disseminate their TV channel on cable or IPTV, they only have to reach an agreement with the operator (service provider) after obtaining this licence. If they are interested in the DTT platform, however, they have to obtain the right to broadcast on DTT via public tender. Only after obtaining both the licence for performing television activities and the right to disseminate in digital broadcasting technology can they reach an agreement with the multiplex operator and start disseminating their TV channel on DTT platform.

For *foreign TV channels*, broadcast only in cable or IPTV, no prior notification or registration is needed. However, their presence in a certain cable or IPTV network should be notified to the Ministry of culture by the network operator, since they are obliged to report any change in their content offer.

In Lithuania, all digital broadcasting platforms are subject to licensing, only that DTT licence requires a tender procedure while cable and IPTV licensing do not.

In the Czech Republic, from 2012, the principle of technological neutrality will come into force with the same system of licensing registration.

- Some countries (such as Latvia, Estonia) report no major licensing differences between digital platforms. In Latvia, there is no differences (i.e. no tendering) until MUX capacity becomes an issue.