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BROADCASTING: Regulatory Issues

Country: Germany

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The attached questionnaire was undertaken in preparation for the biennial OECD Communications Outlook. The responses provided by Member countries on broadcasting regulation were used to provide information supporting the analytical sections published in association with data. A similar questionnaire with responses on telecommunication regulation is also available. In some cases, data for individual firms, used to compile OECD totals, have not been published at the request of the respondent. For further information, including data, see **OECD Communications Outlook 1999** and <http://www.oecd.org/dsti/sti/it/index.htm>

Broadcasting market status (Questions 1- 3)

1. Please provide details of the broadcasting and cable television infrastructure provision in your country.

Infrastructure provision for following service	Number of licensed operators (1998)	Number of privately owned companies ¹	Number of public service organisations ²
Terrestrial TV (National coverage ³)	16	14	2
Terrestrial TV (Local coverage ⁴ only)	16	8	8
Terrestrial radio (National coverage)	19	18	1
Terrestrial radio (Local coverage only)	172	164	8
Cable television service ⁵		approx. 60	1
Analogue direct broadcast satellite (DBS) service	37	21	16
Digital DBS service	2	2	--

¹ Defined as private sector companies holding one or more licences for service provision.

² Including state-owned corporations or institutions holding one or more licences for service provision.

³ A service with national coverage is defined as a service by a group of television or radio stations distributing a majority of the same programming, that are licensed on a national or regional basis but collectively provide nation-wide coverage. Affiliating companies of the nation-wide broadcast network are included in this category. If new operators have been licensed to provide national coverage in the last three years but are at the stage of rolling out networks please include these operators in the total.

⁴ A service with local coverage is defined as a service by a group of television or radio stations that are licensed on a national or regional basis but distribute the programming in the local area only. If new operators have been licensed to provide local coverage in the last three years but are at the stage of rolling out networks please include these operators in the total.

⁵ Please indicate if more than one organisation is permitted to own and operate cable television infrastructure in the same area.

2. Please provide details for the major public / private terrestrial TV broadcasting companies in your country. They include state and privately owned organisations providing broadcasting services with national coverage.

Name of public / private terrestrial TV broadcasting companies	Ownership Status (1998) (e.g. state-run / state owned / privately owned)	Do they own transmissions infrastructures? If not, please indicate the name of company which provide transmission infrastructures.
ARD	public law	mostly, yes, otherwise owned by Deutsche Telekom AG
ZDF	public law	no, Deutsche Telekom AG
RTL	private	no, Deutsche Telekom AG
SAT 1	private	no, Deutsche Telekom AG

3. What was the price of cable television service for a subscriber in the largest city of your country on 1st January 1998? Basic service corresponds to the least expensive option to a customer and premium service the most expensive option. (Local currency, current prices)

Cable Television services	Basic service			Premium service	
	Connection	Monthly subscription fees	Number of cable channels included in the basic option (excluding free services)	Monthly subscription fees	Number of cable channels included in the premium option (excluding free services)
(Please indicate the name of operator)	Deutsche Telekom AG	DM 25.90	32 (non-pay TV)	DM 49.50 (Pay TV)	1
(National average, if available)					

Broadcasting Regulatory Framework (Questions 4 - 9)

4. Which organisation(s) administer the following services (carriage and content) in your country and what are their main responsibilities? Please mention agencies dealing with spectrum allocation and management, and providing licences.

Please provide details:

a. Terrestrial broadcasting service

b. Cable Television service

15 Länder media institutes

c. Direct broadcast satellite (DBS) service

5. Please provide a description of significant recent policy changes affecting the provision of broadcasting services, as well as any draft laws, or regulatory proposals to be implemented in 1998.

- Alignment with the revised EC directive on TV (e.g. free transmission of major events)
- measures to protect young people
- non-discriminatory access to digital TV.

6. How is broadcasting defined in your country's regulatory framework? In addition, please specify public service obligations stipulated in broadcasting regulations.

Definition of broadcasting: Broadcasting is the production and dissemination of performances of all kinds, including vocal, sound and picture using electromagnetic oscillations without a connecting line or along or by means of a line. The concept includes performances which are disseminated in encrypted form or for which a certain charge is made for reception (Section 2, paragraph 1 of the Agreement on Broadcasting between the Federal States in United Germany).

Public service obligations: An example of this in Section 5 of the Interstate Agreement on Zweites Deutsche Fernsehen (ZDF):

- 1) The transmissions of ZDF are intended to give the viewers in Germany an objective overview of world events, and in particular a comprehensive picture of life in Germany. The transmission should foster the free formation of individual and public opinions.
- 2) The events in the various Länder and the cultural variety of Germany are to be presented by ZDF in an appropriate manner.

In its transmission, ZDF must respect and protect human dignity. It should help to boost respect for life, freedom and freedom from bodily harm, for faith and the opinions of others. The moral and religious convictions of the population must be respected. The transmissions must particularly promote a freeing of belonging together in the united Germany, serve overall social integration in peace and freedom and the mutual understanding of the nations and aim at non-discriminatory co-existence.

- 7. Are there must-carry rules? For example, are cable television or satellite operators required by regulation to provide capacity for certain services? If yes, please elaborate on the reasons.**

Must-carry rules are to be introduced. These will make it possible for some of the cable channels available for digital transmission to be used by the Länder media institutes in line with Länder law (must-carry sector); the other cable channels are to be used by cable network operators on their own responsibility.

In most of the Länder, the analogue channels are to continue to be used by the Länder media institutes in the future.

- 8. Are there any local content requirements for broadcasters and cable television operators in your country in terms of the level of domestically produced content which must be broadcast, the amount of turn-over which must be allocated to domestic production or other criteria? Yes/No**

No, but there is support for European productions. Section 6 of the Agreement on Broadcasting between the Federal States in United Germany states the following: in order to present the diversity which exists in the German-language and European area and to promote European film and television productions, the television companies are to reserve the majority of the total time available for feature films, television plays, serials, documentaries and similar productions for European works in line with European law. Full TV programmes are to include a substantial proportion of in-house productions and contract and joint productions from the German-language and European area. The same goes for niche TV programmes, to the extent that this is possible in view of their particular focus.

- 9. Are there any limitations on share ratio, number of stations, or other ownership restrictions on entities investing in service providers of terrestrial broadcasting, cable television and satellite broadcasting in your country? Please refer to each service individually, if they have separate restrictions.**

In the case of radio, there are restrictions on shareholdings; this is not the case for nation-wide television. A variety of opinions on television is ensured by limiting the share of viewers to 30%. This share can be reached via however many channels one provider or a group of providers have.

Competition law also prohibits market dominance.

Cross-ownership and cross sector provision (Questions 10 - 14)

10. Are there any restrictions on terrestrial broadcasting companies from directly providing the cable television infrastructures and services in your country? On the other hand, are there any restrictions on cable television operators from directly providing the terrestrial broadcasting companies in your country?

If yes, please provide details:

- a. Restrictions on terrestrial broadcasting companies providing the cable television infrastructures
None, in principle.
- b. Restrictions on terrestrial broadcasting companies providing the cable television services
None, in principle.
- c. Restrictions on cable television operators providing the terrestrial broadcasting
None, in principle.

11. Please specify any restrictions on cable television operators and terrestrial broadcasting companies investing (including merging and acquiring shares) in companies that provide other infrastructures or services.

None.

12. Are there any restrictions or limitations on foreign investment regarding services of terrestrial broadcasting, cable television and satellite broadcasting in your country? Please refer to each service individually, if they have separate restrictions.

Yes/No

A company operating on the radio and television market normally requires a *license*. A licence is issued only if the content of the programmes basically expresses the variety of opinions in Germany. The significant political, philosophical and social groups must have an appropriate say. In some cases, a relationship with certain Länder or regions is required;

Priority is given to domestic and European programmes when selecting what is to be broadcast *on cable*. The choice also reflects questions of programme content and variety of opinions. In practical terms, it is very difficult for foreign broadcasters from outside the EU to fulfil the criteria to receive a licence or be selected for cable transmission.

Terrestrial frequencies: for radio and television are only available to companies to a very limited extent. When they are allocated, foreign companies are faced with problems similar to those in the case of licensing.

- 13. Are there any regulations restricting cross media ownership (e.g. broadcast television, radio, newspapers) for infrastructure and services in the same geographical market. Yes/No**

A company may provide an unlimited number of nation-wide programmes on television itself or via related companies, unless by so doing it attains dominant power over opinions, which is defined as follows: If the programmes which can be ascribed to a company attain a share of viewers of more than 30%, it is assumed that it has dominant power over opinions. The same applies if it is slightly below this share of viewers, to the extent that the company has a dominant position on a media-related market, or that an overall assessment of its activities in television and in media-related markets shows that the influence on opinions exerted by the company corresponds to a share of 30% of television viewers (cf. Section 26 of the Agreement on Broadcasting between the Federal States in United Germany).

In addition, there are limits on shareholdings by press companies in broadcasting companies when they have a dominant position on regional press markets.

- 14. What kind of methods are adopted by regulatory authorities in order to measure market shares in broadcasting market? If the measure used is “audience rates”, please describe the methodology used.**

Description of market share measurement:

The share of viewers is measured (see question 13).

Please provide methodology for measuring audience rates:

Representative sampling by the Gesellschaft für Konsumforschung (GfK).

Convergence (Questions 15 - 18)

- 15. Under the communication regulation existing in your country how would services provided over the Internet, which some have likened to broadcasting services (e.g. audio and video services transmitted over the Internet) be defined and treated?**

The content of the service basically decides whether it is defined as broadcasting (requiring a licence) or as a media service which does not require a licence. If the transmission of broadcasting on the Internet is not regarded as mass communications, it can be assumed that this is a media service accessed by an individual.

16. Would a video on demand service be treated differently in terms of regulations, by the transmission methods (for example, PSTN, cable or satellite)?

The transmission method does not basically affect whether video on demand is regarded as broadcasting or is a licence-free media service: it depends on the content and on whether the transmission method has a broad impact in terms of quality and quantity.

17. Under the communication regulation existing in your country how would conditional access services, such as in digital DBS services, be treated?

Providers of services for which an access entitlement is required, which manufacture or market access services for television services, must offer technical services to all broadcasting companies at conditions which allow equal opportunities and are appropriate and non-discriminatory, and which permit their television services to be received by entitled viewers using decoders administered by the service providers. This obligation applies similarly to suppliers of systems which also guide the selection of television programmes and which are used as a higher-level user interface for all services offered via the system (navigators). This derives from Section 53 of the Agreement on Broadcasting between the Federal States in United Germany.

18. Please detail plans for digital broadcasting and cable television services.

	Number of Licences to be granted	Expected Number of New Channel Capacity	Expected Date of Service Commencement
Terrestrial TV service		several	
Terrestrial Radio service		several	
Direct Broadcast Satellite service		60	
Cable Television service		15	
Additional information and comments: In Germany's Länder, there are several trials of terrestrial digital Video Broadcasting (DVB-T) and Digital Audio Broadcasting (T-DAB).			