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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Global Forum on Competition

COMPETITION ISSUES IN TELEVISION AND BROADCASTING

-- Session II --

Call for Country Contributions

This document is a call for country contributions for Session II of the Global Forum on Competition to be held on 28 February - 1 March 2013. GFC participants are invited to submit their contributions by 17 January 2013 at the latest.

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TO ALL GLOBAL FORUM PARTICIPANTS

Re: Competition Issues in Television and Broadcasting

Global Forum on Competition (28 February and 1 March 2013)

Session II

Dear GFC Participant,

The OECD Global Forum on Competition will hold a roundtable on Competition Issues in Television and Broadcasting on the second day of the meeting, 1 March 2013. You are invited to make a written contribution to this session **by 17 January 2013 at the latest**.

Television broadcasting can be defined as the business of producing information content in an audiovisual format, and distributing it via telecommunications services. Over the past decade, the convergence of broadcasting and telecommunications technologies has been highly disruptive to the analogue model common in the late 20th century, where broadcasting services were delivered primarily across limited radio spectrum or dedicated cable services. From a technical perspective, there is now a wide and growing range of platforms across which broadcasting services can be delivered. Each of these platforms has the potential to support a diverse range of channels both through dedicated provision, or open access across the internet. These technical developments have in turn supported a rapidly expanding market for a variety of broadcasting products and services.

Where the timeliness of the information is important, broadcasting has few substitutes. Timeliness is critical in times of emergencies, for the currency of news and information, such as the outcome of sporting events, and also for research and instant communication. The capacity for interactivity through broadcasting services, providing two way communications, is also shaping the design of products and services, for which timeliness is a key feature. Accordingly, there are points in the value chain for the development and delivery of broadcasting products and services where broadcasters may be able to exercise significant market power, either through controlling the supply of specific content, or as a bottleneck in the provision of distribution/delivery services.

Providing universal access to broadcasting services is considered important for a number of economic and non-economic reasons. On the one hand broadcasting constitutes a significant economic sector in itself and also contributes to the growth of other sectors, and the economy as a whole. On the other hand, it is instrumental in the pursuit of social objectives, such as promoting values, encouraging linguistic diversity or preserving cultural identity.

Increasingly, because it is an essential component in the information chain, the performance of broadcasting services is recognised as playing an important role in fostering development and in helping countries derive the benefits from an information society. While in some countries, broadcasting technologies may complement and build on existing telecommunications platforms, in others, especially those where such platforms are still being developed, they may represent a valuable alternative.

It is generally accepted that reform that took place in the telecommunications sector can present a potential model for broadcasting. However, while multilateral, international institutions have actively promoted reform in the telecommunications sector, which has in turn facilitated diversity in broadcasting markets, broadcasting has generally remained outside of this reform. This was probably due to the fact that in the analogue era, broadcasting and telecommunications were considered distinct industries (while

broadcasting used radio frequencies, telecommunications relied on dedicated connections); and there was a reluctance to influence content-related issues. However, with rapid technological advancements and increasing convergence between telecommunications, broadcasting and IT services, a regulatory model that does not take into account links between telecommunications and broadcasting no longer reflects reality. An approach is required that is responsive to the dynamic nature of the sector.

The objective of the session is to identify potentially divergent challenges that developed as well as developing countries face in the process of opening the broadcasting sector to more competition and reducing the digital divide. An increasing number of studies acknowledge that it is “anomalous to exclude broadcasting as a leading instrument for delivery of information society services in developing countries”. Relevantly, the report of the ITU asserts “where governments have adopted a liberal attitude towards broadcasting, content is more varied and households find ways to get round income or electricity constraints”.¹

Enforcement of competition law with respect to broadcasting may arise in all areas, namely: mergers, abuse of dominance and agreements. Specific problems may in particular stem from concentrated media ownership, limiting access to premium content such as sports rights or first release movies, as well as through vertical arrangements, denying access to telecommunications platforms for the delivery of content.

While the term broadcasting refers to “the business of producing interactive information content and distributing it via telecommunications services”,² which encompasses both radio and television, the session will focus solely on regulatory and competition issues that arise in the context of the television and broadcasting sector. It will examine the matters that competition authorities should be concerned with to ensure that consumers are able to derive maximum benefits from broadcasting services.

The quality and utility of this roundtable will be greatly strengthened by written contributions from participants addressing the following questions:

1. What is the state of competition in the television broadcasting sector in your jurisdiction?
2. What do you consider to be the most significant current and future challenges for competition policy in television broadcasting?
3. What has been your relevant experience in competition law enforcement relating to television and broadcasting?

To assist with the preparation of your contribution, countries are invited to have regard to the issues outlined in the attachment. This is not an exhaustive list and participants are encouraged to raise and address other issues in their submissions related to competition in television broadcasting.

Please advise the Secretariat by **17 December 2012** if you will be making a written contribution. As noted above, written contributions are due **by 17 January 2013**. This deadline applies to both members and non-members. Failure to meet this deadline may result in the contribution not being taken into account in the preparation of the scenario for the roundtable discussion. In addition, late contributions may not be distributed via the meeting website www.oecd.org/competition/globalforum in advance of the meeting.

All communications regarding documentation for this roundtable should be sent to Ms. Jessica Escaip (Email: jessica.escaip@oecd.org; Tel: + 33 1 45 24 15 15; Fax: + 33 1 45 24 96 95).

All substantive queries relating to this roundtable should be sent to Mr. Gregory Bounds (Email: gregory.bounds@oecd.org) and to Ms. Anna Pisarkiewicz (Email: anna.pisarkiewicz@oecd.org).

QUESTIONS AND POINTS FOR CONSIDERATION

Countries are invited to answer the three headline questions below, taking account of the issues that are outlined, and bearing in mind that both the issues and the questions are intended to be illustrative rather than exhaustive. You should feel free to discuss other pertinent topics that are not mentioned here. Wherever possible, please demonstrate the points you raise by referring to specific cases.

1. **What is the state of competition in the television broadcasting sector in your jurisdiction?**

In preparing your answer, have regard to the following:

- A. Are there constraints on competition in the television broadcasting sector in your country? Please indicate in your answer in what segment of the value chain these constraints arise. For example, whether in respect to the delivery of and access to broadcasting platforms or distribution services, or the timely production of and supply of content. Where possible, please cite evidence drawing in particular on the following factors:
 - Do consumers have real choice among providers of platforms and alternative services?
 - Is there any evidence of excessive prices (for example subscription prices for Pay-TV or fees charged to advertisers)?
 - Is there evidence of poor quality, poor service, and/or lack of innovation and investment?
 - Are there significant barriers to entry and expansion (and exit)? What is the nature of these barriers (i.e. regulatory, network effects)?
- B. The broadcasting sector, in developed and developing countries, has been subject to extensive and often intrusive regulation. As a consequence of new technological advancements, constraints previously justified on the grounds of spectrum scarcity and limited audiences, may no longer make sense. When considering the state and scope for competition in the broadcasting sector, one has to take into account existing sector-specific regulation, and in particular any provisions relating to content, infrastructure, ownership conditions or licensing. With these issues in mind, do you consider the existing legal and regulatory framework to be effective in supporting a robust competition policy for the broadcasting sector?
- C. Vertically-integrated providers: are issues arising from vertical integration of media companies raising any particular competition concerns in your country?
- D. Cross-ownership: are issues arising from cross-ownership of media companies raising any particular competition concerns in your country?

2. What do you consider to be the most significant current and future challenges for competition policy in television broadcasting?

In preparing your answer, have regard to the following:

- A. Barriers to entry: Please identify barriers to entry and expansion, if any, which prevent competition and growth of the market players.
- B. New technologies and future challenges: The broadcasting industry is continuously evolving. The convergence of the Internet and television, in particular, is revolutionising the broadcasting industry and has the potential to transform the market for all the players: both actual and potential. Traditional television business models based on proprietary and vertically-integrated distribution networks are being challenged by more personalised programming. Where viewers can access content on multiple platforms broadcasters can establish a more direct relationship with the viewer, thereby leading to a long-term fragmentation of the audience. Bearing in mind new opportunities offered by convergence of Internet and television, do you expect that competition authorities will face a different set of challenges? If yes, what sort of competition problems do you expect in the future? Do you have any specific time-frame in mind within which you would expect such problems to arise?
- C. Has your competition authority conducted any market studies relevant to the television and broadcasting sector? Please provide references to these studies.
- D. Access to content: New entry into broadcasting markets requires obtaining access to both telecommunications services and access to content. Access to premium content, such as sport events, first-release movies and thematic television channels, can be vital to ensure the success of media platforms. While exclusive rights to content underpin many business models, they may also hamper competition. For example, competition issues may arise when buyers acquire exclusive rights to premium content that locks out competition from other sources. To what extent is the acquisition of exclusive content rights a concern in your jurisdiction?
- E. Efficient spectrum allocation: Generally, limits on spectrum are no longer a technical barrier to entry or expansion in television broadcasting. However, where procedures for granting spectrum license are not straightforward and transparent, there is a risk that spectrum is not allocated on an efficient basis. This in turn may constrain the ability of broadcasters and service providers to fully exploit the potential of digital broadcasting. Does your jurisdiction have in place a transparent procedure for granting spectrum licenses? Do you think that spectrum allocation will cease to pose serious competition issues as new technologies undermine the traditional television broadcasting business model?

3. What has been your relevant experience in competition law enforcement relating to television and broadcasting?

In preparing your answer, have regard to the following:

- A. Please provide a brief overview of significant competition law enforcement matters that your agency has undertaken in relation to the broadcasting sector, including:
 - Merger assessments
 - Cartels and horizontal agreements

- Vertical restrictions
- Abuse of dominance actions

Please explain how the matter came to the attention of the agency, the substance of the allegation, the analysis undertaken, and the remedies imposed (if any). In particular, can you explain whether your agency has examined under competition law provisions any practices relating to:

- Bundling of telephony, internet and pay-TV
- Access to premium content
- Access to set-top boxes and electronic programming guides (EPGs)
- Access to transmission facilities
- Access to telecommunications platforms (mobile networks and the internet)
- Access to spectrum

Has any of the above (with the exception of the first) been considered as a natural monopoly or essential facility? What was the outcome of the investigation?

- B. Parallel application of two different legal regimes: Where competition law applies to the broadcasting sector, it is very likely that two authorities – national competition (NCA) and national regulatory authority (NRA) – will be in a position to apply in parallel two different legal regimes: *ex ante* sector-specific regulation and *ex-post* competition law. Have you dealt with any case(s) where these two authorities reached or planned to reach inconsistent decisions? Do you have in place any mechanism addressing the issue of co-operation between NCA and NRA?

¹ ITU (2010), World Telecommunication/ICT Development Report 2010, Monitoring the WSIS Targets: A mid-term review.

² OECD (1998), Regulation and Competition Issues in Broadcasting in the Light of Convergence, DAF/CLP(99)1

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