

Mikołaj Bednarski



**The Adequate Level
of Public Broadcasting Regulation
and the Polish Television Market**

The Adequate Level of Public Broadcasting Regulation and the Polish Television Market

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Mikolaj Bednarski

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Gutachter:

Prof. Dr. Eckhard Höfner (Europa-Universität Viadrina)
Prof. Dr. Hartmut Schröder (Europa-Universität Viadrina)
Prof. Dr. Cornelia Müller (Europa-Universität Viadrina)

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LIST OF ABBREVIATIONS

AWS (Akcja Wyborcza Solidarność)	Electoral Action Solidarność
GPW (Giełda Papierów Wartościowych)	Stock Exchange
KRRIT (Krajowa Rada Radiofonii i Telewizji)	The National Broadcasting Council
KRS (Krajowy Rejestr Sądowy)	National Court Register
LPR (Liga Polskich Rodzin)	League of Polish Families
NIK (Najwyższa Izba Kontroli)	Supreme Chamber of Control
PAP (Polska Agencja Prasowa)	Polish Press Agency
PiS (Prawo i Sprawiedliwość)	Law and Justice
PO (Platforma Obywatelska)	Civic Platform
PRL (Polska Rzeczpospolita Ludowa)	Poland's People Republic
PSL (Polskie Stronnictwo Ludowe)	Polish Peasant Party
PZPR (Polska Zjednoczona Partia Robotnicza)	Polish United Workers' Party
RSW (Robotnicza Spółdzielnia Wydawnicza)	Workers' Cooperative Publishing
SLD (Sojusz Lewicy Demokratycznej)	Democratic Left Alliance
TP (Telekomunikacja Polska SA)	Polish Telecommunication
TVP (Telewizja Polska)	Polish Television
UKE (Urząd Komunikacji Elektronicznej)	The Office of Electronic Communications
UOKiK (Urząd Ochrony Konkurencji i Konsumentów)	Office for Competition and Consumer Protection
URT (Urząd Regulacji Telekomunikacji)	Telecommunications Regulatory Authority
URTiP (Urząd Regulacji Telekomunikacji i Poczty)	Telecommunications and Post Regulatory Authority

CHAPTER I: INTRODUCTION

The dissertation project “The Adequate Level of Public Broadcasting Regulation and the Polish Television Market” analyzes and evaluates the overall significance of public market involvement in general and specifically in the Polish TV signal transmission segment. Public broadcasting as the sector’s most distinct form of governmental involvement will receive special consideration in this context. The dissertation is founded on economic and media-political theories, which examine the specifics of the TV market from different angles with the focus on the question of public market regulation, its justification, configuration, and extend. Based on the theoretical consideration, the project reflects the current Polish market status as of January 2010 and assesses the significance of its public component. Based on the multi-perspective analysis of Poland’s broadcasting market specifications, the adequate role of its public constituent will be derived.

1. The television broadcasting market and its significance

The television sector as a part of the media market is an integral element of life in societies all over the world. The press sector, the broadcasting sector, and for several years already also the Internet market, are not only the major sources of information for a vast majority of all humans, but are also fiercely fought over for this very reason. In almost every country of the world has especially the TV market therefore for decades been subject to constant politically, legally, and economically motivated debates, which are led publicly as well as offstage. The reason for such an interest in the TV sector lies clearly in this market’s immediate proximity to the average consumer and voter. The resulting political and economic influence potential and power stemming from this market is enormous, especially when taking into consideration the role of TV consumption in the average household and its function as the central information source. The more centralized this potential and power, or in other words the fewer the competitors, the higher the probability of political and economic abuse and corruption. It is therefore the structure of the internal broadcasting market that significantly co-defines a country’s level of opinion plurality and independence - two very crucial parameters for every democracy.

2. The broadcasting market, its public component, and the threat of abuse

Traditionally, in totalitarian systems the government claims power over the whole media market as a crucial control- and propaganda instrument. No factual competitors are tolerated, even if some channels may take the shape of seemingly independent private entities. Consequently, the political and economic broadcasting power is perfectly centralized. In democratic systems on the other hand, the political independence of the media is claimed to be a general precondition. Still, even in democratic countries with more open broadcasting systems, most governments have never fully given up their traditional dominating market positions, remaining significant players in their television signal transmission segments. The scope of governmental interference however differs from one media system to another, ranging from pure market structure control by governmental regulation institutions, to the most direct market involvement in the form of public broadcasting stations.

The pure fact of public involvement in such a crucial sector is not a problem as such. Yet a natural consequence of an assumed disproportionately high governmental role within a market segment is its susceptibility to economic and political exploitations. Seemingly paradox, the same can be valid for a very low level of public market control. Accordingly, a market's centralization by commercial entities can endanger the broadcasting opinion plurality and independence to a very similar degree without proper public regulation. Not only is the purely economic interest within a monopoly situation disadvantageous from the consumers' point of view; but the natural links between the business world and politics can also transpose a financial centralization towards a political opinion monopoly, representing not necessarily the governmental side, but certainly a given group of interest related to politics.

Consequently, the openness to commercial broadcasting competitors does not automatically imply political independence as it may seem on the first glance. A possible political involvement within an open commercial broadcasting system rather has to take a more sophisticated form as it is the case in a straightforward totalitarian scenario. Analogously, direct governmental involvement in terms of public broadcasting does not endanger the overall broadcasting opinion plurality per se. Consequently, these relations already indicate the complexity, which must be taken into consideration when exploring the proper level of public involvement on the broadcasting market.

In this context one of the most interesting and controversial topics is the question if public television as one of the major public broadcasting regulation instruments is today merely an unnecessary and market-disturbing tail of the very beginnings of television signal transmission, or if it still fulfills a certain realistic and necessary role within a country's broadcasting landscape; and if so, what is its optimal extent and shape. There is no current global consensus on this topic, which is a major reason for the differing broadcasting structures in different countries. Even within the European Union there are rather vague guidelines on this matter, giving the member countries the liberty to freely decide over their scope of public broadcasting involvement. One of the major reasons for the lack of a unified broadcasting structure is that each country has to take its own current market realities into consideration when evaluating a possible market structure change. In other words, a dual broadcasting system, for instance, may be a recommendable model for one country, while being far from the optimum for another one. It is therefore no surprise that within a given media system the opinions as to its proper shape and structure differ diametrical and are often subject to populist polemicizing rather than academic and matter-of-fact arguments.

3. Poland as the country for the multi-perspective analysis

The dissertation project intends to identify the present and the potential broadcasting market status of one of the EU's relatively new members: Poland. Having successfully left behind its transition period starting in 1989, and being currently a comparably stable but still young democracy with a satisfying economic growth over the last years, Poland is an interesting object of market analyses of each kind. Needless to say, a market segment like the television broadcasting sector, which for the named-above reasons is of such significance in general, is an even more relevant one for a country like Poland, whose geopolitical role still waits to be fully defined by the future. Accordingly, the proper balance between free market mechanisms and public involvement must be chosen with an even more particular care as it may be the case for mature broadcasting systems.

4. Goal, methods, and structure of the analysis

The goal of this dissertation is to identify and evaluate the role of public television broadcasting in Poland. Public broadcasting is the most direct form of governmental involvement in this sector and it is the one, whose public debate is lead over most expressively.

The dissertation is divided into two major parts. The first part deals with the technological and theoretical foundation for the empirical analysis of Poland's broadcasting market, which in turn is conducted in the second part. Accordingly, the first section gives an overview of the technological basics affecting the TV sector. The technological framework is crucial, since it represents the "natural preconditions" of the television sector, based on which further definitions are made. This technological nature is in practice exposed to external limitations of economic, legislative, and political character. Yet without the consideration of the technological basis most analyses of structural changes would be as incomplete as philosophical theories would be without basic assumptions concerning the human nature, its limitations and its potentials. In order to ensure a general understandability of the TV sector's nature, this paper condenses the partly complex technological specifications to their major traits. Based on the technological preconditions of the television sector, its natural markets and products are identified, thereby connecting the technological sphere with a market model terminology.

After the extended natural conception of the television sector and its sub-markets are presented, the picture- and content specifics of modern broadcasting are evaluated from a communication model perspective, confronting its properties also with other forms of mass communication, with the focus on media content of public interest. Subsequently, the two major theoretical approaches forming the project's model framework are examined: the theories of competition policy and media policy. These two theories provide a stable two-perspective basis for the evaluation of all television-market related regulation measures and activities. The two approaches, which affect the conception of any broadcasting sector, are presented, compared, and confronted. In doing so, the TV market's specifications are taken into consideration and the question of the theories' postulates factual implications for the broadcasting sector are regarded. Special attention is given to the role of public market involvement from both theories' viewpoints.

The second part of the work examines the empirical example of Poland's TV market in the light of a practical implementation of the dealt with theoretical section with a focus on

public market involvement. In order to propose an adequate level of governmental participation for any given media system, its current configuration needs to be evaluated in the first place. In doing so, direct political externalities have to be taken into consideration, as well as the market's economic structure and its legislative framework, since those areas actively co-define a country's TV sector. In addition, as already indicated above, neglecting the technological status of the country's television sector would make such an analysis more than incomplete. This is especially true in the present market situation, with Poland facing the switch-over from analogue to digital broadcasting. While analogue signal transmission has widely determined the conventional broadcasting market configuration, setting relatively narrow natural limitations with respect to supplier density, digital broadcasting considerably broadens these limits, therefore creating a significantly altered market framework potential.

Consequently, the empirical section of the project could be divided into four parts consisting of the political sphere, the legislative sphere, the economic sphere, and the technological sphere. Yet even though the technological perspective could be formally treated as a separate one, it forms an integral part of the economic section of this work, due to its considerable and intrinsic influence on the broadcasting market's economic level, defining potential efficiency parameters and setting natural market boundaries. This connection follows the logic of the first part of the paper, which also combines the technological precondition of television with the resulting market model perspective. The legislative perspective on the other hand adds legal rules and boundaries to the potential market conception, thereby acting predominantly from outside of the market. The political sphere, in turn, influences the market structure from both market-relative locations: from outside, by means of legal act amendments, and from within, in the form of a certain grey area. This grey area includes informal relations to market participants, as well as to theoretically objective market institutions, and has a significant influence on any given market structure, while mostly being officially nonexistent. These contextual interrelations of the different spheres indicate how delicate the overall analysis must be conducted and how carefully the resulting conclusions must be drawn.

Regarding the chronology of the second section of the dissertation project, it is headed by an overview of the most important developments within Poland's TV sector, starting from the socio-political transition in 1989. Following that, the legal perspective of its market is discussed. This part of the analysis embraces the current legislative framework of the Polish television broadcasting market, which is a symbiosis of EU directives and national legal acts. The legislative framework is furthermore evaluated as the legal

implementation of the major competition- and media policy postulates, thereby forming a direct connection to the dealt-with theory.

Subsequently, the Polish TV sector is viewed upon from the political standpoint in order to present an impression of the practical value of the legal framework. Concerning this, the project indicates the way, in which the Polish broadcasting sector is influenced by external interests, and identifies the main reasons for political interferences within it. The political sphere indicates the level of distortion of the legal framework and its significance for the economic level of the analysis.

Accordingly, after the presentation of the legal and political viewpoint, the TV market's economic characteristics are examined. This is done by first introducing the technical specifics of Polish broadcasting within the current switch-over phase from analog to digital transmission, since they determine the economic market conception, whose constellation is presented accordingly. Within the economic analysis of the sector, the major market participants are introduced and special attention is given to the different sub-markets of the television sector. Accordingly, the TV stations' respective recipient market shares are assessed, as well as the market positions within the area of advertising. Moreover, the television signal distribution market is presented and evaluated, embracing traditional signal transmission forms, such as terrestrial broadcasting, as well as innovative ones, such as Internet protocol based TV transmission.

The economic framework gives detailed insights into the interior structure of the market, thereby completing the legal and the political perspective. Based on the three viewpoints, as well as on the theoretical framework influencing them, solid conclusions as to the adequate role of public broadcasting in the Polish context can be formulated.

CHAPTER II: TECHNOLOGICAL MARKET FRAMEWORK

1. Technological basics affecting the TV sector

Visual and aural external information, such as a barking white dog in the middle of our street, are received by our eyes and ears as a combination of sound and light waves. We can see and hear such information because our eyes and ears are natural receiving devices of these wave impulses. The set of audio-visual waves carries all necessary information for our

brain to interpret the situation correctly. Accordingly, a white light wave has a different wave length and amplitude than a red light wave and so do differing sounds. Our brain in turn is, among other things, programmed to translate the received combination of waves into the contextual information that what we see and hear is actually a white barking dog in the middle of our street. This is the simplified natural technology of seeing and hearing.

Yet even though our eyes and ears can receive broader audio-visual information and our brain can even save them to a certain degree, our memory reliability, as well as our natural reproduction predispositions of the seen and heard information, is rather limited. Technological devices such as cameras or voice recorders imitate and optimize the process of natural audio-visual information receiving, saving, and rendering. The barking white dog can be recorded (for example by a camera) or artificially created (for example by a computer program) and stored on a data carrier, such as a camera tape or a computer hard drive. In order to do so, the data is saved by translating the wave signals into small pieces of information based on their lengths and amplitudes. These information units can be structured in various ways, depending on the technological coding routine used. The two major technological methods are analogue and digital data conversion. While analog conversion transforms a given or simulated audio-visual data wave signal into electronic impulses, digital data coding transforms such an audio and video impulse into a binary format with a series of “1”s and “0”s.¹ The first method saves the data by transferring the electronic impulses onto a mechanical data carrier, such as a (magnetic) camera tape, while the second one reduces the mechanical space requirements saving the code of zeros and ones on an electronic storage device, such as memory stick.

The same way, in which the data can be stored, it can be transferred, or in other words sent, to external devices: via analogue or digital signaling. With respect to television broadcasting, one striking difference is that an analogue signal includes both, voice and picture, while digital broadcasting sends the audio and the video signals separately.² There are various mediums for the television signal transmission. Both, analog and digital signals can generally be transmitted terrestrially, through cable or by satellite. Terrestrial broadcasting is the transmission of TV signals via air within a short distance to the earth. Cable transmission uses optical fibers or coaxial cables for the data transfer basically on the earth’s surface and its immediate proximity. Satellite transmission happens on air within long distances to the earth using space satellites. These are the three major TV signal

¹ Cf. Kruger / Guerrero (2002: 42).

² Cianci (2007: 2).

distribution types. In addition to that, digital TV can also be directed at handheld devices, such as mobile phones, it can be broadcasted over the World Wide Web as Internet Television, and it can be conveyed by the telecommunication infrastructure, for example by the technology IPTV, which is television via the Internet Protocol on guarded isolated service provider networks.³

In Europe, digital broadcasting's major technological standard is Digital Video Broadcast (DVB), which distinguishes various carrier-based approaches, such as DVB-S and DVB-S2 (satellite), DVB-C and DVB-C2 (cable), DVB-T and DVB-T2 (terrestrial), or DVB-H and DVB-SH (handheld).⁴ Other geographical regions use partly differing digital TV standards, such as the ATSC family in the USA or the ISDB family in Brazil and Japan.⁵

While analog broadcasting is the traditional and established method, the rather new technique of digital broadcasting offers significant advantages, in spite of certain existing disadvantages. The initial substantial investment to switch from analog to digital broadcasting, as well as the partly imperfect digital compression algorithms, such as MPEG-2, which can result in sound and video distortions, are indeed worth consideration, yet these are rather short-term downsides of digital broadcasting.⁶ Accordingly, very few technological development steps can be taken without an initial investment, which is naturally expected to pay off in the future. Continuous dynamic technological advancements, in turn, are certain to solve the mentioned compression imperfections. One basic advantage of digital versus analogue signal transmission is the former technology's resistance to noise. While an analogue signal can be severely distorted by electronic noise, this very noise would have no effect at all on the fact that "a '1' is a one and a '0' is a zero".⁷ This results in better picture and sound quality possibilities. The probably major advantage of digital signal transmission is that it requires less physical space than analogue signaling. This is not only valid as far as data storage is concerned (a memory stick takes up by far less physical space than a traditional camera tape) but also with respect to data transmission. Accordingly, data transmission (especially on air) is tightly connected to the required bandwidth. With respect to signal transmission, bandwidth in turn describes the available frequency range for an electronic signal within a diffusion medium.⁸ Each country has a naturally and technologically given inventory in terms of overall frequency range, depending

³ Benoit (2008: 139ff).

⁴ Jack (2008: 215ff).

⁵ Haim (2009: 188).

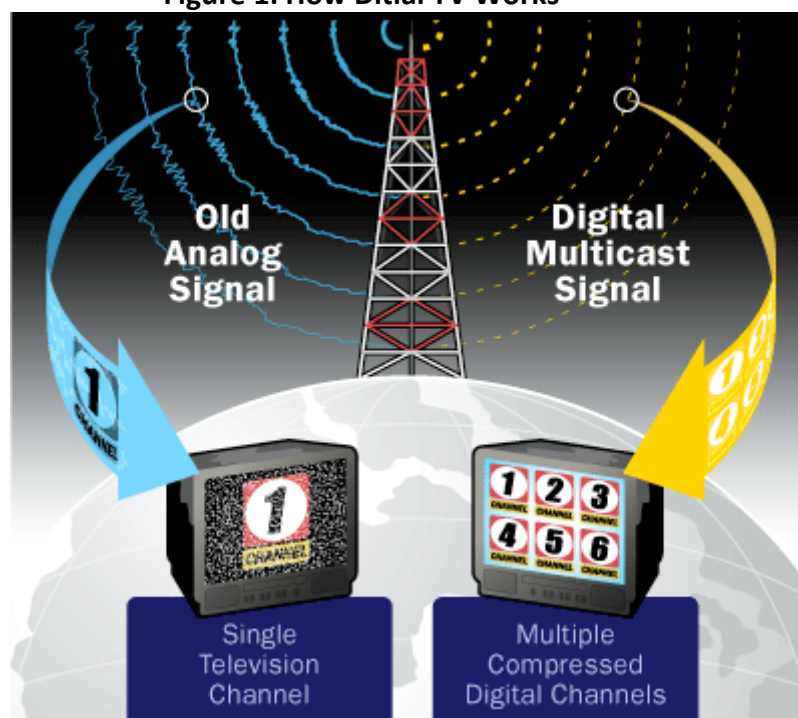
⁶ The Polish sector will probably opt for the more reliable MPEG-4 technology.

⁷ Cianci (2007: 3).

⁸ Wells / Hakanen (1997: 24).

on its geographical shape and its mast infrastructure.⁹ In Poland, for example, the available frequency inventory allows for a maximum of three nationwide terrestrially transmitted analogue TV programs, two over-regional, and two regional channels, while this number could easily be multiplied by transmitting the slimmer digital signal (the Polish Ministry of Defense also still uses frequencies, which could be used for TV transmission).¹⁰ In other words, while on a given channel analog broadcasting within a given bandwidth (in most systems 8MHz) allows for only one standard program, digital technology allows multiple programs in that space including additional digital services - such as digital program guides, subtitles, language selection, parental control, video-on-demand - or fewer stations on the other hand (generally more than one), yet in high definition format (HDTV).¹¹

Figure 1: How Digital TV Works



Source: Pollette (2008).

This short technical overview indicates that the TV market's technical framework, which is in a global transition phase from analog to exclusively digital broadcasting, naturally influences the overall TV market structure, co-defining its sub-markets.

⁹ Straubhaar / LaRose (2006: 164).

¹⁰ KRRiT (2006a: 23).

¹¹ Kruger / Guerrero (2002: 42).

2. The TV sector and its markets

What is commonly considered the TV sector can model-wise be divided into three major interrelated markets. This means that this sector can be viewed as a certain market matrix structure with differing goods, rules, and market participants. The three markets are driven by distinct mechanisms and differ as to their respective major product, the parties involved as consumers and suppliers, and as to the form of payment for the given television product.

2.1. The recipients market

On the first market, broadcasters compete for viewers. The product is the particular media content in its broad sense, such as a soccer game, a movie, or a quiz show. This content competes with other media contents on other TV stations at the same time of a given day. Accordingly, the stations compete on the recipient market via content marketing and content quality, trying to make their products those ones, which the viewer prefers to watch. Thus the target group for this media product is the receivers of the programmatic content.

The broadcasters in turn need to do a basic calculation subtracting the cost of a program from its expected revenues. The major program costs can be composed of direct production costs, license costs, or a mixture of both. While own production allows for increased cost efficiency, gratis repetitions, and possible license revenues, license payments for nationally or internationally already successful media contents increase the probability of high audience rates. The broadcasters' revenues consist of advertisement revenues, direct signal distribution, and license revenues.

The price for the media product on the recipient market from the consumers' perspective can be monetary or/and non-monetary. In the case of so-called free-TV the viewer pays with her spare time, watching programmatic commercial breaks. The advertising breaks are therefore non-monetary for the consumer, being factually paid for by third parties in the expectation of commercial effects on the respective product markets. While in most cases terrestrial broadcasting does not require further payment, cable or satellite transmission may demand an additional periodic - mostly monthly - monetary fee from the consumer.

As far as advertising-free TV stations are concerned, which are usually transmitted in a coded way, a decoder is needed to receive the media content with the recipient paying a periodic monetary fee for this service. Concerning this, free TV corporations compete among each other exclusively over the quality and the form of the journalistic content, while pay-TV suppliers, as well as cable companies or digital platform providers, are involved in both, price and quality competition.¹² Resuming the mechanisms on the TV recipient market, the consumers are offered a programmatic service and are in return supposed to watch advertisements and/or to pay TV signal distributors a periodic fee. Viewing rates decide over the success or failure of a given program, especially with respect to advertisement TV. Accordingly, the higher the viewing rates for a given program, the better its potential position on the other two television sub-markets, namely the advertising market and the TV signal distribution market.

2.2. The Advertising market

On the advertising market, broadcasting corporations compete with their programs for advertising expenses of firms via competition on the recipient market. The broadcasters produce on the one hand the transmission of information, education, and entertainment in form of programmatic goods for the audience on the recipient market, and create on the other hand thereby a certain dispersion probability of commercial messages for the advertisers.¹³ Consequently, the product on this sub-market is the dispersion probability of each advertising message, and the advertisers are here the broadcasting corporations' immediate business partners, or in other words advertisement time buyers, who in turn base their investment decisions predominantly on the viewing rates via the recipient market.

For all media corporations, except for exclusively Pay-TV broadcasters, the advertising market plays a crucial role as far as financing is concerned. While this is obvious in the case of private broadcasters, in the case of public transmitters, the advertising input in the overall budget is theoretically considered to be of secondary significance; yet in practice, in spite of the usual additional public financing, public service broadcasters (PSBs) are in most media systems as dependent on advertisement revenues as commercial media

¹² Kiefer (2005: 109f).

¹³ Heinrich (2001: 129).

corporations are.¹⁴ Consequently, advertisement revenues are for most broadcasters the traditional and still essential financing pillar, in spite of the rising significance of alternative financing sources, such as direct program sales via satellite platforms. The broadcasters are at the same time probably the most important commercial vehicles for the advertisement industry.¹⁵ Accordingly, the television advertisement market, in spite of rising competition especially from the Internet sector, still represents the major part of the overall advertising sector. As a result, the market is characterized by a special type of interdependence between broadcasters and advertisers.

As to the price-mechanism of this sub-market, the broadcasters charge per commercial unit, which is usually a 30-second spot. The pricing differs depending on the available advertising time, on the expected amount of viewers, and on the prestige of a given television program, which is to be interrupted for commercials. TV stations mostly fix their prices in the beginning of each year and try to keep them stable for this period, yet may adjust them during the year based on dynamic market data.¹⁶ From the advertiser's perspective, the decision-making is based on several indicators. One of them is the so-called cost-per-mille (CPM)¹⁷, which is the price for one advertisement unit divided by the number of its expected viewers multiplied with 1000.¹⁸ In other words, it is the price to reach 1000 viewers with the advertising unit. This advertising unit is usually a 30-second spot, which is sold by the broadcasters in a semi-auction way (an auction can be the consequence of the lack of demand for the preset unit price).¹⁹ Therefore, the competitive position of a given TV broadcaster is strongly correlated with its ranking on the recipients market. Accordingly, if a broadcaster reaches a larger audience than its direct competitor with a given program (for example two different programs on two different channels beginning at 8PM and ending at 10PM), this program's advertisements during the commercial breaks are of higher value for the advertisers, since they reach more potential clients. Assuming identical CPM, the commercial spots during more popular programs can be sold at a higher rate. While it could be expected that advertising unit prices vary proportionally to their viewing rates resulting in a constant CPM, this mechanism is more complicated than that. The advertising prices grow rather exponentially with the amount of viewers, resulting in relatively low CPM rates for day time programs and sometimes exorbitantly high prices during big events, such as a

¹⁴ The terms public service broadcaster (PSB) and public broadcaster will be used as synonyms in this paper.

¹⁵ Heinrich (2001: 42-f).

¹⁶ Dunnett (1999: 55-f).

¹⁷ The CPM is also called Thousand Ad Impressions (TAI).

¹⁸ Newcomb (2004: 610).

¹⁹ Ace (2001: 53).

soccer-world-cup final. The factual CPM pricing furthermore differs among the broadcasters as an element of price competition on the TV advertising market.²⁰ Yet there is also quality competition in this market: assuming that an advertiser is interested in a specified consumer group, for example in science enthusiasts, she will not only look at the overall audience contact, yet also calculate to which degree and how sophisticated a given program actually addresses that particular consumer group.²¹ In addition, discounts, package prices, and a natural forecasting bias need to be taken into consideration when intending to analyze the exact transaction mechanisms on the TV advertising market. Accordingly, since prices are often fixed for a whole year, cyclical changes during the year not seldom cause the need for discounts and other sales measures, so that the actual spot prices often differ from the list prices.²²

2.3 The TV signal distribution market

A similar relation as the advertisement market has with the recipient market is also valid on the distribution market of the programmatic TV signals. Accordingly, the more popular a given program on the recipient market, the higher is its value for the distributors of TV signals. Three major forms of signal transmission, each having also own interior competition structures, co-exist and compete against each other: terrestrial, satellite and cable transmission. In the case of terrestrial broadcasting, the current TV signal distributors can mostly only offer the programmatic product, which they themselves produce. So the signal distributors are in this case at the same time the producers of a given programmatic composition within their own TV station. The reason is that terrestrial broadcasting in its traditional analog form allows for a rather small amount of signal distributors, who in turn are given space for one and only TV station, thereby naturally limiting the option of programmatic diversity. In contrast to that, cable TV providers and satellite television suppliers can offer their customers wider programmatic bundles embracing more than only their own stations by purchasing the rights to transmit whole channels produced by other broadcasters. Within these two TV distribution ways - and probably also within the terrestrial distribution market after the final digital switch-over - a program's position on the

²⁰ Kiefer (2005: 127).

²¹ Dunnett (1999: 56).

²² Ace (2001: 53).

recipient market also determines its value and its potential price for including it into a given programmatic bundle. Therefore, business relations take also place between the producers of media content and the distributors of TV signals.

In addition to the three major distribution forms, the Internet-based IPTV technology is worth mentioning (together with the related xDSL technologies, combining Internet-based technologies with cable-related technologies). Being a niche market today, this technology may increase its significance on the distribution market of TV signals in the years to come, depending on the further industrial development of the sector.

2.3.1. Terrestrial broadcasting

Terrestrial broadcasting is connected to the very beginnings of television and describes the transmission of TV signals within a short distance to the earth. The term terrestrial broadcasting is determined by the fact that during this kind of signal distribution method broadcasting waves are transmitted to home antennas by TV towers and masts, which actually stand *on* the earth, as opposed to satellite broadcasting orbiting the earth. The major problem of terrestrial broadcasting is the scarcity of frequencies, which only allows for a relatively limited number of broadcasters to reach the total of a country's households with their program or programs. As a consequence, terrestrial TV signal distributors mostly dispose over not more than one or two programs, which they themselves produce.

The switch-over from analog to digital terrestrial broadcasting, which is to be finalized on the whole territory of Europe, Africa, the Middle East and Iran latest by 2015,²³ will lessen this phenomenon, since digital signals take up less space in the ether than analog ones. Multiplexes are platforms that bundle and transmit multiple digitally-broadcasted programs using the bandwidth space of one analogue program.²⁴ After their implementation, the multiplex operators, who will partly be involved in direct broadcasting themselves, will not only emit their own channels but also transmit other stations within their services. In doing so, the multiplexes will partly act as brokers between the content producers and the viewers, similar to what cable TV providers and digital platforms are already able to do today.

²³ International Telecommunication Union (2006).

²⁴ Cianci (2007: 71ff).

Even though in some countries, such as the USA or Finland, the complete digitalization process is already finalized, in many countries it is still a vision of the future.²⁵ Today's analog transmission is predominantly not decoded and consequently available for everyone with a television antenna free of charge. However, this does not signify that terrestrial TV receivers do not have to pay anything for the broadcasting services they get. Accordingly, in most systems a public broadcasting fee²⁶ is imposed on every potential consumer of public television, and therefore of terrestrial broadcasting. On the other hand, since this fee is also imposed on the receivers of cable TV and satellite TV as potential receivers of public television, this monetary transfer can be neglected when comparing the costs of the different signal distribution methods. Therefore, a direct payment interaction between the distributors of terrestrial TV signals and the receiver does not exist within most of the current TV market structures.

The described scenario may end in Poland with the probable selection of private corporations as administrators of multiplexes, depending on the respective regulations. Since the commercial owners or operators of multiplexes will act as distributors, similar to cable TV and digital platforms, they will be theoretically able to impose a fee on their programmatic offer by encoding their signals. However, it will depend on the public involvement in digital terrestrial broadcasting whether such fees will indeed be imposed. Concerning this, a probable scenario is the administration of at least one multiplex by a public corporation, which will offer its services theoretically free of charge and practically for the price of the overall public broadcasting fee, as it is common today with analog terrestrial broadcasting. Within such a scenario the other market actors will have to decide if their digital service bundle will be able to be sold to customers for direct money transfers, or if other financing methods, such as advertising, will be of exclusive importance.

2.3.2. Satellite broadcasting

Satellite broadcasting defines the transmission of encoded or free to air TV signals to the receiver via satellites. During satellite broadcasting, TV signals are transmitted to artificial satellites. Those satellites are placed on the orbit over 36.000 km above the earth's surface.²⁷ In order to receive satellite TV, the customer needs a specialized antenna, the so-

²⁵ Cf. United States Congress (2009) and *Review* (2008).

²⁶ The terms public broadcasting fee, broadcasting fee, license fee are used as synonyms in this paper.

²⁷ Taylor (2000: 424).

called satellite dish, to catch the satellite-sent signal, as well as a decoder in order to “unpack” the coded signals received. The technology of satellite broadcasting effectively solves the terrestrial problem of limited bandwidth range, due to the high distance between the earth and the satellite and the resulting extended signal dispersion sphere. Accordingly, terrestrial broadcasting is basically limited to the line of sight of the receiver and bounded by the curved shape of the earth. By broadcasting from a satellite, on the other hand, the number of receivers, which are “in the line of sight”, is of course considerably bigger.

Figure 2: Satellite Earth View



Source: Bonsor (2010).

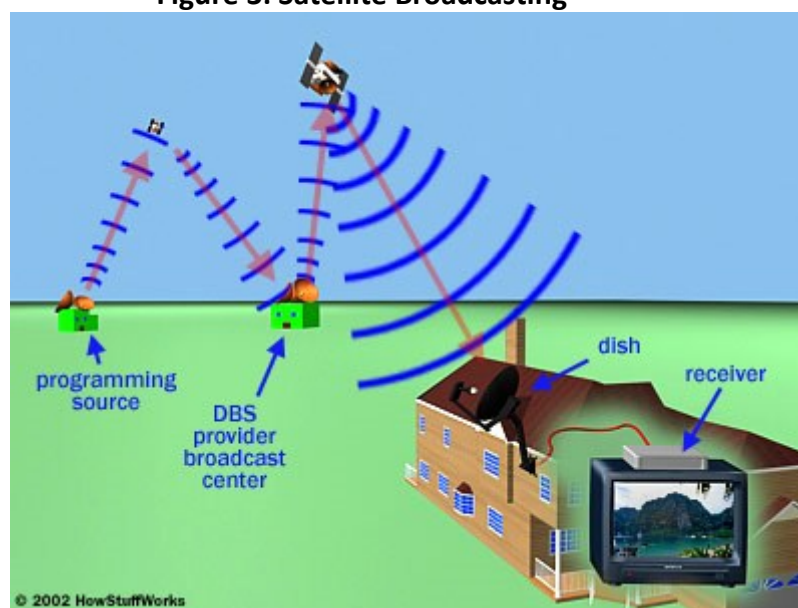
Satellite broadcasting can address cable TV companies for further signal distribution, it can be directed for the reception of certain satellite dish holders, or - what in the recent years has gained popularity and influence - it can be used for so-called Direct To Home (DTH) broadcasting.²⁸ The direct broadcast satellite providers (DBS) are digital platforms, which - similar to cable TV suppliers - are the distributors of a compilation of programs, embracing various packages, from which the customers can choose.²⁹ Satellite TV providers receive TV signals in the so-called broadcast center, which can be considered “the central hub of the

²⁸ Elbert (2004: 209).

²⁹ Meyer (2009: 126).

system”³⁰. The broadcast center, in turn, receives TV signals in two possible ways: either directly via satellite or indirectly as in the case of those TV signals, which are exclusively broadcasted terrestrially. In the latter case the terrestrial signal is caught either by antennas or transmitted via fiber-optical cables and then sent to the broadcast center, which subsequently forwards the program bundle to its satellite - or its network of satellites - and then back to the earth to the customers’ satellite dishes.³¹

Figure 3: Satellite Broadcasting



Source: Strickland (2010).

The providers of digital platforms partly act as distributors or brokers of channels by purchasing the right to transmit programs by other broadcasters, similar to the case of cable TV providers. At the same time digital platform owners produce their own satellite-based programs, in order to distribute them within their programmatic offer, and in order to sell the transmission rights to cable companies, or - naturally to a lesser extent - to other digital platform operators. The programmatic bundle, which digital platforms dispose over, is then redirected to the customer, who is offered a multitude of programmatic packages in exchange for specified periodic fees.

³⁰ Ibid.

³¹ Howstuffworks (2010a).

2.3.3. Cable TV

Cable companies realize the TV signal transmission through optical fibers or coaxial cables.³² Cable TV works in principle as a network of antennas, cables and receiving towers. While antennas receive terrestrial TV signals, receiving towers catch those signals, which are transmitted via satellite. The antennas and receiving towers are in turn connected to each other and to the customers' cable sockets by coaxial cables or optical fibers. Using MPEG compression, cable providers can convert analog signals into digital ones.³³ Even though the investment related to this technology is considerable, digital television will most probably also globally dominate cable TV in the years to come.

On a nationwide level, cable companies predominantly act as pure TV signal brokers. This means that cable companies purchase the rights to distribute given programmatic content from other companies, such as *Discovery* or *HBO*, and offer their customers programmatic packages, using a similar mechanism to the mentioned-above concept of digital platforms. Cable companies are only on a local level involved in the actual broadcasting procedure of channels and programs in terms of direct programmatic production.³⁴ For the service of distributing the programmatic bundles, cable companies charge the end customer a certain periodic (mostly monthly) fee, based on the chosen package. Since the signals are mostly encoded in order to prevent gratis watching, a customer of cable TV usually also gets a decoding box from the cable provider. With the introduction of digital services, cable companies can offer HD formats and increase their direct involvement in the intrinsic TV service creation, using the potential of digital transmission for additional media products, such as subtitles or dynamic information concerning the watched content.

2.3.4. Innovative signal distribution types

In addition to the three major signal transmission types, there are several innovative niche mechanisms, which in the middle-term future may gain significance in the signal distribution landscape.

³² Iniewski / McCrosky / Minoli (2008: 4f).

³³ Howstuffworks (2010b).

³⁴ Straubhaar / LaRose (2006: 238).

2.3.4.1. Internet Protocol TV (IPTV)

Out of those new technologies, Internet Protocol Television (IPTV) deserves probably the most attention at present. IPTV is a technology, which uses the Internet protocol as a transmission channel and which requires usually also a special set-top-box (STB) to transmit digital television signals, offering both, gratis and fee-based broadcasting. It can generally be used for watching live television, for time-shifted programming (recording TV content, in order to watch it deferred to the actual schedule), and for video on demand (IP-VoD).³⁵ In addition to the supplementary possibility of watching High Definition TV, IPTV also offers interactive digital elements, such as the exchange of movies between the users, similar to the *YouTube* principle. Moreover, IPTV subscribers have the possibility to perform Internet-related activities via their TV device, such as email checking, or to use their computers as TV receivers.³⁶ IPTV is often wrongly associated with downloading from the Internet or watching movies via a stream player (like in the case of *YouTube*). Yet in fact IPTV does not even exploit the Internet as such, but rather a separated part of it by using IP stacks on isolated service provider networks.³⁷ This creates the advantage of increased security and immunity to temporal Internet connection speed fluctuations. Moreover, IPTV allows for a high degree of interaction between the viewer and the content. This means that the viewer can have substantial influence on his customized programs, being able to rent videos from virtual rentals (Video on Demand), to adjust the viewing schedules of programs, and even to share comments with other viewers in form of messages, emoticons, and interactive games.³⁸

Even though the technological potential of IPTV is striking, its major middle-term downside is the necessity of a high-speed Internet connection, which currently is still not a standard in the average household.³⁹ Moreover, in order to be competitive, telecommunication companies, which can be considered the natural IPTV providers, need to cooperate with digital satellite platforms, in order to supply their customers with adequate programmatic services. Digital platforms are in turn for understandable reasons only to a limited degree eager to promote this kind of technology, which directly competes with their own distribution system, unless they don't see a direct favorable link to their very offer.

³⁵ Cf. Küng / Picard / Towse (2008: 57ff.).

³⁶ Cf. Held (2007: 16ff.).

³⁷ Cf. Simpson / Greenfield (2007: 18ff.).

³⁸ O'Driscoll (2008: 411ff.).

³⁹ Hesseldahl (2008).

Consequently, if not offered by hybrid solutions, IPTV is usually more expensive for the end-user than the usage of pure digital platform services, therefore still being rather a niche market of TV signal distribution. Nevertheless, taking into consideration the dynamic development in information technology, and the constantly rising interest in this signal transmission solution, it is quite probable that IPTV will gain significance in the future.

2.3.4.2. Internet TV (ITV)

Internet Television (ITV) is related to IPTV as a signal distribution form in so far as both use the Internet Protocol as their intrinsic channel, yet there are also some basic differences. First of all, ITV does not require additional hard- or middleware, such as a set-top-box, other than a functioning computer device and an Internet connection. The content of Internet television does usually not follow the concept of live TV, but makes use of streams, which, once loaded, enable the user to choose based on individual preferences, providing her with maximal flexibility as to the actual viewing time and content. Furthermore, ITV is a low-cost broadcasting alternative relative to IPTV, which generally requires considerable investment.⁴⁰ Internet television can be provided by the actual program broadcasters on their websites as a complementary time-shifted service to standard TV consumption, it can be provided in a similar way as an additional broadcasting activity by alternative mass media representatives, such as press publishers, it can follow the principle of a video sharing website, on which users can act as broadcasters and viewers at the same time, and it can be provided by explicit ITV operators, who concentrate on providing the users a self-sufficient program variety as a factual alternative to traditional TV consumption. Internet TV provides a variety of interactive elements, such as comment areas, reply-videos, or chat options for given streams. Even though today ITV and IPTV are clearly distinguishable broadcast options, it is probable that with the continuous technological advancements of IPTV it will take up more and more elements of Internet TV, so that the intersection between those two options will steadily increase, making ITV a subcategory of IPTV in the future.

⁴⁰ Turner / Tay (2009: 44ff.).

2.3.5. Mobile TV

Mobile Television is actually not a stand-alone broadcasting option - it is rather a supplementary technology, which allows for watching live television on handheld devices.⁴¹ Mobile TV can take the form of fee-based television service provided by mobile telecommunication operators, it can receive terrestrial (European Union standard: DVB-H) or satellite (European Union standard: DVB-SH) signals either in a regular or in a special mobile format and it can be based on an Internet protocol framework, such as IPTV or ITV.⁴² While mobile TV can be *sensu stricto* distinguished from related portable TV solutions by its live TV character consumed out of home, “the time-and-place shifting characteristics of portable television”⁴³ surely complement mobile television by increasing user control over the consumed content. As a consequence, mobile terrestrial TV viewing, for instance, whose only distinction to regular terrestrial TV viewing is its consumption via a handheld device, is in practice mixed with time-shifted solutions, such as downloadable podcasts or mobile versions of video sharing websites.

The expected significance of mobile TV is best demonstrated by the fact, that in the European Union, for instance, mobile television is an intrinsic part of the switch-over from analogue to digital terrestrial broadcasting, pushing the member countries to implement digital mobile TV as soon as possible and to reserve crucial frequencies for that matter.⁴⁴

2.4. Review

The TV market is currently characterized by two ways of carrying audio-visual signals: analog and digital. These signals can be transmitted in three major ways: first, by terrestrial transmission using broadcasting towers placed on the surface of the earth, which transmit TV signals by air in a short distance to the air; second, by transmission via satellites, which are placed on the earth’s orbit in a considerable distance; third, by distributing the TV signal, previously caught from satellites or terrestrial towers, via cables on and under the earth’s surface. In addition to the three major signal distribution forms, the

⁴¹ Lotz (2007: 60).

⁴² Cf. Kumar (2007: 123ff.).

⁴³ Lotz (2007: 60).

⁴⁴ Cf. Europa (2007).

new technology of IP protocol based TV signal transmission plays also a role on the TV signal distribution market, yet still to a lesser extent.

The four transmission methods compete with each other for the distribution of programmatic media goods. These programs, in turn, also compete on the recipient market for viewing rates and on the advertising market for advertising budgets of corporations. The market position on the recipient market determines the potential position of a program on the advertising market and on the signal distribution market. The dependence works also the other way around: if a program is not included into a popular programmatic packages by the signal distributors, its viewing rates will be affected negatively. This, in turn, has a negative effect on the station's advertising market position, since prices for advertisement units are based on the level of absolute dispersion of advertising messages. Consequently, the presented three markets - the recipient, the advertising, and the signal distribution market - are highly interrelated.

3. The TV sector and its programmatic goods

On each of the presented sub-markets goods are traded in form of programmatic media content. This content represents bits of information, which are composed into audio-visual messages, received by the television viewer. The television product is immaterial, having therefore a clear service character. TV goods are consumed based on the satisfaction of different human needs and expectations; they can be directed at a general target group or a niche market. Consequently media goods partly follow similar rules as other markets' products. On the other hand, certain media products seem to go beyond a purely commercial function, considerably influencing the viewer's voting decisions and serving as the major source of information for matters of public interest.⁴⁵

The specifications of television goods, their relation to mass communication goods in general, and their balancing between consumption goods and public interest matters are of high importance for the understanding of the whole sector's socio-political relevance and potentially resulting regulation guidelines. Since the depth of the television product's characteristics is virtually endless, the following elaborations will focus on just a part of it, in order to provide an introductory understanding pillar for the theoretical considerations anent the television market to follow.

⁴⁵ Cf. Islam (2008: 150ff.).

3.1. Profile and range differences

Each programmatic good is unique;⁴⁶ movies, quiz shows, or news broadcasts are distinct, except for explicit repetitions. This general product heterogeneity is accompanied by similarities with respect to content, form, and target group, allowing for a categorization of the programs to areas such as sports, education, or music. These programmatic categories are supplied by broadcasters in various ways. Generalist channels aim to cover most of the whole programmatic spectrum, while specialty channels focus their broadcast time on one specific programmatic section, such as information, sports, or movies. While generally, economic competition is most direct among channels with the same programmatic profile, specialized channels also compete with universal channels within their respective program area.⁴⁷

A similar configuration can be identified in terms of range: local, regional, over-regional and nationwide channels have different technical availability parameters, which to a certain degree determine their programmatic configuration. Over-regional and national channels, which are able to address a high share of a country's viewers, may opt for a universal program spectrum or a specialty of choice, while local and regional channels are rather restricted to specialize in programs dealing with their geographical broadcast region.

From the public interest angle, far-ranging universal channels and specialized news channels being the central subject-matter of media-political concern require a different consideration than specialized movie, sports, or music channels. The same is valid for national and over-regional channels, which play the deciding role in a macro analysis, while local and regional channels rather focus on geographical niche segments, thereby playing a subordinate role within a nation-wide evaluation.

3.2. Information vs. entertainment

The most general programmatic division can be identified in form of information versus entertainment. While the information category embraces media content, such as news, political magazines, or history programs, the entertainment section basically covers all

⁴⁶ Owen / Wildmann (1992: 59).

⁴⁷ The terms "generalist channel" and "universal channel" will be used as synonyms in this work. The same is valid for the terms "specialized channel" and "thematic channel".

remaining sections ranging from sports broadcasts to quiz or talk shows, music programs and television movies. Regarding the major programmatic division between information and entertainment, the basic difference is that the latter is explicitly and dynamically demand-oriented, while the former is believed to follow certain static guidelines, which go beyond momentary market demand, in order to provide objective, educative, and socially informative content of public interest.

Entertainment programs serve the purpose for the viewer to relax, to distract herself, to be amused. As pure consumption goods, their quality standards do not follow any absolute parameters, being dynamically adjustable relative to the estimated viewers' demand structure. Their distance to the real world is rather big, yet it can take any form between reality and fiction, being often a certain semi-realistic mixture product. The sphere of influence on a viewer normally starts at the beginning of a given entertainment content and terminates at its end.

Informative programs, on the other hand, have the purpose of informing and educating. Their economic value as a commercial media good is theoretically of secondary importance. Media content such as news programs or political magazines have an assumed direct influence on the public interest, which is why they are of particular media-political significance. The information programs' flexibility as to the content and form is by far more limited than it is the case for the entertainment section. This is especially true for the content arrangement, since one of its major postulates is truthfulness, and to a certain degree also objectivity and journalistic seriousness. Informative content is assumed to have a direct influence on the viewers' real world, in the form of thoughts, opinion formation, and actions, being an integral part of the public interest. In contrast to entertainment programs, a political magazine, for example, should have the pretension to transcend its pure broadcasting time with factual effects on the viewer's political considerations and ultimately on his election behavior. Accordingly, the wholeness of informational media content is to provide the viewer with complete inter-subjective information, accompanied by a representative opinion spectrum with regard to substantial public issues. Moreover, while entertainment content is internally directed and a priori planned, information content is generally created from outside, limiting the director or host of the exemplary political magazine to an overall framework function, in which real incidents and sovereign statements by the participants, who are mostly subject to election-related considerations, decide over the course of events.

While these differences in the interior arrangement and structure of information versus entertainment programs seemed rather certain in times of national broadcasting monopolies, the competition on television markets has gradually blurred them. From the very beginnings of commercial television, programmatically universal private TV stations started to compete for market shares not only in the entertainment sector, yet also in the information segment. The reason is obvious: viewers are used to both segments and the best way to prevent a viewer from switching to a news program on another channel, where she may even be inclined to stay for the next entertainment show instead of switching back to the originally viewed channel, is to provide this informational content on one's own. As a consequence, information programs have gradually begun to be subject of fierce competition, very similar to entertainment content.

Competition for viewers, however, must be based on certain demand-oriented parameters. Since informational programs have in their basic assumption objectively defined and rather inflexible product characteristics, it is not an easy task to create an informative program using these original factors for obtaining competitive advantages. Accordingly, the striving for being more accurate, more truthful, or more objective than the competition's programs has its natural limits, commercially implying the need for alternative fields of competition. As an almost natural result, informative programs nowadays also use proven product-design measures known from entertainment programs. Personification, modern sound- and picture technologies, as well as their more dynamic sequences in content and form have for informational programs become of similar and partially even greater importance in the fight for audience rates than their primal journalistic standards of information transfer. This gradual convergence of information and entertainment content, being a critical factor for a media-political market evaluation, is captured by the portmanteau term *infotainment*, whose characteristics will be discussed in the following section.

3.3. The infotainment phenomenon

Infotainment can be defined as "information-based media content or programming that also includes entertainment content in an effort to enhance popularity with audiences and consumers"⁴⁸. While this definition makes no differentiation as to the proportion of

⁴⁸ Demers (2005: 143).

entertainment elements within a given information program, the generally negatively perceived connotation of the term is attributed to a considerable, intentional and in many cases also dominating effort to entertain within an allegedly informational content. On the other hand, however, a rise in entertainment within informational content does not necessarily signify its decrease of information substance. The proper and careful use of image and cut techniques can in fact enrich the visually entertaining aspect of a given program, thereby capturing a greater share of the viewers' attention, without losing the program's informative character.⁴⁹ However, such a complementary productive synthesis of entertainment and informational elements is rather the exception, while the focus on entertainment with a subordinate role of information seems to be the rule within modern infotainment.

3.3.1. The content problematic - hard news vs. soft and spot news

The infotainment phenomenon has altered the approach, by which the value of media content is evaluated. The attractiveness of informational media topics is to an increasing degree determined by their soft and spot news character rather than by their level of hard news.⁵⁰ Up-to-date news and political or economic broadcast with a fact-oriented approach (hard news) give way to emotionally appealing, human-touch content (soft news) or sensationally shocking crime and violence stories (spot news) with personified pseudo-background information.⁵¹ A professional analysis of a politician's foreign policy, for instance, is very likely to receive a less attractive airing time than this very politician's dining habits or speculations about his sex life. This seemingly absurd phenomenon appears to be motivated by the viewers' preferences towards a passively consumed "feel good" environment with regard to about each and every topic, instead of being profoundly informed about serious matters of public interest, which require a certain amount of contemplation.⁵²

These preferences can be deduced from the general viewing behavior with the effect that political programs nowadays only have a factual chance to address a note-worthy audience share when using the presentation patterns of infotainment.⁵³ Within a viewing-rate

⁴⁹ The Discovery Communications productions are good examples.

⁵⁰ Mazzoleni / Stewart / Horsfield (2003: 29).

⁵¹ Cf. Witten, (1995: 136-143).

⁵² Dörner (2001: 57ff.).

⁵³ Bernreuther (2004: 16).

dominated broadcast environment, media producers decide over whether or not to include given informative media content and how much as well as which particular airing time to dedicate to it rather by its entertaining potential than by its significance with regard to the public interest, which in turn for a long time has been considered a natural and primary reason to broadcast informational television messages. Dramatization, sensations, and emotionally touching superficial media goods are currently camouflaged as significant information, in order to meet the viewers' primary expectations of being entertained, while at the same time allowing her to pretend to be intellectually challenged. Taking these infotainment-related developments and mechanisms with regard to the factual informational content selection criteria into consideration, it seems justified to reflect on the risk of socially significant public interest information being neglected by a purely demand-oriented commercial television landscape.

3.3.2. The form problematic - pictures, information bits, emotional language

In addition to the issues related to the content selection, the infotainment phenomenon has analogue characteristics with regard to the form, in which the chosen media content is presented. As already mentioned, the demanded media subjects are characterized by sensation, dramatization, excitement, and personification. Such media content directly addresses emotions rather than reason; it is to stimulate the viewer's adrenaline rather than her brain cells and to raise blood pressure rather than knowledge. The biggest emotional effects are achieved by each new informational stimulus, whose effect constantly decreases after its consumption. It is the shocking effect, the astonishment effect, the surprise effect, the pity effect, the disgust effect, which seems to be demanded - all of which are characterized by their momentary ephemerality. In order to keep the desired excitement up and to condense as many different bits of information as possible into the available broadcast time, constant and short-sequenced re-stimulation is required. Superficial information pieces without serious background information are the consequence, so that the information of a celebrity's dog, which regained strength after pneumonia, will receive a comparable presentation time to the news of an assault on the civilian population in Chechnya.

The desired effects of constant emotional stimulation seem to be best conducted either by talk-show formats emphasizing the personal sphere of public-interest matters, or by wrapping the infotainment content in expressive pictures with short sequences, vaguely

accompanied by simple spoken language. Pictures as a form of non-verbal communication with a very immediate stimulus impact are a very different means of information transmission than spoken text. Accordingly, moved pictures are in television broadcasts mostly used as shortcuts, which encode a message in a way, which would require a considerable time to articulate in words. Consequently, such information also demands a comparable time interval to get fully decoded by the receiver. Television and also print-press pictures go even beyond the shortcutting of spoken messages, disposing over a certain type of own symbol system.⁵⁴ The picture of a smiling man, woman, and child is by most interpreted as a symbol for a happy family, even without any factual background information.

Of course, the use of pictures as a communication carrier is not deceptive per se, especially when a human brain has enough processing time to critically interpret the viewed pictures. Yet the fast sequencing of moving pictures, which is a normal scenario in most television news programs, mostly results in an imperfect decoding outcome by the receiver, leaving him with impressions, which are camouflaged by the brain and partly saved as knowledge, due to the lack of adequate contemplation time. Information transmitted with short sequenced pictures becomes similar to fragrances, which pass the Cerebral Cortex, responsible among other things for thought, reaching almost directly to the region of the Limbic System and Hypothalamus, the center of emotions and subconsciousness.⁵⁵ A handshake between two politicians, for example, is in its symbolism by most people interpreted as an agreement, while the question of the factual meaning is usually only marginally regarded before moving to the next picture or the next news bit. The bias in information transmission is hence undoubted and the distortion and manipulation potential immense.

3.4. The communication problem of media goods: noise and feedback

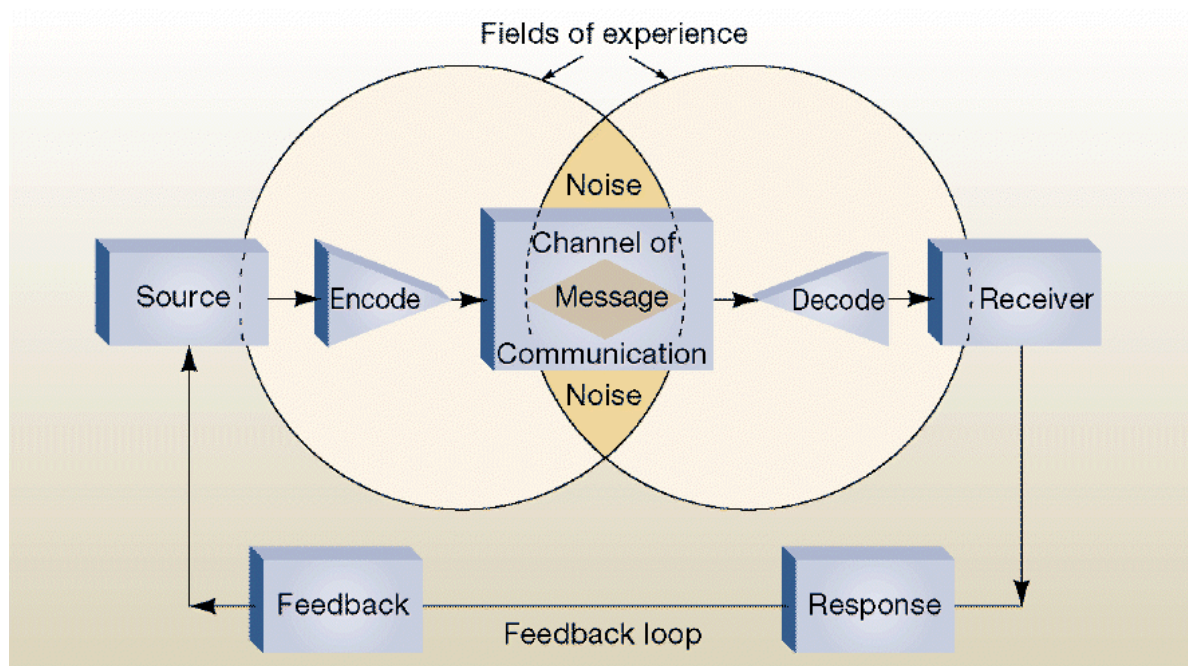
These communication issues, which characterize the socio-politically most crucial television market products, can be specified with the aid of a simple Shannon-Weaver communication model, in which a sender encodes a given message, sends it to the receiver, who in order to receive it must first decode it. The feedback given to the sender is a

⁵⁴ Cf. Salomon (2006: 162ff.).

⁵⁵ Sell (2006: 162-164.).

verification of the rightfulness of the received message. Each disparity between the sent and the received message can result from different types of noise caused by differing encoding and decoding mechanisms of the parties involved, by the channel's interior interferences, and by external influences.⁵⁶

Figure 4: The Shannon-Weaver Model



Source: Garza (2009).

One major communication problem with mass messages is that they generally constitute for a one-sided procedure. The immediate feedback component is in contrast to direct face-to-face communication not in place, so any possible distortion can pass unnoticed by both, the sender and the receiver. The only instance to assume a possible distortion is the receiver himself, when simply realizing that he has not understood the message or the whole context of it. Of course, such an assumption requires a certain ability of objective self-analysis, which is not a universal trait. In addition, the solution of the assumed imperfect understanding requires the willingness to initiate countermeasures on one's own initiative, as well as a certain knowledge level, where to search for complementary information. Not all people are characterized by such abilities, what often leaves them with imperfectly decoded messages.

⁵⁶ Cp. Weaver / Shannon (1949).

Different means of mass communications have differing characteristics within this model and this specific problem. The noise and feedback specifics of television are best demonstrated when confronted with other channels of mass communication. Preceding the TV market perspective, the print press sector as the traditional predecessor of audio-visual mass messages will be evaluated anent these communication issues. Succeeding the television communication evaluation, the Internet as the newest form of mass communication will be regarded, since it represents a certain symbiosis of the traditional media channels, at the same time disposing over pathbreaking mass communication mechanisms in terms of interactivity, which in the middle term future will very probably be applied for the television market itself. Consequently, the characteristics of Internet-based mass communication are crucial for the understanding of potential changes, which television communication will undergo in the time to come.

3.4.1. Noise/feedback problem and print media

Print media use a relatively simple encoding mechanism, which are printed words. The decoding procedure is analogue, so that it bears a relatively low distortion potential of the message. Noise, however, exists also within this traditional form of mass communication. Accordingly, semantic noise in form of formulations, which the receiver may not be familiar with, can cause miscommunication when transmitting information by means of printed media. Additional physical noise from external sources, which distract the receiver's attention, is very common with each form of communication.⁵⁷

The print press reader has far-ranging alternatives to react on identified noise. When the receiver of print messages experiences or assumes noise of whatever kind, she can stop the process, reread the respective passage, refer if necessary, to an encyclopedia or another source of background or explanation information, and continue at exactly the same passage where the now cleared noise was identified.

As far as feedback to the sender is concerned, the only factual channel a reader has, apart from demonstrating her content or discontent with the particular newspaper by purchasing it or not, is letters to the editor. In such letters, sent either by traditional mail or by email, the receiver can comment on the respective article. As a feedback channel, which generally serves the purpose of a secondary understanding interaction between message

⁵⁷ West / Turner (2009: 13-14).

sender and receiver, letters to the editor are naturally of limited effectiveness. First of all, it is not an instrument to actually verify the proper reception of the message. It is rather a means of polemics, of showing approval or disapproval, whose precondition is a basic and at least subjective understanding of the originally published message. Accordingly, letters to the editor are not suitable for asking questions with regard to more detailed information and explanation concerning the original message.

Certain time issues also limit the effectiveness of this feedback channel. Accordingly, the editor will react to only a very limited amount of letters, selected based on specific and also subjective criteria. This is partly due to the simple fact that it would be too time-consuming for the editor to answer to a high number of letters. Mostly only chosen letters will be published and answered in one of the following issues of the respective paper. The actuality of the printed message and their feedback relation is a further limitation. Since a letter, if actually considered by the editor, is published and answered earliest in the subsequent edition of the paper, the immediacy of the communication procedure is highly disarranged. While in addition letters, which are sent as a reaction to current issues may receive a reply, feedback with respect to considerably older issues, even when dealing with dateless topics, will most likely not be taken into consideration, since the dealt-with subject will be considered outdated due to distant temporal relation to the original message source.

In addition to the time factor, there is another limitation to effective print press feedback, namely the question of space. It would be out of physical proportion as to a newspaper's page quantity to print each reader's letter in it. In printed media publishing space is in addition cost-intensive, so a certain economic calculation also plays a role anent the answering to readers' letters.

Hence letters to the editor basically represent only a one-layer feedback-channel, from which predominantly the sender and not the receiver of the original message profits. Most of the receivers only profit from this type of feedback channel by reference to selected presumably representative letters, which indeed are published in the following issue of the media.

The elaborations above give a notion that the print press offers no or very little dynamic interaction between the sender and receiver. The print press feedback channel is too limited by time and space aspects to be considered effective. Yet a reader still has relatively broad options of fine-tuning the message decoding on her own when dealing with communicational noise. So while the print-press feedback channel is clearly limited, the

channel's handling of noise offers several opportunities for the receiver to optimize the understandability of the sender's message.

3.4.2. Noise/feedback problem and linear television

Audio-visual information receivers, on the other hand, do generally not have the option of comfortable noise treatment. Due to the fast sequencing of messages and its components, the recipient of traditional linear television content has normally neither the opportunity to review the information received, nor to get background information on it before continuing to watch where interrupted. In addition to the mentioned general forms of noise, which apply also to print media receivers, television may strengthen another noise type, namely psychological noise. This type of noise evolves from the receiver's internal stereotypes or assumptions, which dynamic pictures are more likely to evoke due to their mentioned characteristic of transmitting shortcut information, which addresses predominantly the emotional sphere of the brain.⁵⁸ Even though new digital technologies, predominantly offered by digital satellite platforms, allow the viewer to stop, rewind and playback any TV content, giving him the option of gathering necessary background information and solving possible misunderstandings, these advancements are still used to a minor degree. Yet it is without a doubt that respective technological developments may at least give the viewer the instrument to solve this particular issue in the middle-term future; if he makes factual use of it is still another question.

Traditional information TV offers only a very limited feedback scope for the viewers. Letters to the editor are also in this mass communication instrument an option, yet it is an even less promising and transparent one than in the case of print media. First of all, the average television consumer will mostly not know to whom actually to send the letter. While the imprint is a static given in a newspaper, such contact information is less available in the case of television due to the fugacity of any broadcast. Once a feedback letter is sent, however, similar and even broader time and space restrictions apply in the case of television than concerning print media. Accordingly, the momentariness of television programs leads mostly to a loss of relevance at the time when the feedback may be publicly considered. Moreover, analogue to physical space issues in print media, broadcasting time is a very valuable factor for each TV channel, so that only a very limited number of feedbacks are

⁵⁸ Wood (2010: 22).

likely to be considered. Consequently, this type of feedback channel is not less one-sided in the case of television broadcast than it is for print media.

It is worth mentioning that in addition to letters to the editor, there are several further feedback mechanisms offered by current television broadcasting, all of which are rather used in niche or experimental programs of inferior importance. Accordingly, one of those feedback forms is direct on-air interaction with the viewer by phone. This type of feedback can only apply to simulcasts and is a very immediate, dynamic, and multi-layer instrument. Due to expensive broadcasting time, this form of feedback allows for only a very limited amount of feedbacks and is for informational content applied only to a marginal degree in selected programs. A modern but not very common variation of this type of interactive feedback channel is email or chat interaction between the viewers and an operator located in the background of a television program, who selects the emails received and periodically takes part in the program, discussing the viewers' messages. A further quite interesting form of feedback is telephone text messages sent by viewers, which are displayed mostly at a bottom screen during a respective program. This form of feedback usually requires a small amount of broadcasting space in form of a display bar, which can be put on the screen in addition to the original content, with which it coexists. Since such a display bar is however spatially limited in itself, it does not allow for the simultaneous display of all messages, but rather for a sequenced one only. Nevertheless it allows for publishing a relatively elevated amount of feedbacks with a rather high display probability for the comment senders. Yet also this kind of feedback is limited in several ways. First, it allows only for short messages sent by phone, what de facto excludes the option of non-trivial feedback. Second, the broadcasting life-time of each displayed feedback is very small, since such messages are displayed in a certain floating sequence, usually without repetitions. Third, this feedback channel is used rather as a stand-alone momentary entertainment instrument, since neither sender nor receivers actually refer to any previously posted feedback, due to the mentioned space and time limitations.

What must be taken into additional consideration in this context is that viewing rates are the most crucial form of feedback for television stations. Any form of content and any amount of letters to the editor is diametrically inferior in meaning for the sender of television mass-messages compared to the respective program's viewing rates. Viewing rates decide over the success or failure of the vast majority of all programs within an economically oriented broadcasting environment. Consequently the main feedback alternative for the receivers is de facto narrowed down to a binary decision, namely whether

to switch the program on or off. Needless to say that this field of action is very far away from being an actual form of communicational feedback, lacking in most cases even the direct causal relation to the receiver's comprehension of the message.

All in all, receivers of linear television messages have a very limited potential to make use of a dynamic form of feedback and to individually tackle communication noise, which in times of the infotainment phenomenon's picture and content specifics are more considerable than ever. However, steps towards a higher interaction between the sender and the receivers of television messages are initialized, imaginable, and beyond doubt feasible within a near future of accelerating technological advancements.

3.4.3. Noise/feedback problem and the Internet

In addition to the traditional forms of communication, the Internet must be mentioned in this context, since it combines the major characteristics of print and audio-visual media. Concerning this, informational messages can be published in the Internet as virtually written articles, optionally accompanied by pictures, similar in form to traditional print press publications, and they can take the form of video or radio content, by means of IPTV or ITV, for instance. Using the Internet as a publishing platform, these alternatives can moreover be mixed ad libitum with endless additional linking possibilities.

This has very positive consequences for noise treatment possibilities. Accordingly, an Internet user may at any given moment choose whether to read informational media messages or to view them in audio-visual spots, depending on the momentary preferences. With a certain amount of Internet usage experience, she can switch freely and comfortably between these two information transmission forms and related combinations of both. She has also the freedom to decide *when* to receive the respective messages without being bound to program times. Using the Internet, one can not only easily combine read and watched messages, but also pause the message consumption and get immediate background information on it, for example by typing the respective term or question into a search engine.

The Internet also provides an immediate feedback area between the sender and the receiver of any mass communication message. Letters to the editor and other mentioned feedback options are here replaced by a virtually unlimited comment area below the published content.⁵⁹ This comment area does not spatially conflict with the original message

⁵⁹ Space restrictions apply but they are not worth mentioning due to their marginal scope.

and can be used by everyone, often even without the need of a formal registration. Any user can post a comment as to the content he or she just dealt with, which will generally be published immediately and remain published henceforward.⁶⁰ Once a comment is published, it becomes a mass communication message itself, visible for all receivers, while at the same time extending the wholeness of the original message. The comment can, with regard to its content, concern the original informational message as such, it can deal with comments posted by other receivers of the original message, and it can discuss any related or unrelated subject with respect to the original message, mostly within certain rules of conduct.⁶¹ The senders of both, the original message and the comment message, have the possibility to further comment on each additional comment received, to react to reactions to those comments, et cetera. A very dynamic, open, multi-level, and multi-party form of communication is the consequence, if no censorship mechanisms are applied.⁶²

While print press and television communication indeed offer a certain form of feedback, those channels are mostly limited to space and time issues: they are static, their publication is cost-intensive, and they are very time-lagging and often unavailable for the average consumer. These issues are potentially solved by the Internet as a form of mass communication. First of all, informational content of mass communication character published via the Internet does generally not volatilize.⁶³ It does not have an end like television programs and its carrier is neither tangible nor connected to periodic sales and circulation, as newspapers are. When information is placed on a webpage, this information is from that moment on available at any time, if not deleted by the administrator.⁶⁴ This clearly solves the mentioned space and time problems encountered by television and print press when dealing with feedbacks and their immediacy. In addition, the Internet feedback procedure is by far more direct than that of its mass-communication counterparts. Accordingly, a rising dominance of written and audio-visual Internet mass communication forms can be observed, which allow for immediate, very simple, and practically infinite commenting below the respective information content. Of course, as with the traditional forms of mass communication, the sender may also in this case be overstrained by

⁶⁰ If not deleted, e.g. due to legal violations or obscene language.

⁶¹ Cf. Strawbridge (2006).

⁶² Even though the comment area is mostly presented as a free space for readers, in which they may express whatever they like, mostly some regulatory criteria apply, in order to avoid abuse, e.g. obscene or insulting content. Yet also politically motivated censorship seems to be applied to a rising extent.

⁶³ Internet posts can be deleted, yet this is not the general occurrence.

⁶⁴ The deleting of mass communication content by the administrator is not a common procedure, yet a possible one especially with highly critical content. Mostly, however, such information is physically copied by other users, so that the erasure is not an absolute one. Also virtual space limitations exist, yet they are of marginal significance compared to traditional media.

answering to each and every receiver's post. The Internet, however, solves this imperfection by allowing the feedback or comment posted to be commented by other receivers of the original information. This way there is a matrix-based communication structure between one original sender and a multiple of original receivers, which may act as interchanging senders and receivers in the following multilayer feedback procedure. This feedback matrix is published and at any time accessible for everyone, forming a combination of mass communication messages flexibly related to the original message, broadening its context, discussing its background information, and solving understanding issues. This comment-based feedback procedure is only one of many forms, which the Internet offers in terms of interactive mass communication, with constant advancements and innovations being under way. Considering the substantial convergence probability of the Internet and television broadcast, the mentioned noise handling and feedback mechanism valid for the former medium may also be applied for the latter mass communication channel in the middle-term future. In fact, the advantages of the Internet's interactivity possibilities as well as its space- and time independence, providing the user a high degree of flexibility, control, noise-handling and feedback options are being already implemented with respect to television by means of Internet-protocol based TV solutions, such as IPTV and ITV. It is very probable that these solutions will keep their dynamic development and rising popularity, revolutionizing the overall approach of TV consumption towards maximal customization and interactivity.

3.5. Implications for the following analysis

From the elaborations anent the latest section on television goods certain conclusions can be drawn with respect to the analysis to follow. First of all, it is crucial to distinguish between the programmatic sections of information and entertainment and to be aware of further programmatic and geographical subdivisions. When analyzing a given TV market from a certain economic angle, it can make sense to consider its whole programmatic spectrum, yet when regarding it from the socio-political viewpoint, only those channels, which at least partly deal with informational content, are of importance. Specialty entertainment channels focusing on movies, music, or sports do not play a role in such a media-political breakdown. Neither do strictly local channels - even when they deal with informational content on a local level -, due to their marginal significance within a holistic

market analysis. The market evaluation should thus be conducted based on the technological and factual range of television channels, which offer informational content. In other words, only those channels, which are the source of information for a noteworthy amount of viewers, are de facto of media-political significance in terms of regulation matters. For these are the channels, which have a realistic influence on the public interest and on the viewers' voting behavior. The remaining entertainment channels act on a very different programmatic segment, whose significance goes only marginally beyond the importance of a purely economically oriented consumer market. Of course, each consumer market is also subject to regulative consideration, yet rather on strictly economic than on socio-political terms. This differentiation will be perpetuated in the theoretical analysis to come.

Yet as important as this programmatic distinction between information and entertainment is, as problematic is it to draw a clear line between these two programmatic segments with regards to their content and form. Informational television content puts the emphasis to a decreasing degree on hard news, being gradually replaced by emotionally appealing sensational and dramatic soft and spot news, portioned in small entertainment bits with a focus on expressive pictures and rapid cuts. This development results on the one hand in a considerable distortion of potential public interest information due to insufficient reflection time and the lack of immediate background information availability. The strong demand for entertainment, on the other hand, which also embraces serious public interest topics, demonstrates that socio-political issues are nowadays judged rather emotionally than rationally. Taking the controllability of those emotions by the mentioned picture-specific sequencing and cutting techniques into consideration, as well as the fact that for many people television is still the major source of information as a fundament for their eventual voting behavior, the manipulation potential of the public opinion by modern TV infotainment becomes apparent.

The active role of politicians within the infotainment phenomenon is worth considering when evaluating its factual socio-political consequences. In order for politicians to achieve their short-term goals of vote maximization and power acquisition, they need above all attention for themselves and their messages. In order to assert their position in the mass media, they must compete with their political counterparts for scarce broadcast resources. In order to sustain in such a competition, politicians must adjust to the viewers' demands. Since political issues have a marginal entertainment value, they are rather added as a side product. While a certain voter base is given for each major political alternative and therefore independent of such political media activity, the major targets within this kind of

politainment competition are the indecisive, the swing voters, and the apolitical ones, which all represent a considerable part of the voting public.⁶⁵ These politically interrelated infotainment mechanisms must be kept in mind when evaluating norms such as opinion plurality with regards to a potential extent of regulatory measures on the television market.

It is also worth mentioning that other forms of mass communication, such as print press or Internet publications, are as well concerned by the phenomenon of infotainment, with yellow press and rumor web-services heading the respective markets, also camouflaged as informational mediums. Yet it is the television-specific lack of noise and feedback handling combined with the crude memorability of moved pictures, which makes this particular market of special socio-political importance. While the Internet offers options to tackle the TV-specific communication dilemmas, the television sector must be analyzed with all its current imperfections until a probable future convergence of these two mass communications methods will make it more interactive and flexible.

Accordingly, such a convergence - if not hindered externally - seems very probable and is already underway. While many predict a take-over of the television by the Internet, others see the future in television usage, whose remote control allows for instant Internet usage. A “telematic information society” predicted by Flusser already in the late 80s and characterized by the shift from a one-way image transmission to a multisided network structure, could be the consequence of this kind of communication merger. Within such a hierarchically flat network structure every participant is a mass message sender and receiver at the same, thereby contributing to the form of information exchange, to the expression of critique, and to the degree of responsibility within the audio-visual media.⁶⁶ While considerable technological advancements have approximated the Internet and television to a certain extent, especially in the last several years with a rising share of digital and interactive information, television today still seems closer to its traditional configuration than to Flusser’s interactive conception.

Considering television’s current status quo as a major mass communication instrument with all its information transfer imperfections and manipulation potential, the need for plurality as a central regulation norm seems to be a logical and implicit conclusion, which will be further solidly founded in the theoretical elaborations to follow within the present paper. At the same time the future technological potential of television mass communication should not be neglected in the evaluation of possible regulative market

⁶⁵ Holz-Bacha (2000: 164).

⁶⁶ Flusser (1996: 86f.).

measures. While the presented infotainment-based and communication-related discussion intended to give a notion of the interior problematic and significance of television as a mass information carrier of public interest, the following theoretical elaborations based on the theories of economic policy and media policy will examine these matters within a fundamental approach with particular regard to possible necessities for public regulation measures.

CHAPTER III: THEORETICAL FRAMEWORK

After the technical market framework has been elaborated and certain aspects of the television market's interior structure introduced, the paper's theoretical foundation will be built. This will be the basis for the normative evaluation of the present and potential Polish TV market configuration. Subsequent to a general presentation of the two theories, a confrontation of these two main approaches will follow. Afterward, the resulting postulates for public market regulation mechanisms will be formulated and discussed.

1. Competition policy

There is a big variety of different approaches defining the nature of economic competition. Fikentscher, for example, interprets economic competition for the supply side as the autonomous aspiration of interrelated producers for business relations with existing and potential customers. This pursuit is executed by means of offering the most promising business conditions.⁶⁷ The competitors' long term goal, in turn, is profit maximization, by means of market share increases and total revenue augmentation.⁶⁸ Due to macroeconomic overall welfare gains, resulting - for consumers - in lower costs and/or higher quality, competition is in the general interest.⁶⁹ We can distinguish between the politico-economic and the socio-economic functions of economic competition. From the politico-economic perspective, the fact that the competitors have to adjust their offers to the dynamics of the demand structure is the main advantage of a competition scenario. From the socio-economic point of view on the other hand, continuous competition counteracts a possible economic -

⁶⁷ Fikentscher (2001: 778f.).

⁶⁸ Preuss Neudorf (1993: 106).

⁶⁹ Emmerich (1999: 2ff).

and resulting from it also socio-political - power centralization by means of balanced plural interests.⁷⁰

In order to maintain a given level of competitive economy in reality, each government intervenes to a certain degree in the respective markets, thereby violating certain aspects of the fundamental norm of economic freedom so as to foster this very freedom holistically. This kind of governmental market regulating interference takes place in the field of economic competition policy.⁷¹ Competition policy in turn can be defined as “the set of policies and laws which ensure that competition in the marketplace is not restricted in such a way as to reduce economic welfare”⁷².

2. Media policy

The field of media policy does not focus on purely economic competition, but deals especially with providing and assuring two structural principles: diversity of opinion, and journalistic quality. Upholding opinion pluralism signifies guarantying a basic level of information supply, as well as fostering a variety of independent media institutions, which in total should constitute for a representative degree of different viewpoints and opinions. Concerning this, journalistic competition is supposed to be the mechanism for upholding media diversity and opinion variety. If journalistic competition in a given media market is not capable of providing the adequate degree of information supply and opinion diversity due to economic reasons, public media is often the institution, which is believed to fill the gap.⁷³ Journalistic quality is predefined by a set of objective parameters characterizing the value of a given media content, thereby clearly differing from the subjectively interpreted economic quality.

Journalistic freedom, being the precondition for the two main media-political structural principles, is focused on the independence of media entities, especially from political influences. The implementation of this principle is of course more difficult than in theory. Mechanisms, which are used to foster journalistic freedom, are for example the total abandonment of direct regulating and censoring agencies, the implementation of a politically

⁷⁰ Ibid.

⁷¹ Heinrich (2001: 55).

⁷² Motta (2002: Xvii).

⁷³ Trafkowski (2002: 3f.).

independent market regulation board, or the effective forbiddance of politically motivated interferences in journalistic contents.⁷⁴

3. Confrontation of media policy and competition policy

In the following part of the paper the two basic theories, which influence the TV sector, will be compared and confronted. The rivalry of the two concepts will be evaluated in terms of norms and integral systems. Following that, the similarities between the two theories will be presented. The theories' viewpoints on the concept of market failure on the TV market will be given special consideration. Following that, the practical policy implications of market failure on the TV market will be presented within the framework of public market regulation.

3.1. Rivalry between competition policy and media policy

The two systems of competition policy and media policy generally differ in two areas: first, in the system of norms. Concerning this, the main norm in the case of economic theory is welfare, whereas as far as media policy is concerned the general standards are plurality and journalistic quality. The second field of disparity is the integral system of procedures within the two theories. Accordingly, as the main mechanisms of competition policy and media policy, we have economic competition on the one hand, and journalistic competition on the other one.⁷⁵

3.1.1. Norm-rivalry

Each theoretical system has a fundament, on which the theory is built. This fundament consists of one central norm or a set of norms. The normative basis of each theory defines the evaluation principles for real or hypothetical phenomena. The valuation of occurrences may differ with unequal norms, yet it may also be congruent, unless the norms are not entirely contrary to each other.

⁷⁴ Hadamik (2001: 236f.).

⁷⁵ Cf. Heinrich (2001: 81-88).

3.1.2. Central economic norm: welfare

The central economic norm is welfare.⁷⁶ Its mechanisms can be looked upon from a micro-perspective, focusing on individual household and company decision-making, and from a macro-perspective considering the aggregated effects of micro-decisions. While the micro-evaluation helps to understand the basic decision mechanisms due to its contextual proximity to the average person or household, the macro-evaluation helps to identify causalities and tendencies within a broader economic sense resulting from aggregated consumer and supplier decisions for the wholeness of a market or an economy.

3.1.2.1. Micro-perspective: subjective need maximization and budget constraint

In economic theory on a household basis the central principle is individual need maximizations.⁷⁷ In other words, it is the maximization of individual welfare by maximizing need satisfaction.⁷⁸ The consumer will find the decision of how to maximize her individual welfare based on budget restraints and subjective needs. So the question, which goods or services to purchase, will be based on the most fitting price to quality ratios. The main behavioral assumption is here rationality and the basic precondition is the freedom of choice. This means that for two so-called normal goods⁷⁹ a person will choose the product with the lower price, if he considers the quality of both the same. The same relation is valid the other way around: when two products have the same price, the consumer will choose the one, whose quality she considers better. However, a given price to quality level may be suitable for one consumer, while being not acceptable for another one. This phenomenon has two reasons according to economic theory: first, each individual is restricted by her individual budget constraint.⁸⁰ This means that certain goods may have an attractive price to quality ratio for two different consumers, yet being financially out of range for one of them, while being affordable for the other one. The second reason for the possibility of heterogeneous purchasing decisions among individuals is that quality is not objectively defined within

⁷⁶ Ibid. (91).

⁷⁷ Homann (2005: 26).

⁷⁸ Kiefer (2005: 71).

⁷⁹ There are also rare case of inferior goods, in which the price mechanism works the other way around: the higher the price, the higher the demand. One example are luxurious goods, whose price is by some considered as a part of quality, since higher prices mean higher exclusivity, so the higher the price, the higher the quality - possibly even in an exponential relation.

⁸⁰ Brent (2006: 77).

economic theory. On the contrary, it is tied to the subjective preferences of each individual.⁸¹ This means that two people can have contradicting opinions as to the quality of a certain product, without being wrong, since economic quality is whatever each consumer considers it to be. Each individual will therefore try to maximize her welfare by individual need satisfaction, choosing a mix of those products, which meet the subjective quality criteria linked with the individual needs at the lowest price possible.

The producers' decision making principles are easier than those of consumers. A service provider also strives to maximize her welfare. In the producer's case welfare is however solely connected to profit maximization, with profit being here the difference between production costs and net sales revenues. It must be taken into consideration however, that the cost structure differs among producers, with ones being more efficient than others.

Even though individual need maximization emphasizes the subjectivity of the decision-making process from the microeconomic perspective, it still seems legitimate to generalize and aggregate the wholeness of individual decisions to a certain degree. Such a macroeconomic perspective is possible when assuming that the majority of individuals share certain basic quality preferences. These common quality preferences include, as far as the TV signal distribution market is concerned, for instance a desired multitude and variety of programs or a high definition of the signal transmission. The aggregation of producers seems even less problematic, since the pure guideline of profit maximization is valid for all rational supplying entities. However, individual wealth levels of both, producers and consumers, need to be taken into consideration when approaching a realistic aggregated model view. A useful model is here the economic surplus model, consisting of consumer surplus, producer surplus and total economic surplus.

3.1.2.2. Macro-perspective: economic surplus model

Consumer surplus is the difference between the amount, which the consumer is able to pay for a good (reservation price) and the actual price for the good.⁸² In a simple example, if the budget of a person and her quality preferences set the maximum acceptable price for this consumer to €30, while the actual price is €10, the individual consumer surplus for this one individual would be €20, while every price above €30 would be not acceptable for him.

⁸¹ Heinrich (2001: 83).

⁸² Mankiw (1998: 134).

Analogously, the supplier surplus is the difference between the lowest acceptable price for a product and the actual price of a product, with the assumption that the total production costs equal the lowest acceptable price. In other words, the producer surplus equals the aggregated producers' profit for a product. The sum of aggregated individual consumer surplus and the producer surplus is the economy's total surplus.⁸³ Normally with increasing prices the producer surplus decreases, while the consumer surplus rises. On the first glance it may seem that within such a movement the total economic surplus remains the same, switching merely a part of the consumer surplus to the producers' side.

However, the mechanism works differently in general, since the producers' profit gains generally do not compensate for the consumers' surplus losses. In fact, under basic circumstances total welfare is lowest with so-called monopolistic prices and highest when prices equal the marginal costs of production.⁸⁴ A monopolistic price is the value, which a monopolist - being de facto the sole supplier on a given market - would generally set for his product, considering only his supply possibilities and the demand structure, not taking into account competition. The monopolist price will be set so as to maximize exclusively the monopolist's profit, thereby being mostly considerably higher than in the case of multiple competitors.⁸⁵ On the other hand, when the price equals the marginal costs of production - a scenario connected to a large amount of competitors under so-called perfect competition - the supplier surplus is zero, while the consumer surplus reaches its peak. Perfect competition maximizes both, consumer surplus and total surplus. While this is the general tendency, price increases not always imply total surplus losses. For example, when two firms merge, thereby eliminating a certain part of their fixed costs, and raise their product price to a certain degree, the total surplus may still rise, even though the consumer surplus falls. What is more, a monopolist may theoretically even maximize the total economic surplus, if she is capable of perfectly discriminating the consumers in terms of demanding differentiated prices, according to the consumers' individual maximal acceptable price.⁸⁶ Since this case of total welfare maximization by monopolistic price discrimination is a purely hypothetical one due to the lack of complete information and the general illegality of such drastic price discrimination, movements towards total competition with resulting price decreases are generally associated with total surplus rises. Nevertheless price discrimination is a common

⁸³ Motta (2004: 18).

⁸⁴ McEachern (2009: 234ff.).

⁸⁵ This relation was first elaborated by Cournot (1838).

⁸⁶ La Manna (1997: 231).

mechanism within its allowed sphere, such as discounts for certain social groups (students, disabled) or differentiated product variations with different prices.

Still the question remains, if competition policy should be focused solely on consumer surplus maximization or on total surplus maximization. Most economists choose the total surplus maximization, or in other words the total economic welfare, as the major objective. There are several plausible reasons for this. First, as indicated above, there are situations, in which mergers may lead to considerable efficiency gains, leading to total welfare gains, even if consumer surplus decreases. Focusing only on consumer surplus, such market activities would be hindered, even though they would eliminate certain market inefficiencies. Second, the economic surplus is a dynamic one, considering the present as well as the future. Accordingly, imposing the lowest possible price on competitors from outside would have reduced investments and innovations as a consequence. This in turn would hinder possible price drops in the future resulting from these innovations. Third, artificially increasing the amount of competitors with the aim of establishing a perfect competition with consumer welfare maximizing prices may seem reasonable on the first glance. However, by favoring for example small companies over the established ones, fairness problems may distort otherwise efficient market behavior.

These arguments are quite closely linked to the question of market justice. When focusing solely on the consumer surplus, justice is narrowly connected with simply taking away from the rich and giving it to the poor. It is an ex post equity concept, demanding equal outcomes of competition.⁸⁷ However the motivation for an efficient company, which gained a certain market power over the years, would definitely decrease if it were in a sense punished for its strong position and the research and development it has invested in. More plausible seems the concept of ex ante equity, meaning equal initial opportunities on the market.⁸⁸ Within a market economy it is natural and not beyond the limits of justice that certain firms, which invest more, innovate more, are more cost efficient, or simply luckier than other firms are more successful on the marketplace achieving higher profits. Nevertheless, also asymmetries stemming from capital allocation need to be considered, in order to prevent a destructive abyss between the market participants.

Yet even though in a general static scenario there is an opposite relationship between market power and economic welfare, it does not seem just per se that a company, which by legal actions gained considerable efficiency and competitive advantage over its competitors

⁸⁷ Motta (2004: 26).

⁸⁸ Ibid.

will be forced to share its profits or market share with less efficient competitors.⁸⁹ Moreover, market power should not be considered something counterproductive as such, since it motivates firms to invest and innovate, allowing for future welfare gains. If however, a monopolist (a company with a dominant market share) abuses its strong market influence to drive existing or potential competitors deliberately out of the market, regulatory mechanisms should protect the endangered fair competition on the market. Accordingly, it is neither fair nor efficient when a market dominating firm temporarily lowers its prices below its production costs with the sole intention of economically terminating a capitally weaker competitor. Such temporal price decreases leads from the consumers' perspective to a temporal increase in consumer welfare and may seem favorable within a static framework. Yet it is without a doubt that if the monopolist's direct aim is to drive its competitors out of the market with the low prices she offers, the prices will rise again, once this goal is achieved. What is more, the prices will most probably rise disproportionately above the previous level, thereby making up for the costs of the price attack and increasing the monopolistic surplus. Consequently within a dynamic model, such monopolistic activities lead to decreases in consumer welfare along with total economic welfare and should be counteracted by competition policy measures. In addition to such and similar unfair and competition-damaging activities, monopolies are also considered less efficient as far as technical advancement and innovation is concerned than if facing competition.⁹⁰ For example, a monopolist will most probably be eager to delay the implementation of a new technology, which in turn would have positive welfare effects on the consumers, and exploit the old technology as long as possible, while a competitive market offers innovations as soon as only possible.

Since most economists agree on the disadvantages a highly concentrated market power brings about, one might be tempted to suggest in this connection that competition policy should strive for a maximization of competitors. Yet there are two basic reasons against such an objective. First, strongly subsidizing weaker companies leads to a misallocation of resources with inefficiencies and welfare losses as a consequence. Second, within markets, which are characterized by high fixed costs, a multitude of competitors signifies a multiplication of fixed costs, which in turn implies overall inefficiency. On the other hand, the more concentrated the competitors on such a market, the higher the use of economies of scale, which can in turn result in lower consumer prices. Consequently, even

⁸⁹ Ibid. (39).

⁹⁰ Sloman (2006: 169).

though a higher number of competitors bring about lower prices and thereby higher consumer surplus, it also implies certain production inefficiencies in terms of fixed-cost doubling. While the net outcome is a priori uncertain, there is a certain trade-off between allocative efficiency (the more competitors, the lower the prices, the higher the consumer surplus, *ceteris paribus*), and productive efficiency (the higher the market concentration, the lower the overall fixed costs, the higher the economies of scale, the lower the prices, the higher the consumer surplus, *ceteris paribus*).⁹¹ As a consequence, the objective to maximize the number of firms within each and every market without considering the market's specification would be clearly unreasonable.

As shown by the elaborations above, total economic surplus, or in other words welfare, is the central norm of competition policy. Its dynamic outcome is closely related to questions concerning competition and market concentration. What must be considered is that respective norms, such as plurality, are not an intrinsic part of welfare. However, plurality in its economic and general sense certainly is converse related to welfare, especially with respect to the potential danger of a monopolistic scenario.

3.1.3. Central media-political norms: plurality and journalistic quality

Media policy focuses on the two norms of plurality and journalistic quality. Both of those norms are connected by the fundamental principle of journalistic freedom, forming a triangular interdependence base of media policy, which can allusively be embraced by the term of media-political welfare.

3.1.3.1. Plurality

While plurality is a crucial factor yet not an intrinsic part of competition theory's principle norm welfare, in the theory of media policy plurality is together with journalistic quality the integral norm, standing above the economic principle of individual welfare.⁹² Moreover plurality is interpreted differently by media scientists than by economists. While economic plurality mainly deals with the co-existence of multiple independent producers, media policy draws a more specific picture of that term. Accordingly, journalistic plurality

⁹¹ McConnell / Brue (2008: 187).

⁹² Detering (2001: 138).

distinguishes three dimensions: consumptive plurality, meritorical plurality, and institutional plurality.⁹³

Concerning the TV market, consumptive plurality refers to the individual viewer's program choice preferences. In simple terms it is a broad choice of consumption. The factors distinguishing the offers from each other within the concept of consumptive plurality are basically all dissimilarities perceived by the consumer. Consequently, consumptive plurality in the journalistic sense very much equals the concept of economic plurality.⁹⁴ Optimal consumptive plurality signifies a programmatic offer dispersion within the criteria continuum corresponding to the current consumer preferences, being therefore a parallel of the economic approach of qualitative efficiency. Maximal consumptive plurality analogously implies the programmatic coverage of the whole potential preference spectrum with assortment for each customer, independent of a potential preference accumulation within the spectrum.⁹⁵

Meritorical plurality in turn refers to factors, which go beyond the consumptive good characteristics of media. It deals especially with social, political, cultural, and moral values, norms, opinions, and arguments and is concerned with the youth education and public opinion shaping processes. Meritorical plurality is therefore congruent with opinion plurality. When the media presence of the whole opinion spectrum and their corresponding arguments is quantitatively proportional to their factual appearance within a society, optimal meritorical plurality is reached. Maximum meritorical plurality respectively implies equal media representation of the whole opinion spectrum's elements, independently of the factual empiric relevance proportion, implying an overrepresentation of minority opinions from a democratic point of view.⁹⁶

Institutional plurality follows similar contextual goals as the former dimensions, while being easier to quantify. Institutional plurality deals with the number of independent programmatic suppliers and their dissimilarities among each other. This dimension implies the financial and political sovereignty of multiple programmatic media entities and is disproportional to market concentration. More specifically, a high institutional plurality requires a certain amount of media entities to be independent in their decision making process and to differ in their general opinion spectrum and its interior hierarchy.⁹⁷

⁹³ Kruse (2004: 12).

⁹⁴ Heinrich (2001: 105).

⁹⁵ Kruse (2004: 12-13).

⁹⁶ Ibid. (13).

⁹⁷ Ibid.

The three dimensions of journalistic plurality are interrelated in an interesting manner. Institutional plurality emphasizes two sub-goals: first the multitude of sovereign and independent broadcasters, and second the need for opinion heterogeneity among them. This implies the theoretical possibility of a certain market division among independent suppliers, who all share a similar opinion continuum, which neither represent the whole societal opinion spectrum, nor its proportions. Consequently, the pure existence of multiple independent entities is only then an implication of meritorical plurality, if the necessary financial and intellectual preconditions of setting up a broadcasting entity are equally or proportionally available for and used by each opinion representative of the whole societal opinion spectrum. While this relation is not unquestionable for meritorical plurality, consumption plurality results from institutional plurality due to the above-mentioned economic incentives. This relation, however, does not work the other way around: a high consumptive plurality does not necessarily imply a high institutional quality, since even a monopolist is theoretically able to supply the whole spectrum of consumer preferences, especially when disposing over a net of broadcasting stations. Analogously, meritorical plurality can theoretically also be optimized by a single producer or a net of producers with the same owner. Yet the probability of such a scenario, in which a monopolist is optimizing both, consumer plurality and meritorical plurality, seems rather improbable. On the other hand, in practice it seems very likely that the market coexistence of many private media companies, which are independent of each other, implies a high institutional plurality and generally thereby also a high consumptive and meritorical plurality. Within such a scenario each competitor has a sufficient economic incentive to fulfill the differing programmatic consumer wishes, optimizing thereby the consumptive plurality. A heterogeneous opinion structure among the suppliers, which generally can be assumed when dealing with a high number of independent broadcasters, optimizes also the meritorical plurality.

In addition to these three dimensions, two further perspectives of journalistic plurality can be identified: static plurality and dynamic plurality. Static plurality deals with the programmatic offer diversity within a tightly limited time period, such as today or today evening. Dynamic plurality, in turn, describes the programmatic variety throughout a certain period of time.⁹⁸ So while throughout a period of exemplary seven days, all existing broadcasters present a different opinion each day, without differences on each particular day, dynamic plurality is positively affected, while static plurality is not.

⁹⁸ Heinrich (2001: 105).

3.1.3.2. Journalistic quality

The second norm of media policy is journalistic quality. While economic quality is a purely subjective measure, journalistic quality in theory follows certain objective rules. The following journalistic quality criteria can be identified: up-to-datedness, objective correctness, relevance, and mediation.⁹⁹ Additional related parameters can be mentioned, such as professionalism, dramaturgy, and accuracy, which can also be seen as integral elements of the previously named ones.¹⁰⁰ Objective correctness is often considered the central norm in this context even though there is no stable consensus as to the norms' factual significance hierarchy.¹⁰¹ Up-to-datedness, which is also considered a crucial sub-norm of journalistic quality, requires an objective or at least subjective news value of the reported content.¹⁰² The correctness and objectivity norm demands fair and neutral reporting with a clear distinction between facts and assumptions and between information and opinion. The relevance criterion calls for the reduction of the media content to the most crucial information for the receiver. The mediation norm embraces an open list of communication criteria such as language, style, outer appearance, or message transfer paste (e.g. the paste of picture sequences).¹⁰³

Even though journalistic quality is stated to be within an objective normative structure, the named group of norms leaves certainly very much room for subjectivity. Since up-to-datedness explicitly allows for a subjective classification, its general objectivity is naturally limited, if not non-existent at all. The same is valid for the norms relevance and mediation, even though they are not explicitly subjectivable. It is impossible to objectively define the proper amount of information, which is to be identified as relevant for the receiver and so is the proper mediation style. Even though it is possible to instinctively sense violations against the relevance criteria and the proper mediation form - especially in extreme cases - it is still a rather subjective notion. The only criterion, which can be assumed objectively stable in this context, is the principle of truthful and objective covering. Yet even though separating confirmed data from presumed information, distinguishing between pure information and subjective opinions, and presenting the whole balanced viewpoint spectrum are objectively accomplishable criteria, they are the ones most often violated even in today's

⁹⁹ Ibid. (83).

¹⁰⁰ Cf. Schreiber (1994: 38).

¹⁰¹ Weber / Rager (1994: 2ff.).

¹⁰² Cf. Heinrich (1999: 138).

¹⁰³ Weber / Rager (1994: 7ff).

enlightened journalistic world. While up-to-datedness, relevance and mediation are therefore debatable factors assessing journalistic quality, the rightful and objective reporting sure is a norm of undoubted journalistic value. Whereas each external definition of the first three norms verges on questionable paternalism, the objectivity and rightfulness criteria surely allow for arguments of market supplementary activities.

3.1.2. Integral system-rivalry: Economic competition vs. media-political competition

Competition among producers of different goods and services can in general be regarded as a kind of selection procedure, during which a third party decides, which of the competitors achieves a given goal to which degree.¹⁰⁴ If the third party is the consumers, the selection process can be considered economic competition, in which the selection decision is generally based on the relation between price and quality of the offered product, with which the producers compete for market shares. While quality is here subjectively valued, the price is normally defined in monetary terms. Of course, the exact shape of the selection procedure varies with the specifics of a given market. Supermarkets, for example, compete in a different manner for consumer preferences and budgets than airplane construction companies do for the funds of airline companies. The market configuration plays a crucial role, as well as the payment method. Accordingly, Free-TV viewers - even though it may seem paradox on the first glance - also pay a price for a given program, although they don't pay in direct monetary units. The Free TV audience "pays" for a given program by their leisure time, which in economic theory has its own price, by accepting to be shown given units and types of advertising during commercial breaks. Consequently, a TV program with more commercial breaks costs more free time than one with very few advertisements. If a consumer decides over the consumption of two movies, whose qualities he considers equal, it can be assumed that he will choose the one with less advertisement breaks, of course only if he disposes over such information in advance, e.g. by knowing that a given TV station generally shows less advertisement than its competitors. Yet advertisement viewers also pay for their TV consumption in monetary terms, even though in a very indirect manner. Accordingly, in one way or another, companies, which invest in their TV marketing campaigns, always carry the costs of television advertisement over to the product price. Hence each consumer of mass consumption products indirectly co-finances the TV spots,

¹⁰⁴ Beck (2005: 65f).

which are the indirect costs of television consumption, by paying the price surplus included in the final product price.

While this indirect and somewhat camouflaged price mechanism is valid on the recipient market, a more standard economic competition takes place on the signal distribution market. Here the consumers decide more directly over the quality-to-price ratios of the adequate programmatic package for them. While on the recipient market the product is a specific show, a movie, or a sports event broadcast, on the signal distribution market the product is the bundle of programs delivered via cables or on air to the customers' TV sets. The programmatic packages typically offered by cable companies, digital platforms, and partly terrestrial multiplexes vary in price and configuration from supplier to supplier. They mostly also differ within the overall offer of one particular supplier, who by offering various packages makes use of product variation in order to address consumers with differing preferences, thereby trying to maximize his market share. The consumer decides if she prefers the programmatic package Z including Y different digital TV programs, X sports channels, W news stations, and V additional digital services by cable TV provider A for M money units a month or a different programmatic compilation, for example with the focus on music channels and blockbuster movies, by digital platform provider B for a differing price. Cable and satellite companies not only compete against each other on the signal distribution market, but also against terrestrial television, whose offer is free of direct charge in many countries, yet usually not as diversified as the cable or satellite based alternatives.

Consequently, the consumers' decision process is two-tired. First, she must decide on the signal transmission market which programmatic package she chooses. The decision will be based on the general programmatic preferences (e.g. more sports, less music) defining the subjective quality estimation for each programmatic bundle, and on the price for each programmatic package (usually a monthly fee, possibly with additional "on demand" payment transfer rates). This price to quality decision on the signal distribution market, in turn, co-defines the competitor configuration on the recipient market, where the consumer then decides, which of the available programs to view or if not to view anything at all. This decision is based on the subjective programmatic offer quality assessment of a given time period, which is in turn based on the subjective preferences during that particular time, and on the price in terms of the extend of leisure loss during commercial breaks.

Within pure economic competition on the TV market, the suppliers decide over their signal distribution prices, over the programmatic packages, over the content each station offers, and over the amount of commercial time within the programs. The consumer as the

other economic half of this market mechanism then freely decides which programs she would like to dispose over, in order to choose on a constant basis what exactly to watch, based on subjective quality to price assessments. Within this market competition, public institutions only act as the guards of market rules established by the law, with the purpose of ensuring fair competition. Within economic competition public institutions are not supposed to value the products' qualities, prices, or the producers' marketing behavior, unless they do not contradict existing legal acts.

In contrast to economic rivalry, within journalistic competition the third party, which decides over the successful achievements of given goals, is not represented by the consumers. Since within media policy quality is not a purely subjective measure, the parameters defining journalistic quality are the ones to decide over journalistic success. In other words, out of two competing media contents the one will be considered superior, which better fulfils journalistic quality factors, such as objectivity, timeliness, relevance, and mediation. However, the objectivity of these parameters is rather theoretical, while in practice it is impossible to measure all of them without a certain subjective input. Therefore the body, which is measuring, weighing, and interpreting these journalistic quality factors, will be the one eventually deciding over the competitors' journalistic success. Since consumers as a group have a heterogeneous and dynamic opinion towards journalistic quality and often lack the educational background behind the decisive elements of journalistic quality, in most cases one or more institutions - predominantly public ones - claim this position, guarding (in the ideal case) the fulfillment of the mentioned journalistic standards.

The difference between the systems of economic competition and media-political competition can be best understood by the fact that a journalistically weak media service can indeed result in a high audience rate and therefore in a monetary success. Most soap operas can be named here as good examples. On the other hand a journalistically high-quality good is not necessarily a warranty for high viewing rates and economic triumph.¹⁰⁵ Accordingly, many in terms of content valuable political TV magazines throughout the world had to make way or were postponed to generally unattractive airing hours due to decreasing viewing rates resulting from not following the trend of visual and contextual simplification of the infotainment phenomenon.

¹⁰⁵ Beck (2005: 65f).

3.2. Similarities between competition policy and media policy

The most intrinsic similarity between competition policy and media policy is freedom as their shared fundamental norm, which is a precondition for the norms welfare, opinion plurality, and journalistic quality. Economic freedom embraces the liberty to make purchasing and sales decisions freely with individual budget considerations as the only restriction. Media freedom, in turn, embraces the wider concept of freedom of speech, allowing mass communication channels to publish messages without external interferences or restrictions, which would go beyond certain socially accepted limitations, such as the protection of minors.¹⁰⁶ This fundamental norm is treated in numerous theoretical books and analyses as a given, yet in many democratic and officially liberty-oriented systems political interferences distort this very freedom - especially with reference to the media - directly or indirectly using a wide range of semi-official channels of power extortion.

In addition to this shared fundamental norm, the two theoretical concepts have several implicit resemblances. As mentioned above, in economic theory the deciding third party within the selection process of competition are solely the customers, who in turn evaluate the question of economic quality based on subjective characteristics. Within media theory, however, the objective principles plurality and journalistic quality stand above the consumer preferences, generally making a public institution the deciding third party, which guards over these quality parameters.

However, it needs to be taken into consideration that in practice - also within economic policy - the third party is not always only the consumers. Accordingly, there are many public institutions, guarding the proper shape of economic competition. This proper shape is in turn clearly defined by law, in order to protect a certain system of rule within the market. This means that the consumers and the producers are the sole market subjects, only as long as the competition behavior fits within a certain predefined system of rules. For example, from the economic point of view, in order to maintain competitive markets, there must be no market participant, who uses his dominating market position against the standards of competition. The reason behind it is that such a dominant position leads to monopolization of a given product or service, which in turn potentially results in a marginalization of the consumers' negotiation power, ergo to arbitrary high product prices, possibly negatively affecting overall economic welfare as the central economic norm.

¹⁰⁶ Kiefer (2005: 67-70).

The evaluation as to when concretely producers create a dominating position is generally expressed in numbers (e.g. a market share exceeding a certain percentage), while it is of course almost impossible to draw a clear line. Moreover, the pure fact of holding a dominant market position is not disqualifying per se. Respective actions must follow, in order to talk about market-abusive behavior. Since, however, monopolistic activities are economically natural for an entity which bundles market power, the risk of competition-destructive behavior is considered high, often resulting in preventive actions. Even if the exact extent of market abusive potential by market potentates is difficult to define in an absolute manner, it is without question that when viewing this mechanisms from a certain angle the following is valid: the more suppliers act on a given market, the higher is the competition, and the better the situation for customers as far as prices and quality is concerned, generally constructively affecting economic welfare. Analogously, the fewer the competitors, the higher is the market concentration, and with it the higher the risk that one or more producers will gain dominating negotiation power over the consumers, thereby being able to impose price and quality standards, without having to fear that the consumer may switch to a competitor. Therefore, the principle of plurality is in economic theory not an explicit but surely an implicit factor for a well-functioning market, implying competition and increased welfare.

In media theory plurality together with journalistic quality is the explicit central norm, which forms media-political welfare, even though it is not directed at the amount of suppliers as such, but rather at the opinion spectrum. Yet similar to the indirect significance of plurality for economic welfare, media theory as well indirectly values supplier plurality, since the higher the number of competitors, the higher the probability of increased opinion plurality. While in economic theory public institutions are to guide the proper competitive environment of the market, media-political institutions further narrow this framework down by adding rules and guidelines to the configuration of the media product as such.

Accordingly, the norm rivalry between economic and media-political theory is not as much an internal contrast as to the logical value system, as it is a question of hierarchy differences of indicators, which are believed to lead to overall economic and media-political consumer welfare. In spite of the mentioned differences, competition theory and media theory both imply a guiding institution to protect a certain market framework. Both theories also implicitly share the appreciation for supplier plurality. While in economic theory plurality is not a central norm, it surely is one essential mechanism for maximizing the principle norm of economic welfare. Similarly, for media theory supplier plurality is not an

explicit central norm either. As already mentioned, the principle media theoretical norm of plurality is rather directed at opinion plurality than at supplier plurality. It is without a doubt, however, that supplier plurality is proportional to opinion plurality in each and every realistic scenario.

3. Market failure in the TV sector

In the pure market model, economic competition optimizes the allocation of scarce resources and maximizes individual welfare. However, exceptions from the ideal status quo occur, namely in form of market failures. The possible divergences arise due to the existence of structural problems, public goods, external effects, as well as due to information deficiencies on the consumers' side.¹⁰⁷ Taking into consideration the media specific characteristics of the TV sector, the mentioned market failures assume a particular form.

3.1. Market failure in the TV sector from the economic perspective

From the economic perspective, the TV market is accompanied by several aspects leading to market failure. First, the media market as such is considered a carrier of the partially public good information.¹⁰⁸ Connected to this is the hypothesis that, in spite of a lack of consensus in that matter, media carry merit goods, which otherwise would not be adequately provided by the market.¹⁰⁹ Externalities, competition-related structural problems, as well as information asymmetries are further sources of TV market failure from the economic point of view.¹¹⁰

3.1.1. Media as a carrier of the partially public good information

A public good is generally characterized by the possibility of consumption without rivalry and by the impossibility of excluding anyone from this consumption. Street lights are

¹⁰⁷ Campbell (2004: 80).

¹⁰⁸ Heinrich (2005: 327).

¹⁰⁹ Imhof (2004: 40).

¹¹⁰ Cf. Beck (2005: 15).

an example of public goods, fulfilling the two conditions mentioned above. Information is one of the crucial products on the media market, virtually wrapped in programmatic content. Information is generally not used up during the utilization, meaning that non-rivalry with respect to consumption is assumed.¹¹¹ On the TV-market, non-payers can only be partially excluded from consuming the good information. Accordingly, while Pay-TV allows such exclusion, public-fee financed broadcasting is handled on a tax-similar basis and advertising-financed television does not require direct payments in monetary units (in the case of terrestrial receiving) other than buying a television receiver as such. Concerning this, public license fees are in many countries raised independently of the factual watching habits and must be paid by everyone with a TV device. Yet while this payment is indeed mandatory, non-payment partly implies monetary fines rather than the exclusion from television consumption. Therefore, in the TV market, the possibility of excluding the ones, who refuse to pay for the good information, is only a moderately one.¹¹² Accordingly, the good information can at most be considered a partially public good, which as a consequence leads to market failure to a similar but smaller extend than an absolute public good.

Even though there seems to be a general consensus on that matter, one basic assumption, on which this argumentation is based, appears questionable: the non-rivalry of consuming the good information and with it the hypothesis that information does not get used up during consumption. Even though the information as such does not decrease during consumption, its value surely does, especially when dealing with information, whose worth depends on its timeliness. A good example is stock exchange data, whose value decreases over time. Accordingly, new information, especially in extreme cases of surprising bankruptcies, for instance, has particular value for those getting it first. Such investors can for example speculate on the fall of the stock value of the concerned company, or in case they possess the particular stock, sell it without or with relatively little loss. Those ones, however, who get such information late, mostly carry greater losses in case they are in possession of the stock, and if not, the information's value is generally almost non-existent for them, at least in monetary terms.

¹¹¹ Cf. Linde (2008: 20ff), Beck (2005: 6).

¹¹² Heinrich (2001: 71f).

3.1.2. Media as the carrier of merit goods

Merit goods are commodities, whose “production and consumption is considered socially more desirable, as it were by the pure market supply”¹¹³. The assumption is that the market mechanism is not functioning with merit goods, due to the distortion of consumer preferences. One example of a good considered to fall into this category by many countries is social security, which is why it is a mandatory insurance in many societies. In such an instance the lawgiver a priori doubts the consumers’ understanding of the significance of social security and intervenes in the market mechanism accordingly. As far as the context of the TV sector is concerned, media contents, such as politically and culturally educational media goods, are generally also considered merit goods, which under normal market circumstances would be demanded for to an insufficient degree from the socio-political point of view.¹¹⁴ This kind of media contents falls into a wider category of culturally valuable goods, such as theatres or exhibitions, which in many countries are assumed to be not profitable enough under market circumstances with the effect of disappearing if not subsidized publicly. Since those goods are however considered socially valuable and relevant, they are very often set above the common market mechanisms, in which demand and supply yield their market quantities and prices and kept at a safe distance from the risk of becoming extinct from the market or adjusting to it. Many cultural goods are subsidized in one way or another following this very reasoning.

Even though this line of argumentation can be considered understandable, merit goods as such are a very good example of how economic theory can somewhat create contradictions within itself. Accordingly, the merit good concept clearly questions consumer sovereignty, especially as far as private goods are concerned, which can be offered by the market. In this connection the concept of merit goods assumes a paternalistic state, which means well for its citizens and knows better than them - a certainly delicate assumption. From a more skeptical perspective, the merit-good model may be seen as a public pretext for self-subsidy. Concerning this, in order to justify the necessity of interference into the market mechanisms, certain goods are declared merit goods. Regardless of the actual consumers’ market demand structure for these goods, revenues are thereby guaranteed and publically subsidized to the level of the desired demand.

¹¹³ Kiefer (2005: 85).

¹¹⁴ Ibid. (136-137).

This arguable economic principle of merit goods and the resulting need to protect, promote, and subsidize them is taken up by media theory as a substantial element of its inner logical system.

3.1.3. External effects

The existence of externalities is a further factor leading to market failure. Externalities are third-party effects, which are not intended by the originators, among supposedly separate not directly interacting action areas or subjects. Positive externalities are those from which the passive party benefits, while negative externalities imply harm for the receiving party. In both cases neither the right for monetary rewards is implied in case of positive externalities nor any kind of compensation for negative ones.¹¹⁵ A classic example of externalities is based on an apple tree in A's garden and bees in B's garden: the bees pollinate the apple trees' blossoms and receive nectar, being the fundament of honey. As a consequence A gets apples and B honey.¹¹⁶ As far as the media market is concerned, examples of externalities can be seen in the consequences of political TV coverage on the voting behavior, on political decisions, and even on individual political careers. In practice, it is of course not always clear to which degree such externalities are factually unwanted and without expected compensation. Media coverage can furthermore have a certain influence on the acceptance and alteration of social values. This can have positive social consequences but also negative ones. Concerning this, there is a widespread belief that the consumption of certain TV content has undesirable effects on the inclination towards violence and delinquency.¹¹⁷ According to this view, media content exceeding a given level of violence will foster real violence within a society. From the media-political perspective, it is therefore obligatory to protect the consumers - especially minors - from undesired socio-political externalities.

The concept of externalities is understandable and rather difficult to question. However, it seems that externalities exist in a vast majority of all higher-scale activities with a varying intensity. Consequently, if externalities are per se regarded as a direct reason for market failure, it would be rather hard to find a market without it. Due to the ubiquity of externalities their factual expressiveness is rather limited with respect to a cause-and-effect

¹¹⁵ Tisdell / Hartley (2008: 34).

¹¹⁶ Meade (1952: 56ff.).

¹¹⁷ Cf. Signorielli (2005: 1ff).

relation in terms of public market interference. Even though in chosen instances, such as youth protection, public market interference appears instinctively reasonable, other instances, such as demands for political correctness in news broadcasts or regulations concerning TV advertisement time, may by skeptics be interpreted as a form of modern censorship.

3.1.4. Information asymmetries

In an ideal market model all participants are completely informed about the traded goods and services. In reality however, within most sectors, producers have an information advantage over the consumers. If the information asymmetries are extensive, they lead to market failure.¹¹⁸ The classic example for that phenomenon is Akerlof's used-car model. According to this example, sellers, who naturally know more about the quality of the cars they sell, are keen to sell bad quality cars at the market price of good quality cars. Buyers, in turn, anticipate this behavior and assume a priori that all the cars, which they are offered, are of bad quality. As a result, buyers reduce their general payment willingness. This, in turn, further reduces the motivation to sell good quality cars from the sellers' point of view. The result is a viscous circle, which may even cause a market to fully collapse.¹¹⁹

Within the TV sector, information asymmetries have a special character. Since one of the major broadcasting goods is information per se, each information asymmetry concerns the wholeness of the product, or at least the major part of it. The producers of media goods are generally far better informed than the receivers. In addition, there is a considerable political and economic incentive for the TV producers to filter information, present it from only one perspective, and even alter certain data, in order to achieve a given goal. The risk of market failure due to information asymmetries is therefore very considerable in the case of the TV sector. This is especially true with a low number of competitors on the market. Accordingly, while with a high number of independent broadcasters presented information by one supplier may be verified and possibly refuted by the other suppliers, the probability of proper verification decreases at least proportionally to a diminishing number of competitors. Within a low number of market participants arrangements are probable, since they are in many cases only rational for all suppliers involved. If those arrangements exist, the resulting opinion plurality becomes marginal, while supplier plurality, which is based on independence, loses its significance. One could argue that even wide-ranging agreements

¹¹⁸ Kiefer (2005: 82).

¹¹⁹ Akerlof (2005: 4).

among suppliers do not violate the main idea of independently acting market entities. This may be true in minor cases, yet with the rising scope of arrangements, things look differently. Accordingly, the decision to give up independence can indeed also be made and held up independently. Yet the result is naturally a total loss of sovereignty, since independence is in its nature a self-defensive value.

3.1.5. Competition-related structural problems

Structural problems of competition are often characterized by the degression of fixed costs and by other economies of scale.¹²⁰ Within this concept the distinction of variable costs and fixed costs as the major components of the total costs is implied. While fixed costs are constant and factually independent of the output amount, such as money invested in machines or rental charges for facilities, variable costs are those ones factually needed to produce any additional unit of output, such as the needed material or labor costs. From a traditional controlling viewpoint, each output unit can be assigned its factual variable costs, as well as a proportional unit of the fixed costs. Since in a simple model fixed costs do not change with absolutely rising output units, after a certain adequately high output level is reached, the fixed costs will disappear eventually from this controlling calculation and the total output unit-costs will equal their variable costs.¹²¹ Fixed costs degression is therefore most evident in high capacity facilities, in which fixed costs are high relative to the variable costs and the output is produced in high units, for example in assembly line facilities.

As far as the TV market is concerned, the degression of fixed costs is considered the main cause of market failure.¹²² Concerning this, the major part of a broadcaster's costs is fixed, while variable costs are practically non-existent. The division between fixed costs and variable costs can be interpreted in two ways. First, we can interpret only the traditional ground and equipment costs as fixed, while defining all other costs required, for instance those to produce or purchase a TV show, as variable. Such a division would however imply a production of unique goods, while rising output would be interpreted as a higher number of those unique shows or movies, rather than as a higher number of customers. More fitting seems therefore the second interpretation, in which fixed costs are considered all costs for facility and equipment plus all costs involved in the production or the purchase and the factual broadcast of a media content. Accordingly, the broadcaster's fixed costs are in this

¹²⁰ Puppis (2007: 71ff).

¹²¹ Woeckener (2006: 43).

¹²² Heinrich (2001: 129).

perspective evaluated separately for each media content. One output unit is here identified as the consumed media content by one viewer. Each additional viewer increases this amount of output units respectively. Variable costs are in this interpretation those costs, which are needed for the multiplication of the media good's reception, or in other words, those costs necessary to address one additional customer or viewer. Variable costs are within this division of total costs practically non-existent, since the total costs are not affected by the addition of each additional customer.¹²³ On the other hand, each additional viewer theoretically generates returns, for instance in form of advertisement or pay-per view revenues. The revenues for each additional viewer of a given media content are consequently pure profit. The intensity of fixed costs degression for broadcasted goods becomes obvious when considering that high viewing rates are targeted, constituting for high output units.

Resuming, the production costs of a given media good, such as information, do not depend on the amount of the receivers. The broadcaster's costs practically maintain unchanged, no matter if the amount of viewers remains constant, doubles or halves. Consequently, taking into consideration that a rise in audience rates brings about a rise in overall advertising or pay-per-view revenues, it becomes obvious that the average unit costs significantly drop with a growing number of consumers. Bearing in mind the high fixed costs on the broadcasting market, and connected to them and to the broadcasting market's specifics the considerable economies of scale, it becomes clear that these structural conditions naturally create substantial entrance barriers for potential competitors, thereby limiting the number of market players from the very beginning. Not only do new potential entrants face fixed costs, which the existing competitors are already degressing, but they also have to target a considerable consumer amount right from the start, in order to compete with the mature fixed-cost-degression advantages of the existing players.

Within a sector of high fixed costs and economies of scale a very high number of competitors is rather improbable without external interference. From the economic point of view, in a situation of few competitors as a result of high market entrance costs, fixed-cost degression causes a good to be most economically supplied by a monopolist, who by maximizing her clientele minimizes production costs and therefore maximizes the corporate profit. Accordingly, in a market such as the television market, the competitors will lead a cut-throat competition, whose result will be the survival of only one supplier, who becomes

¹²³ Heinrich (1999: 140).

the monopolist.¹²⁴ This does not mean that only one TV station will remain on the market. On the contrary, the monopolist will take over his competitors and maintain a certain level of variety in order to reach as many customers as possible and maximize her welfare. The level of independence among the broadcasters will however decrease, be it due to direct takeovers or supposed partner agreements, and tend towards zero. This, in turn, is not desirable from the socio-economic point of view, since a monopolist is inclined to maximize her producer's welfare by setting a monopolist's price, which is higher than it would be within a competitive environment. Even though on the first glance the question of price is not as much a concern for the TV market consumers as it is for the advertisers, a more thorough reflection will present a different conclusion: first, the monopolist could dictate advertisement prices almost at will, which would have negative spillover effects on the advertisement industry with the result of welfare losses. Second, a monopolist may charge monopolist pay-per-view prices, as well as monopolistic non-monetary advertisement viewing prices. Accordingly, by marginalizing the customers' bargaining power the monopolist could implement unfavorable monetary and non-monetary prices, which the customers could only confront with the binary decision of accepting or restraining from television consumption as such due to the lack of alternative suppliers. These are merely two of the more direct potential economic threats of a monopolist scenario in the TV market, which undoubtedly would lead to economic and socio-political welfare losses.

While the economic threat of a highly centralized market is one issue, the political consequences of such a scenario may appear even more considerable. Accordingly, if the entire television broadcasting spectrum had one and the same owner, the centralized political power would be immense. Political opinions could be balanced at will, favoring for example option A, criticizing option B and completely neglecting option C depending on the level of acquaintance with the respective options. Opinion plurality would be highly endangered within such a scenario and the risk of immoral connection between the business world and politics would surely be very high.

While the monopoly scenario as a consequence of a cut-throat competition is the most drastic one, also amalgamations, mergers, unofficial agreements, and other similar activities can lead to, or deepen structural problems of a given market, if the resulting power structure is dominated by a more or less centralized interest. Accordingly, the TV market's structure creates economic entrance barriers in form of high fixed costs and economies of scale, naturally tending towards a rather narrow number of competitors. In addition to these

¹²⁴ Heinrich (2001: 96-97).

economic barriers, natural limitations of technological character exist as well, with partly similar consequences to the economic ones. The most considerable ones concern the signal transmission market, and more precisely the terrestrial part of it. As already mentioned in the technological chapter of this work, each country's terrestrial frequency inventory is naturally limited by geographic factors and the amount and configuration of television masts and towers, mostly offering space to only a few analogue broadcasters. This has for years been the major reason for a narrow competitor structure in many television systems. The rapid advances of satellite and cable signal distribution have however provided a serious alternative to terrestrial broadcasting, overtaking larger and larger parts of the market. This development surely had a certain influence on the technological change in terrestrial broadcasting from analogue to digital broadcasting, which currently is in the process of being implemented in most media systems. The switch-over will give the terrestrial signal distribution method the opportunity to improve its competitive position over the other broadcasting methods by not only improving the transmission quality, but also expanding the competitor quantity, thereby diminishing the previous technological barriers to a significant degree. Consequently, the technological limitations as to market concentration tendencies are decreasing and only concern a certain part of the television market. However, they do definitely not counteract the tendency of market concentration resulting from the economic barriers discussed above.

3.1.6. Economic market failure and the broadcasting market

The elements which per definition lead to market failure and imply the necessity of public market intervention convince only partially with respect to the broadcasting sector. Concerning this, even if there is some reason to interpret media content as a partially public good, its fundamental assumption is rather doubtful. Accordingly, information as the major good on the broadcasting market has a value dependent on time. In this regard, information has a higher value when received early, therewith not fulfilling the necessary requirement for a public good of not getting used up during consumption. The second basic assumption, namely that viewers cannot be excluded from watching, is questionable as well. Concerning this matter, non-payers can and will be excluded in all signal distribution options but terrestrial broadcasting, which does not constitute for the dominating reception form of media goods anymore. Hence, since the two basic assumptions for defining the broadcasting

market as a public good are doubtful, this aspect can generally be rejected as a factor leading to market failure.

A similar mechanism is valid for the merit good postulation. Accordingly, the whole concept of merit goods, not only in the case of the broadcasting sector, seems to be problematic. It questions adult consumer sovereignty, therewith violating the basic concept of a free decision-making process based on subjective consumer preferences and budget constraints. Questioning or limiting the consumers' decision-making implies the objectification of quality. Since, however, quality is by economic definition purely subjective, the concept of it being a merit good may be upheld from the media-political point of view, yet hardly from the economic perspective.

The external effects in the broadcasting market on the other hand seem from the purely economic perspective not perspicuous enough in order to speak of a realistic threat for the functioning of the market. The last two factors, however, which per definition lead to market failure, seem to make up for the other supposed market failure elements, as far as the broadcasting market is concerned.

Due to their empiric fundaments, the economic and the technological structural problems are probably the most meaningful ones when identifying potential market failures and discussing possible public market intervention methods. High fixed costs and the degression mechanism involved, as well as further economies of scale and additional technological parameters imply a natural tendency of limiting the number of market participants. Such a framework without regulation makes the existence of only a few competitors very probable. Going further, the probably resulting oligopoly has additional market concentration tendencies as a natural consequence of such power distribution. Those tendencies can take the form of agreements, mergers, and informal arrangements, while from the competition theory point of view having a propensity of a cut-throat competition, leading eventually to a monopoly scenario if not hindered externally. A highly concentrated market is in turn not desirable in general as well as economically due to its negative effects on economic welfare.

Those structural problems are intensified by the last discussed element of market failure: information asymmetries. Accordingly, information asymmetries take a special form in the case of the broadcasting market, since information is the market's major good. As a consequence, information asymmetries can indeed lead to a fundamental market imbalance, especially when dealing with a very low number of competitors resulting from the competition-related structural problems discussed above.

3.2. Market failure from the media-political perspective

The elements of economic market failure described above influence the media-political perspective on that matter, yet viewed from its own angle. From the standpoint of media theory, the direct reasons for market failure are deficiencies of the norms opinion diversity and journalistic quality. Yet the merit good, the public good, and the external effect approach, partly criticized from the economic standpoint, are indirectly taken up by media theory.

As far as external effects are concerned, it appears plausible that media theory identifies them as an element of market failure leading to the need of institutional market intervention. Consumer protection aspects of form and content, such as youth protection, are at most very indirectly taken into consideration by the field of economic theory. Accordingly, economic theory is neutral towards the product configuration, in the same way as it is neutral towards quality, regarding it as completely subjectively defined. It is without a doubt, however, that especially protecting minors from certain contents indeed is of substantial sociological importance. One could interpose that even such an external intervention unnecessarily questions consumer sovereignty, while it is the parents' role to protect their children from undesired media content. However, leaving the entire responsibility to filter media content to the parents would overburden most of them due to the partly inscrutable television landscape, additionally harming a vast majority of children without the perfect composition of parental care. A similar line of argumentation can be identified for the compulsory education approach. Hence it seems that consumer sovereignty is a crucial factor when dealing with adults, yet a greater care is necessary when dealing with minors, who in turn are not their parents' property and must be therefore adequately protected socially and legally due to their limited emotional and rational sovereignty.¹²⁵ Therefore, this aspect is taken up by media theory by integrating it to a certain degree into the concept of journalistic quality. As a consequence, the journalistic quality approach receives an even broader role, including educative and protective elements. At the same time the term becomes yet less explicit than it already was with the supposedly objective sub-norms, such as accuracy, rightfulness, or relevance. Not surprisingly, the resulting regulation consequences anent consumer protection are far from being unambiguous. Youth protection - and consumer protection in general - often appears to be used as a pretext to implement

¹²⁵ This restriction is in fact also valid for a considerable share of adults; yet it is not possible to protect and guide those who lack personal responsibility without conflicting with the overall political maturity concept.

dubious market regulation measures, which do not seem plausible in this context. Accordingly, while regulations concerning the level of violence and sex on television do seem conceivable, especially with respect to youth protection, restrictive regulations concerning the amount and length of advertisement breaks surely do not.

Even though the objectivity of the sub-norms is debatable, journalistic quality and journalistic plurality follow certain normative guidelines, on whose fundamentals third parties may base their judgment about what is qualitatively good and what is bad, and whether the presented opinion spectrum is sufficiently plural or not. Since media theory assumes that broadcasters, as well as viewers, are driven by other objectives than those of journalistic quality and opinion plurality, the market is considered to fail eventually, resulting in the exclusiveness of media contents, which would not only be of unacceptable quality, but in a holistic programmatic perspective to a certain degree harmful to society or at least not favorable for it. This line of argumentation directly leads us to the merit good approach, discussed in the economic market failure section above. Accordingly, while the merit good approach is highly controversial from the economic perspective, it is a given from the media-political viewpoint. Certain media content of cultural and educational value is not considered to be sufficiently supplied under uncontaminated market conditions. The same is valid for a balanced opinion diversity, which under pure market conditions is believed to be provided only imperfectly. Hence the market is believed to fail to supply an assumingly objectively defined qualitative content, as well as the complete opinion spectrum.

The broadcasting sector is therefore considered a public good per se, without taking into account the necessary economic preconditions defining it. Media policy implies thereby that even a highly competitive market would not be able to supply the journalistic quality and the opinion spectrum, which is believed to be objectively defined and socio-politically desired. This assumption is highly controversial when viewed upon from an economic angle. Accordingly, it seems convincing that with a multitude of providers both, the opinion spectrum and the journalistic quality spectrum, will be sufficiently supplied, proportionally to the demand for it. If, however, within a competitive market environment the demand for certain media content is assumed to be nonexistent, it does not seem to make sense to supply such content artificially, since the consumer can easily switch to another program according to his preferences. This logical line is however based on the assumption of a highly competitive market with multiple independent market participants, who would naturally supply the balanced quality and diversity spectrum due to economic reasons. Within a

centralized market the face of affairs is more complex, even when viewed from an economic angle.

Nevertheless, from the communication theory's hypothetical viewpoint, opinion plurality and journalistic quality do not necessarily imply the need for multiple independent competitors. Accordingly, in media theory even one single supplier could provide the necessary opinion diversity and journalistic quality.¹²⁶ However, if such a single supplier is a commercial corporation, then it is questionable that it would maintain a weighted opinion variety over time. Accordingly, commercial corporations will always aim at profit maximization, so that opinion plurality would only be guaranteed, as long as it is the most profitable strategy. Therefore, with one single TV supplier sooner or later economic and political interests would get into conflict with the concept of plurality.

A hypothetical way out of this bond is the strict control over the media monopolist or even direct ownership by an objective institution. Such an objective institution, which would only be concerned with providing maximal opinion diversity and the assumed adequate level of journalistic quality, would indeed lead to a high level of plurality and quality in the journalistic sense. Taking the economic interest as the central element of a private entity into consideration, such an objective monopolistic institution would have to be a public one. Objective public institutions, however, are unfortunately mostly only an idealistic concept, especially when dealing with immense political and economic power, as it is the case in the TV sector. In each political system at least the potential existence and substantial influence of a group of corrupt politicians and businessmen seems to be a given. Existing laws and regulations, directed at controlling politicians and holding them accountable for their public activities, as well as their steady adjustment, imply the existence of such abusive potential, in addition to known empiric examples of high-scale abuse of public functions for private interests. This inefficiency potential is identified in the approach of government failure, which is the political counterpart of economic market failure, which the public sphere is supposed to correct.¹²⁷ Without going too deep into suppositions concerning the level of factual and potential corruption even in democratic systems, assuming the existence of the potentially corrupted political and economic subjects, it would surely be of their general interest to abuse such powerful institutions for own benefits rather than for the public good.

In order to avoid undesired dependencies and interferences by private or public centralized market powers, it therefore seems highly recommendable to strive for opinion

¹²⁶ Heinrich (2001: 104).

¹²⁷ Gravelle / Rees (2004: 341).

diversity and journalistic quality by the coexistence of multiple suppliers, which factually compete against each other in terms of different opinions, journalistic standard and style. Consequently the central journalistic norms of opinion plurality and journalistic quality are in practice tightly linked with the economic approach of supplier diversity. In an indirect way media policy identifies very similar reasons for market failure as economic theory, while weighing and interpreting these reasons according to its own normative hierarchy structure.

3.3. Need for market regulation from both viewpoints

As demonstrated above, even though the intrinsic reasons for market failure differ in economic theory and media-political theory, the results and necessary measures to counteract such failures seem to be quite similar: from both viewpoints regulatory mechanisms seem to be required, in order to ensure the desired level of competition on the TV market. From the economic viewpoint, such external intervention mechanisms are to prevent the arising of a monopolist, who uses her dominating influence for own interests, thereby counteracting individual consumer welfare maximization. From the media-political standpoint TV market regulation mechanisms seem to be unavoidable in practice in order to maximize the probability of weighted opinion diversity and journalistic quality, even though the pure theory allows for different alternatives. Accordingly, not only from the economic but also from the media-political perspective does it seem factually recommendable to foster and guard competition among multiple independent TV broadcasters, since such an economic selection procedure naturally leads to opinion diversity and produces a wide spectrum of journalistic quality. Consequently, the concept of supplier plurality is one, which both theories seem to agree on, even though the initial argumentations have different starting points. Other stated justifications for public market interventions, on the other hand, such as the merit good factor, the public good approach, and the external effect argumentation have differing meanings and weights within the two theories, resulting in differing calls for and extents of the resulting market regulation measures. In any case must those regulation mechanisms be in practice based on legal foundations from both perspectives and require public-oriented institutions to act as objectively and politically independent as possible, while ensuring a competitive environment in both, economic and media-economic terms.

4. Public involvement in the TV sector

If market failures occur, economic competition policy calls for public intervention, in order to regulate the market; and so does media policy. In terms of economic competition policy, such a regulatory intervention is supposed to simulate competition and thereby enforce a price, a quantity, and a quality, which would exist under complete economic rivalry. Public market interference has also the goal of protecting a fair market environment according to a given set of rules, which every competitor must follow.

4.1. Market control mechanisms

Economic competition theory defines various instruments for regulating the market, which are often used simultaneously. Such instruments include market access control, market behavior control, market structure control, and direct market participation. Similar instruments are applied by media-economic policy in accordance with its normative structure.

4.1.1. Market access control

Due to its structure, the TV sector has its own natural access barriers. These natural barriers have partly economic reasons, such as very high investment costs, and partly technical reasons, such as a limited amount of frequencies to be used for terrestrial broadcasting. Yet in addition to these natural barriers, most countries have also created artificial market access barriers for the broadcasting sector.

One of the crucial artificial access barriers is the imperative to hold a broadcasting license, without which putting a program on the air or through the cable would be illegal. Such concessions are most crucial in the instance of a dense supplier compilation, as it is the case with terrestrial broadcasting. Cable companies and satellite broadcasters also require according concessions, yet due to a mostly less restrictive technical framework these are granted more frequently. The following elaborations on that matter will therefore focus on terrestrial broadcasting. The terrestrial broadcasting concessions are in most cases managed by a public institution, which grants them for a specified frequency and a specified limited

time period. When a concession for a given frequency is to be distributed for the first time, the managing institution usually uses a tendering procedure in order to do so. The criteria, according to which the competitor for a given concession will be chosen, generally include not only financial stability but also programmatic factors. Concerning this, the overall fitting of the program structure in the already existing broadcasting landscape is taken into consideration and in many cases also the planned share of cultural programs or broadcasts in the country's native language.¹²⁸ Thus, economic parameters as well as media-political factors both define the public entrance barrier to the television market according to a set of criteria.

Such partly vague and not necessarily legitimate criteria already indicate that this decision-making process leaves much room for subjective interpretations, and therefore manipulations, since it is clear that the question as to which programmatic structure fits best into the existing TV landscape, can always be answered in more than one way.¹²⁹ Once a broadcaster is granted a public concession, she can generally only lose it by severely violating the concession criteria or the existing law. A certain time before a granted concession expires - usually one to two years before the concession expiration date - the respective broadcaster can apply for a new concession. The decision whether or not to grant a given broadcaster the concession for a new time period is however seldom made via the tendering procedure, as it is the case when concessions are granted for the first time. On the contrary, a concession will often only be denied prolongation, if severe violations against the concession regulations or against the law are diagnosed.¹³⁰ Even though exceptions from this model exist, this procedure defines the usual nature of the broadcasting concession process.

This clearly indicates how important early-mover advantages are in the case of the TV market, especially as far as terrestrial broadcasting is concerned: once a broadcaster is granted a concession, it is practically impossible for a potential competitor to take over her frequency-based concession. Moreover, once a corporation is actually in the market, it clearly has a certain influence on the future market structure. Concerning this, during tendering procedures for new concessions, an existing broadcaster has not only an advantage over its competitors due to his market presence, but can also programmatically influence to a certain degree what according to the license managing institution fits or does not fit into the existing broadcasting landscape. Due to such restrictive licensing regulations, the terrestrial market is practically closed for new entrants, unless technological advances allow for a

¹²⁸ Cf. Council of the European Union (1989a).

¹²⁹ Cf. Najwyższa Izba Kontroli (2005).

¹³⁰ Cf. Woźniak (2008).

higher amount of competitors within the given frequency spectrum. Such changes must be clearly revolutionary, and they currently indeed are anent the so-called digital switch-over. The possibility of market reconfiguration due to released programmatic space resulting from the new signal transmitting technology is in most cases not welcomed by the existing competitors on the market, who strive for maintaining their market power positions.

Theoretically, the public market access control on the TV market is aimed towards the protection of economic and journalistic competition, as well as towards the distribution of scarce frequency resources. However, as demonstrated above, the decision-making criteria and processes are in practice often vague and partly questionable. Therefore, they do not necessarily ensure economic and media-political competition goals, such as multiplicity of suppliers and opinion diversity. They very much depend on particular situations and on the respective driving forces behind them. It is hence not always indisputable that the deciding institution has the overall good of the market in mind, especially considering its enormous politico-economic bearing. In the face of technological advances introduced by digital signal transmission, the relevance of market access control on the terrestrial broadcasting market receives an even broader meaning. The potential multiplication of programs brings the chance of inviting new competitors to the market - something which for years was considered impossible due to the technological restrictions of analog broadcasting. It is up to the public institutions with the deciding power of executing the regulating mechanism of market access control in the respective countries, to either use their authority accordingly or to give in to the existing competitors' lobbying activities, who predominantly strive for maintaining their market power also within any new technological framework; not by means of market competition but rather by excluding potential rivals a priori. It is without question, however, that from the economic point of view a higher amount of competitors on the terrestrial signal distribution market would lead to increased welfare, while from the media-political viewpoint it would increase the probability of an amplified opinion plurality and a wider spectrum of journalistic quality. Everything but the multiplication of independent competitors on the broadcasting market in the light of the new technological potential would be therefore inconsistent with the basic economic and media-political guiding principles.

4.1.2. Behavior control

A further governmental regulation mechanism, which is supposed to counteract market failures, is behavior control. From the economic point of view, this instrument is above all directed against those agreements among companies, which are aimed at counteracting competition.¹³¹ Concerning this, antitrust laws, which among other things are supposed to prevent price agreements, are one example of behavior control. Such regulations surely make sense, since price agreements, for example, clearly discriminate those competitors, who do not take part in them, as well as all potential competitors, and ultimately also the consumers. Accordingly, price agreements damage the market price mechanism, setting prices artificially higher than they would be if established by the demand-supply system in a competition-based market, thereby having a negative influence on economic welfare. One has to distinguish the nature of a given agreement however, since not all cooperation forms among independent competitors are welfare destructive per se.

In addition to economically motivated conduct control, there are also those behavioral regulations in the TV market, which are entailed by media policy. Accordingly, regulations, such as those concerning the protection of minors, are supposed to counteract socially undesirable external effects, such as the rise of juvenile delinquency.

While the named examples are elements of economic and media-politically reasonable behavior control regulations, the TV sector also faces those regulations, which limit the competitors' economic freedom on partly questionable grounds. An example of doubtful behavior regulations can be seen in the legal limitations of advertising time in relation to media content. Such constraints confine the market participants' revenue growth stemming from advertising for the supposed benefit of limiting the potential journalistic quality decline.¹³² Another example of doubtful behavioral regulation is mandatory local productions quota, which every EU broadcaster must implement into its programmatic compilation.¹³³

Therefore, in spite of understandable reasons for market behavior control in some cases, such as in the case of antitrust regulations or minors' protection rulings, there are also policies, such as the limitation of advertisement time, which can be regarded as superfluous paternalism and unnecessary, even harmful market intervention.

¹³¹ Toyne / Nigh / Nigh (1997: 223).

¹³² Kübler / Blaurock (2002: 126).

¹³³ The legal component will be closer regarded in Chapter IV.

4.1.3. Structural control

Structural control is a further procedure to neutralize market failures. The control over amalgamations, mergers, and joint ventures, is supposed to counteract dominating market power held and used by one group of market participants against other rivals. Once a dominating market power is created, it offers space for aggressive market activities, such as agreed upon pricing above market prices in order to maximize certain producers' welfare, or pricing below productions costs, in order to push less powerful competitors out of the market. Such negatively perceived market actions can thereby lead to significant limitations of economic competition, and therefore to welfare losses not only on the consumers' side, but in the long run also on the suppliers' part.

Structural control is crucial from the competition policy point of view, especially in those market segments, which are characterized by high fixed costs and economies of scale. Those markets are eminently susceptible to concentration tendencies. In essence, structural control prohibits certain forms of economic concentration by setting numeric borders as to the permitted market share owned by a single economic entity or by a group of market units, whose economic independence is being questioned. It is naturally very difficult - if not impossible - to set objective and doubtless limits defining at which point the line towards a market dominating position is crossed. In practice such calculations need to take the shape and extent of the so-called relevant market into consideration. This is crucial, since in order to analyze if a corporation owns more than the set X% of the market, it is necessary to be sure what 100% of the market look like. While the definition of the relevant market is already a complex task, leaving very much room for controversies given that market segments are interlinked with each other, the justification why on one market for instance 70% and not 69% market share is considered monopolistic and on another market 75% is still acceptable is an even trickier undertaking. As with many economic concepts, also structural control is therefore a market constructive instrument, which is very difficult to implement without controversies in a real market environment, hence leaving space for economically and politically motivated misuse.

In addition to its economic fundamentals, structural control is also fostered by media policy. Even though media policy justifies structural control by the need of maintaining and promoting opinion plurality, rather than considering direct economic factors, the goals of media policy and economic policy are harmonious. An opinion monopoly by economic market concentration and the inherent squeezing out of the market of a too high number of

competitors is in practice clearly inferior to the subsistence of multiple suppliers with respect to opinion plurality and journalistic quality. As a consequence of this natural synchronization of aims, most of the directly defined structural control mechanisms, such as antitrust laws and merger control, are based on economic competition policy.¹³⁴ Therefore, economic policy dominates the implementation of structural market control mechanisms, whereas media policy profits from most of them in an indirect way. Yet there are also exclusively media-political regulation mechanisms, which influence the television market structure. Concerning this, while the external economic market structure is controlled by economic instruments, media policy rather controls the interior structure of the sector. More specifically, media policy is concerned with the control of the television market's programmatic structure. As already indicated above, the market access is limited for new potential suppliers not only by economic and technological reasons, but also by the question, whether or not a potential competitor fits into the existing programmatic scenario according to a central institution. The idea behind such programmatic supervision is to have a balanced thematic spectrum of TV programs, rather than, for instance, only sports channels. However, in less extreme cases, imposing a certain programmatic configuration on existing and potential suppliers is per se surely a controversial concept.

In this connection it is worth mentioning that normally the multitude of structural regulations on the broadcasting market differs from the one on the related press sector and on the Internet. Whereas the press sector control is basically limited to economically motivated mechanisms, leaving the internal journalistic structure be regulated by the market itself within some general rules of minor and privacy protection, which are even less effective in the case of the Internet, the broadcasting sector's structural control also includes the regulation of its intrinsic configuration. This is mostly due to the fact that TV broadcasting was for quite a long time reserved for the government, while commercial broadcasting on a broader level is a rather new concept for most countries. Accordingly, it seems that most governments are not very keen to give up control over such an opinion-shaping mass-communication instrument.

It is impressing in this connection that in most democratic systems the governmental distance towards the journalistic competition in the press sector obviously leads to a relatively high opinion diversity and journalistic quality, even though economic forces dominate the competition on the press market. Accordingly, it seems that in contrast to the leading media-political conviction, governmental restraint rather than central regulation

¹³⁴ Heinrich (2001: 285).

assures opinion plurality and a multitude of different levels of journalistic competition.¹³⁵ Media policy, however, seems to apply different standards to the television market.

On the one hand, the rightfulness of the different approaches concerning the print press and audio-visual media is clearly questionable; on the other hand, however, it can partly be justified by the two markets' structural differences, since the TV sector naturally - in terms of economic and technological characteristics - embraces a lower number of competitors than the press market. Even more striking are the control differences between the television market and the Internet, which on the one hand offers space for an unlimited amount of competitors and on the other hand is still relatively resistant to constantly increasing censoring intentions with certain infamous exceptions.¹³⁶ Yet it is still questionable - while being not less desirable - that in the hypothetical case of a similarly high number of market participants on the TV market, the public institutions of media policy would apply the same distance to the programmatic structure as it is the case on the press or Internet market. The reason for that seems to lie in each government's vast interest to maintain control over the politically and economically significant sector of television broadcasting, what also seems to be the major motive for intensifying public control efforts directed at the Internet. While in this connection certain TV market regulations seem justified, such as those counteracting a too high market power of one single broadcaster or those regulating the amount of violence and sex relative to the broadcasting time, other ones seem inadequate and rather counteracting the intrinsic norms of economic and media-political theory, such as advertisement time regulations and promotion of locally produced programs independent of the respective demand for them.

4.1.4. Direct market participation

The most intermediate market regulation mechanism, which the public sector disposes over, is direct market participation. This mechanism basically addresses all of the named causes of market failure. Accordingly, it may be directed at counteracting competition-related market failures by capturing a given market share, which private entities cannot absorb with the usual economic concentration measures. Hence even if a private

¹³⁵ For completion purposes it should be stated that in most systems - also in Poland - several culturally relevant publications are as well publicly co-financed. Yet the degree of this kind of subsidies is marginal compared to broadcasting public funding.

¹³⁶ Famous international examples of broad public Internet control measures are China's censored version of Google, its temporal blocking of the service YouTube during the Urumqi incidents, or the French HADOPI law.

entity is financially able to monopolize the whole commercial part of a given market, the public supplier will mostly be at least the ultimate remaining antipole. Regarding this matter more dynamically, the pure existence of a strong public market participant may also reduce the motivation of concentration tendencies before they actually happen, since the overall monopolization success is a priori limited quite considerably.

Direct market participation can be furthermore utilized to share inside information with the public. In doing so, extreme information asymmetries, which are generally welcomed by commercial market players due to economic reasoning, can be counteracted. This is of special importance for the broadcasting sector, since information is one of its primary goods. Even without commercial monopolization it may for instance be economically favorable for all commercial market participants to present given information from an attractive, demand-oriented but not necessarily accurate perspective. In such a scenario the PSB can be the institution to lessen the extent of information asymmetries between television content providers and viewers. This role is captured by the concept of the public service remit of broadcasting, which is the declared educative and informative mission of public broadcasters.¹³⁷ This role of public broadcasting is of course a publically very optimistic one, which does not always meet the factual behavior of public and private broadcasters. While PSBs are in practice certainly not the incorporation of objective broadcasting, commercial media companies are not manipulative per se. However, the PSB may or may not follow the principles of fairness and objectivity, depending on the political philosophy of a given deciding political fraction, yet it must to a certain politically calculative degree consider the voters' moral interests if regarding a democratic framework. Commercial entities, on the other hand, are neither moral nor unmoral; they are a priori neutral towards the social sphere of their media content. Since monetary measures are their decisive parameters, commercial broadcasters may opt for objective and accurate broadcasting in the programmatic sector of information, yet they may also choose the other way round, depending on the expected - not only short-term - financial revenues of such a decision.

A similar mechanism is valid for the merit good assumption of media goods. Since commercial broadcasters calculate their decisions based on money, they will obviously neglect merit goods. The most effective way to force the expected shape and extent of those merit goods publically is naturally their direct delivery. Accordingly, if television is

¹³⁷ The terms public mission, public broadcasting service, and public service remit will be used as synonyms throughout this paper.

considered the carrier of the partially public good information, its co-supply by a direct entity only seems consequent.

Yet if this and further market failure assumptions are wholly or partly questioned, direct market involvement as a market regulation matter, is not so striking anymore and requires a deeper analysis. In simplified words, the more economically liberal the viewpoint concerning the television market the fewer the arguments justifying direct public market intervention. Yet the lesser the inclination to consider the TV sector as a simple consumption market rather than as a delicate sector of public interest, the more reasonable appears direct public broadcasting as a complementation to commercial suppliers, at least under centralized market conditions.

4.2. Flow-specific layers of public market involvement

The discussed methods of regulation policy can be identified in different implementation flows of public broadcasting market involvement. The table below demonstrates this spectrum.

Table 1: Levels of public broadcasting regulation

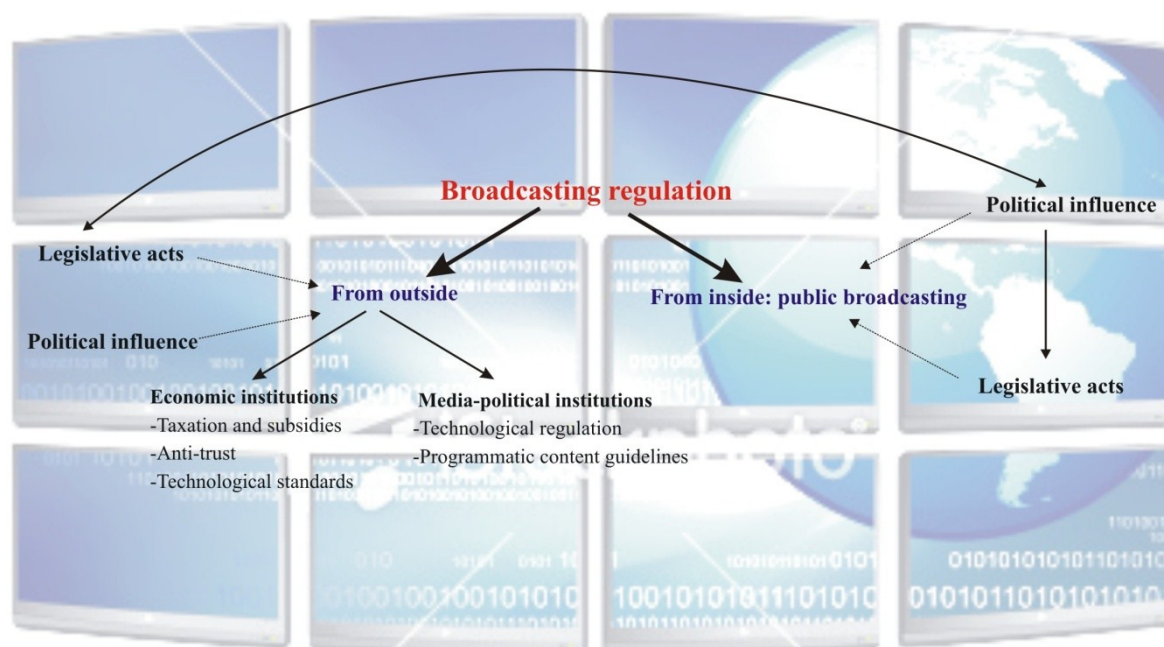
Economic	Media theoretical	Legislative	Political
-Taxation and subsidies	-Technological regulation	-Legislative acts on the EU level	-Personnel decisions
-Anti-trust	-Programmatic content guidelines	-Legislative acts national level	-Influencing regulating bodies
-Technological standards	-Direct public broadcasting	-Jurisdiction	-Influencing legislation

The table distinguishes the economic, media-theoretical, legislative, and political level of market regulative activities. The economically motivated regulation sphere embraces the most basic area of public interference in form of regular tax collection and subsidy grants. It furthermore includes anti-trust regulations and institutions to guard over a fair marketplace and counteract possibly harmful concentration tendencies. The public sphere can also impose and foster technological standards, motivated by macroeconomic progress and global competitiveness, since those goals, while not being the primary concerns of the

predominantly nationally oriented broadcasters, are surely welcomed by viewers. The implementation of those technological standards is in turn overseen by media-political institutions. This area of public market regulation also intervenes in the programmatic sphere of broadcasting by guidelines and regulations concerning youth protection, advertisement time, national productions, and socially desirable content matters. This level of direct involvement in the media-good as such can even go further by means of public broadcasting. Legislative acts and their jurisdiction further define the economic and media-politically shaped market environment. All the spheres are furthermore co-defined by political activities of the public sector. Since the regulating public institutions and legislative bodies are mostly chosen - or at least codetermined - by political bodies, they have an indirect but in practice often very considerable say in the respective institution's field of actions.

The following graphic views these different flows of public broadcasting involvement from a slightly different angle, demonstrating the hierarchy of influence.

Figure 5: Flows of public broadcasting regulation



Accordingly, two basic levels of public market interference can be distinguished. The first level embraces market regulation from outside implemented by means of different economic and media-political public institutions and the second basic form of market involvement is

identified as direct internal market participation by a public broadcaster. Both major interference flows are furthermore influenced by factually higher-ranking legislative and political decisions and unofficial exertion of influence.

4.3. Possible market structures according to the main theories' balance

The theories of economic competition and media policy have been presented and their differences and similarities with respect to the television market have been analyzed and evaluated. It has been mentioned that in spite of their different norms and procedures both theories imply a need for market regulation whose various elements, dimensions, and dependencies were further analyzed. The most basic implication is that both theories undoubtedly affect the TV market to a considerable degree, resulting in certain possible market regulation measures, yet nothing has been said about the balance of influence, about the hierarchy of theoretical authority. Should economic postulates dominate, should media policy have the decisive say, or should both theories be rather valued equally? The answer to this question is in theory far from being unambiguous and depends in practice on the various market specifications, thereby having a dynamic character. Since a direct answer to this seemingly simple question is worth avoiding, it shall be tackled from its back view. Accordingly, the two theories' different hierarchy structures will be regarded in terms of their practical consequences on the TV market structure. Since it is not possible to analyze the whole balance spectrum, only three theoretical scenarios will be regarded: the two extreme scenarios, in which either theory has complete dominance and one compromise scenario, in which both theories have a similar impact on the resulting market framework. Since such hierarchy balancing between theories is a rather abstract scenario, especially when considering the practical market sphere, the results should be treated with the adequate distance, while they may help understanding the links between a given or proposed TV market structure, its theoretical origins, and its socio-political consequences.

4.3.1. Extreme scenario: exclusively public sector

The first scenario is the extreme case of a television market, which is wholly controlled and managed by public institutions. Private entities have no shares in the market.

The configuration of TV stations and their programmatic spectrum is imposed from above with little or no independence. PSBs compete with each other, yet without the necessary action sovereignty and indispensable motivation for real competition. The desired opinion plurality and journalistic quality are directly implemented and controlled based on a central deciding body. The dominating theoretical foundation is media-political theory, while economic competition theory plays no role at all in this scenario. Accordingly, broadcasting financing is complemented by public funds whenever market revenues are considered insufficient.

Such a market configuration is associated with the early stages of broadcasting, as well as with totalitarian systems. Even though opinion plurality and journalistic quality may be the proclaimed goals of such a closed public broadcasting market, the immediate proximity of all TV content to politics causes intuitive concern. For it is only rational for a ruling party to put less emphasis on self-criticism and more on the positive sides of its governing, while at the same time being keen to disparage the opposition rather than objectively evaluating her. The objectivity of broadcasting is hence clearly questionable within a scenario of complete public broadcasting control and the abuse of political influence almost suggests itself.

The only realistic ways to lessen the extend of biased public broadcasting are decentralized nominations of the PSBs' board of directors - including a say on the side of the opposition - and cadences, which are asymmetrical in length and timing to those of governments as well as towards one another. In theory the fact that not only the government, but also the senate, the president, and other public instances have their candidates in relevant broadcasting directing positions, whose cadences are in addition time-shifted relative to those of other directors and to general political elections, may seem like a cure against the politicization of broadcasting. However, it is in practice often a very unstable one. Concerning this, all political instances choose their respective candidates to a quite high degree based on political calculation rather than on professional expertise. It is therefore without a doubt that the most important actions of the respective boards of directors are above all politically motivated, while media-political postulates come second, especially when lacking commercial competitors. Short-term coalitions, conflicts, and constant intents to take over the deciding power of the respective broadcasting entity based on the respective voting framework accompany such a political configuration of broadcasting boards. In addition to the internal struggle for power among the public media directors, which is actually rather an externally delegated one, attacks from outside will not be evaded even by

the best decentralization and asynchronization ruling. There are always ways for the governing unit to overstretch legislative acts - without openly and explicitly violating them - in order to replace uncomfortable directors, especially when the jurisdiction's independence and objectivity is not indisputably guaranteed. A special case in this connection are amendments to broadcasting acts, which often automatically terminate the cadences of all central directors, giving the ruling party the option of a desired personnel reconfiguration.

As a consequence, the crucial broadcasting decisions are often based on political calculation, while media-theoretical postulates form the official decision-making background, being implemented where they do not collide with political interests. The desired level of opinion plurality and journalistic quality within the public service remit is directly and exclusively provided by public service broadcasters. Economic norms play a very inferior role and with them the viewers' actual demand structure. Paternalistic broadcasting can be the consequence, whose innovativeness and efficiency is rather below-average, due to the lack of real competition and consumer orientation. The immediate proximity of all broadcasters to the government is very likely to cross the line between independent, objective journalism and the instrumental use of audio-visual content for piloted political interests.

4.3.2. Extreme scenario: exclusively commercial sector

The second scenario presents the other extreme of the two major theories' hierarchy balance, with economic considerations clearly dominating the broadcasting market structure. Within such a configuration, the television market is completely commercialized with private entities competing for the entire market's shares. Private broadcasters compete against each other based on programmatic content quality and on price, on both, the advertisement and the signal distribution market. Within an economically competitive environment, financed by market-based revenues, the programmatic content is a function of the assumed demand structure. Opinion plurality and journalistic quality are a consequence of broadcasting activities by a wide spectrum of independent, demand-oriented TV stations, rather than being decided upon by an external third party. While many media-theorists may disagree that a socio-politically desirable level of opinion plurality and journalistic quality would be achieved by the pure interaction of demand and supply, it seems reasonable to claim so in the case of a high number of competitors. Broadcasters will found their programmatic decisions based on the viewers' demand structure, which in turn reflects a

given society's opinion diversity. The same seems to be valid for journalistic quality: if there is demand for a given programmatic quality level, it will definitely be covered by commercial suppliers within a competitive environment, due to potential profits resulting from those consumers. The only reason for not covering the whole demanded opinion and journalistic quality spectrum is the lack of programmatic space and time. However, within a hypothetically diversified market, in which a multitude of competitors dispose over a high number of own channels, the space problem is non-existent.

Such a market configuration seems desirable, since it indicates the fulfillment of the major economic norms and at the same time realizes crucial media-political postulates. However, one basic condition needs to be fulfilled within this scenario, in order to generate these desirable results, namely the mentioned wide spectrum of independent competitors. This may seem banal on the first glance, yet basic market rules indicate a different view. Within a market of negligible entry-, fix-, and exit costs it is indeed almost natural for a high number of competitors to co-exist, assuming a certain relevant demand structure. However, markets with negligible investment preconditions are rather the exception, while the broadcasting market is surely on the high fixed-cost side of the spectrum. Within such a market the first preselection of potential suppliers takes place right in the beginning, since only relatively few economic entities can obtain and afford to invest the necessary funds - several million Euros¹³⁸ - to set up a broadcasting facility. Moreover, the technical conditions not always allow for an unlimited number of broadcasters, as in the case of terrestrial broadcasting. This limits the number of suppliers right from the start, both, economically and technically. Not always will these restrictions allow for a sufficiently high number of independent competitors, in order to speak of a functioning market mechanism. How high this "sufficiently high number" empirically is depends on the particular market and its macroeconomic characteristics.

Yet even when regarding a television market, in which the initial economic and technological barriers are overcome by various independent broadcasters, the middle- and long term market configuration will have a clear inclination towards concentration. In markets with high fixed costs and resulting economies of scale producers gain exponentially when uniting with one or more competitors. Without interference from outside, the natural consequence of a concentrating market is the survival of one monopolist. Yet even before that, in the course of mergers and takeovers resulting in the gradual reduction of independent economic entities, a certain critical number is reached, which changes the forces on the

¹³⁸ US National Telecommunications and Information Administration (2009).

market. Below a certain critical amount of independent competitors on the television market it is not necessarily the demand structure anymore, on which the programmatic content is based. Whether this critical number is five, three, or two depends on rather complex specifications of a given television market and is very hard to define theoretically. Once this critical number is crossed however, the factual opinion plurality becomes questionable. What is more, the existence of different television stations owned by the same holder may simulate opinion plurality, which in reality neglects considerable socio-political standpoints. Neglected political viewpoints, in turn, suggest their inferiority and as a consequence very often their gradual downfall. The exact effects of such a concentrated commercial television landscape are certainly difficult to foresee and are in addition dynamic in nature, yet it is clear that within a broadcasting market, which initially fulfilled the basic economic and media-political postulates, this assurance cannot be given anymore after a certain supplier density is reached.

The potential of political abuse is very high and probably even more sophisticated within a concentrated commercial broadcasting market than within the complete public broadcasting scenario discussed above. The socio-politically dangerous symbiosis between political instances and market dominating commercial broadcasters can be kept hidden from the public quite easily, while allegations of biased reporting can be disclaimed by pointing at journalistic independence and indisputable market rules. Yet it is clear that journalistic freedom can only be carried out by those who are employed. If there is only one employer (in the extreme case) and a hypothetically objective journalist is not willing to follow assumed guidelines, he may never get the chance to realize his journalistic freedom. The same is valid for market rules, for they only exist if the market really functions. If a market is too dense, the basic demand-supply mechanism is not working and the monopolist (in the extreme case) decides over the product configuration, its price, amount, and quality. The receiver - similar to the free but unemployed journalist - has no alternative other than a complete switch-off when all broadcasting stations are owned by the same economic entity (in the extreme case).

In order to prevent this extreme scenario the emphasis must be put on upholding a multitude of independent broadcasters. While the initial entry barriers have to be tolerated to a certain extent, the ensuing concentration tendencies can surely be counteracted. Competition policy regulations are necessary, and a regulating independent politically body must keep the number of competitors from crossing the critical level of supplier density. Of course, also in this case the existence of a regulating politically independent body is a

critical issue, since such a powerful institution is always considerably susceptible to politically motivated interference attempts, and must therefore be implemented and function with the highest care possible. Yet only the maintenance of a sufficiently high number of independent competitors can assure the political independence of the market as a whole and ensure the functioning of a demand-oriented programmatic structure, which fulfills the socially representative spectrum of opinion diversity and journalistic quality.

4.3.3. Evaluation of the extreme scenarios

The two extreme scenarios presented above show the possible dimensions, risks and conditions for a socio-politically well-functioning broadcasting market when either one of the major broadcasting theories clearly dominates. The nature of a fully public broadcasting market seems to be a politicized and inefficient one, while fully commercial markets with high fixed costs have a clear concentration tendency, which eventually endangers both, economic and media-political welfare. As a consequence, complex administrative measures need to be implemented and constantly controlled, in order to minimize the political impact on the broadcasting entities when considering a fully public broadcasting market. When a broadcasting market is dominated by economic postulates, on the other hand, its well-functioning depends on external competition policy measures and public control, in order to maintain a sufficiently high number of independent broadcasting entities. In both cases, the control measures need to be well-considered, consequently implemented, and dynamically adjusted to the constantly changing technological and economic market framework. Otherwise economic and media-political plurality will only be a fiction within a publically or economically monopolized television market.

Comparing the two extreme scenarios, the economic market configuration seems more promising than the public one for several reasons. First of all, an entirely public television market is already monopolized right from the start, while any control mechanisms may only aim at the public monopolist's behavior. Even though the public television stations may not be directly connected, they still have the same owner, which considerably reduces their sovereignty. Moreover, this regulation scenario suggests that public institutions control public institutions, so at the end of the day, even in an indirect manner, they are actually controlling themselves. The entirely economic scenario bears similar monopolization risks, yet the control potential seems more promising. Assuming a sufficiently high number of competitors at a given starting point, the market is indeed striving towards concentration,

while not being monopolized right from the start. Consequently, the mission of the controlling body is to maintain the competitive environment in such a manner that a sufficiently high number of market participants are upheld, so that competition and other market mechanisms can factually function by themselves. A public entity is in this scenario controlling multiple independent commercial broadcasters, so that the abuse and corruption potential is by far more decentralized and defanged than in the case of one public entity controlling other public units.

4.3.4. Compromise scenarios

The practical implementation problems of either scenario may be eased by a combination of both theories. Even though such a combination seems to be a good solution when considering it spontaneously, it still bears substantial conflict and abuse potential for three major reasons. First, the proper definition of such a compromise is a noteworthy challenge - where should the exact borders of unlimited economic freedom end and public regulation begin? Second, even when eventually defining the shape of the compromise, the proper balance between both influencing theories will always be an issue of conflict and debate and each implemented form will not be free from fierce, and from a certain angle surely justified, critique. Third, mistakes, imperfections, and misuse will in each possible compromise scenario lack absolute and undoubted accountability, since the public sector will blame the commercial part of the market for potential problems and vice versa. However, there surely are market preconditions and circumstances, which make such a compromise in spite of the drawbacks plausible, at least as an interim solution. In order to present the overall difficulties of identifying and implementing the proper compromise between the two major theories of television market influence, the dual broadcasting system as an exemplary inter-theory model will be closely analyzed.

5. The Dual broadcasting system

As mentioned earlier, media-political theory sees a need for regulations, which go beyond the pure control of the economic market access, behavior, and structure. Accordingly, the theory of media policy considers it necessary to intervene in the

programmatic structure of the market participants, since due to the existence of merit goods, information asymmetries, and further market failures, the market is believed not too be able to ensure the publicly desired level of journalistic quality and opinion diversity by itself. The central regulation of media content can take many shapes, reaching from loose rules, which apply to all market participants, to complete control over the TV sector, as for example in the case of factual public ownership of all broadcasters. The lower the market regulation is, the higher the economic freedom, yet the poorer the assumed journalistic quality and especially under centralized market conditions also the opinion diversity. Analogously, the higher the governmental control over a sector, the more direct the fulfillment of media-political norms, yet the bigger the economic concerns with regard to market distortion and inefficiency; for a monopoly always bears the same risks and dangers to competition from the economic point of view, no matter whether state-owned or in form of a private corporation.

A possible compromise in the conflict between the media-political approach concerning the broadcasting sector and the economic one is the dual broadcasting system, which is present in most European countries today.¹³⁹ The dual broadcasting model describes the co-existence of private and state owned competitors on the broadcasting market. In addition to the difference of the ownership structure, public broadcasters differ from commercial ones, in so far as they are mostly at least co-financed by public fees or taxes, while the private broadcasters are generally exclusively financed by advertising revenues and/or TV signal distribution fees. On the other hand, public financing of governmentally controlled broadcasters does generally not exclude additional financing forms, such as advertising, sponsoring, or selling transmission rights to TV signal distributors.¹⁴⁰ The justification for the additional funds is presented by the public mission of broadcasting, whose fulfillment requires front end financing, due to its assumed independence from market rules.

The economic level of the dual broadcasting market embraces its commercial competitors, but also partly its public component, namely if the state-owned broadcasters compete with their private rivals commercially over the major television submarkets in addition to their public revenues. While economic competition theory is the sure foundation for the private broadcasters' part of the market, it is rather a deformed one in the case of public competitors. Media-political postulates rather than economic theories constitute for

¹³⁹ Cf. inter alia European Broadcasting Union (2000: 9) and De Smaele (2007: 131).

¹⁴⁰ Cf. Kiefer (2005: 159).

the dominating fundamentals of public broadcasting within the dual broadcasting model, at least in its basic supposition. The public broadcasters are generally the ones supposed to provide the necessary opinion plurality and journalistic quality, which the commercial part of the sector is a priori believed to generate to an insufficient degree. The evaluation of this concept depends on the theoretical viewpoint, since both approaches focus on different aspects of such a market configuration.

5.1. Evaluation from the economic viewpoint

Within the dual broadcasting system the commercial part of the market generally follows economic mechanisms, while the public part rather distorts them. From the strictly liberal-economic point of view, the co-financing of public broadcasters, who operate on the same market as private TV corporations, signifies subsidizing them. Accordingly, if the public fees constitute for the only financing source of the respective PSB, an interior logic of this public market behavior possibly exists. If, however, the public service broadcaster is as active on the commercial financing markets as her private competitors, this sort of additional public funds can clearly be interpreted as a considerable market interference, by which private broadcasters are financially discriminated. In other words, the public broadcasting component is from the economic perspective more distorting when it competes with the commercial competitors for viewers in connection with advertising revenues. Admittedly, even without the presence on the advertisement market, public broadcasters compete with their commercial counterparts for viewers. However, the financial effects are by far more perceptible for the commercial entities when they factually have to share the naturally limited advertisement budgets with their public equivalent.

The only intrinsic justification for additional financing is its clear accountability to a reasonably defined public mission. Informative, educative, and cultural programs may under merit-good assumptions be indeed publically co-financed, if they are considered to close the gap anent opinion plurality and journalistic quality, which a concentrated economic market may not be eager to fill due to respective market mechanisms. Yet many countries also include content, such as entertainment shows or sporting events, in their public mission. In doing so, the PSB directly competes with commercial suppliers in a subsidized manner. Moreover, such a broad public remit definition forces the public to pay for respective

transmission rights and broadcasting time, independent of their factual entertainment interests and without a proper connection to the public interest.

A wider economic justification as to the existence of public service broadcasters and their public co-financing can only be found when interpreting the broadcasting market as a strategic market of higher national importance. Whether the TV sector indeed is a market of such strategic importance depends on the potential threat of its monopolization by a narrow group of interest and the probability of the factual market domination scenario by this narrow interest group, if direct public control were not applied. Accordingly, it is without question that the TV market has an enormous influence potential on the respective society, being able to address each household with a television. It is the major source for public opinion formation, which considerably affects election decisions, consequently having immense social responsibility and at the same time also massive abuse potential. Therefore the theoretical scenario of a private monopolization of the broadcasting sector indeed bears considerable social risks, going beyond the threat of economic monopolization. As to the probability of such a scenario, it can be stated that if a market is due to its fixed-cost intensity as concentrated as most TV sectors, competition policy mechanisms may be regarded insufficient and a direct intervention in form of a public competitor may be indeed considered necessary. However, this conclusion assumes the resignation of promoting and upholding a sufficient number of independent competitors on the market, which by their pure existence accompanied by a regulating body would counteract the threat of capital monopolization and with it opinion centralization. Therefore, from the viewpoint of strategic economic policy, the co-existence of public and private broadcasters only seems to make sense if maintaining a crucial number of commercial competitors is considered impossible. Otherwise the relevant competition regulation measures could also be implemented without a direct public market participant.

Yet the partial plausibility of this kind of co-existence does not necessarily imply the justification of additional financing for a PSB, who as well competes with his private-owned pendants on the commercial market for corporate advertising budgets. Therefore, even within this framework, additional financing of public broadcasters only seems acceptable either in the short and middle run, namely until the public TV provider can compete on the market on its own without the genuine risk of bankruptcy, or within a framework of definite and transparent separation between the PSB's public and commercial operating range. Therefore, at least in the long run and with the perspective of a broad and diversified competitor spectrum on the market, it seems plausible that public service broadcasters

should not be subsidized at all but should have the same financing conditions as commercial providers, at least in the sphere of commercial programmatic content. If the public broadcaster acts under the same financial conditions and restrictions as its commercial competitors, it does not distort the market mechanisms from the economic point of view and can be considered a coequal part of it.

5.2. Evaluation from the media policy viewpoint

More arguments in favor of the dual broadcasting model can be found on the side of media policy. Accordingly, the necessity to fulfill the socially significant role of providing valuable merit goods, which under pure market conditions would not be provided in the desired quantity, plurality and quality, is called the public service remit of broadcasting. Since media policy questions the proper fulfillment of the public service remit by the market itself, it considers complementary public involvement necessary and therefore justifies the need for additional financing of this public mission.¹⁴¹ This line of argumentation holds that numerous cultural and politically informative media contents, which are socio-politically desirable, would be missing if not provided by public broadcasters or at least delegated by a respective public institution. The evaluation of this reasoning seems however to depend on the existing market density. For it seems more convincing when talking about a very concentrated commercial sector, since a competitive market with a high number of independent broadcasting suppliers, who act according to the receivers' demand structure, surely is capable of providing a sufficiently diversified opinion and quality spectrum. Media theory, however, does not make such a distinction and seems to assume that independently of the market density, a demand-oriented supply mechanism will not provide the desired extent of socio-politically desirable media goods. Since, according to media-political theory, the market fails to offer the necessary funds for covering the costs of providing merit goods in the desired quantity and quality, additional financing is needed for this purpose. Given that the public service remit is supposed to serve a significant social purpose, this additional financing must stem from public sources. The traditional dual broadcasting concept's distinctiveness in comparison with other compromises between competition and media theory is that the role of providing the public service remit is generally exclusively held by

¹⁴¹ Cf. Beck (2005: 267ff).

the public service broadcaster. This means that within this model public market intervention goes beyond the conceptualization of the public broadcasting service through guidelines, regulations, and control to the point of its direct implementation. As a consequence, the public broadcasting financing is usually exclusively intended for the PSB.

The commercial part of the market is similarly disturbing for the public broadcasters as it is vice versa. This is especially true, whenever commercial broadcasters absorb viewers from the allegedly relevant content offered by PSBs. What is more, media policy generally considers popular commercial media content as being of low value, which deforms the viewer's sensitivity for journalistic quality, thereby distorting the overall standards, to which public broadcasters to a certain degree feel obliged to adjust, in order to remain competitive. This line of thought is somewhat paradox, since it assumes that in order to foster and maintain a high journalistic quality standard it must be lowered. The assumption behind it is that, in simple terms, there is a stronger demand for lower than for higher journalistic quality. While this hypothesis is questionable as an absolute factor - even though modern infotainment seems to prove otherwise - even more doubtful seems the presumed cure for it. How can it be constructive for the sake of higher journalistic quality to provide similar quality standards as the supposedly low ones supplied by commercial broadcasters? More reasonable seems the suggestion to compete with the presumed lower journalistic quality by providing high quality content transmitted in an up-to-date, partly demand-oriented framework. While innovative transformation methods often imply a loss of critical information¹⁴², it is not an overall automatism. Concerning this, many innovative formats - headed by the productions of *Discovery Communications* - have proven that relevant information of a considerable journalistic quality level and the use of innovative user-friendly audio-visual techniques are indeed compatible. Accordingly, it is often not the content as such, which loses the competition against easier digestible media goods, but rather the form of its audio-visual communication.

5.3. Critique related to the dual broadcasting concept

As shown above, the media-political line of argumentation related to the dual broadcasting concept goes beyond the need for economic competition on the market,

¹⁴² Ontrup / Schicha (2001: 160ff).

questioning a priori the achievement of a satisfying level of journalistic plurality and opinion diversity by pure market competition. The so-called public service remit must therefore be guarded by a public institution, and this is done most directly by means of a public broadcaster. For media policy the existence of more market participants than the public one, which fulfills the public service remit, is in general not necessary, yet it is accepted as a concession with the principles of market economy. Therefore, the dual broadcasting concept can be best interpreted as a compromise between media policy and economic competition policy. However, like any other compromise, also the dual broadcasting concept is not free from reasonable critique.

5.3.1. Media goods and merit goods

Media policy calls for the fulfillment of the public service remit, predominantly based on the assumption that the socio-politically desirable media goods are merit goods. This assumption can be questioned in its absoluteness, however, based on the earlier elaborations of this work.

One could try to defend this paternalistic approach by questioning demand orientation per se as the guiding institution of market forces. Accordingly, one could argue, for instance, that most smokers are aware of the health risk they take while at the same time continuing to demand cigarettes, which makes it necessary for the public sector to save smokers from their defective demand. One could go further and take stronger narcotics as an example of the need for a relativization of individual rationality and consumption sovereignty. However, first of all, it is generally questionable to try to limit a person's choices to those, which are constructive according to the mainstream categories of everyday life. Many smokers, for example, seem to readily pay the possible health-issue price for the individual delight of the moment. Does the lawgiver have the right to interfere in this decision-making process? It seems that highly addictive substances may indeed justify such an active involvement, due to their obvious limitation of free will once addiction is reached. However, the question of television consumption does certainly not belong into this category.

Even though the phenomenon of TV addiction should not be neglected¹⁴³, it would be highly exaggerated to generally view television consumption in the light of addictive

¹⁴³ Cf. Steuer / Hustedt (2002: 41ff.).

behavior, which requires public help. Even if qualitative downfall may characterize current global television markets, partly resulting from the information overflow and marketing measures stimulating the demand for commercial media products, a paternalistic approach towards politically mature adults does neither seem to be the only nor the best conclusion. If the current media structure and its mechanisms are diagnosed to be partly too overwhelming for the average user, it seems to make more sense to help him understand the viewing decision, rather than trying to impose one instead. Thus media literacy seems to be the more constructive concept, teaching especially - but not only - the young generation to understand media processes and how to deal with them as a substantial part of school education. In several countries, such as Australia, New Zealand Canada or Sweden media literacy is already an integral part of the school curriculum, while the European Union puts emphasis on implementing this solution among all of its member countries.¹⁴⁴

While further advancements in media literacy seem indeed essential to give the viewer the necessary tools for his individual viewing decision, the assumed merit good character of informational television content should not be derived from questioning the adult viewer's demand structure, for free will must not be limited to the socially accepted and presumably right decisions only, also in terms of television consumption. At the same time, the diversity of private information programs or the sophisticated and profitable multinational programmatic structure of *Discovery Communications* seem to be examples, which further contradict the thesis that desirable media goods cannot be provided sufficiently by demand-oriented commercial suppliers.

If we negate the main thesis that informational media goods are merit goods in the absolute sense of the term, it becomes more difficult to uphold the claim for publicly co-financed broadcasters within a competitive environment, since the so-called public service remit would practically be fulfilled by the market competitors with no additional public funds. However, one must keep in mind that in order for the commercial market to provide a satisfying level of opinion diversity and journalistic quality, it must not be too concentrated. Only above a crucial number of multiple independent broadcasters can the market be expected to be competitive enough in both, the economic and media-political sense, thereby providing viable, welfare-increasing prices, as well as different levels of journalistic quality and an opinion plurality, which reflects a given society's factual viewpoint composition in depth and variety. Below this crucial number of independent media producers, whose exact value is a question of empirical analysis for each market, the risk of opinion monopolization

¹⁴⁴ Cf. European Commission (2010a), European Commission (2010b), Haller (2006).

and insufficient qualitative diversification is indeed realistic. However, this risk is not adequately captured by the merit good concept, since the assumption of merit goods implies a market failure independent of the number of competitors. Yet if this concept is modified in such a way that merit goods in the television market embrace desirable media goods, which are not supplied by *a given* market configuration of rather few independent competitors and not a priori by *any* market configuration, it seems acceptable and so does the deducted consequence of a complementary public market intervention.

5.3.2. Merit goods, the public service remit, and public broadcasting

Yet even if we accept the thesis, that the public service remit as the central category of media policy can't be provided by market mechanisms - or a given market's mechanisms under certain concentration circumstances - and therefore needs to be regulated, the need for public broadcasters is still not necessarily implied. Public broadcasting is only one of several possible instruments for fulfilling the public service remit from the viewpoint of media policy. There are clearly other possible alternatives in order to regulate its implementation. One alternative to foster socio-politically desirable programs is to call for tenders among commercial broadcasters, or among both public and commercial ones on equal terms. Based on the media-political standards of the public service remit - opinion diversity and journalistic quality -, a regulating institution could specify what is expected from the tendering competitors, and choose the most optimal offer as far as price and quality is concerned. In doing so, private broadcasters would not only be financially interested in producing the desirable programs due to the public funds, they would also strive to offer the media contents in the most attractive and professional way, in order to gain viewers, and therefore to profit twice. It seems possible that this mechanism could provide at least comparative results to those achieved by PSBs with respect to the fulfillment of the public service remit as far as educative, cultural, and political programs are concerned.

However, the implementation of such tendering, which includes commercial competitors is not unproblematic. First, it is not easy to objectively define the journalistic criteria for a given desirable media good, say a historical magazine, and combine them with financial specifications. Palpable problems concerning this matter arise once a contractor is chosen, the ordered program is produced or in the process of production, and it does not meet the actual requirements. Accordingly, it is doubtful that a commercial broadcaster would let a public institution actively intervene in the media production process, even if the

latter ordered the respective broadcast. Thus how could a possible conflict as to the eventual effect of an ordered program be solved? Can the public tenderee refuse to pay for the dissatisfying service? Who is to decide if the order was realized according to the original tendering specifications and assumptions? These questions are hard to answer and picture at the same time a very probable scenario when considering the use of the tendering mechanism in the broadcasting sector.

Second, the major justification for a tendering procedure of socially valuable media goods is the assumption that those goods are to a certain extent merit goods, which do not follow market mechanisms. Consequently it seems paradox per se to include commercial parameters into the tendering criteria and partly value socially desirable goods with economic measures. Should a bidder of less convincing journalistic standards be valued higher if his quote is economically more attractive than the one of his competitor, who offers a more promising qualitative implementation? What is the break-even point? Is such a tradeoff at all justified in this context?

Third, such a tendering solution could only embrace a part of the public service remit. Accordingly, a major role of the mission is included in news-related broadcasts characterized by objectivity and opinion diversity. Even if these and related journalistic norms were included in any tendering procedure, their implementation could not be guaranteed to such a degree as if the content were supplied by a hypothetically objective public service broadcaster.

Forth, in order for commercial competitors to participate in such a tendering procedure, the resulting revenues must generally not only be cost-covering but also profitable. The winner of the tendering may use the profits from those public orders in other broadcasting areas, thereby strengthening his overall market position and financial situation. This is valid for both, the commercial and the public competitors. Yet while such an order would signify additional revenues for a commercial broadcaster, it may be an indispensable source of revenues for the PSB. Assuming that the public broadcasters' original funds for the public service remit are transformed into a tendering budget and also offered to commercial suppliers, each lost tendering is a clear economic blow for the public television signal provider. Going further ahead, if the public broadcaster's existence depends on the tendering funds due to insufficient additional financing, it may even be in the strategic interest of the commercial competitors to make offers, which will not cover the providers' production costs but of course be financially the most competitive ones. In doing so, financially strong commercial broadcasters may accept temporary losses, only in order to

economically weaken the public service broadcaster and eventually push her out of the market. Such economically understandable behavior would clearly miss the original objective of the tendering. Accordingly, the tendering procedure option for the fulfillment of the public service mission is indeed an alternative to the exclusive remit implementation by public broadcasters, yet it brings about high inefficiency potential, as well as a threat of economic and political abuse, especially in a sector of few market players. The denser the market structure on a given broadcasting market, the more important is the existence of a PSB from the socio-political point of view and the higher the motivation for the private broadcasters to eliminate the public competitor for this very reason. Accordingly, the PSB's potential elimination would imply substantial economic and political rewards for the commercial broadcasters. Consequently, especially within centralized broadcasting structures, the public broadcaster's economic well-being must not depend on revenues from such tendering, in order to prevent market-distorting behavior by commercial competitors.

Even though especially from the economic viewpoint a dual broadcasting structure raises concern, it seems that within a dense broadcasting market, it is difficult to guarantee that private competitors are providing the whole socio-political spectrum of desirable high-quality journalistic topics without direct or indirect public intervention. Accordingly, some contents, such as those concerned with national culture and history, are indeed likely to be neglected by commercial providers or pushed to unattractive airtimes, due to possible insufficient demand. It is yet more difficult to assure that even if private broadcasters delivered the desired programmatic spectrum and plurality today, they would also do so tomorrow. Therefore, especially on highly concentrated markets, public broadcasting as an already widely implemented option seems to be one of the acceptable solutions for the realization of the public service remit, with the goal of counteracting economic and media-political monopolization, fostering opinion plurality, and setting journalistic standards, in spite of its undoubted shortcoming potential.

5.3.3. Public broadcasting and the advertisement market

In most dual broadcasting systems, PSBs are not only delivering the original public service remit, but are also involved in commercial transmitting, for example in the field of quiz shows or soap operas. In doing so, they are not only active on the programmatic information market but also in the entertainment segment. If those entertainment programs are financed or co-financed by public funds initially designated for the realization of the

public service remit, such broadcasting activities can be interpreted as a misuse of the public broadcasting fee by applying it in programmatic segments, which according to common sense go beyond the public service mission. At the same time the public broadcaster gains a competitive advantage in the rivalry for advertising budgets being able to demand lower commercial time prices due to the additional funding for a given program or show.

This forces the general question, whether public service broadcasters should at all be allowed to compete on the commercial market, and if so, under which conditions. A large part of most public broadcasters' programmatic structure has not much to do with the public service remit in its original informative, educating, and cultural conception, but is rather directed at the entertainment part of broadcasting, on which competition for advertising budgets prevails. Three options for a fair market behavior come into question.

First, the PSB ceases its commercial activity completely and focuses exclusively on the fulfillment of the public service mission. Such a scenario seems to be the theoretically most justified one, yet in practice it would probably marginalize the public broadcaster's market position in the long run. Accordingly, the public broadcaster would lose her role as a universal television service provider and become a more thematic or special-interest niche channel. As a consequence, it would quite probably lose a considerable share of viewers, which would in turn significantly lower the public service remit's efficiency. One could argue in this connection that the entertainment and information sections are independent segments and that consequently the usually broad viewing rates would remain unchanged for the informative content when excluding commercial entertainment from the overall program. However, it seems reasonable to assume that informative programs succeeding entertainment shows profit from respective spill-over effects, in so far as many of the viewers of "*The Bold and the Beautiful*" will stay tuned for the following news program rather than switching to an alternative informative broadcast.

The second alternative is for the PSB to forgo the public funding and finance its whole programmatic structure by its participation in the advertising market. This is certainly the most justified alternative from the economic market viewpoint. Fair demand-oriented competition with commercial broadcasters could be implemented through market mechanisms, undisturbed by public subsidies. However, within such a scenario it would be unrealistic to expect the fulfillment of the public service remit from any supplier, since without public funding even the public broadcasters would base their broadcasting decisions exclusively on economic efficiency parameters, as every commercial entity.

The third basic option to counteract a market-distorting intermixture of publicly financed and commercial content by the PSB is their clear and unambiguous separation. The public service remit must be reasonably defined, focusing on informative, political, historical, and cultural content while definitely excluding quiz shows or similar entertainment programs from it. The public service remit section may then be financed publically, while the entertainment programs may follow the same economic rules, which also apply to commercial competitors. From a marketing perspective such a separation is not without a certain bias though. As indicated above, there surely are spillover effects between entertainment programs and content, which is assigned to the public service remit. So if entertainment programs, which precede public service remit content, considerably contribute to its dispersion and are actually intended to do so, they can be considered a factual input factor for the succeeding public service mission. This in turn makes the inclusion of a given entertainment program's broadcasting costs to the public service remit expenditures plausible, not only from the economic viewpoint. So should entertainment shows, which theoretically would be excluded from the public service mission, be therefore re-included in the public funding if they directly precede informative content? Or should other commercial content also be embraced, since one could argue that the predecessor of the predecessor of the commercial content preceding an informative broadcast has as well a considerable influence on the overall public mission dispersion? Even though these questions are justified, they must be answered with a clear "no", when the goal is a separation of commercial and public service remit content. Clear accountability of public funds, in the best case even visible for the viewer, for example by respective logos for each publically financed show, and a fair market competition are in this context definitely higher ranked postulates as far as transparency and economic justice is concerned.

With the precondition of clear transparency and accountability, mixed funding of public and commercial revenues seems to be the optimal option from a practical point of view.¹⁴⁵ Above all, mixed funding lessens the extent of dependencies on the respective funding source. Concerning this, exclusive commercial revenues would completely expose the PSB, and consequently the public service remit, to market fluctuations and therefore income changeability. While one could argue that commercial broadcasters are also exposed to this kind of general economic market threat, it must be taken into consideration that private broadcasters have the option and the economically reasonable habit of completely adjusting their activities to the market, due to the commercial character of their products.

¹⁴⁵ Cf. European Broadcasting Union (2000).

The analogue situation for public broadcasters would imply an advertisement-based and audience rates dictated remit constellation. While this may not be problematic on the first glance due to the general acceptance of demand-orientation, one must consider the fact that advertisers, who ultimately decide over the structure of commercial programs, focus on a specific target group with purchasing power and flexible consumption habits, namely “18 to 49 years old, ideally 18 to 34”¹⁴⁶, and not on the public in general. Since the public service remit should for obvious reasons not only be directed at the economically attractive part of a society, a complete dependence on commercial revenues is surely a suboptimal option. Complete public funding on the other hand implies a high risk of politically motivated interventions in the PSB’s program policy, with the according absolute pressure mechanisms to reduce the PSB’s funds in case of insubordination. A mixed funding structure does not eliminate these threats by no means, yet it diminishes their possible maximum impact by the percentage of the respective other financing form in the overall mixed funding structure, giving the PSB a wider flexibility and sovereignty to fulfill the public service remit and the option to at least temporarily survive in case of one funding source’s breakdown. As already mentioned above, these clear advantages of mixed funding can only be effective if accompanied by clear and understandable accountability and transparency as far as the funding sources and their respective programmatic destinations are concerned.

5.3.4. The public broadcasting fee and the proper form of collecting it

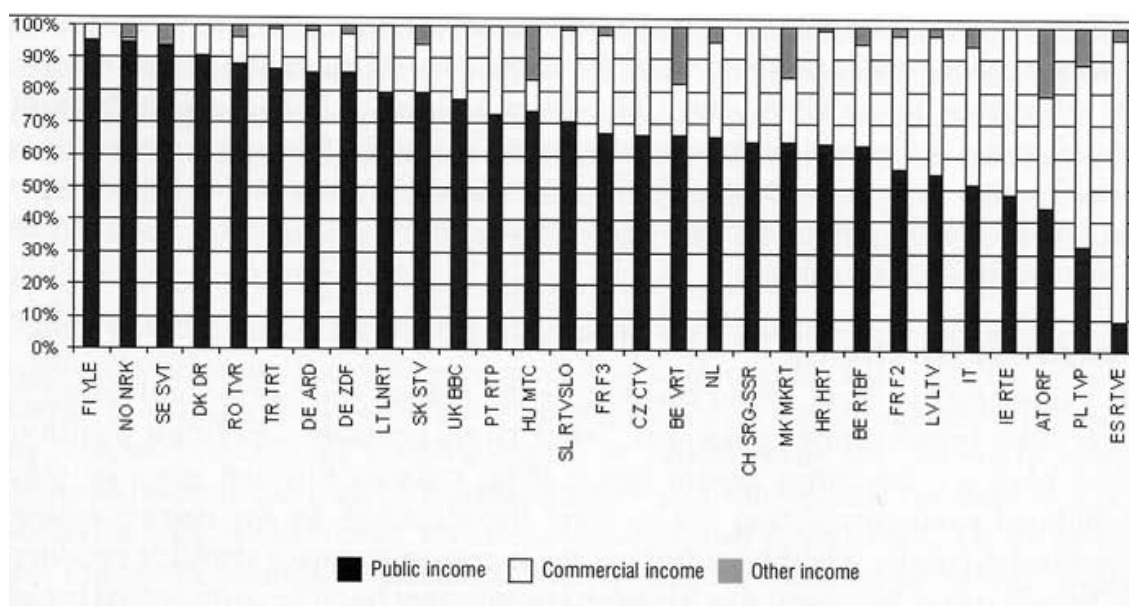
One of the backsides of each public financing is that the necessary funds must be somehow collected. In most cases public financing implies one of multiple forms of direct or indirect taxes, either imposed on corporate or private entities. Some taxes are more dependent on a current government’s actions than others, some are easier to collect than others, and some seem more just than others. As far as public broadcasting is concerned, there are various implemented methods worldwide and even more concepts to alter the existing ones.

The traditional form of public broadcast funding is the television license fee, which in its basic assumption is levied on every household with a television device. It is a hypothecation tax, mostly formulated as a monthly fee, directly dedicated to finance public

¹⁴⁶ Perebinossoff / Gross / Gross (2005: 17).

broadcasting.¹⁴⁷ Supporters of this broadcasting financing method argue that it is the most appropriate one, due to the following relations: "first, it assigns the costs for broadcasting directly to its consumers. Second, this tends to create a mutual and reciprocal sense of responsibility between the broadcasters and the audience, which, third, frees the broadcaster from control and influence by governments (as might be the case where direct government support exists) or advertisers (as might be the case in commercial systems)"¹⁴⁸. While especially the last justification seems very plausible, the public license fee is not without controversies. This financing concept assumes that everyone with a TV set is a consumer of public television, which is not necessarily the case. Especially with a rising spectrum of commercial alternatives nowadays, for instance in the form of digital platforms, it seems justified to question this mechanism from the perspective of consumer justice. Nevertheless, "two thirds of the countries in Europe, one half in Africa and Asia and 10% of those in the Americas and Caribbean rely, at least in part, on a license fee to support their television systems."¹⁴⁹ It is striking however, that in most media systems of the world the public license fee is not the exclusive public broadcasting financing form. The vast majority of all countries are involved in additional commercial financing as demonstrated by the graphic below.

Figure 6: Public broadcasting financing in Europe 2005



Source: Picard (2006: 186).

¹⁴⁷ Buckley / Duer / Mendel et.al. (2008: 203).

¹⁴⁸ Newcomb (2004: 1358f).

¹⁴⁹ Ibid. (1359).

The reason for the additional funding forms is in most cases the insufficient amount of revenues generated by the television license fee. One of the reasons for this is the evasion of the broadcast fee. In many countries, such as Poland or Germany, non-payers do de facto not have to fear legal consequences, since the respective controlling authorities are not allowed to enter a given household without the owner's permission, which can be denied without any penal consequences. Germany, however, successfully fights this phenomenon by employing freelance controllers on a commission payment basis, who often use grey area tactics while chasing license evaders.¹⁵⁰ The UK on the other hand uses high technology, in form of detector vans, which are supposedly able to identify non-paying but television-watching households.¹⁵¹ While these methods may be effective to a certain degree, their moral, legal and financial downsides seem superfluous compared to the example of Greece. There the government successfully implemented the collection of the license fee via electricity bills.¹⁵² This collection method goes further than the Polish, German, or British model, assuming not only that all TV-device owners watch public television but also that everyone with electricity owns a TV set. While this generalization undoubtedly discriminates a certain minority without television devices, it does not seem to add a significant share of injustice to the originally questionable supposition that everyone with a TV set must be a customer of public television. On the other hand, its collection is comparably inexpensive, stable, and predictable, ensuring the public broadcaster a certain realistic planning horizon.¹⁵³

Due to the superficial proximity of this hypothecation tax to general taxes, some countries opt to replace the broadcast license with factual tax funding. In the Netherlands, for example, the license fee was abolished in 2000, officially due to the high costs of its collection, and was replaced by an income tax increase.¹⁵⁴ While tax funding has the advantage over the broadcast license that it can be camouflaged amid other publically accepted and more or less successfully collectable taxes, it certainly does not eliminate the question of consumer justice, alienating the actual broadcasting service even more from its customers. Another more critical disadvantage of tax-funded public broadcasting is its amplified proximity to the political players. Whenever taxes are collected, they must pass the budget before their redistribution, which implies a dependency on a given government.

¹⁵⁰ Thiel (2009: 38).

¹⁵¹ Cf. BBC (2003), BBC(2008).

¹⁵² Young (2007).

¹⁵³ Picard (2006: 188).

¹⁵⁴ Electronic Communications Committee (2006: 12).

This can put “public service remit broadcasting in the position of being one of many cultural institutions seeking state funds, such as symphonies, museums, and arts festivals.”¹⁵⁵ The potential financial instability and uncertainty resulting from budget funding can put public broadcasting in very close dependencies on the ruling power, therewith endangering its role as an objective government control institution, which supplies its viewers with the whole socio-political opinion spectrum, and is a viable broadcasting market player, financially resistant against competitive marginalization.

Many countries allow their PSBs to additionally finance their programs through advertising, so that they rely on commercial revenues to a similar extent as they rely on license fee revenues. This rising dependence is not unproblematic, since the advertisement market is neither economically stable nor in sync with the public service remit conception. As a consequence, the television license compared to budget funding or exclusively commercial funding can probably be currently considered the “least worst”¹⁵⁶ option. However, it certainly needs a clear accountable framework today and restructuring in the near future. A clear separation of the PSBs commercial and public service remit activities with transparency and control mechanisms are a predisposition of the system’s functioning. Of course, commercial revenues can be utilized to finance the public mission, yet the reverse mechanism must be ruled out, in order to prevent market distortions and losses of public credibility and support. The future of public broadcast financing must in addition take the changing technological environment into consideration.¹⁵⁷ Within a television landscape, in which pay-per-view services rise in significance, the signal distribution market, especially the digitalized one, seems to be a potential source of revenue, which PSBs should not neglect. Only if public broadcasters follow the technological market development, they are able to compete with their commercial competitors on fair terms, while at the same time having the support and the means to fulfill the public service mission.

6. Aggregation of the presented market scenario spectrum

Based on the elaborations above, the presented implementation scenarios as a function of the hierarchical influence division between economic theory and media-political theory can be summarized with regard to their most significant characteristics and their

¹⁵⁵ Picard (2006: 190).

¹⁵⁶ UK Department for Culture, Media and Sport (2004: 2).

¹⁵⁷ Picard (2006: 193).

respective desirability from both theories' viewpoints. The three major scenarios - a wholly commercialized broadcasting market, an entirely public broadcasting market, and a dual broadcasting market - can be further subdivided according to their respective initial supplier quantities at a given starting point of the hypothetical observation. As already indicated earlier, the supplier density plays a crucial role when evaluating the adequate degree of public market involvement. It therefore makes sense to consider this parameter relative to the fixed market scenarios, since such an examination may provide conclusions anent its reciprocal relation. While such a competitor-based subdivision can take a very detailed form, this work will limit the occurrences to the most general ones. The following matrix gives an overview of the options and their major characteristics.

Table 2: Market-scenario matrix and their basic characteristics

Scenario	Commercial competitors	Public competitors	Economic characteristics	Media-political characteristics
Wholly commercial 1	Many	none	-demand orientation -competition -efficiency -welfare maximization -technological progress	-high opinion plurality -possibly low journalistic quality standards
Wholly commercial 2	Few	none	-oligopoly -strong welfare-reducing concentration tendencies -not necessarily demand orientation	-limited opinion plurality -probably low journalistic quality standards
Wholly public 1	None	one or more, appointed by same instances	-no competition -inefficiencies -high public costs -technological progress lower-ranging	-opinion monopoly -factual opinion diversity improbable -possible increased efficiency of public service remit (if implemented) due to missing competition -high journalistic standards possible
Wholly public 2	None	more than one, appointed by politically competing instances	-very high public costs of proper implementation -competition for viewers/voters reduces inefficiencies related to public broadcasting	-opinion diversity relative to parliamentary diversity -journalistic standards distorted by political motivation
Dual 1	Few	one or more	-semi-competitive market -public broadcasters forced to compete with economic suppliers -market distortion due to public co-funding -high costs and inefficiencies of public broadcasting -risk of commercial market concentration with only public broadcaster as competition	-mutual opinion control of public and commercial broadcasters -demand-oriented content supplemented by public service remit content -public broadcaster can set journalistic standards -journalistic quality limited by viewer orientation -possible opinion monopolization but an unstable one
Dual 2	Many	one or more	-demand orientation -competition -efficiency -welfare maximization -technological progress -high costs of public broadcasting	-very high opinion plurality possible -possibly low journalistic quality standards by market corrected by public broadcaster -minimizing the risk of opinion concentration by public market involvement in addition to high starting commercial competition

A wholly commercial broadcasting market with many suppliers¹⁵⁸ is characterized by demand-orientation and by mutual opinion control. Economic efficiency, technological advance, and opinion plurality are the probable outcomes, as long as the initial supplier density is upheld. Since capital intensive markets are by economic nature characterized by considerable concentration tendencies, public control is necessary to counteract the risk of welfare-reducing and opinion-plurality minimizing economic monopolization. This risk is correspondingly higher, when a given starting point is characterized by only a few competitors on the commercialized broadcasting market.

An overall publically managed broadcasting market with one public supplier is a natural opinion monopoly, in spite of probably differing public proclamations. Even if socially representative opinion plurality is intended, it takes a paternalistic and most likely unrealistic form due to the lack of factual demand orientation. And even if real opinion plurality could be temporally established, its instability is unquestionable, resulting from the usual proximity of the broadcaster's management to a particular political option by which it directly or indirectly got appointed. Thus opinion plurality can only be upheld in this scenario as long as it does not noticeably conflict with the concerned political option's vast interests, which is insufficient for the fulfillment of the major media-political postulates. The lack of commercial broadcasting competition makes the lack of stable opinion plurality absolute for the whole market. From the economic viewpoint, complete public broadcasting furthermore implies public costs, inefficiencies, and an overall slackness with regard to technological development.

The existence of multiple public broadcasters changes this scenario generally only on the surface. In most cases it is nothing more than an artificial division, due to the lack of factual independence and sovereignty resulting from the same public ownership. Only in the case of a complete separation of two or more public broadcasters, with opposing parties appointing the respective broadcasters' managements, a competition and opinion plurality scenario is imaginable with regard to the overall publically run broadcasting sector.

An interesting hypothetical concept in this connection is the allocation of PSBs to all or most parliamentary represented parties. The public financing of the respective broadcasters could be proportional to the election result. In doing so, all political opinions would be represented in the broadcasting landscape, to a certain degree proportionally to their factual occurrence in a society, if assuming that the election behavior represents the people's opinions and the respective parties' behave accordingly. Such a configuration could

¹⁵⁸ The term "many" is an abstract parameter, referring to a supplier number that implies a very competitive market environment.

be a fair and above all transparent solution, rather free from hidden political influences, which are present in so many supposedly objective commercial broadcasting entities, for the politization would at least be completely official and crystal clear, embracing all political powers according to their voters' support. Such a concept is of course a clearly hypothetical one, due to the high improbability of its successful implementation, yet worth-mentioning, in order to envision the complexity of a broadcasting market striving for representative opinion plurality.

The dual broadcasting system is a market configuration, in which commercial competitors control the opinions presented by the public broadcasters and vice versa. This kind of mechanism seems to make sense whenever a high commercial supplier density is not accomplishable due to technological or financial restrictions. Even though this control balance is not a stable one, since the public and the commercial broadcasters may have the same political interest and background at a given time, it probably is Pareto efficient in its broad sense, since the public broadcaster's power structure cyclically changes time-delayed but in accordance with the overall political power reconfigurations. If for instance the market is divided between commercial broadcaster A and public broadcaster B, with A being in cooperation with the newly elected governing party C, B will still for some time follow the general opinions of the former governing party D, due to assumed asynchronic election methods. The result is a certain level of minimal guaranteed opinion plurality over time. At a certain moment C will probably be able to take control over B, so that A and B will not be real competitors anymore as far as political opinions are concerned. However, the democratic configuration of a given political system at least allows for a prospect of change of this possible opinion monopoly, making an assumed opinion cartel therefore less stable than it would be when dealing with only one single broadcaster or a group of cooperating and politically involved commercial providers. Therefore, within such a configuration of only few competitors, the dual broadcasting system may not be perfect per se, economically resulting in considerable public costs and inefficiencies, but it seems to be the least harmful and most promising one if the central guiding norm is opinion plurality.

When dealing with a multitude of broadcasters, direct public involvement seems superfluous, since opinion plurality and welfare are maximized by a demand-oriented competitive market. However, considering that strong concentration tendencies can be incorporated in many ways, even in such, which pass unnoticed by respective control institutions, direct public market involvement is still worth a thought here. The whole spectrum of opinion plurality would thereby be provided by the commercial suppliers, while

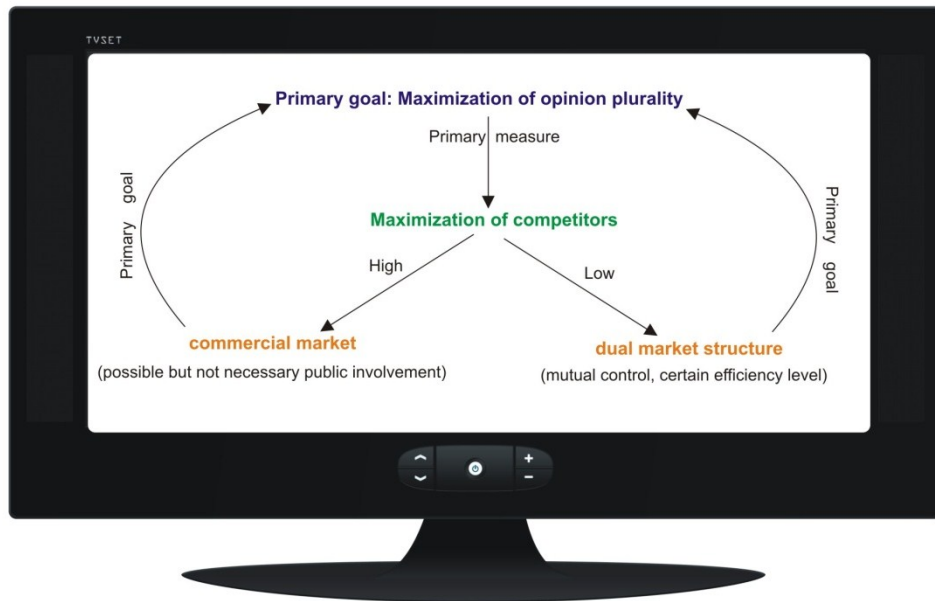
the public broadcaster could set journalistic quality standards and additionally hedge against the risk of market concentration and opinion monopolization. There is certainly a clear trade-off between the costs of a PSB and its opinion-plurality stabilizing potential, which needs to be taken into consideration.

7. Resulting decision guidelines

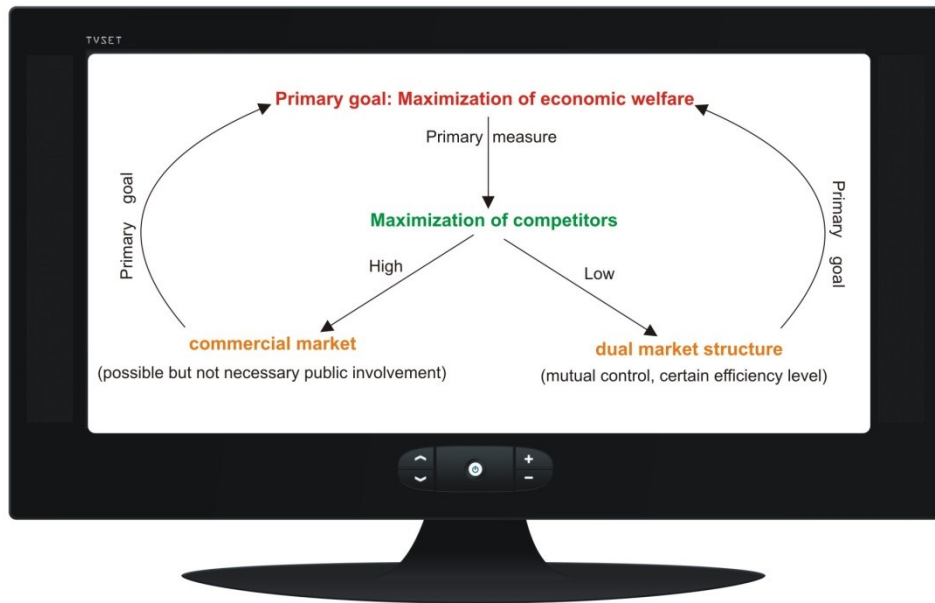
Certain decision guidelines with respect to macro market regulation policy on the broadcasting market can be derived from the elaborations above. They are summarized in the following two decision-boxes, which give a simplified dynamic decision-base for market regulation directions.

Figure 7: Macro decision boxes

Media-theory macro decision box



Economic-theory macro decision box



We can see that the only difference between the two boxes is their initial primary goal. While media theory formulates it as the maximization of opinion plurality¹⁵⁹, for economic theory it is the maximization of economic welfare. Resulting from the elaborations of this work, we can deduce that the primary and most efficient measure for both goals is in essence identical, namely the maximization of competitors. If the respective efforts result in a high

¹⁵⁹ The second media-political norm - journalistic quality - can in practice be considered as a function of opinion plurality, or at least as very closely associated with it.

amount of market participants, a fully commercialized market is a recommendable option. The coexistence of one or more public market participants is optional in this scenario, since it has disadvantages, in form of economic market disturbances through public co-financing, as well as advantages, in form of risk minimization with regard to monopolization tendencies and of setting journalistic market standards. If however the efforts to maximize the number of competitors on the broadcasting market allow for only a few market participants, a dual system is the most suitable market configuration, maximizing the possibility of a certain interior control and opinion balance between the commercial and public broadcasters, in order to counteract concentration tendencies.

Within both market configurations the regulation benchmark should still be the maximization of opinion plurality and, respectively, of economic welfare in order to maintain and optimize the primary goal. If the market is characterized by multiply suppliers, this configuration, no matter if completely commercial or dual, should be guarded and, if possible, even expanded, since market concentration is a steady, active, and self-accelerating development, which requires adequate active counteraction. If only few competitors can be present on the market at a given starting point, then the implemented dual system should as well be accompanied by continuous striving for opinion plurality and economic welfare, and therefore supplier maximization. Consequently, a certain decision loop is created, ensuring the continuous effort to fulfill the major norms of both, economic theory and media-political theory. It is worth mentioning in this context that during the efforts of transforming the market from few to many broadcasters, the initial status quo of a dual system should not be given up until a satisfactory level of commercial suppliers is reached. Only after the market achieves a number of competitors certainly exceeding the critical number, above which the interior competition effectively counteracts monopolization pressures, a public direct broadcasting involvement can but does not have to be withdrawn.

8. Review

While the first section on the theoretical framework presented the technological background of television broadcasting, its markets, and product specifics, subsequently comparing and confronting the two theories of economic competition policy and media policy, the second part focused on possible market configurations relative to the hierarchical order of the two theories. The extreme cases of a completely commercialized market and of

a wholly publicly controlled one were followed by the discussion of the special concept of dual broadcasting, in which private and public suppliers co-exist.

Accordingly, complete governmental control over the broadcasting market indeed gives the authorities the hypothetical chance to implement the whole spectrum of the public service remit while having the undivided viewer attention. It allows for a comfortable broadcasting environment, which is independent of viewing rates and consequently of consumers' actual demand. While such a scenario may superficially seem desirable from the media-theoretical point of view, it actually bears enormous inefficiency potential, both, economically and media-politically. Concerning this, a sector without commercial competition is not sensitized to technological advancements, therefore constraining its overall development, user-orientation, and value creation, especially in comparison with more open systems. Pure public broadcasting furthermore implies a natural centralization of transmitted opinions, in spite of the public service remit's plurality approach. An opinion monopoly will due to its self-interest always have plurality-averse tendencies. This is not less true for a monopolistic public broadcasting body, which is rather limited in factual independence, because of its governmental proximity. For the same reason such a body also lacks effective external control; within a framework of absent sovereign competitors, the only possible realistic control institution left is a public one, which in a broader picture necessarily implies a certain self-reference set of problems, being above all susceptible to political exertion of influence. Consequently, a wholly public-run governmental sector may be based on constructive intentions, yet the successful counteraction of destructive political opinion monopolization is rather improbable in this scenario.

An entirely commercialized broadcasting market as the opposite implementation extreme of the two major theories' hierarchical spectrum seems to be an economically reasonable solution due to its efficiency-promoting demand orientation, yet only as long as multiple independent broadcasters can factually compete within a fair environment. Crucial in this context is that even in the long run a critical number of economically and politically sovereign competitors must be able to preserve on the market, assuming that only such a diversified configuration can ensure a satisfying level of opinion plurality. Since capital-intensive sectors have a natural concentration tendency, a public institution counteracting this propensity seems indispensable.

When broadcasting markets fail to include and uphold a high-enough number of commercially and politically sovereign competitors, a compromise between the two extremes in the form of a dual broadcasting market is an acceptable solution if adequately

implemented and guarded. Such a duality counteracts the monopolization tendency, which is present on both, the public and the commercial side of the market. As far as opinion plurality is concerned, the same mutual control mechanism is in effect, positively affecting the overall opinion diversity and journalistic quality spectrum. The most famous argument in favor of publicly co-financed broadcasters competing with commercial ones is the assumption of merit goods on the TV market, which need to be fostered publicly, independent of the economic demand and supply. While the merit-good character of television content is surely not an absolute one but rather relative to the supplier density on the TV market, within the dual broadcasting system the public broadcasters' role is to provide these very merit goods, thereby fulfilling the so-called public service remit. At the same time, there is commercial competition on the dual broadcasting market, which follows the standard market rules. Most PSBs are involved in both segments of the market, which is one of the major sources of the concept's criticism. If the public broadcaster's public and commercial activities are not clearly separated, unfair and competition-distorting market subsidies can be the result.

Accordingly, there are sufficient counterarguments questioning the need for public service broadcasters. This is especially the case when publicly sponsored PSBs use the public funding beyond the public service remit by providing commercial programmatic services as privileged competitors on the advertising market vis-à-vis their private pendants. It seems logical that the dual broadcasting system, especially with its dual financing conception of public broadcasters, should be considered a transitional model until an adequate level of sovereign competitors is achieved and its maintenance guaranteed. Yet since such a guarantee is difficult to get or provide, the PSB may be considered a safety brake against concentration tendencies, even within a competitive market framework. Public broadcasting as such does not have to be the focus of criticism, but its means of integration in functioning market structures. Accordingly, a fair structure needs to be found, in which public funding will be goal-oriented and economic competition on the advertising market will be fair. Public broadcasting as an internal market regulation instrument should therefore be complemented by external market regulation mechanisms, implemented by decentralized and politically independent institutions, in order to strive for continuous opinion diversity and supplier plurality.

In order to assess a specific broadcasting market in terms of public regulation, in addition to the generally valid theoretical conclusions the sector's unique compilation needs to be taken into consideration before drawing final conclusions. This means that the existing

supplier density and the respective hierarchy on the recipient and advertising market need to be analyzed as well when evaluating a specific television market. Furthermore, the financial status of both public and commercial competitors needs to be regarded in order to assess the consequences of possible changes. Yet before analyzing the market's economic structure, its legal perspective should be considered first, in order to establish the level of implementation of the theoretical postulates presented in the first part of the paper. It is also necessary to consider technological changes and challenges of the TV market, as well as its political framework.

All of these dimensions need to be taken into account when empirically regarding a country's television sector, such as the Polish one, under the premise of its adequate extent of public market involvement. The legislative structure of the Polish TV market represents the implementation of the theoretical postulates. The political framework in turn indicates the factual compliance with the legislative acts' meaning. Therefore, after an overview of the most important developments of the Polish TV market, the practical analysis will start by presenting the legal framework of the country's television sector. Since Poland is a member of the EU, Community directives as well as Polish acts will be taken into consideration. Following that, the relation between the world of politics and the TV sector will be outlined. Last but not least the concrete market structure will be analyzed from an economic perspective, accompanied by technological market specification and conclusions as to the proper degree of public market involvement will be drawn.

CHAPTER IV: THE POLISH TV MARKET

In order to be able to understand the current market situation of the Polish TV sector, its development needs to be taken into consideration. Until the political transformation in 1989, the Polish TV market, as well as all other mass-media sectors, was fully controlled by the Polish communistic party *PZPR*¹⁶⁰. The first Polish TV program *TP1*¹⁶¹ was launched in 1937, while the second program *TP2* followed in the year 1970.¹⁶² Polish television developed from black-and-white to color, from rare broadcasting to a more or less full-time program offer, while the number of television device owners has grown

¹⁶⁰ PZPR - Polska Zjednoczona Partia Robotnicza - Polish United Workers' Party. Being a political Soviet satellite country, Poland was governed by the centralist communistic party PZPR from 1948 to 1989.

¹⁶¹ TP was used as an abbreviation for Telewizja Polska - Polish Television.

¹⁶² Ward (2009: 225).

steadily. Even though the content became more attractive over time, compared to Western standards it was still backward before 1989, while opinion plurality and journalistic freedom was non-existent due to the strict control and censorship by the ministry of propaganda. After the fall of Communism in 1989 a more dynamic development of the whole media sector was to follow.

1. Poland's political transformation since 1989: a short overview

On February 2nd, 1989, the so-called Round Table talks were initiated, during which the communist *PZPR* representatives negotiated with the so-called *constructive* part of the oppositional labor union *Solidarność* over socio-political changes, in order to terminate intensive labor strikes and smoothen rising social unrest caused by continuous violations against basic human rights, political repressions, and alarmingly deteriorating living and working conditions. One of the crucial results of the almost two month-lasting negotiations were the so-called semi-free elections of June 4th, 1989, allowing *Solidarność* to run for 35% of the *Sejm* seats (the Polish upper house) and for all seats of the newly formed *Senat* (the Polish lower house). *Solidarność* won all but one seat in the *Senat* and all of the available 35% *Sejm* seats. In spite of their semi-free character, the elections resulted in a total success for *Solidarność*, since the appointed Prime Minister Czesław Kiszczak, one of the most crucial figures in the *PRL*¹⁶³ regime, was not able to form a government with the *PZPR*'s former puppet coalition partners, who unexpectedly turned their backs on the communistic party.¹⁶⁴ After 22 days in office, Kiszczak had to give way to Tadeusz Mazowiecki, an oppositional theologian, who formed the first non-communistic government after over 50 years of centralistic *PZPR* regime. The first democratic presidential elections followed by the end of 1990 with Lech Wałęsa replacing the former communistic leader Wojciech Jaruzelski.¹⁶⁵

The new government, which was not yet freed from the old regime's involvement¹⁶⁶, was confronted with serious macroeconomic problems (above all with the galloping hyperinflation) and with the resulting need of fundamental reforms. The

¹⁶³ PRL - Polska Republika Ludowa - Polish People's Republic. From 1952 to 1990 Poland's official name.

¹⁶⁴ Dudek (2006a: 20).

¹⁶⁵ Hadamik (2001: 145-146).

¹⁶⁶ E.g. Kiszczak became the minister of the interior and Florian Siwicki, another high-ranking politbureau member, was appointed the minister of defence.

Mazowiecki government decided - under the lead of economist Leszek Balcerowicz as finance minister - to primarily stabilize the macroeconomic situation as fast and effective as possible, in order to subsequently implement the necessary institutional changes. The character of this so-called “shock therapy”, initialized on January 1st, 1990, can be simplified as the “the freeing of prices under the abolition of subsidies and fostering currency stabilization, while simultaneously liberating foreign trade”.¹⁶⁷ In spite of an in many aspects delicate and difficult phase immediately following the “shock therapy” introduction, the country’s economic situation changed noticeably under increasingly market-economic conditions. At the same time, the privatization process has in many cases remained blurred with irregularities due to continuously close interaction between the business world and the political environment.

In the following years, in spite of the economic system’s general continuity, Poland’s political landscape was characterized by rotations between the “Left”, predominantly represented by former communistic politicians, and the “Right”, mainly personified by former *Solidarność* activists.¹⁶⁸ In 1991, following Poland’s first completely democratic elections, a *Solidarność* alliance formed a government, whose representatives and party base resulted to be more heterogeneous than expected. The multiple fragmented alliance parties most noticeably differed in their degree of determinedness to lustrate the collaborative past of current officials and to take respective measures. The night before the announced release of a list of *PRL* secret service collaborators among high-ranking *Solidarność* representatives - among them a considerable number of the than-governing parties - president Lech Wałęsa, who interestingly enough as well was on the list, initiated a constructive no-confidence vote, which under questionable conditions was accepted by the parliament at quarter to one in the night of June 5th, 1992, putting in place the puppet prime minister Waldemar Pawlak, who expectedly failed to form a government.¹⁶⁹ The anti-lustration coalition formed a new government under Hanna Suchocka, which lasted less than a year.

¹⁶⁷ Szomburg (1998: 219).

¹⁶⁸ It should be mentioned here that the terms “left” and “right”, used in this work, differ in the Polish meaning from the German sense, for instance. The “left” is in the Polish context predominantly connected to those officially social-democratic political groups, which are related to the post-communistic PZPR camp. The “right”, in turn, predominantly refers to economically liberal but solidary, domestically rather conservative political thought, stemming predominantly from the camp of adversaries to the former communistic system. After the radicalization of differences between the previously as “right” considered parties PO and PiS, the former one initialized a self-reference of a “politically central” direction, so that the terms’ political definitions are gradually changing in the Polish context.

¹⁶⁹ Cf. Dudek (2006b: 76ff.).

The new elections were won by the post-communistic *SLD*¹⁷⁰, which formed a governing coalition with the farmers' party *PSL*¹⁷¹, again headed by Pawlak. Also the president's office moved 1995 to a former *PZPR* official, Aleksander Kwaśniewski, who managed to maintain it for ten years (the maximum amount of two cadences). In 1997 new parliamentary elections were won by a *Solidarność*-related *AWS*¹⁷² and *UW*¹⁷³ coalition, which governed until 2001, in the end failing once more due to interior conflicts and fragmentation. The 2001 elections were driven by the general dissatisfaction with the post-*Solidarność* camp, leading to a coalition between the post-communistic *SLD* and left-wing *UP*¹⁷⁴, which formed a government under former *PZPR* Central Committee secretary Leszek Miller. Amidst continuous corruption scandals, which culminated after three years of governing, the Miller government initially sought its rescue in installing Marek Belka as prime minister, but realized soon that also this solution could not prevent the government's fall and new elections in 2005.

The hope and will to hinder the post-communistic government from further harming the country politically and financially characterized the elections in 2005. The popular belief was for the strongest opposition parties, *PO*¹⁷⁵ and *PiS*¹⁷⁶, both from differing post-*Solidarność* camps, to achieve a sufficient result to form a strong and effective government, which would not repeat past mistakes. These *PO-PiS* coalition expectations were backed up by explicit announcements by the two parties' leaders and by pre-election polls, predicting *PO* to be strongest power and *PiS* the second one in the parliament to come.¹⁷⁷ The elections proved the polls to be right as far as the two parties' dominance and government-capable coalition potential was concerned, while being relatively astonishing as far as the factual rank order was concerned. Accordingly, *PiS* received the best election result leaving *PO* with the alternative of being the weaker coalition partner in a future government. It seems that this unexpected *detail* as to the actual power hierarchy in the possible future government turned the pre-election harmony and cooperation between the two parties and their electorate upside down. In these days there were not many issues dividing the public to such a degree as the question, whom to blame for the failure of the coalition talks between the two camps. Both parties accused each other of demanding disproportionately high

¹⁷⁰ *SLD* - Sojusz Lewicy Demokratycznej - Democratic Left Alliance.

¹⁷¹ *PSL* - Polskie Stronnictwo Ludowe - Polish People's Party.

¹⁷² *AWS* - Akcja Wyborcza Solidarność - Solidarity Electoral Action.

¹⁷³ *UP* - Unia Wolności - Freedom Union.

¹⁷⁴ *UP* - Unia Pracy - Labour Union.

¹⁷⁵ *PO* - Platforma Obywatelska - Civic Platform.

¹⁷⁶ *PiS* - Prawo i Sprawiedliwość - Law and Justice.

¹⁷⁷ Cf. Wildstein (2005: 24ff.).

authorities in the future government, while the question of control over the secret services appeared to be one of the major insurmountable obstacles.¹⁷⁸ Once the coalition negotiations with *PO* ultimately failed, *PiS* was left with the decision either to form a powerless minority government, or an unstable coalition with the conservative *LPR*¹⁷⁹ and the populist *Samoobrona*¹⁸⁰, since any form of cooperation with the post-communists was considered unacceptable and a partnership with *PSL* calculatively insufficient. The presidential elections, which followed only two and four weeks later (first and second round), were also won by the *PiS* candidate Lech Kaczyński, which further radicalized the divide between the two unrealized partner parties. In spite of conflictual junior coalition partners and constant emotionally aggressive and predominantly unobjective critique from a dominant share of the media sector, the *PiS* government was able to realize some of its major political projects, such as the dissolution of the highly corrupted army secret service *WSI*¹⁸¹, or the access-opening to law professions. The conflicts among the coalition parties, accompanied by corruption suspicions, especially against the *Samoobrona* leadership, finally led to the government's fall and new elections after 13 months of ruling.

The 2007 elections were won by *PO*, yet in radical contrast to the previous elections, a coalition with *PiS* was now the most improbable coalition scenario of all. *PO*'s election result was however well enough to form a government with the farmer's party *PSL*, which is historically a universal, quite, and comfortable coalition partner if granted the demanded regional authorities. In an atmosphere of exceptionally harmonious media accompaniment, *PO*'s rather passive governing, politically focused on depreciating the opposition and the president's authority, has after two years of relative public harmony begun to struggle, due to the party's close relations with the business world, resulting in the disclosure of serious corruption and embezzlement allegations. It is therefore not improbable that the 2010 presidential elections will be accompanied by accelerated parliamentary elections, similar as five years before.

¹⁷⁸ Cf. Gwiazdowski (2005: 48ff.).

¹⁷⁹ LPR - Liga Polskich Rodzin - League of Polish Families.

¹⁸⁰ Whole name: Samoobrona Rzeczypospolitej Polskiej - Self-Defence of the Republic of Poland.

¹⁸¹ WSI - Wojskowe Służby Informacyjne - Military Information Services. Polish intelligence and counterintelligence services from 1991 to 2006.

2. Transformation of Poland's media sector

The beginnings of the media transformation in Poland are closely connected to the Round Table events of June 1989. The necessity to liberalize the media sector was formulated already during these talks.¹⁸² Accordingly, the representatives of *Solidarność* explicitly demanded a pluralistic media market, without censorship and with access possibilities for all social entities.¹⁸³ The media market should thereby be not only a source of information, but also an independent third party, which would be supposed to critically control Poland's political events.¹⁸⁴ The significance of opinion plurality and supplier diversity in the media was recognized as a precondition for a functioning democratic system, which was the final goal for a considerable part of the *Solidarność* movement.

2.1. The need to restructure the main control institutions

The idea was to integrate the media market into the country's reform development. In practice, four monopolistic state-controlled institutions, which had served as crucial communistic party media control instruments, were supposed to be eliminated or restructured as fast as possible. These four institutions were: the Highest Censorship Administration, the Broadcasting Committee, the Polish Press Agency *PAP*¹⁸⁵, and the Workers Publishing Association *RSW*¹⁸⁶. The Highest Censorship Administration was the central media controlling organ in the Peoples Republic; the *RSW* was a gigantic and powerful party-controlled publishing trust, which embraced almost all legal publishing houses and related production facilities, and therefore practically the whole legal press market; the *PAP* and the Broadcasting Committee were directly subordinated to the Ministry of Propaganda and therefore active organs of the Party's information monopoly for the print media and for broadcasting, respectively.¹⁸⁷

It is interesting in this connection that the initial media transformation plans did not include rapid restructuring of the state-owned radio and TV broadcasters as such other than

¹⁸² Hadamik (2001: 148).

¹⁸³ Pisarek (1998: 135).

¹⁸⁴ Sokół (1998: 219).

¹⁸⁵ PAP- Polska Agencja Prasowa - Polish Press Agency.

¹⁸⁶ RSW- Robotnicza Spółdzielnia Wydawnicza - Workers' Publishing Association.

¹⁸⁷ Rutkiewicz (1998: 183-184).

personnel changes, changes in the programmatic structure, and the establishing of advertisement sections.¹⁸⁸ Moreover it is striking that even though the *Solidarność* leaders had a broad media restructuring concept, they seemed to lack a detailed action program.¹⁸⁹ Therefore, the factual media transformation was loudly propagated, yet not initiated immediately. It seems ironic that the first media deregulating law was implemented by the Communist Party in March 1989, one month before the elections. This amendment of the press law eliminated the licensing system for newspapers and magazines and replaced it with a registration system.¹⁹⁰

The next important transformation step for the media was not undertaken until one year later by formal abolishment of the censorship.¹⁹¹ This legislative act was of high symbolic value, yet it had no intermediate consequences, since the Censorship Administration factually ceased to operate already one year before.¹⁹² Several weeks later the State Publishing Monopoly Liquidation Act¹⁹³ was introduced and the implementation of the *RSW* liquidation began shortly after: a part of the publications was sold to political parties, another part to journalistic associations, and the remaining part was sold on the market.¹⁹⁴ The press distribution network of *RSW*, namely *Ruch S.A.*, was only slightly restructured and was as of January 2010 never completely privatized (the main shareholder is the Polish Ministry of Treasury), while maintaining a dominating market position.¹⁹⁵ The similar is valid for the Polish Press Agency, yet with the Ministry of Treasury holding the complete share package in this case.¹⁹⁶

2.2. Terrestrial broadcasting before and after the Broadcasting Act

It was not until December 29th, 1992 that the first official actions on the broadcasting sector were undertaken. The Broadcasting Act defined the implementation of the dual broadcasting system in Poland, which should open the broadcasting market for private competitors, thereby initializing the end of the state monopoly on the broadcasting

¹⁸⁸ Jakubowicz (1999: 183-184).

¹⁸⁹ Goban-Klas (1998: 57).

¹⁹⁰ *Ustawa* (1989a).

¹⁹¹ *Ustawa* (1990a).

¹⁹² Jędrzejewski (1998: 149).

¹⁹³ *Ustawa* (1989b).

¹⁹⁴ Goban-Klas (1998: 59-60).

¹⁹⁵ Bąk / Molga (2009: 48-49).

¹⁹⁶ *Ustawa* (1997a), Lemańska (2009a).

market.¹⁹⁷ The Act replaced the Broadcasting and Television Committee by a new institution, the *KRRiT*¹⁹⁸. In contrast to the former Broadcasting and Television Committee, this new National Radio and Television Council was now explicitly responsible for guaranteeing and controlling the freedom of information and opinion, and for managing the frequency distribution among the competitors. Accordingly, the *KRRiT* became the highest regulating institution on the audio-visual media market, watching over the public service mission and over Poland's programmatic broadcasting landscape. The Broadcasting Act furthermore redefined the formerly state-run radio and television broadcasters into a public service corporation with the state as the only owner, based on the model of the British Broadcasting Corporation (*BBC*).¹⁹⁹

In the years before the Broadcasting Act, the Polish television landscape officially consisted of two state-controlled nationwide TV programs, and from 1992 on also of nine state-controlled regional stations. Yet a multitude of illegal local TV stations competed with the state-run broadcasters, pioneered by the Wrocław-based *PTV Echo*²⁰⁰, while only a few of them held vague temporal broadcasting licenses. Most of these pirate TV broadcasters anticipated the opening of the market and hoped for an advantage in the license distribution process due to their factual market presence. Especially the offer of *Polonia 1*, which was held by the Italian Nicola Grauso and embraced seven (later 12 and for a short time even 13) of the illegal local broadcasters, was growing increasingly professional and popular.²⁰¹

In addition to the legal and illegal national TV offer, satellite programs, distributed in the initial stage via private satellite dishes and over primitive quasi-cable nets, grew progressively popular, granting access to foreign TV programs. The four unencrypted stations were *SAT1*, *Super Channel*, *Teleclub*, and *RTL-Plus*.²⁰²

The Broadcasting Act and the new central institution *KRRiT* were supposed to create an overall legal framework for the pirate stations and regulate the broadcasting landscape. In spite of high hopes, the pirate stations were not granted the licenses they had expected. Instead of that, criminal procedures against 19 illegal local TV broadcasters were initiated.²⁰³ The interference by leading politicians, however, led to only symbolic penalties

¹⁹⁷ *Ustawa* (1993).

¹⁹⁸ *KRRiT* - Krajowa Rada Radiofonii i Telewizji - National Radio and Television Council (sometimes also abbreviated as *KRRiTV*).

¹⁹⁹ Cf. Jakubowicz (1998: 166), Jędrzejewski (1998: 147).

²⁰⁰ Modrzejewska (1999: 198). *PTV Echo* - Prywatna Telewizja Echo. *PTV Echo* started to broadcast its local program in February 1990 with its antenna installed on the roof of a student dormitory belonging to the Wrocław Technology University.

²⁰¹ Cf. Filas (1999: 39), Jakubowicz (1994: 71).

²⁰² Filas (2002: 19).

²⁰³ *KRRiT* (1994: 23-24).

for the illegal TV stations.²⁰⁴ Nonetheless, the distribution of broadcasting frequencies resulted in the factual beginning of the end for the pirate stations.

2.3. The first concession phase

Poland's terrestrial frequency inventory allowed for only one nationwide commercial broadcaster in addition to the two public programs. In order to assign this nationwide broadcasting license in accordance with common democratic guidelines, a tendering procedure was announced, whose decision criteria were however rather dimly formulated.²⁰⁵ Ten bidders, which for the most part were co-financed by foreign trusts, such as *Bertelsmann*, *Time Warner*, or *CLT*, took part in the tendering procedure, whose vague specifications included a 33% limitation of foreign capital. For the popular local station network of *Polonia 1* this restriction meant that Nicola Grauso's service eventually had to sidestep to satellite broadcasting.²⁰⁶ The other offers lost as well against *Polsat*, the only purely Polish capital-based bidding group, which received the terrestrial broadcasting concession in 1993 for a time-period of ten years.²⁰⁷ This decision was controversial and intensively debated upon, since it showed that the *KRRiT* clearly favored Polish capital intensity over more economically competitive, experienced and professional candidates, which were, however, co-financed by foreign media conglomerates.²⁰⁸ Yet for *Polsat*, which was already broadcasting via satellite from the Netherlands since December 1992 as *Pol Sat*, the concession decision meant not less than the beginning of its rise to one of the crucial players on Poland's overall media market. During the first concession phase, the *KRRiT* also assigned two regional concession (for *TV Wisła* and *TV Niepokolanów*), one Pay TV concession for *Canal+* as well as eleven broadcasting licenses for local TV stations.²⁰⁹

The new legal commercial broadcasters had to face the restructured public broadcasting network as their main competitor: two nationwide stations, *TVPI* and *TVP2*, as well as 13 local public broadcasting services constituted for the new public corporation with

²⁰⁴ Kowalewska-Onaszkiewicz (1999: 152-153).

²⁰⁵ *KRRiT* (1994: 28ff.).

²⁰⁶ Jakubowicz (1998: 170-171).

²⁰⁷ Modrzejewska (1993: X1).

²⁰⁸ Filas (1999: 48).

²⁰⁹ *KRRiT* (1994: 30).

the name of *TVP S.A.*²¹⁰ Hence even though the first concession phase terminated the formal governmental monopoly on the TV market, in practice the public broadcasters still dominated the sector, due to their clear advantage in technical range. While the two nationwide public broadcasters had theoretical access to nearly all households, *Polonia 1* had overall coverage of 25% just before it switched to satellite broadcasting, while *Polsat*, in spite of its theoretically nationwide character, was able to reach only 18% of all Polish households in its initial terrestrial signal transmission phase.²¹¹

Yet this public domination decreased gradually in the following years with the appearance of new satellite programs in Polish language, such as the French-capital based Pay-TV *Canal+* and the *CLT-UFA* station *RTL7*. Also the local television market showed a certain dynamic development: six local commercial broadcasters united their programmatic structure and cooperated on the advertising market under the name of *TV Odra*.²¹² In 1995 the catholic Franciscans Fraternity received a regional terrestrial concession for religious-familial broadcasting with its station *TV Niepokolanów*. After considerable financial struggles in the following years, the station was transitionally taken over by *Polsat* in 2003, renamed to *TV Puls*, and found in Rupert Murdoch's *News Corporation* a foreign investor in the year 2006. In 2007 the *KRRiT* allowed *TV Puls* to change its religious-familial concession into a general commercial concession, which in addition to its factual terrestrial range of about 35% and an overall range of over 82% makes the broadcaster a serious potential player in Poland's current television market, in spite of *News Corporation's* eventual withdrawal in November 2008.²¹³

2.4. The second concession phase

The second concession phase in 1997 brought about the next one of today's commercial media giants, namely *TVN*²¹⁴, which was granted one of the two over-regional terrestrial broadcasting concessions in 1997.²¹⁵ The subsequent acquisition of local broadcasters soon after, provided *TVN* with expanded terrestrial range. In contrast to *Polsat*,

²¹⁰ Jędrzejewski (1998: 147ff), Jakubowicz (1998: 165ff). *TVP S.A.* - Telewizja Polska Spółka Akcyjna – Polish Television Joint Stock Company. The owner is the Ministry of Treasury.

²¹¹ Bujko (1998: 105).

²¹² Mielczarek (2002: 63).

²¹³ Gembalik (2009), Lemańska (2009b: B-008).

²¹⁴ The letters *TVN* have no official meaning, even though according to the pre-launch flyers they were supposed to stand for *TV Nowa* - New TV.

²¹⁵ Mielczarek (2002: 86).

TVN with its owner *ITI*²¹⁶ used the full 33% foreign capital limit with *CME* and afterwards with *SBS* as the investor from abroad.²¹⁷ In 2003 *ITI* took over *SBS*'s shares thereby practically becoming *TVN*'s sole owner.²¹⁸

The second over-regional concession was given to *Nasza TV*²¹⁹, a consortium based on capital from the Polish world of business, represented by the holding *Polskie Media*. In contrast to *TVN*, *Nasza TV* never proved to be a serious competitor on the market. Structural and financial problems made it necessary for this broadcaster to eventually declare bankruptcy in 1999. Several months later, the station's owner, *Polskie Media*, was taken over by *Polsat*-related Andrzej Kuchar, restructured programmatically, and renamed to *TV4*.²²⁰ During the second concession phase *Polsat* furthermore managed to expand its own technical range from to 80% and established the satellite station *Polsat2*.²²¹

Polsat and *TVN* have gradually become serious competitors for the public broadcasters by expanding their market shares, their technical ranges, and their programmatic activities. The rising number of commercial TV stations has leveled the overall market-share gap between public and private broadcasters over the years of the transformation.

2.5. The development on the cable TV market

In addition to the terrestrial part of broadcasting, the development of Poland's cable television has clearly determined the overall dynamic market progress.

Polish cable TV has its roots in the 1970s.²²² Not many people know that in 1975 the Gdańsk-based Industrial Institute of Telecommunication²²³ together with the telecommunication device producer *Telkom-Telmor* built an experimental broadband cable television network in Gdynia, embracing 12,500 households. The net was constructed to hold merely seven channels, yet this was more than enough, since the former Polish television landscape knew not more than two. The beginnings of Polish cable television are, however, mostly associated with the emergence of initially experimental primitive cable nets

²¹⁶ ITI - International Trading and Investments Holdings SA Luxembourg

²¹⁷ Mielczarek (2002: 63).

²¹⁸ Klimkiewicz (2007: 306).

²¹⁹ *Nasza TV - Our TV*.

²²⁰ *Raport* (2003).

²²¹ Mielczarek (2002: 61).

²²² Piszczek (2001: 45).

²²³ Przemysłowy Instytut Telekomunikacji

in the apartment-block neighborhoods of Warsaw, starting in March 1988.²²⁴ These nets were built in an atmosphere of communal cooperation, opening the window to the West by the four unencrypted programs: *SATI*, *Teleclub*, *Super Channel*, and *RTL-Plus*.

After the political upheaval in 1989 and a changing legal environment starting from the new Communications Act of 1990²²⁵, the cable television market was very soon recognized by commercial entities of different shape, size, and background as a sector with immense potential. Throughout the following years, the market developed dynamically, gradually lost its communal character while gaining professionalism, and eventually started to consolidate, leaving the top ten competitors to dominate almost 75% of the market today and the top five over 62%.²²⁶ The most significant players on the market - *UPC Polska*, *Vectra*, *Multimedia Polska*, and *Aster* - are only to a marginal degree involved in the production of own local television programs; they rather focus on the reemission of terrestrial and satellite programs, on the introduction of digital formats to their offers, and on the connection of their TV services with broadband Internet and telephony offers.

2.6. The development of digital satellite platforms

Besides terrestrial broadcasting and cable-based signal distribution, also the development on the DBS digital platform segment in Poland is clearly worth mentioning. Accordingly, the emergence of digital satellite platforms starting from 1998 has strongly and directly influenced the cable TV dynamics, yet also the terrestrial broadcasting market, forcing both signal distribution segments to considerably increase their technological competitiveness, especially as far as digital television is concerned.

The first digital TV service *Wizja TV* was initiated by the American corporation *@Entertainment* in 1998. Its offer included own channels and Pay-TV programs, such as the movie channel *HBO*. Before the launch of *Wizja TV*, owners of satellite dishes could basically only watch analog free-to-air satellite programs from the *Astra* or *Hot Bird* satellites.²²⁷ Several months after the start of *Wizja TV*, *Canal+* answered (in a short-term

²²⁴ Filas (2002: 19).

²²⁵ *Ustawa* (1990b).

²²⁶ Pike (2009). For a more detailed overview of the Poland's cable TV development stages cf. Filas (2002).

²²⁷ One exception was the South African satellite platform *MultiChoice*, offering an analog programmatic package, partly with Polish audio versions or subtitles, on a subscription basis; taken over in 1996-1997 by *Canal+*. Canal (1996).

cooperation with *Polsat*) with the digital platform *Cyfra+*.²²⁸ In 2000 *Polsat* launched the third Polish digital platform: *Cyfrowy Polsat*.²²⁹ After the merger between *Cyfra+* and *Wizja TV*, a new digital satellite offer by the name of *Nowa Cyfra+* appeared on the Polish TV landscape, whose name was soon changed back to *Cyfra+*.²³⁰ In the year 2006, *ITI* as well launched its digital platform *Telewizja n* and two years later a second one, *Telewizja na karte (TNK)*.²³¹ The fifth Polish digital TV platform, *Neostrada TP z telewizją (DTH)*, was launched in 2008 by the Polish telecommunication provider *Telekomunikacja Polska S.A.*²³² In September of 2009 Poland's public television corporation *TVP S.A.* started the most recent digital platforms on the Polish market with the provisional name of *Platforma Cyfrowa TVP*.²³³ The public satellite project was, however, cancelled less than two months after its launch.²³⁴

In contrast to cable TV providers, the operators of digital platforms mostly also produce a considerable amount of predominantly thematic satellite programs, which they themselves broadcast and license to other DBS providers and to cable TV operators. The major reason for this is that for the most part Polish DBS providers have a terrestrial broadcasting background, thus being by economies of scope and scale able to produce television programs more cost-effective and on a qualitatively higher level than cable TV operators, who only in very few cases are linked with factual broadcasting corporations. Furthermore, as far as digital TV-related services are concerned, DBS operators are currently further ahead of cable TV providers, while however not being as advanced in the Internet or telephony sector. These distinctions are mainly caused by the differing cost structures of the respective technological fields of application, which however due to constant advancements in this area are very dynamic in character. Terrestrial broadcasting, on the other hand, has in its current analog status in fact only the economic advantage of being gratis for the end-user, yet it is for the time-being technologically the most uncompetitive solution, at least until the implementation of the first digital terrestrial multiplexes.

²²⁸ Zarębski (1999: 207).

²²⁹ KRRiT (2001a: 18).

²³⁰ KRRiT (2003b: 57), KRRiT (2005b: 103).

²³¹ Cf. KRRiT (2007: 21), ITI (2008b). *Telewizja n* was initially known as *Telewizja Nowej Generacji – nHDTV*.

²³² KRRiT (2008: 46-47).

²³³ Arb (2009).

²³⁴ Sommer (2009).

2.7. Review

The transformation on the Polish TV sector is closely connected to the socio-political transformation of the country. The abolition of the Soviet party control system led to multiple TV and radio broadcasters, which operated within a legal grey zone until the market's legislative framework was implemented in 1992 by the Broadcasting Act. This central act restructured public broadcasting and defined the conditions for commercial transmitting, thereby determining the Polish TV market's dual character.

Due to terrestrial frequency scarcity and the postulate to maintain a significant role for public broadcasters, in the opening phase of Poland's broadcasting sector there was space for only one nationwide commercial concession assigned to *Polsat*, one regional Pay-TV concession for *Canal+*, and three over-regional TV concessions for *TVN*, *Nasza TV*, and *TV Niepokalanów*. Out of these, in addition to the public channels *TVP1* and *TVP2*, *Polsat* and *TVN* grew to be strong market players among the programmatic TV providers. These two commercial market players - together with *Canal+* as the Polish pioneer in the DBS sector - also dominate the creation and distribution of digital satellite TV by the establishment of growingly popular digital platforms. Cable television has played a crucial role in the overall progress of Poland's TV sector, dynamically developing from a semi-communal freedom-seeking movement to a professional and concentrated high-volume sector.

3. Legal Framework

After the devolvement of the Polish TV sector has been outlined, an overview of the Polish TV market's legislative framework will be given and confronted with the theoretical background from the first part of the paper. The presentation of the full extent of legislative acts, which influence the TV sector directly or indirectly, would certainly exceed this paper's scope. Therefore the emphasis should be put on a selection of the following most significant legislations connected to this sector: the Polish Law Against Unfair Competition, which is harmonized with EU directives, the Constitution, which includes significant postulates concerning the broadcasting market, the Broadcasting Act as the central Polish Act defining the TV market structure, as well as the Advertising law, which is dispersed

among several legislative acts. Two further legislations, the Intellectual Property Law and the Telecommunication law, will be presented separately, since only certain parts of their legislation directly influence the audio-visual signal transmission segment.

In order to stay in line with the theoretical background presented in the first part of the paper, the legal perspective will be linked to both, the theory of economic competition and the theory of media policy. In doing so, the legal realization of the respective theoretical postulates will be evaluated. Accordingly, competition law can be regarded as the legal implementation of competition theory, while the theorems of media policy can be identified in several acts, such as Constitutional law, the Broadcasting Act and in the Advertising law.

3.1. The competition policy component of the legislative environment

For all sectors within a market economy, competition is of crucial significance. The economic framework within a market environment pushes the market subjects to adjust to certain natural market regulations, in order to be able to create competitive products and services. Complete competition signifies the creation of prices and quality levels by market mechanisms, since the consumer can switch from one supplier to an unlimited amount of other suppliers, which compete on price and quality. As a consequence, complete competition is optimal for consumers, for small- and middle-size suppliers, and for a given industry as such; yet bigger capital-intensive market players have a big interest in limiting competition, while maximizing their control over prices and quality. So in order to guarantee such a competitive environment, economies require certain laws and regulations to counteract unfair activities, which are aimed at limiting competition as such.

The Polish law in this segment is based on historic international legal acts, such as the Paris Convention for the Protection of Industrial Property of 1883, the Hague Agreement of 1925, or the Complementary Act of Stockholm of 1967.²³⁵ Poland's legislative acts are furthermore closely influenced by European Union regulations, due to the country's access in May 2004.

²³⁵ Orzewski (2004: 99).

3.1.1. EU competition policy

After 50 years of legal instability, EU directives and regulations have been crucial guidelines for Poland legislative development during the last 20 years. As far as competition law is concerned, the most significant acts are the Prohibition of Cartels, the Prohibition of Abuse of a Dominant Market Position, the Control of Mergers and Acquisitions, and the Control of Public Subsidies. While all four acts are explicitly included in the Treaty establishing the European Community of 1957 and taken over in the Treaty on the European Union of 1991 (the Maastricht Treaty), the mergers and acquisition control is governed by the Council's Regulation 139/2004 EC (the Merger Regulation).²³⁶

3.1.1.1. Prohibition of cartels

The Prohibition of Cartels refers to every agreement among undertakings, whose goal is the limitation or distortion of competition on the Community's market. Examples of such prohibited cartel activities are price agreements, production control agreements, and investment agreements. Only under exceptional circumstances are cartel agreements allowed, for example when they foster overall economic growth and increase consumer welfare at the same time, while not limiting market competition.²³⁷ If these conditions are not fulfilled, cartel agreements lead to destructive information asymmetries, which in turn cause market failure. Hence, in order to counteract market failure and protect a competitive market structure, cartel agreements are prohibited.

3.1.1.2. Prohibition of abuse of a dominant market position

The second relevant act in terms of EU competition policy is the Prohibition of Abuse of a Dominant Market Position.²³⁸ This regulation defines the illegality of any abuse of dominant market position by one or more market participants within the European Union. Such abuses can take various forms, including: tying the sale of one product to another product, the refusal of providing a specific capacity, which is substantial for all existing market players, or pricing below production costs with the dominant aim of

²³⁶ Amended 1997; Mik (1999: 323).

²³⁷ Founding Treaty (1957: Art. 81 [82]).

²³⁸ Founding Treaty (1957: Art. 82 [86]).

eliminating competitors. A crucial question in this connection is the concrete definition of the so-called relevant market, on which the supposed dominating participant is competing by forbidden means. This question is in practice answered by market analyses, which are guided by predefined figures and percentages. Therefore, a certain decision bias is unavoidable.

3.1.1.2. Control of Mergers and Acquisitions

A further significant part of the EU competition policy legislation is the Control of Mergers and Acquisitions.²³⁹ This act implies the control of all concentration activities, during which at least one undertaking is planned to subordinate another undertaking on a long-term basis. Practically, mergers, acquisitions, and related concentration processes mostly take the form of one firm buying the shares of another one. If the resulting corporation increases the market dominance of the main undertaking in such a manner, that that the effectiveness and competition on the common market would be limited in a deciding way, then this particular concentration process is to be hindered.

3.1.1.3. Control of public subsidies

The fourth relevant legal area with respect to competition policy is the Control of Public Subsidies.²⁴⁰ This act forbids all forms of direct or indirect public financial assistance for all firms, which compete under market conditions, no matter if private or government-owned. The act grants that a member state can in fact deliver public services within crucial industries and therefore finance publicly the respective government-controlled firm. Yet other than that, in all areas where the public corporation acts as a market competitor, such subsidies are considered to be market interferences, which must be prohibited.

²³⁹ Council of the European Union (1989b).

²⁴⁰ Founding Treaty (1957: Art. 87 [92]).

3.1.2. Polish competition law

The implementation of the main acts of the European Community competition into Polish law was established by the Law against Unfair Competition of April 16th, 1993.²⁴¹ This law took a cue by the respective EU directives, while the amendments of 2003 and 2004 harmonized this legal act with the EU legislation. The harmonization was finalized during Poland's accession process, whose sixth chapter constituted for competition policy.²⁴²

Accordingly, the law's Article 5 defines the prohibition of cartels, yet limiting the control sphere to those agreements, whose participants' cumulated market share exceeds 5% of the overall market (Article 6).

The pendant for the EU-directive Article 82 [86] is Article 8 of the Polish Law Against Unfair Competition. According to this Article, the abuse of the dominant market position by one or more firms is prohibited. The main criterion for a dominant market position is a market share of over 40% on the so-called relevant market, on which the respective participant is economically active.

Article 12 of the law against unfair competition defines the extent of control over concentration processes, based on the EU directive 83 [87]. Concerning this, each economic concentration procedure must be reported a priori to the main market control institution *UOKiK*, provided that the cumulated revenues of the concerned firms exceeded €50.000.000 in the year preceding the planned amalgamation. Freed from this reporting obligation are those concentrations, which in spite of meeting the condition above also fulfill certain additional criteria. First, the revenues of that firm or that part of a firm, which is to be taken over, did not exceed €10.000.000 in each of the two years preceding the planned amalgamation. Second, the market share of the resulting undertaking will not exceed 25%.²⁴³

The control of public subsidies is not included explicitly in the Polish competition law, since this regulation is executed on the EU level, and not on the national level.

²⁴¹ *Ustawa* (2003a).

²⁴² Urząd Komitetu Integracji Europejskie (2003).

²⁴³ UOKiK - Urząd Ochrony Konkurencji i Konsumentów - Competition and Consumer Protection Agency.

3.1.3. Review

The named four legal areas: prohibition of cartels, prohibition of abuse of a dominant market position, control of mergers and acquisitions, control of public subsidies, are the basis for EU competition policy. They have universal character, referring to markets and competitors in general. Consequently, the TV market is affected by the postulates of EU competition policy as any other economic sector. Being a member of the EU, Poland harmonized its law with the EU directives in this subject matter.

Referring to the theoretical framework, these legal acts are closely related to the theory underlying economic competition regulation. Accordingly, the control of mergers and acquisitions intends to tackle the thread of market failure caused by structural problems. The resulting policy is consequently mainly structural market control. The prohibition of cartels and the prohibition of dominant market position abuse deal with both, structural problems and information asymmetries as sources of market failure. The resulting regulating policy is in these cases structural control, as well as behavior control. The control and regulation measures are in all three acts directed at all corporate market participants.

In contrast to that, the legal act of control over public subsidies plays a special role within these four legislative competition policy postulates, since it explicitly addresses the state and its economic activities as the subject of potential investigation. In doing so, the competition on each market is to be protected against the state, which due to its very nature has immediate potential of being a dominating market participant. The limitation of public subsidies to those, which are necessary for the fulfillment of certain public services, can therefore be considered a special case of prohibition of abuse of a dominant market position.

3.2. The media-political component of the legislative environment

In addition to competition policy related legislations, which were presented above, media policy is also implemented into Poland's legislative framework affecting the TV sector.

3.2.1. The Constitution and the media sector

The Polish Constitution of 1997²⁴⁴ includes several elements, which form the basis for the legal implementation of media-political postulates. Accordingly, Article 14 is the foundation for the freedom of the media, stating that “the Polish Republic guarantees the freedom of the press as well as other forms of social communication”.²⁴⁵ The Article 54 goes further, guaranteeing everyone’s freedom of speech and access to information. Moreover, this Article prohibits the preventive censorship, as well as the licensing of print media, while admitting the possibility of licensing regulations in the case of audio-visual media. In addition, Article 214 and Article 215 explicitly name the *KRRiT* as the central broadcasting institution to guide the radio and TV market.

The EU pendant to this legislative content can be found in the European Convention on Human Rights of November 4th, 1950, which was ratified in Poland on January 19th, 1993. As to the freedom of speech, as well as to the possibility of licensing the broadcasting sector, Article 10, point 1 explicitly defines the following:

„Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”²⁴⁶

Consequently, even though the state regulation of the broadcasting market is a “can” and not a “must” clause in European and Polish ruling, the purely economic competition on the TV market is factually legally questioned and limited already within the Constitutional law. A clear reference to the European Convention on Human Rights is also included in the Article 6, point 2 and 3 of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community²⁴⁷:

“2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

²⁴⁴ *Ustawa* (1997b).

²⁴⁵ „Rzeczpospolita Polska zapewnia wolność prasy i innych środków społecznego przekazu.”

²⁴⁶ ECHR (1950: Art.10).

²⁴⁷ Council of the European Union (2008).

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law."

3.2.2. The Broadcasting Act

As already mentioned before, a fundamental legislative element on Poland's way to a democratic and pluralistic rule of law was the termination of the broadcasting state monopoly by the ratification of the Broadcasting Act. This law established a dual broadcasting system, allowing and legally regulating the coexistence of public and private broadcasters (Article 2). This coexistence does however not imply an equal status of public and private broadcasting entities. For instance: while public broadcasters gain the allowance to broadcast automatically, private broadcasters require an administrative licensing act. This seemingly trivial difference already indicates the character of the dual broadcasting structure, which to a certain degree favors public broadcasters over private ones. On the other hand, public broadcasters have a greater share of programmatic duties and restrictions compared to their private counterparts; the main regulative differences concerning this matter will be elaborated later on in this work.

According to Article 5, the Country Council for Radio and Television (*KRRiT*) was established as the central regulating broadcasting institution. Article 6 specifies the assignments and competencies of the council. As a state institution, the *KRRiT* should "guard the freedom of the word in radio and television, as well as the broadcasters' autonomy, the interests of the receivers, and the open and pluralistic character of the broadcast" (Article 6.1).

The practical assignments of the council are above all decisions related to the licensing process, as well as to the stipulation of the public broadcasting fee and its distribution between the public radio and TV broadcasters. The legal significance of the Council was additionally strengthened by its explicit inclusion in Poland' Constitution of 1997.

In order to achieve an independent and intrinsically pluralistic structure of the council itself, its members are voted for in a specific manner. As specified by Article 7, the *KRRiT* consist of five members. Two of the council's members are chosen by the Polish

parliament, one by the senate, and two are named by the Republic's president. The members' cadence amounts for six years, and had a delayed voting till 2005, in so far as one third of the council is to be exchanged every two years. When assuming the office, a *KRRiT* member has to resign from all political charges, as well as professional activities in the broadcasting market. The dismissal of a member is only possible under exceptional circumstances, such as a legal conviction.

3.2.2.1. Public Broadcasting

According to Article 26 of the Broadcasting Act, national broadcasting was transformed into a one-person corporation with the government as the only shareholder. Even though the government is the public broadcasters' sole owner, it has theoretically no direct influence on the programmatic structure. According to the Broadcasting Act, the finance minister nominates only one out of five to nine members of the public *TVP* supervisory board, while the remaining ones are appointed by the *KRRiT* with a 2/3 majority (Art.9.2, Art.28.1). The *TVP* supervisory board, in turn, elects the one to five member board of directors with a 2/3 majority in presence of at least 3/4 of its members (Art.27.2). Thus, the politic neutrality of the board of directors is practically only given, if the objectivity of the *KRRiT* is ensured.

The Broadcasting Act furthermore defines the financing form of public broadcasting. In addition to the possibility of advertisement financing, the Articles 48-51 empower the *KRRiT* to define the level of the broadcasting fee and to distribute the resulting revenues between the public TV and radio broadcasters based on the corporations' needs and resulting from the expected fulfillment costs of the public service mission. The public mission, in turn, was defined in the Act's amendment of April 2nd, 2004²⁴⁸. According to Article 21 "the public radio and TV broadcasters fulfill the public service mission, by offering the whole society and its particular units manifold programs and other services in the areas of information, journalism, culture, entertainment, education, and sports, which are characterized by plurality, objectivity, balance, and independence, as well as innovation, high quality, and integrity of communication".²⁴⁹

Even though the definition of the public service remit is clearly motivated by the principle media-political postulates opinion plurality and journalistic quality, some elements

²⁴⁸ *Ustawa* (2004a).

²⁴⁹ *Ustawa* (2004a: Art.21).

of its definition are questionable. First, the inclusion of entertainment and sports in the public service mission raises concerns, since it is highly doubtful that these programmatic elements are merit goods or at least goods of public interest. Consequently, if a media good is not a merit good, the justification for a public service mission financed by public funds ceases to apply. Sports and entertainment events are certainly difficult to include in either of both principle postulates. Second, the presented definition implies that the public service mission can be exclusively provided by public broadcasters, which unnecessarily eliminates the possibility of alternative public service fulfillments.

3.2.2.2. Commercial Broadcasters

As mentioned above, a concession is mandatory for private broadcasters. The *KRRiT* has the exclusive authority to distribute broadcasting licenses (Article 20b), making the council the major executive organ for the structural control of the sector. The decision criteria adherent to the licensing process are rather vaguely defined, based on technical, financial and programmatic factors. A concession is always limited in time and is granted for maximal ten years.²⁵⁰

Until the Act's amendment of 2004 the limit for the involvement of foreign capital in a broadcasting corporation amounted to 33%. After the change, the percentage was raised to 49% for non-EU capital, while the capital restriction for EU members was eliminated completely in harmony with EU standards (Article 35).

In addition to these administrative regulations, the Broadcasting Act also includes rulings concerning programmatic contents and advertising. For example, according to Article 15, commercial broadcasters are obliged to dedicate 33% of their transmission time to programs produced in Polish language, excluding informational programs, advertisements, sports transmissions, textual program, as well as game shows. Moreover, 50% of the whole transmission time (again excluding the contents mentioned above) needs to be dedicated to productions stemming from the European Union. These regulations are harmonized with one of the central EU regulations concerning the TV market, namely the Television Without Frontiers Directive of 1989 with its amendment of 1997²⁵¹. The latest amendment, renaming the Television Without Frontiers Directive in December 2007 by the

²⁵⁰ *Ustawa* (2004a: Art. 36).

²⁵¹ Council and Parliament of the European Union (1997).

Audio-visual Media Services Directive (AMSD)²⁵² may require additional harmonization in Poland. Accordingly, the AMSD requires implementation by the EU member countries latest by December 19th, 2009. However, Article 3.1 AMSD partly allows the member countries to maintain the old ruling by stating that:

“Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the fields coordinated by this Directive provided that such rules are in compliance with Community law.”

3.2.3. Review

The Polish constitution and the Broadcasting Act are the major legislative components, which led to the current publicly regulated dual broadcasting structure in Poland. The regulation of the media sector by a public institution is legally suggested by the Polish constitution, which stands in line with the EU standard in that matter.

The Broadcasting Act as the TV market’s fundamental legal institution regulates the sector’s structure on different levels. First, it appoints the *KRRiT* as the central market regulating institution. In doing so, the Broadcasting Act turns the “can” into a legislative “must”, as far as institutional TV market regulation is concerned. Second, the act explicitly defines the existence of a dual broadcasting system, in which public broadcasters are co-financed by public funds, while commercial broadcasters are not granted access to the revenues from the public fees. Third, the Broadcasting Act defines the financial structure of broadcasters, setting limits for foreign capital stemming from outside of the EU. Last but not least, The Act imposes a multitude of behavioral imperatives and prohibitions connected to the arrangement of the programmatic structure itself, thereby limiting the market participants’ economic freedom for the sake of media-political regulations.

3.3. Advertisement Law

The Polish advertisement law is distributed among a variety of legislative acts. A single act unifying the legal postulates of advertisement law exists neither in Poland nor in

²⁵² Council and Parliament of the European Union (2007).

Europe. Relevant advertising rulings are included in the competition law, civil law, patent law, press law, broadcasting law, as well as in intellectual property right regulations.²⁵³

3.3.1. Competition and Consumer Protection Law

The Polish Unfair Competition Law²⁵⁴ specifies unjust and forbidden advertising as an aspect of unfair competition (Article 3). According to Article 16 of this law, such undesirable and forbidden advertisement methods include among others:

- Advertising directed at deceiving consumers in order to influence their purchasing decisions.
- Messages, which are camouflaged as objective information, yet directed at motivating consumers to purchase specific products or services.
- Advertising directed at consumers' emotions by creating fear, taking advantage of superstitions, or children's naivety.
- Advertising, which is excessively privacy invasive, for example the sending of not ordered products to potential customers.
- Advertising of tobacco and alcohol.²⁵⁵

3.3.2. Television without Frontiers Directive / Audio-visual Media Services Directive

For the European television market and its advertisement section, the Television Without Frontiers Directive has been of importance. Its regulations were adopted by the Polish law within the Broadcasting Act in its Amendment of 2004. Article 12 of the Television Without Frontiers Directive, and analogously Article 16a of the Polish Broadcasting Act, sets the limits for legal advertisement time on TV. Accordingly, the maximum programmatic share dedicated to commercials must not exceed 15% of the total daily broadcasting time. If telephone shopping is used, the percentage can be raised to 20%, unless telephone shopping itself exceeds 15% of the daily transmission time. Moreover, commercial breaks during TV movies can't be implemented oftener than every 45 minutes, while information programs, documentaries, as well as religious programs can't be

²⁵³ Sobczak (2000: 14-15).

²⁵⁴ *Ustawa* (2003b).

²⁵⁵ *Ustawa* (1996).

interrupted at all, unless they last longer than 30 minutes in total; if this is the case, advertisement units can be inserted in 20-minute intervals.

These restrictions were partly redefined by the 2007 amendment, simultaneously renaming the Television Without Frontiers Directive into the Audio-visual Media Services Directive (AMSD). Advertisement and teleshopping regulations were aligned as to their maximum programmatic share and their base changed from daily broadcasting time to clock hour, with a maximum of 20% (18.1 AMSD), ergo 12 minutes of allowed advertising per hour. The frequency of commercial/teleshopping interruptions has also been aligned to once per each scheduled period of 30 minutes, increasing thereby the allowed advertisement frequency for television movies, while reducing them for other programmatic content, such as news and children's programs (11.2 AMSD).

3.4. Further legislative regulations acting on the audio-visual sector

There are several further legislative acts, which influence the audio-visual sector. The probably most interesting among those with respect to the television market are the intellectual property law and the telecommunication law.

3.4.1. The Intellectual Property Law²⁵⁶

The intellectual property law defines the scope of immaterial work protection for the authors of the respective works. Some parts of this Polish act have a considerable impact on the audio-visual signal distribution landscape, especially the Articles 21 to 25. These articles postulate the necessity of a contract between the work's author and the subject, which is emitting or reemitting the work to a broader audience. Without such a prior agreement respective transmitting activities are generally prohibited. Exceptions are the non-commercial usage by cable- or antenna television organizations for an audience of not more than 50 people, as well as already published reports and statements concerning current events, while granting the authors' also in the latter case the right for compensation (Article 25).

²⁵⁶ *Ustawa* (1994).

These intellectual property regulations are especially important for cable TV companies, making a separate contract with each of the broadcasters necessary, whose programmatic compilation the cable TV provider plans to include into its offer (except for non-commercial offers targeting an audience of less than 50 viewers). This is particularly problematic as far as the public TV offer is concerned. Accordingly, the Broadcasting Act's Article 43.1 defines a "must-carry" regulation, according to which cable TV providers must include the nationwide public television channels into their net in the first order, followed by regional and non-commercial offers terrestrially available in the respective area. Tertiary, commercial channels, which are terrestrially available in the area, are to be included into the cable net and only after all these channels are part of the cable offer, other national or foreign stations may be added. This "must-carry" regulation is within the Polish law not accompanied by a "must-offer" rule, so it naturally creates a drastic imbalance in negotiation power between the cable companies and the broadcasters embraced by the "must-carry" ruling. Accordingly, not only are public broadcasters and local channels disproportionately privileged vis-à-vis cable companies, yet also nationwide commercial broadcasters, whose programs must also be implemented in all cable nets in areas of their terrestrial availability. Hence, the fact that these commercial programs rank third in the "must-carry" regulation has no practical meaning, since no cable company would be able to compete with only offering public and regional stations, even though they could legally do so. Yet the inclusion of attractive satellite stations to the cable offer is only allowed if terrestrially available commercial programs are implemented in front, thus making the private nationwide broadcasting stations factually as mandatory as nationwide public channels.

In spite of this, especially the public *TVP* was widely criticized for demanding license fees from cable companies (predominantly as an answer to similar demands by the commercial broadcasters) with the popular argument of a resulting doubled license fee. Accordingly, license fees, demanded by the nationwide public television stations to be paid by cable companies could from a certain angle indeed be regarded a sort of additional public license fee, since cable TV providers could carry the fees imposed on them forward to their viewers, making the latter indirectly pay twice for the public offer. Yet this argumentation seems more valuable from a marketing point of view than from a matter-of-fact perspective. Accordingly, from an intellectual property rights approach there is no reason for public broadcasters to give up their sovereignty over their works, including the question of fees, especially since cable companies are commercial entities. The "must-carry" critique is certainly more objective than the double broadcasting approach in this context, due to its

logic that no individually negotiable fees should be demanded from cable companies for those public and commercial channels, whose inclusion in the cable offer is not a question of realistic choice.

This problematic legal status first appeared in Poland in accordance with the law's EU harmonization after the Act's amendment on October 28th, 2002, coming into force on January 1st, 2003²⁵⁷, giving the cable companies only 34 days minus the Christmas holidays for separately negotiating reemission contracts with multitude companies. Before this amendment, cable television operators could reemit all channels without prior agreement but not without resulting compensation for the broadcasters (this was the principle of the so-called "licencja ustawowa" - the "legal license"). As a consequence, several channels disappeared from the cable net offer in the beginning of 2003, due to the lack of proper agreements. The problem of short transition time to negotiate the reemission contracts was brought before the Polish Constitutional Tribunal by the Polish Ombudsman already in December 2002, yet it was declared conform with the constitution in September 2003.²⁵⁸ A month before the trial, the Senate however initiated a transitional amendment of the Act, giving the cable companies time for the adjustment until Poland's European Union accession in May 2004.²⁵⁹ While nearly all cable companies signed the demanded contracts with most of the broadcasters of concern, after May 2004 the amendment's problematic relation to the Broadcasting Act's "must-carry" regulations became the main problem: cable companies expected gratis licenses for the reemission of all programs embraced by the "must-carry" rule, while commercial nationwide broadcasters demanded license fees from cable companies, while vehemently criticizing *TVP* for acting likewise. The issue was solved by the end of 2005 with the renouncement from license fees vis-à-vis cable companies by both, nationwide public and commercial TV stations in separate agreements for gratis reemission licenses with the biggest cable TV chamber *PIKE*.²⁶⁰

This cable TV solution did however not embrace the digital satellite platform sector. Here *TVP* still demanded license fees from the then only two providers *Cyfra+* and *Cyfrowy Polsat*, and so did other commercial broadcasters. Since the Broadcasting Act does not

²⁵⁷ The amendment implemented the following EU directives:

1. Council of the European Union (1992),
2. Council of the European Union (1992),
3. Council of the European Union (1993a),
4. Council of the European Union (1993b),
5. Council of the European Union (1996).

²⁵⁸ Trybunał Konstytucyjny (2003).

²⁵⁹ Sąd Najwyższy (2007).

²⁶⁰ Makarenko (2005a).

PIKE: Polska Izba Komunikacji Elektronicznej - Polish Chamber of Electronic Communication

directly regulate the relations between public TV and satellite platforms, the question of licensed reemission is indeed similar to the one concerning cable companies, yet without the described problematic “must-carry” regulations. As a consequence, the inclusion of channels into a given platform’s offer depends entirely on agreements between the parties concerned. While the two satellite platforms demanded gratis access to the nationwide *TVP* programs, again using the argument of a potential double public broadcasting fee, *TVP* was again not inclined to give up control over its most significant programs. The conflict, which even included an unsuccessful motion for antitrust proceedings brought before the *UOKiK* in 2006 by *Cyfrowy Polsat* against *TVP*, did not embrace *Telewizja n*, the third biggest satellite platform in Poland, which has had a licensing agreement with the public broadcaster from its very start in 2006.²⁶¹ It was not until 2009 that *Cyfrowy Polsat* and *Cyfra+* were legally allowed to include *TVP*’s programs into their offers after signing respective agreements with the public broadcaster, which finally regulate the *TVP* license fees in the form of a programmatic package, embracing both, the public mission offer and the commercial part of *TVP*’s broadcasting activities with its flagship *TVP Sport* (*TVP Sport* holds various attractive sports broadcasting licenses, such as the soccer World Cups 2010 and 2014 and the Olympic Games 2012).²⁶²

Individually negotiable contracts as required by the Polish Intellectual Property Law bear an additional source of doubt. Since price discrimination is legally not excluded in this case, broadcasters, who are at the same time signal distributors, may keep potential new entrants out of the market by demanding unacceptable license prices for their channels. Considering a scenario with two satellite platform operators, who are at the same time program broadcasters, it is under certain conditions only rational that both agree to include the other’s channels on advantageous terms, yet offer new entrants, who for instance solely focus on signal transmission and have ergo no attractive channels to offer in return, intolerable license prices. This scenario can be applied to more than the simplified two competitors, allowing for closure tendencies of signal distribution markets, which is naturally disadvantageous from the competition and consumer welfare perspective. If, however, license fees were fixed or set transparently for all potential business partners, the dominance of existing players would be eased, especially as far as their influence on the development of new technologies are concerned. For it is clear and economically rational that broadcasters within one signal distribution segment will first compete against other

²⁶¹ UOKiK (2007).

²⁶² Makarenko (2009a: 32), Zespół Rzecznika Prasowego TVP S.A. (2009).

forms of signal transmission but in most cases finally strive to dominate the alternative segments as well.

Accordingly, these reemission problems, resulting from the intellectual property right legislation, do not only concern cable companies and satellite platforms, yet naturally also include other television distribution types, such as IPTV or ITV. Accordingly, no Internet television provider is legally allowed to offer even selected parts of third party's programs without a prior agreement. As a consequence, the sector of Internet-based television transmission is not only in Poland developing within a certain grey area, also by making use of various web-related mechanisms, such as uploads by the users, in order to avoid the evident application of intellectual property right regulations to their services.

A legal order of this issue is most certainly one of the biggest challenges by each country's legislation, which will undoubtedly have a considerable impact on the structure of Internet services, among others also on the Internet-based audio-visual content transmission. As far as Poland as a member of the European Union is concerned, the so-called Telecom Package, which is expected to become law by 2010, including the Framework Directive, the Access Directive, the Authorization Directive, the Universal Service Directive and the e-Privacy Directive will most probably have a major impact on the audio-visual content transmission over the Internet.²⁶³

3.4.2. The Telecommunication Law²⁶⁴

The telecommunication law regulates a number of basic and specific issues connected to telecommunication networks and related services. One of the law's major components is the introduction of the Office of Electronic Communications (*Urząd Komunikacji Elektronicznej - UKE*) as the central regulating body in this sector.

As far as the television market is concerned, the Articles 112 to 118 are of special importance. Those articles are to define the *UKE's* role in the frequency infrastructure planning and implementation procedure in general and in the terrestrial frequency redistribution process in the course of the digital switch-over in particular. The activities include among others technological parameters (Article 112), detailed allocation planning of the frequency infrastructure within multiplexes (Article 115), and tendering procedures for the usual case of frequency scarcity relative to the number of willing frequency holders

²⁶³ Europa (2009a).

²⁶⁴ *Ustawa* (2004b).

(Article 116). In addition to the demanded overall legal and political conformity of the frequency distribution process with national and EU standards, Article 118.5 furthermore emphasizes that non-economic media-political parameters of national importance (culture, language, and media plurality) should receive special consideration when defining respective tendering procedures.

While the act provides guidelines as to the selection process of audio-visual frequency holders, a clear accountability of authority and responsibilities in this matter seems to be missing. The Articles of concern indeed emphasize *UKE*'s cooperative relation with the *KRRiT* in the matters of audio-visual frequency reservation and the related tendering procedures, whose power balance, however, lacks the proper definition. Whenever matters of audio-visual frequency planning and distribution are concerned, the law uses either the term "...in agreement with the National Council of Radio and Television..."²⁶⁵ (Articles 114.2, 118.5, 122.6) or "...in accord with the chairmen of the *KRRiT*..."²⁶⁶ (Articles 112.2, 123.3, 201.4). In the same matter Article 192.15 names the "cooperation with the *KRRiT*"²⁶⁷ as one of the *UKE* chairman's substantial duties without further defining the hierarchy between these two for the implementation of digital terrestrial television in Poland's crucial institutions, leaving much room for contradicting interpretations and paralyzing conflicts, which will be closer described in the political section of this work.

The Telecommunication Law furthermore defines the openness of technological solutions for the digitalization procedure (Article 132 ff.) and the general fees levied on broadcast frequency holders (Art 185 ff.).

3.5. Review

The presentation of the legal framework acting on Poland's TV market indicated in which way the country implemented the basic theoretical postulates into legislative acts. While Poland's competition law can be considered the legal implementation of the theory of competition policy, media political postulates found their way into several acts, such as Constitutional law, the Broadcasting Act and the Advertising law.

²⁶⁵ „...w porozumieniu z Krajową Radą Radiofonii i Telewizji...”

²⁶⁶ „...w uzgodnieniu [porozumieniu] z Przewodniczącym *KRRiT*”

²⁶⁷ „współpraca z Krajową Radą Radiofonii i Telewizji w zakresie określonym ustawą i przepisami odrębnymi”

The correction of presumed market failures takes legislatively place on various levels of market regulation, in accordance with the theoretical background. Accordingly, competition policy regulates the economic market structure of the TV sector with the intention of protecting economic competition from unfair behavior on three levels. First, the market participants are supposed to be protected from one another. Second, consumers should be secured from dominant market players. Third, suppliers are to be protected from the state. Hence, behavioral control and structural control have crucial significance as the major instruments of competition policy to counteract market failures. Whereas economically motivated legislative regulations strive towards economic welfare through a competitive market environment with supplier plurality, media policy uses similar mechanisms while being motivated by opinion plurality and journalistic quality independent of economic competition parameters.

Accordingly, from the perspective of media policy, the central law is the Broadcasting Act. On the basis of constitutional regulations, this act implements a public institution as the central regulator of the programmatic landscape. In doing so, the Broadcasting Act realizes the media-theoretical need for an institutional third party, which decides over the adequate level of opinion plurality. The act additionally defines the dual broadcasting system, imposing a co-existence of commercial suppliers and publicly co-financed public broadcasters. Further regulations as to the desired programmatic framework, are not only valid for public broadcasters but also for commercial transmitters. By demanding one central broadcasting institution, which has licensing authority and programmatic control, the media-political component of the broadcasting market's legislative framework defines market access control, behavioral control, and structural control as the major regulative instruments. By legislatively defining public broadcasting, direct market participation is additionally implemented as the most immediate form of market regulation.

Advertisement regulations are further elements of predominantly media-politically motivated behavior control on the broadcasting market. While in some cases, such as the one of unfair advertising, the restrictions may seem plausible, other examples, as those related to advertising duration restrictions, are rather unnecessarily limiting and questionable, especially from the economic point view. These kinds of regulations are a very good example of the intent to co-regulate journalistic quality by legal means. One consequence of such market interference is the creation of artificial advertising time scarcity, which thus considerably influences and limits the competition on the advertising

market. A second consequence of such regulations is that consumers are further restricted in their role as the third party who decides over the programmatic structure along with the density and allocation of commercials they would like to watch. Consequently, the question arises if in some cases the presumably positive intentions of media-policy-motivated regulations do not do more harm than good - room for improvements in these matters certainly still exists.

A number of further legislative acts have an impact on Poland's legal television framework. The Intellectual Property Law's most crucial postulate is the need for contracts between an audio-visual work's originator and the emitter or re-emitter. Especially in combination with the Broadcasting Act's "must-carry" regulations, which concern the cable TV sector, individually negotiable contracts between the parties involved do by no means seem to be the most suitable option. The Telecommunication Act introduces the *UKE* as a regulating institution, which is especially with respect to the digital switch-over of considerable significance. The *UKE*, together with the *KRRiT*, is jointly responsible for the redistribution of broadcasting frequencies and their adequate programmatic bundling in multiplexes. While the cooperation between the main broadcasting regulation body and the major telecommunication regulation institution is a reasonable concept in the context of groundbreaking changes around the digitalization process of terrestrial broadcasting, the lack of proper authority balance definition is undoubtedly a legislative shortcoming, which will certainly have a problematic influence on the digital switch-over process.

The legal perspective of the Polish television sector shows that in general public broadcasting is adequately defined within the Polish legislation. Its public service character is emphasized, while its commercial activities are subject to the same regulations which apply to commercial broadcasting entities. The three institutions *UOKiK*, *KRRiT*, and *UKE* regulate the audio-visual mass communication market in their respective fields of actions, which naturally overlap in certain areas, not always accompanied by adequate hierarchy solutions. Many fields of economic and media-political theory have indeed been tackled by the Polish legislative framework, yet since the major postulates are supplier maximization and opinion plurality, its structure is still incomplete and requires further refinement, especially in the fields of new technologies and market openness. The factual status of the legal framework is best reflected by its political sphere. A properly defined and adequately guarded and executed legislative structure is resistant to illegitimate political interferences, or at least minimizes their extent. If such political involvement crosses a certain corruption line of acceptance, the legal framework is either suboptimally defined or improperly

executed. Of course, no system is free from corruption affairs, yet their commonness and overall extent can provide at least a suiting feedback and impression area in this subject matter.

4. The Political Framework

The legislative acts evaluated above presented the legal postulates for the Polish TV sector. According to the legislative framework, political interferences should only have marginal significance. Yet in a market of such political and economic potential such as the TV market, external interferences are not easy to be excluded, especially if a sufficient extent of public regulation is present. The level of political involvement in the Polish TV market should be indicated in the section to follow by a selection of practical examples.

4.1. The first KRRiT recalls

Even though semi-political regulatory institutions, such as the *KRRiT*, were conceived to counteract market failures, they mostly form the most significant instruments for executing political influence. In spite of political independence fostering asymmetric cadency regulations, decentralized member appointing, and legally fixed member indefeasibility, it seems clear that whenever institutional members are appointed by politicians, this institution is quite unlikely to be free from political interest.

How true this hypothesis is for the Polish broadcasting regulation segment, prognosticated already *KRRiT*'s very beginnings. Accordingly, the council started its constitutional mission accompanied by high hopes for a strong and politically independent broadcasting institution in April 1993, while already in March 1994 former President Lech Wałęsa first dismissed Marek Markiewicz from his *KRRiT* chairman position and four months later from the council as such, together with a second *KRRiT* member, Maciej Iłowiecki.²⁶⁸ Both men, together with Ryszard Bender, were previously appointed to the council by Wałęsa. Their overall role in the first concession process and especially their voting in favor of *Polsat* to be granted the first nation-wide commercial broadcasting

²⁶⁸ KRRiT (1995: 8). According to the initial legislation, the president appointed KRRiT's chairman.

concession (the voting decision was unanimous) were the direct reasons for Wałęsa's legally questionable reaction. Wałęsa and many other critiques of the first concession phase suggested corruption-like irregularities accompanying the tender and pointed out that *Polsat* could only win because other more promising offers were discriminately not taken into serious consideration due to their foreign capital involvement, despite its legal rightfulness of up to 33%.²⁶⁹ Yet it was certainly not only the worry about the legal rightfulness of the concession process, which caused the *KRRiT* members appointed by the *Solidarność* legend to fall from grace. For Wałęsa undoubtedly favored Mariusz Walter's and Jan Wejchert's project *TV-7* to receive the only nationwide TV concession, since the future *TVN* owners were close to the former president's political environment. *Polsat*'s owner Zygmund Solorz-Żak, on the other hand, was from the very opposite political camp, being in very friendly terms with the post-communistic establishment as a former PRL security service agent.²⁷⁰

The tender was brought before the Supreme Court by the losing tenderers and the former president considered it justified dismissing two of the three members, who he appointed 18 months earlier. The third presidential *KRRiT* member, who took part in the first concession phase, Ryszard Bender, voluntarily left the council in July 1994 - two months before the two mentioned dismissals - in connection to corruption allegations concerning his foreign travelling financed by a decoder producer.²⁷¹ Wałęsa's vice head of office Lech Falandysz justified the president's controversial move with the principle that the one who appoints can also dismiss, unless not explicitly stated otherwise by law.²⁷² The Polish Supreme Court as well as the Constitutional Tribune, however, contradicted this legislative construction suggested by Falandysz in various related decisions.²⁷³ Nonetheless, even though Poland's Supreme Court decided that the concession tender was in essence correct and both dismissals certainly not rightful, Markiewicz and Iłowiecki never returned to the council.²⁷⁴ What gives these initial dismissals additional brisance in retrospect is the fact that both, Markiewicz and Iłowiecki, were in the aftermath of the described events until 2009 closely connected to the concession-winning *Polsat*.²⁷⁵

²⁶⁹ Modrzejewska (1999: 200).

²⁷⁰ Pi (2006).

²⁷¹ Olczyk / Kucharski (2009: A-006).

²⁷² This principle became popularly known as the law's *Falandyzation* (*Falandyzacja prawa*). Kowalska (2009).

²⁷³ Cf. e.g. verdicts K. 5/86, P. 2/86, U. 6/87, K. 1/87, K. 1/89, U. 3/92, K. 11/93 according to Wojewódzki Sąd Administracyjny (2010).

²⁷⁴ Gluza (2003: 32).

²⁷⁵ Markiewicz had his own journalistic programs on *Polsat*, such as the magazines "Sztuka Informacji" and "Bumerang", while Iłowiecki was a frequent participant in those programs.

The following anecdote connected to the first *KRRiT* dismissals additionally characterizes quite well a certain aspect of the Polish relation between broadcasting regulation and politics. Accordingly, during a UK visit *KRRiT* member Janusz Zaorski (appointed by Lech Wałęsa to replace Ryszard Bender) asked a BBC colleague if the institution who appoints their broadcasting regulating body's members can also dismiss them. On receiving a confirming answer he stated to his delegation colleagues: "you see, who appoints can dismiss" only to receive the additional information from the British colleague that "until now, however, this has never happened here".²⁷⁶

4.2. Rywingate

A fascinating example of the interrelation between the media and politics is the so-called "Rywingate" case of 2002, which is connected to the Broadcasting Act's planned amendment in 2001. The amendment was supposed to include measures to counteract further concentration tendencies on the media market. A crucial element of the act was that newspaper and magazine publishers would not be allowed to receive broadcasting concessions.²⁷⁷ This ruling would have had a negative impact on companies such as *Gazeta Wyborcza*'s publisher *Agora*, which were present on both, the press and the broadcasting market. In the time of the planned amendment, *Agora* was in addition interested in purchasing the most popular commercial TV broadcaster *Polsat*.²⁷⁸

Signalizing the political power to influence this amendment, the Polish movie producer and businessman Lew Rywin²⁷⁹ approached *Gazeta Wyborcza*'s chief editor Adam Michnik, offering an advantageous change of the act's amendment. As a return service Rywin demanded the equivalent of €14.300.000 for the post-communistic party *SLD*, which formed the government at that time in coalition with *PSL*, as well as the position of *Polsat*'s chairman for himself. Adam Michnik however recorded the conversation with Rywin, and *Gazeta Wyborcza* published an article about the dialogue six months later.²⁸⁰

²⁷⁶ Cf. Kublik (2008: 20), Gluza (2003).

²⁷⁷ Nowakowska / Makarenko (2002: 22).

²⁷⁸ Kancelaria Sejmu (2003).

²⁷⁹ Rywin is among others the producer of „The Pianist” by Roman Polanski.

²⁸⁰ Smoleński (2002: 3).

According to the recording, Lew Rywin referred to his influence to the political “power-holding group”²⁸¹, as well as to the then *TVP* chairman Robert Kwiatkowski and then-*KRRiT* chairman Włodzimierz Czarzasty (former and present *SLD* politician). *Gazeta Wyborcza*’s publication gained widespread public attention and the media foresaw that the „Rywingate“ would become one of the greatest scandals of the decade, which would shake Poland’s political and business world.²⁸²

The following events confirmed this forecast. The finalization of the Broadcasting Act’s amendment was interrupted in the *Senat* and an investigation commission including all parliamentary party representatives was appointed by the *Sejm*. The commission’s sessions became a public spectacle, which was broadcasted live on television.

The then-Prime Minister Leszek Miller denied having sent Rywin to Michnik and demanded a continuation of the works on the Broadcasting Act’s amendment. However, the amendment’s preparations showed additional compromising discrepancies. The most famous example is the disappearance of the words “lub czasopisma” (“or magazines”) from the suggested subcommittee version of the amendment. Interestingly enough, without these two words, while owners of newspapers would not be allowed to hold broadcasting licenses, exclusive magazine publishers would indeed be allowed to do so. Needless to say that such a version of the amendment would be favorable for *Agora*’s competitors, which as a press publisher holds both, newspapers and magazines. Under increasing public pressure the draft was finally withdrawn from the *Senat*. Shortly after, Leszek Miller announced his resignation as Prime Minister.²⁸³

This incident shocked the Poles, showing how tightly connected the world of business and the political elite still were. In addition, it signaled the media market’s high political significance, as well as its manipulation potential.

²⁸¹ „Grupa trzymająca władze”, a term which ever since became a symbol for the business-political power relations.

²⁸² Majewski / Marszalek (2003: X1).

²⁸³ Oj (2004).

4.3. Struggle for KRRiT and TVP: the amendments

The audio-visual media sector's socio-political importance is probably best illustrated by the continuous tug of war for its legislative structure and the resulting political implications.

4.3.1. The PiS-LPR-Samoobrona amendment of 2005

Following the mentioned attempted amendment of 2002, which was eventually dropped in connection with the *Rywingate* scandal, the new *PiS-LPR-Samoobrona* government implemented its own legislative changes to the Act in December 2005²⁸⁴. This amendment's major changes concerned the *KRRiT* and above all its reduction from nine to five members. Officially justified with a cost saving approach²⁸⁵, the change in the *KRRiT* configuration was very likely directed at not more and not less than legally changing the council's members, as opposed to the mentioned unlawful interpersonal reconfigurations by Lech Wałęsa in 1994. Before and after this amendment, the *KRRiT* members could legitimately be only recalled from their offices upon serious legal violations. Their decentralized and asynchronic election should further ensure political independence. Accordingly, before the amendment the *Sejm* elected four members, the *Senat* two, and the President three *KRRiT* members, while every two years one third of the council's members were to be exchanged due to terminating cadences.

Despite these sophisticated regulations in terms of institutional sovereignty, there is one considerable legal loophole in the Polish system, constantly counteracting the intended, proclaimed, and legally defined independence of most public institutions from politically motivated interpersonal rotations: the amendment. Concerning institutions, which are not constitutionally defined, it is enough to de facto simply rename them, in order exchange their theoretically irrevocable members. Accordingly, the 2005 amendment was not only directed at the Broadcasting Act yet also inter alia at the Telecommunication Law (Article 13), by revoking the then-central telecom regulation institution, the *URTiP*,²⁸⁶ and replacing it with the *UKE*, while at the same time implementing certain additional more or less

²⁸⁴ *Ustawa* (2005a).

²⁸⁵ Pieńkowska (2005).

²⁸⁶ *URTiP* - Urząd Regulacji Telekomunikacji i Poczty.

significant side paragraphs, undoubtedly to a substantial degree in order to make the institutional takeover with the related personnel changes not too obvious.

Concerning constitutionally fixed institutions, such as the *KRRiT*, the mentioned renaming mechanism is out of question, yet a thought-out change in the council's arrangement, such as the reduction of its members, reaches the desired goal of interpersonal reconfiguration to a comparable extent. Accordingly, following the amendment of December 2005, in January 2006 the council's members were newly appointed. Since this amendment, the President and the *Sejm* appoint only two council members each and the *Senat* decides over one *KRRiT* member. The cadence is still set for six years, yet the asynchronous member election has been abolished and replaced by a common six-year cadence, starting after the last member's appointment (Article 7).

In addition to this legal loophole there is one further option to recall the whole council according to the Polish legislation. Concerning this, the *KRRiT* is obliged to present a yearly report before the *Sejm* and the *Senat*. If both chambers reject the report by a resolution, the council's cadence terminates automatically, in case the President confirms this decision (Article 12). Even though this scenario has not taken place in Poland so far, it is not an unrealistic option, in case a political option manages to centralize all three ruling instances.

The interpersonal interest in the *KRRiT* results not only from the institution's influence on the broadcasting licensing procedure, but also on its direct influence on the public broadcasting authorities. Accordingly, the council appoints and recalls the public broadcasters' supervisory board members (except for one board member each, who is appointed by the Ministry of Treasure), counting from five to nine members, which in turn appoint the respective management boards (Article 27 and 28). From there on, a top-down appointment procedure defines the respective broadcasting agency' directors. Consequently, political control over the *KRRiT* almost automatically signifies interpersonal control over the public media. Therefore many of the council's members have not been experienced mass media or public media experts as Article 7.1 postulates²⁸⁷, but lawyers, politicians, or loyal party followers. Examples of high-ranking politicians appointed as *KRRiT* members are former head of the presidential office Danuta Waniek, former minister Aleksander Łuczak, and former *Sejm* marshal Marek Jurek.

²⁸⁷ „...wyróżniających się wiedzą i doświadczeniem w zakresie środków społecznego przekazu.” – „...who are distinguished by knowledge and experience in the field of public media communications.”

Table 3: KRRiT former member cadency development 1993-2007

<u>Appointed by the President</u>	<u>From month</u>	<u>From year</u>	<u>Till month</u>	<u>Till year</u>	<u>Months in office</u>	<u>Cadence</u>	<u>Missing cadence months</u>	<u>Percentage of cadence in office</u>
Marek Markiewicz	4	1993	9	1994	18	24	6	75%
Maciej Iłowiecki	4	1993	9	1994	18	36	18	50%
Ryszard Bender	4	1993	7	1994	16	72	56	22%
Janusz Zaorski	7	1994	5	1995	11	72	61	15%
Tomasz Kwiatkowski	9	1994	5	1995	9	72	63	13%
Henryk Andracki	9	1994	4	1997	32	72	40	44%
Jan Szafraniec	4	1995	4	1999	49	72	23	68%
Marek Jurek	5	1995	5	2001	73	72	0	100%
Robert Kwiatkowski	4	1997	6	1998	15	72	57	21%
Waldemar Dubaniowski	9	1998	4	2003	56	72	16	78%
Włodzimierz Czarzasty	5	1999	1	2005	69	72	3	96%
Danuta Waniek	5	2001	12	2005	56	72	16	78%
Stawomira Łozińska	4	2003	12	2005	33	72	39	46%
Anna Szydłowska	1	2005	7	2005	7	72	65	10%
Stanisław Jędrzejewski	8	2005	12	2005	5	72	67	7%
Wojciech Dziomdziora	1	2006	4	2007	16	72	56	22%
Elżbieta Kruk	1	2006	9	2007	21	72	51	29%
Sum President					504	1140	636	44%
Appointed by the Sejm								
Lech Dymarski	4	1993	4	1995	25	24	0	100%
Marek Siwiec	4	1993	1	1996	34	36	2	94%
Andrzej Zarębski	4	1993	4	1999	73	72	0	100%
Bolesław Sulik	4	1993	4	1999	73	72	0	100%
Michał Strąk	4	1995	4	2001	73	72	0	100%
Robert Kwiatkowski	2	1996	4	1997	15	72	57	21%
Adam Halber	4	1997	7	2003	76	72	0	100%
Juliusz Braun	4	1999	5	2005	74	72	0	100%
Jarosław Sellin	4	1999	5	2005	74	72	0	100%
Aleksander Łuczak	4	2001	12	2005	57	72	15	79%
Ryszard Ulicki	7	2003	12	2005	30	72	42	42%
Andrzej Kneifel	5	2005	12	2005	8	72	64	11%
Andrzej Zieliński	5	2005	12	2005	8	72	64	11%
Sum Sejm					620	852	232	73%
Appointed by the Senat								
Ryszard Miazek	4	1993	5	1996	38	36	0	100%
Jan Szafraniec	4	1993	4	1995	25	24	0	100%
Witold Graboś	4	1995	4	2001	73	72	0	100%
Witold Knychalski	7	1996	4	1997	10	72	62	14%
Jan Sęk	4	1997	5	2003	74	72	0	100%
Lech Jaworski	4	2001	12	2005	57	72	15	79%
Tomasz Goban-Klas	5	2003	9	2004	17	72	55	24%
Ryszard Sławiński	11	2004	12	2005	14	72	58	19%
Sum Senat					308	492	184	63%
Sum Total					1432	2484	1052	58%
Total analyzed members: 38. 100% cadency: 12, below 50% cadency: 17, above 50% cadency: 21. Average cadence in months: 37,68, in years: 3,14.								

Source: author's compilation based on KRRiT (1995-2008).

Table 3 shows the former *KRRiT* members' fluctuations, sorted by the respective instances implementing them. The average cadence of 3.14 years is striking when considering the proclaimed cadence length of six years.²⁸⁸ Accordingly, out of 38 *KRRiT* members (not counting the current ones as of January 2010) only 12 managed to complete their cadences, while 17 cadences lasted less than 50% of their intended span. The current council is divided among the former coalition partners. *PiS* has due to the party's proximity to the president factually three *KRRiT* representatives: the president's candidates Piotr Marian Boroń and Barbara Bubula as well as the senate's candidate Witold Kołodziejcki, the current council's chairman. *PiS*'s former minor coalition partners were granted both *Sejm* candidates: *LPR*-related Lech Stanisław Haydukiewicz and *Samoobrona*-related Tomasz Borysiuk.

4.3.2. The PO-PSL amendment attempts of 2007 and 2009

The new *PO-PSL* government has also aimed at changing the legislative broadcasting framework and with it the *KRRiT*. Even though *PO* announced in its election program of 2005 the plan to eliminate the council²⁸⁹, the party's amendment efforts concentrated on a personal takeover after becoming the strongest *Sejm* party in 2007. According to the two amendment projects of 2007²⁹⁰ and of 2009²⁹¹, the *KRRiT* should be extended to seven members (*Sejm*: 3, *Senat*: 2, President: 2) - of course making an exchange of its current members necessary -, its cadences should be - as before the 2005 amendment - asymmetrical to each other (with some minor changes due to the different number of members), its decision procedure should be changed from the current 2/3 majority vote to an absolute majority vote, and university or journalist association recommendations should be obligatory to prove the respective candidate's professional qualification.

The second important modification intended by the current government's projects was the financial and organizational restructuring of public broadcasting. Accordingly, the public license fee was supposed to be abolished and replaced by direct governmental budget financing. The regional public broadcasting stations, which have from October 2007 on

²⁸⁸ When interpreting the table's results, it is important to consider that due to the proclaimed asymmetrical election process, demanding 1/3 of the council to be exchanged after two years, three of the historically first *KRRiT* members had legally shortened cadences of two years, and three others of four years. These shortened cadences were included in the calculations, considering them as 100%.

²⁸⁹ Rokita / Kawalec (2005: 29).

²⁹⁰ *Projekt* (2007).

²⁹¹ *Projekt* (2009).

formed *TVP's* competitive news channel *TVP Info*, were meant to be decentralized. The restructuring's obvious consequence would be *TVP Info's* elimination as the most serious news program competitor of segment leader *TVN24*. According to the 2009 project, the public broadcasting supervisory boards were planned to be reduced to three members as opposed to the current configurations of five to nine board members. Their management boards were also supposed to count three members with respect to national broadcasting and one member as far as regional broadcasting is concerned, as opposed to the current one to five member regulation. Needless to say, the reconfiguration of board member regulations would make their immediate replacement necessary.

Both, the 2007 and the 2009 amendment, took a similar legislative path, being the center of public attention in their respective periods. Both amendments passed the *Sejm* and the *Senat*, were then vetoed by the President, and did not achieve the necessary 3/5 majority (60%) to discard the presidential veto. While the 2007 amendment was rather certain to be rejected in the described manner, since it was an exclusive coalition project and the voices of *PO* and *PSL* accounted for not more than 57%, the 2009 project, on the other hand, was very close to being ratified. Accordingly, as opposed to the purely governmental project of 2007, the 2009 amendment was co-authored by the oppositional post-communistic *SLD*. The configuration of seats in the *Sejm* guaranteed a 60% majority with the voices of *PO*, *PSL*, and *SLD* (these three parties together dispose over 63,7% of *Sejm* voices), necessary to revoke the expected presidential veto. Yet unexpectedly also this amendment project failed. The immediate reason was the *Senat's* amendment 31 to the original *Sejm* version, which passed the *Senat* and the *Sejm* with exclusive *PO* voices despite *SLD's* disagreement in particular. This *Senat* amendment was meant to eradicate the previous minimal financial limit for the public mission fulfillment, which was set in the initial project on the level of the absolute public license fee revenues of 2007 (the former Article 16.2). This change would have made public financing entirely dependent on governmental budget decisions, resulting in complete insecurity and instability as far as public broadcasting revenues are concerned, making public TV's marginalization even more probable than in the initial *Sejm* project. Since it is very likely that *SLD* agreed to co-author and support the initial media-law amendment project for the price of personal power within the new public broadcasting boards, it is of no surprise that the party was not eager to back an amendment, which would now determine public broadcasting's disempowerment to such a high degree. As a consequence, *SLD* felt betrayed and abstained from voting against the following presidential veto, resulting in the amendment's eventual dismissal. President Lech Kaczyński's main

arguments for his veto included this very lack of financial stability for the public mission, the lack of preliminary consultations with the European Commission, which are indispensable in cases of budgeted funding already during the legislation process, in order to prevent the budget funds from being declared as illegitimate subsidies according to EU law, and the restructuring of the regional public broadcasters, which would either result in their fall or their commercialization.²⁹²

It is clear that without *PO's Senat* amendment 31, which eliminated the planned minimal budget limit for the public mission from the initial project, the whole amendment would have been ratified with the help of the *SLD* voices, even despite the presidential veto. Therefore, the question of *PO's* motivations in this matter is as justified as it is limited to political assumptions. Several scenarios come into question. The most probable one seems to be that *PO* has never intended to ratify the original *Sejm* amendment with the public broadcasting aid in question. Yet the coalition needed to implement this factor in the project in the first place in order to get *SLD's* initial support. With the *Senat's* amendment, which is a relatively late stage in a project's legislative process, the coalition likely wanted to take *SLD* by surprise, wrongly hoping for the lack of resistance from the post-communists.

When evaluating the current government's intentions to change the media law, it must be taken into consideration, that even though the amendment as such failed to become a legislative act, the campaign around it surely served the purpose of considerably weakening the public media. Concerning this, Prime Minister Donald Tusk and his party colleagues have repeatedly undermined the public broadcasting fee from the very beginning of their governing, for example by comparing it to criminal protection money, and announced its certain and rapid abolition.²⁹³ It is of no surprise that many people, especially the young *PO* electorate but not only, interpreted such statements as a permission to evade the license fee payments. In addition, the government (with the aid of *SLD*) passed a small media law amendment concerning the license fee, freeing a considerable share of the population - e.g. a part of the retired, the unemployed, and the people on pension - from its payment.²⁹⁴ The effect without the public license fee amendment is a predicted revenue loss for public television of almost 40% between 2007 and 2009. Accordingly, in 2007, *TVP* received 515 million zł out of total license fee revenues of 826,3 million zł, while in 2009 this amount is expected to fall to 314 million zł out of total expected public license fee

²⁹² Prezydent (2009).

²⁹³ Pap (2008a).

²⁹⁴ *Ustawa* (2008a).

revenues amounting to not more than 656,7 million zł.²⁹⁵ The new license fee regulations may result in a further considerable loss of total public license fee revenues, to the amount of about 240 million zł, which makes up for over 36% of the expected 2009 revenues prior the amendment.²⁹⁶

As a consequence, a new legislative media framework now indeed seems to be indispensable, in order to prevent a public broadcasting's marginalization and to allow for the public mission's proper fulfillment. Therefore, a new project is currently being prepared, this time with the dominating involvement by media artists, such as directors, poets, publicists, and film music makers (among others Wisława Szymborska, Andrzej Wajda and Wojciech Kilar).²⁹⁷ The new project, which is a priori backed by president Kaczyński, allots a new emphasis on public mission funding by its tying to personal and corporate income taxes, yet has as of January 2010 still no official outline.

4.3.3. The struggles for TVP

The tug-of-war for public media control is very well exemplified by the most recent incidents on *TVP*'s executive level. From April 2007 until December 2008 the *PiS*-related Andrzej Urbański was *TVP*'s chairman. *TVP*'s five-person board of directors was in that time divided between *PiS* (Andrzej Urbański, Marcin Bochenek, and Sławomir Siwek), *LPR* (Piotr Farfał) and *Samoobrona* (Anna Milewska, who resigned in April 2007, replaced by Robert-Rynkun-Werner, who was recalled in November 2007). Since Urbański was chairman, *PiS* theoretically controlled both, the five- and the four-person board, since in case of a voting draw, the chairman's voice decides. Yet in certain questions Urbański did not follow the *PiS* guidelines and acted within a temporal coalition between with Farfał against Bochenek's and Siwek's voices (for example in the decision to employ the controversial and anti-*PiS* moderator Tomasz Lis and his wife Hanna).²⁹⁸

In contrast to the board of directors, the supervisory board was, however, not controlled by *PiS*, which was related to only four (Janina Goss, Janusz Niedziela, Krzysztof Czabański, Bogusław Szwedo) out of nine members, while the remaining five were linked with *LPR* (Ireneusz Fryszakowski, Łukasz Moczydłowski, Szymon Czysz) and *Samoobrona* (Tomasz Rudomino and Piotr Wawrzeński). Both boards' constellations were the result of

²⁹⁵ KRRiT (2007: 131), KRRiT (2010: 110).

²⁹⁶ Polskie Radio (2009).

²⁹⁷ Cieślak (2009: A-031).

²⁹⁸ Gociek (2008a: A-005).

the prior *PiS-LPR-Samoobrona* coalition. This public media compromise, which *PiS* made in order to erase the previous *SLD* dominance in the *TVP* boards, also reflected this governmental coalition's overall instability.

The two years of interior media coalition did indeed not lack internal conflicts. For example *Samoobrona* and *LPR* did not accept the first *PiS*-related *TVP* chairman, namely the former *Solidarność* activist and lustration proponent Bronisław Wildstein, which is why Wildstein got replaced by Urbański in 2007, who in turn was keener to compromise with the other camps. Nevertheless, the cooperation in the boards was relatively functional until the end of 2008. Accordingly, on December 19th, 2008 the supervisory board first recalled *PiS*-related Janina Goss from her position as supervisory board chairwoman with a 5:4 voting decision (the *Samoobrona* and *LPR* members outvoted the *PiS* voices) and replaced her with *LPR*-related Łukasz Marek Moczydłowski. The same day the supervisory board furthermore suspended three *PiS*-related directors: *TVP* chairman Urbański and the board members Marcin Bochenek and Sławomir Siwek.²⁹⁹ The *Samoobrona*-nominated but not always *Samoobrona*-loyal Tomasz Rudomino was delegated to the board of directors for a three-months period, while the *LPR*-related director Piotr Farfał, who was suspended from his director position by this very board the month before, due to his fascist and anti-Semitic past, was named *TVP*'s new chairman. Yet while it was theoretically the same board to vote the described rotations, the situation looked de facto differently. Accordingly, between Goss's recall and the suspension of the three directors, the *KRRiT*-appointed and *PiS*-related Janusz Niedziela resigned from the supervisory board (officially as a sign of protest), so that the board made the named decisions theoretically in an incomplete eight-person squad and factually even in a circle of five, since the remaining *PiS*-related members also left this very conference (without resigning from the board) after Niedziela's resignation.³⁰⁰ According to the suspended *TVP* directors, the boycotting supervisory members and the *KRRiT*, the supervisory board lacked the authority to decide over the directors' faith in such a diminished configuration.³⁰¹ According to the Warsaw district court however, each corporation's supervisory board is functional when counting at minimum five members, in spite of differing *KRRiT* acts, so that after ten days of the two boards' coexistence the National Court Registry (*Krajowy Rejestr Sądowy - KRS*) registered Farfał as the new chairman and Rudomino as a new *TVP* director.³⁰²

²⁹⁹ Nalewajk (2008).

³⁰⁰ Cf. Knysz (2008a), Us (2008a).

³⁰¹ Us (2008b).

³⁰² Gociek (2008b: A-001), Knysz (2008b).

According to the *TVP* statute, in order for the supervisory board to absolutely recall *TVP* directors, 2/3 of the voices are necessary, that is six out of nine; yet in order to temporarily suspend them for a maximum period of three months (which can be repeated) a simple majority suffices, that is five supervisory board voices. Due to the voice constellation in the supervisory board, the three directors could therefore legally be only suspended for a three-month period, with the option of countless repetitions after each period, since the statute does not specify a suspension repetition limit. The same is valid for appointing directors, so that Rudomino could only be temporarily delegated from the supervisory board to the board of directors, while Farfał's appointing was his prior suspension's reversal; once in the board, the chairman nomination is possible with a simple supervisory board majority. Even though the suspensions and appointments were theoretically temporary, they gave Farfał complete power within a factual two-person board, since in case of parity the chairman's voice dominates.³⁰³

This radical change of events was surprising, even if considering the interior instability potential within *TVP*. The most probable reasons for such a development were on the one hand late revenge by *Samoobrona* and *LPR* for their political marginalization after the governmental coalition with *PiS* and its descend, and on the other hand a silent agreement between *LPR*, *Samoobrona* and the current *PO* government to back up *LPR* and *Samoobrona* in their personal and political power ambitions, and for *PO* to achieve its own goals, namely to compromise and weaken *PiS* and public television. It seems probable that the real reasons for the described *TVP* takeover were even more complex and related to parallel political negotiations and decisions of a broader context.

The power takeover indeed lasted long enough for Farfał to discredit *TVP* in the public opinion, to implement large-scale personnel changes, and to make certain controversial strategic decisions, for example concerning *TVP*'s digital platform. Yet it was clear that on June 30th, 2009, the supervisory board's cadency would end and that *KRRiT* would be supposed to elect a new one (the *KRRiT* elects four to eight supervisory board members and the Minister of Treasure one). However, since the December 2008 coup, the *KRRiT*'s governing body was similarly divided among the former coalition partners as *TVP*'s supervisory board and therefore not in a state of agreement, so that initially a paralyzing pat was a probable scenario. If however, the *KRRiT* had been unable to appoint a new supervisory board after the definite end of the old one, the suspended Urbański, Siwek and Bochenek could have possibly returned to their offices in September 2009, since the old

³⁰³ Cf. *TVP* (2010: § 12, § 19, 2., § 21, 4., 3)+4)).

supervisory board would not have been in office anymore to recall them for another three-month period (the suspension was in total repeated twice). This, in turn, would have signified a regained *PiS* majority in the highest *TVP* board and a probable termination of Farfał's presiding.³⁰⁴ The lack of a supervisory board would, however, most probably have had even more radical consequences, possibly in form of a superintendent or another public instance to temporarily execute the board's function.

The *KRRiT* was indeed unable to appoint a new supervisory board by the actual cadency end of the old one. In such a situation, according to the Commercial Companies Code's Art. 202 and 369 § 4 in connection with the Civil Law's Art.111, a public broadcasting company's old supervisory board's cadency is extended and terminates either the day before new board's appointment or the day the shareholders' general assembly closes its meeting concerning the supervisory board's financial statement, whatever event is first.³⁰⁵ Accordingly, the day the old supervisory board's cadency ended (June 30th, 2009), the Minister of Treasure opened the shareholders' general assembly, whose only shareholder he himself represented, yet interrupted it immediately for an unspecified period of legally maximal 30 days, officially in order to get auditing results, necessary for his decision whether or not to accept the board's financial statement. Three days later, on July 3rd, 2009, around 10 o'clock in the morning, the *KRRiT* unexpectedly filled the vacancy in *TVP*'s supervisory board, left behind by Janusz Niedziela on December 19th, 2008. Radosław Potrzezecz, nominated by *Samoobrona*'s Tomasz Borysiuk, was appointed as the board's ninth's member.³⁰⁶ In order to appoint a *TVP* supervisory board member, the *KRRiT* requires a 2/3 majority, that is in the current constellation four out of five voices.³⁰⁷ The crucial person to co-vote with the three *PiS*-related members was in this connection *Samoobrona*-related Borysiuk, who since the previous December 2008 turnaround in *TVP*'s boards until that day was not eager to ally with *PiS*, and/or vice versa. One hour after Potrzezecz's appointment, at 11 o'clock the same day, the old supervisory board already held a meeting, during which it suspended Farfał from his chair and annulled Siwek's and Bochenek's suspensions, appointing Siwek as *TVP*'s new chairman. Urbański, however, remained suspended until the end of his cadency, most probably due to his too close relations with Farfał prior to the latter's appointment as chairman. The three *LPR*-related members and *Samoobrona*-related Tomasz Rudomino, who returned to the supervisory board in March

³⁰⁴ Kublik (2009a: 10).

³⁰⁵ Cf. *Ustawa* (2000a), *Ustawa* (1964), Bilewska / Kozłowski (2009: C-006).

³⁰⁶ Naszkowska (2009: 2)

³⁰⁷ Cf. *KRRiT* (1996b).

2009 after his three-month delegation to the board of directors, left this meeting as a sign of protest.³⁰⁸ As a consequence, the supervisory board again debated and made personnel reconfiguration decisions in a five-person squad, consisting of three *PiS*-related members and two *Samoobrona*-related members, being actually rather Borysiuk-related members, since Piotr Wawrzeński as Borysiuk's former assistant was as well nominated to the board by the latter in 2006.

However, this time the board configurations resulted to be even more complicated. Accordingly, between *KRRiT*'s completion of *TVP*'s supervisory board and the mentioned *KRRiT* meeting, the Minister of Treasure Aleksander Grad, resumed the previously opened and paused general assembly, closing it shortly after, circa 30 minutes before the described supervisory board's meeting, without accepting the public broadcaster's financial statements.³⁰⁹ As a consequence, Grad and Farfał did not accept the old supervisory board's decisions, since according to their legal interpretation, backed by several legal opinions, the old supervisory board's cadency terminated the moment - and not the day - of the general assembly's closure.³¹⁰ The coexistence of two boards of directors was again the consequence. On July 13th, in spite of multiple legal opinions stating otherwise, the *KRS* decided in favor of Grad, who previously sent a motion to the *KRS* in this matter, and annulled the old board's decisions, extending thereby Farfał's presidency.³¹¹

On July 30th, 2009, the *KRRiT* finally came to an agreement concerning the new supervisory board. The crucial person to co-vote with the three *PiS*-related members was in this connection again *Samoobrona*-related Borysiuk, who is currently more associated with *SLD* than with *Samoobrona*. As a consequence, in *TVP*'s supervisory board an exotic coalition between *PiS* (four members: Beata Kozłowska-Chyła, Krystyna Pawłowicz, Tomasz Szatkowski, Bogusław Szwedo) and *SLD* (three members: Barbara Misterska-Dragan, Bogusław Piwowar, Małgorzata Wiśnicka-Hińczka) came into being. The election of *SLD*-related members by *PiS* and originally *Samoobrona*-related *KRRiT* members is certainly connected with the proceedings around *PO*'s failed media law amendment. In other words it seems to be the price, which *PiS* had to pay in order to uphold especially the last presidential veto in this matter. The nine-person supervisory board was completed by Piotr Wawrzeński, candidate of Borysiuk, and the Ministry of Treasure candidate Ewa Nowińska. As a consequence, *TVP* had once more two co-existing management boards: Farfał plus the

³⁰⁸ Kublik (2009b: 1).

³⁰⁹ Kucharski (2009a: A-003).

³¹⁰ Kublik (2009b: 1), Ika (2009), Bilewska / Kozłowski (2009: C-006).

³¹¹ Knysz (2009b: 5).

temporarily suspended Urbański, Siwek and Bochenek as the old board and the newly delegated board - for a three months period - consisting of Bogusław Szwedo and Małgorzata Wiśnicka-Hińcza.³¹² Farfał claimed the chair due to him being still registered in the *KRS*, while Szwedo and Wiśnicka-Hińcza considered the deciding momentum to be the actual recall and appointment election and not the *KRS* registry, which anyway lasted longer than necessary according to *PiS*.³¹³ One additional move to block the new board was Haydukiewicz's official complaint to the *KRS* that some of the board member candidates were presented less than 24 hours before the *KRRiT* meeting, in spite of this procedure's accordance with *KRRiT* regulations.³¹⁴ Minister Grad, in turn, issued a motion to the *KRS*, asking for the assignment of a governmental superintendent, due to the lack of an unambiguous supervisory body for *TVP*.³¹⁵

This motion, in connection with Aleksander Grad's previous actions, such as the general assembly closure right before Farfał's suspension by the old supervisory board, indicate that the *PO* minister's actions coincide - and probably have coincided since December 2008 - with Farfał's motives, making an initial agreement between Farfał and *PO* a probable origin of *TVP*'s takeover in December 2008. The likely intrinsic motives of this cooperation for the governing party are ironically most accurately formulated by the controversial high-ranking *PO* congressman and millionaire Janusz Palikot. According to him, "Farfał is useful for *PO*. He gives a chance to create a new right-wing presidential candidate. (...) If *TVP* will remain outside of *PiS*'s control for some time longer, this will considerably lower Kaczyński's chances and increase the chances for a new candidate on the right side, who would split the right electorate. And this increases Donald Tusk's chances."³¹⁶

It is worth mentioning that in December 2008 during the ten days of two management boards, between Farfał's appointment and the *KRS* decision, Farfał claimed that Rudomino and him are the elected directors until the court decides otherwise, which is why he refused to let Urbański into the *TVP* offices.³¹⁷ Eight months later, being in a very similar position as Urbański was before, it was ironically again Farfał, who did not let the second board enter the *TVP* offices, claiming this time that the new election does not concern his position until the court decides otherwise. It is also grotesque that Farfał

³¹² Kublik (2009c: 5), Kublik (2009b: 1), Amk (2009), Wewiór (2009).

³¹³ Arb (2009).

³¹⁴ Knysz (2009a: 4).

³¹⁵ Kublik (2009d: 8).

³¹⁶ Kublik (2009e: 6).

³¹⁷ Kublik / Beylin (2008: 1).

questioned the lawfulness of the supervisory board's decision, on the ground of its incompleteness after Nowińska's resignation, even though it was also an incomplete board, which appointed himself as chairman eight months before.

Any new *TVP* supervisory board is legally supposed to hold its first meeting not later than one month after the general assembly closure. The meeting is to be called by the previous supervisory board's chairmen. In spite of his duty, *LPR*-related Łukasz Moczydłowski, however, denied to do so until Minister Grad would appoint his ninth supervisory board representative. After the named one-month period passed, Moczydłowski in turn doubted his own right to call the board's first meeting. According to him and Farfał, after this one-month period, the latter as the directors' chairman would now be the only one to have the proper authority.³¹⁸

On September 16th, 2009, the supervisory board finally held its first official meeting, called in autonomously despite Farfał's resistance, and recalled the latter on a second meeting three days later. The new board also recalled the former temporarily suspended directors Urbański, Siwek, and Bochenek for a second time. As temporal chairman the board again delegated Bogusław Szwedo.³¹⁹ Farfał also once more did not let the new chairman enter the *TVP* offices, who as a consequence had to work in the *KRRiT* headquarters.³²⁰ The situation finally changed on October 1st, 2009, after the *KRS* finally approved the legality of the new temporarily delegated *TVP* chairman and the second director Małgorzata Wiślicka-Hińcza (*SLD*).³²¹ The same day Grad also completed the Ministry of Treasure vacancy in the supervisory board left behind by Nowińska, by appointing Grzegorz Borowiec.³²² Two days later Szwedo surprisingly resigned from the directors' chairman position, officially due to personal reasons, and returned to the function of the supervisory board's chairman. He was replaced by also *PiS*-related Tomasz Szatkowski.³²³

On December 19th, 2009, on the final day of the provisory board of directors and a year after Urbański's suspension, the supervisory board elected Romuald Orzeł for *TVP*'s chairman position.³²⁴ Even though certainly closer to *PiS* than to *SLD*, the economist Orzeł, being relatively distanced to politics, is a compromise candidate between the two parties, since *SLD* kept rejecting other candidates favored by *PiS*. The board of directors consists of

³¹⁸ Pap (2009a).

³¹⁹ EB / Amk / Jen (2009).

³²⁰ Lemańska / Kucharski (2009: A-004).

³²¹ Kucharski (2009: A-011).

³²² Pmaj (2009).

³²³ Kucharski / Szuszczyński (2009: A-005).

³²⁴ Kucharski (2009b: A007).

three other new members: the *PiS*-related Przemysław Tejkowski, the *SLD*-related Włodzimierz Ławniczak and *Samoobrona*-related - or more precisely *Borysiuk*-related - Paweł Paluch.³²⁵

The price for the agreement with *SLD* against the media law amendment, whose certain consequence would have been the takeover of *KRRiT* and *TVP* by *PO*, has for *PiS* most probably been the second public TV channel. Considering the overall programmatic decisions, especially as far as *TVP2* is concerned, during the last months of 2009 (the cancellation of programs led by politically right-oriented journalists), it seems that the eventual division of public television influences between *PiS* and *SLD* will be *PiS*-control within *TVPI* and *SLD* dominance within *TVP2*.³²⁶ Accordingly, the new *TVP2* director responsible for the changes is *SLD*-related Rafał Rastawicki, a former left-wing *Trybuna* journalist and *PiS* critic, who was *TVPI* vice-chairman during the infamous Kwiatkowski rule within *TVP* between 1998 and 2004.³²⁷

It should be considered, however, that the new *TVP* authority division is probably more complicated than a pure power channel separation between *PiS* and *SLD*. The division of the public radio as well as *Borysiuk*'s share of influence should not be neglected, since the previously *Samoobrona*-related and now *SLD*-associated *KRRiT* member seems to know how to use his position as the one to tip the scales in negotiations among the political camps.

On December 30th, 2009, the Highest Control Agency (*Najwyższa Izba Kontroli - NIK*) reported to the public prosecutor's office about the suspicion of committing a crime by the former *TVP* chairmen Wildstein, Urbański, and Farfał.³²⁸ *NIK*'s action is based on its November 2009 audit, covering the years 2007-2009, during which the highest public control institution identified mismanagement amounting to 150 million zł in total by the three chairmen and their respective boards, yet especially by Farfał. According to the *NIK*, all controlled boards of directors were acting against *TVP*'s interest, especially with respect to the replacement of management personnel, but also with respect to the chairmen's advisors and external law firms in spite of an internal legal department.³²⁹ Shortly after *NIK*'s prosecutor information, *TVP* announced that it considers the audit and its conclusions as untrue, admitting irregularities to the amount of 343.000 zł within the audited period,

³²⁵ Kucharski (2009c: A-004).

³²⁶ Nalewajk / Sowa (2009), DGP (2009).

³²⁷ Kalukin (2009: 12).

³²⁸ Kublik / Czuchnowski (2010: 6).

³²⁹ Cf. Buczyński (2009).

which is of course far less than *NIK*'s accusations.³³⁰ The *KRRiT* and the *PiS* opposition questioned the report as well, also criticizing the *NIK* for neglecting the reduced public fee revenues as the major reason for the public broadcaster's weak financial state.³³¹

The truth lays probably somewhere in-between the presented sums and accusations. Management staff replacements as a consequence of reconfigurations in the directors' boards are unfortunately a norm within each governmental corporation, especially in those of strategic political importance. Public broadcasting is here of special political significance, so that even with the best thought-out political independence regulations, political parties will always find a way to compete for influence within these valuable public corporations. Very few potential managers, directors, and chairmen lack political preferences, without which a leading position in high-ranking public institutions is practically impossible - not only in Poland. Each new board of directors stemming majoritarianly from a differing political camp than its predecessor, or being in coalition with a respective political camp, will allocate the strategic directing positions by trusted people. The costs involved result from lucrative compensations fixed in the managers' contracts in case of dismissal, connected to the market-usual prohibition to immediately seek employment in competing firms. It would surely be difficult to evade the costs involved, since also within private corporations similar compensations are the norm. One option is therefore to legally prevent the management from being replaced by new chairmen. Yet this could obviously have a paralyzing and sabotaging effect on the overall corporation's operations, not to mention the lack of performance-based evaluation possibilities when factually not being subject to notice. Therefore a probably more realistic option to evade the costs involved in personnel rotations within public corporations is to limit the scope of those compensation amounts, premiums, etc. within public corporations. The downside of this option is however, similar to the upper salary limits for public directors, the risk of not attracting a certain part of the elite management right from the start, due to the resulting relative contract unprofitability compared to similar positions on the free market. The effect for public broadcasting would in the best case be a competition between public corporations led by second-class public managers and commercial broadcasters led by a first-class management - a scenario, which public broadcasting can currently only hope for when considering the politization of its interior structure.

³³⁰ Kucharski (2010: A-006).

³³¹ Pap (2009b).

4.4. Political influence by the media

The political interest in the TV market is accompanied by an analog interest of TV broadcasters in politics. „Media politicization is not only a top-down but also a bottom-up process. Many publishers and journalists consider it their public duty to be involved in the process of reshaping the country and determining its future, also by supporting political ideas and organizations of their choice.”³³² This is best exemplified by the intensive criticism of the *PiS* administration by most commercial broadcasters, newspapers and magazines, as opposed to the government-friendly journalism of the present *PO-PSL* coalition. The scope of criticism stood, and still stands, in no rational relation to the respective governing activities. This scenario goes hand in hand with the political parties’ media-political intentions: while *PiS* strives towards a strong public TV sector, the *PO* environment seems to be in rather close political and economic environment with the commercial stations, especially with *ITi*.

One of the interesting consequences of this situation was the complete boycott of the major *ITi* stations *TVN* and *TVN24* by the current opposition party *PiS* from July 2008 to January 2009.³³³ According to the parliamentary group chairman Przemysław Gosiewski, *PiS* politicians are “treated as people of a lower category” in those stations.³³⁴ Due to similar reasons, *PiS* also boycotted the *Polsat*-related TV station *Superstacja* from February 2008 until April 2009.³³⁵

4.5. Review

The examples of Poland’s recent history in terms of legislative struggles for the public media framework, as well as for direct political influence on the public broadcasting institutions show the continuously high level of political involvement in the sector. In spite of legal regulations aimed at political independence, the power struggle is very intense and immediate. All parties have a vast interest in regulating the broadcasting sector and the public television market in particular. As of January 2010, it seems that no legislation can

³³² Kelly / Kelly / Mazzoleni et al. (2004: 174).

³³³ Gabryel (2008: A-002).

³³⁴ Pap (2009c).

³³⁵ Mm (2009).

ensure Poland's broadcasting sector complete political independence. The reason for that is not only the overall political and economic significance of the television sector, but also the overall political framework in Poland, which still seems to lack the adequate political morality consensus, as well as a sovereign jurisdiction. It is still an immature democratic rule of law, filled with emotional and populist policy-making, seeking its political balance by extreme standpoints. This is of course not surprising, considering the fact that compared to other Western systems Poland is still a very young democracy, which regained sovereignty only 20 years ago after a total of 173 years of external suppression with merely 21 years of regained independence between the two World Wars. In fact, compared to the majority of other countries, which shared a similar political fate as Poland between 1939 and 1989, not to mention the years before World War I, the Vistula country catches up astonishingly quickly with Western societies, in both, economic and political terms.

Nevertheless, the Polish democracy is in its current status not guaranteeing the broadcasting sector - and here especially the public broadcasting sector - the necessary political and economic independence. It is without a doubt that the *PO-PSL* government intended to introduce drastic changes to the public broadcasting legislation, at least partly due to the ruling party's closer relations with the commercial broadcasters. On the other hand, *PiS* is defending *TVP's* status probably not only due to media-political reasons of public interest, but mainly because the public broadcasting network has for the last four years been the only major TV medium, which did not show disproportional *PiS* antipathy and *PO* sympathy. In doing so, *TVP* has held a certain objectivity balance, which is, in turn, certainly linked to the described personnel reconfigurations in connection to the Broadcasting Act's amendment of 2005.

It is important to note in this context that the real danger for public broadcasting does not seem to be the political power struggle for the final influence in certain programmatic decisions, despite the obvious media-political asymmetries and economic inefficiencies, which such a struggle brings about. For this power struggle is more or less conform with the overall political power fights within the country, which in spite of justified criticism is indeed still a very democratic one. More dangerous than the political tug of war for public TV seem to be initiatives to marginalize or eliminate the public broadcasting sector, since they would allow for a monopolization of the public opinion from the side of commercial broadcasters. As long as the political parties fight for involvement within the public broadcasting institutions, the public broadcasting mission and the potential value added to the opinion spectrum and journalistic quality scale are fighting as well. Yet by

eliminating the public broadcasting sector, its non-commercial component would certainly lose. There is undoubtedly a big difference between fighting for influence within public broadcasting and selling it out. Concerning this, it is clear that *TVP*'s elimination would not only signify minimized opinion plurality, but also huge financial gains for the commercial broadcasters. The latter would be due to increased advertisement revenues, resulting from a relative shift of advertisement-time scarcity and complete power over the advertisement unit prices, assuming the public broadcaster's market absence. As evaluated in this paper's theoretical section, the pure market-significant existence of public broadcasting is media-politically and economically the more crucial the fewer the amount of independent commercial competitors on the market. In Poland, the *Polsat* group and the *ITI* group form a commercial duopoly, whose consequence is the obvious high risk of opinion plurality minimization; this risk prevails even with public broadcasting, yet most definitely without it.

After two decades of political and social transformation, the relationship between the media and politics is still a tense one. This relation can be regarded as a state of permanent conflict, which is characterized by mutual exercise of influence intents. Politicians try to sway the media-political landscape, since TV is still the dominant media type as far as mass communication of political messages is concerned. Therefore, political agents will strive for maintaining a media content scenario with a generally positive attitude towards its own political group of interest, or if necessary, for converting the existent imperfect one into a subjectively more favorable one. The broadcasters, in turn, are due to the concentrated and high capital-volume character of the media market by its very nature involved into politics, since high scale businesses influence politics within each political system, and vice versa. Poland is no exception to that rule, which was demonstrated frequently during the last 20 years.

The presented examples are just a few out of many interrelations between Poland's TV market and the world of politics, which often exceed the socio-political acceptable framework. These political interferences have several reasons. First, the TV market has an immense opinion creating potential, which is the most natural reason for political interest in it. Second, the market is a high-capital one, thereby naturally attracting corrupt behavior. Third, the market's intrinsic compilation with a more or less direct governmental involvement in the overall TV market regulation, embodied by *KRRiT*, offers potential for fraudulent activities. Last but not least, the publicly co-financed strong market participation by *TVP* gives room for an intensive and repeated tug-of-war for the public broadcaster's control, indirectly fought over within the partly politicized *KRRiT* structures. As a

consequence, Poland's main broadcasting regulation institution is the main target of direct and indirect politically motivated takeover intentions as far as its own directing personnel is concerned and as a result also with respect to the public broadcasting branches' management.

Even though political involvement in supposedly independent institutions should be in general perceived as counterproductive as far as the modern democratic country's overall democratic principles and standards are concerned, with regard to opinion plurality they can be of both, limiting and broadening nature. Political activities, whose aim is to realistically diminish those media subjects' influences, which oppose the dominating opinion landscape, can be clearly regarded as harmful towards opinion plurality. Politically motivated actions, on the other hand, whose basic goal is to maintain and foster those broadcasting players, which add value to the overall opinion spectrum by opposing or relativizing the dominating popular standpoints, should be viewed positively from the public interest standpoint, due to the major media-political goal of opinion diversity maximization. It must be noted however, that probably very few of the mentioned political interferences in the broadcasting regulation sector are motivated by strictly media-political postulates. Rather than that, political calculus is mostly the driving force aimed at being positively - or at least objectively - presented by a maximal share of broadcasting content, especially in the informational segment. As a consequence, the political parties' actions in that connection should always be evaluated relative to the prevailing political content. However, while the former statement may justify intentions to *influence* the respective broadcasting institutions, a stricter judgment must be made as to these institutions' *elimination* attempts, especially considering the very narrow supplier density, which characterizes the Polish market. Since within a broadcasting landscape with very few noteworthy competitors the major emphasis should be put on supplier maximization, an additional reduction would surely have drastically negative consequences for the overall broadcasted opinion plurality. In exactly this context the debate over *TVP*'s future should be led. As long as the competitor density is still far below a satisfying level, public broadcasting is an integral and necessary element within the opinion spectrum, whose extent has an immense influence on the present and future factual democracy level in Poland.

5. Economic framework

After the evaluation of the Polish TV market's legislative framework as an implementation of theoretical postulates, the political framework was presented, in order to indicate the external powers and influences acting on the market and especially on its legislative and regulative construction. The next section will deal with the internal compilation of Poland's TV market, whose analysis is essential in order to fully understand its overall status quo.

In order to examine the strictly economic framework, technical market characteristics will be presented first, since they are an integral part of the resulting market conception. Following that, the interior constellation of Poland's broadcasting market with its three major sub-segments will be analyzed from the economic viewpoint, including empirical market data, as well as the competitors' major financial indicators and capital linkages, in order to present the market's complete current status and its middle- and short-term potential. The economic market evaluation will complement the previous legislative and political analyses, completing the final basis for conclusions as to Poland's adequate extent of broadcasting regulation.

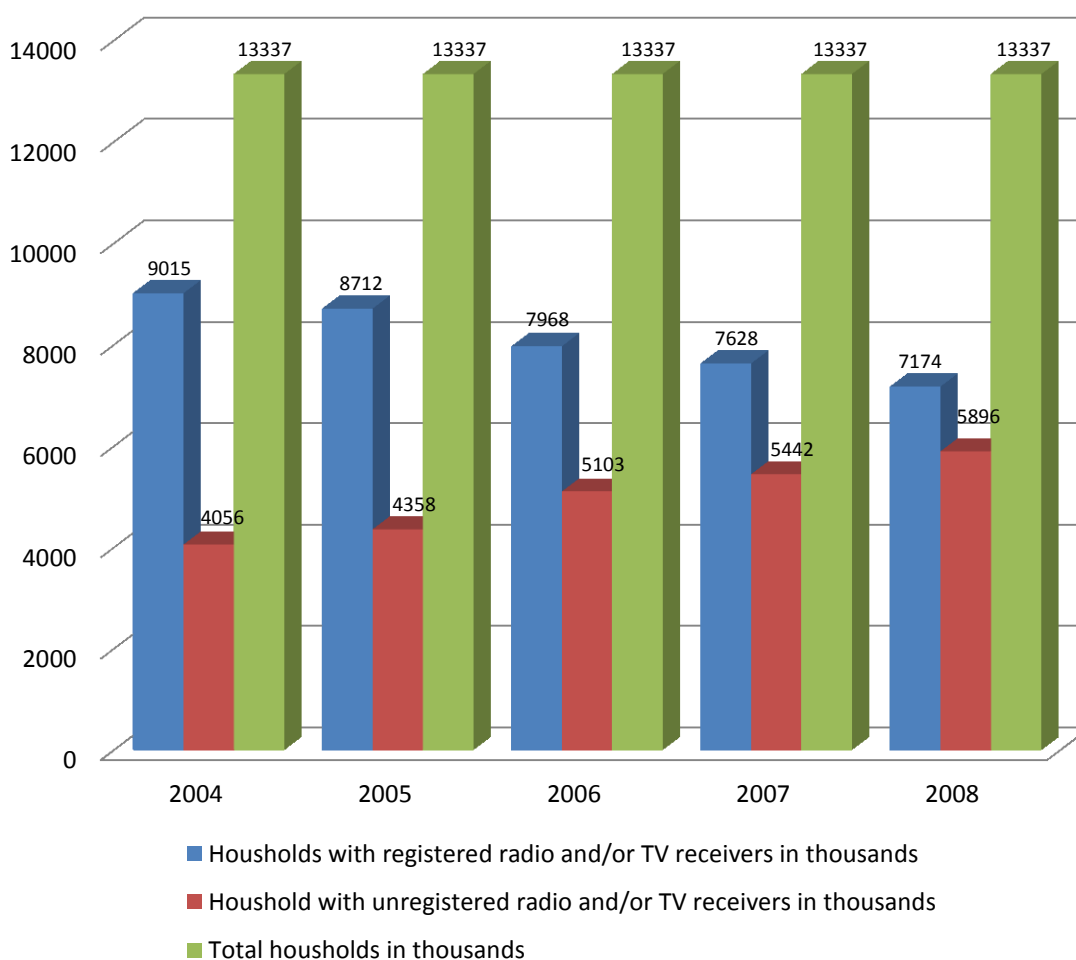
5.1. Poland's empirical TV market basics

The general technological framework as one of the major driving forces of each broadcasting market was presented in the theoretical part of this paper. The understanding of this dynamically changing technological landscape is essential in order to be aware of its very nature. The empirical data to be presented in the following section will in turn indicate the factual technological framework of Poland's current TV market configuration, which to a considerable degree determines its further development potential. The data origins predominantly directly from the competitors' financial statements within the regarded period of time, from *KRRiT's* yearly reports, from Poland's central statistic office *GUS*, and from the market research institutes *AGB Nielsen*, *TNS OBOP*, and *Starlink*.

5.1.1. Radio/TV device equipment

As of 2008, Poland has a population of 38.135.876 inhabitants, who make up for an estimated amount of 13.337.000 households.³³⁶ While the percentage of households with at least one radio and/or TV receiver is estimated to be 98%, only 55% of those registered their receiver for public fee purposes. The tendency of not registering the receivers has intensified over the last years, as shown in the following charts.

Figure 8: Housholds with and without registered radio/TV sets 2004-2008



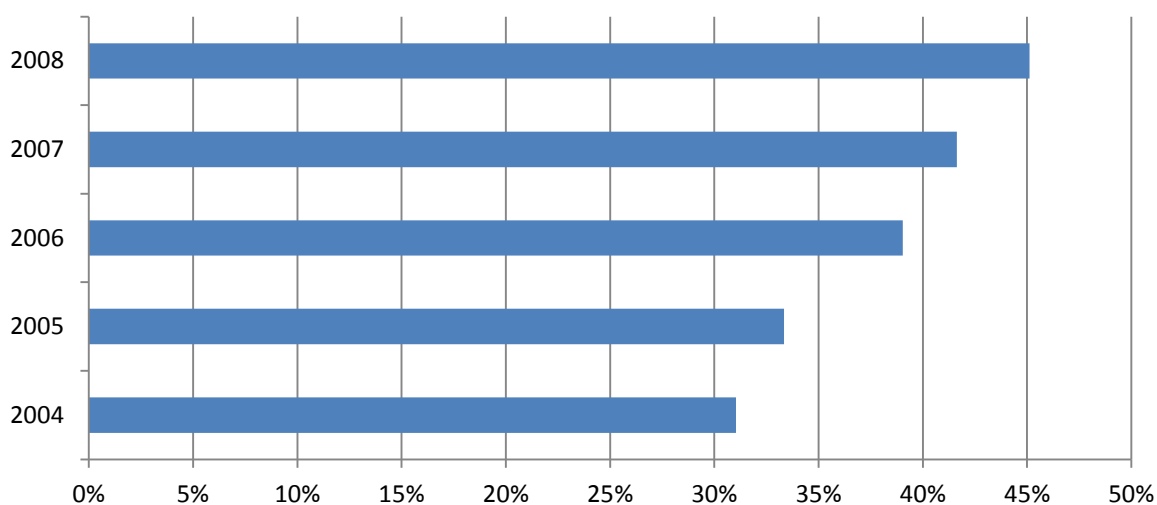
Source: author's calculations based on KRRiT (2005-2009).³³⁷

³³⁶ The actual population number: Główny Urząd Statystyczny (2009b).

The number of households is based on the GUS population census of 2002 and is currently probably smaller than the 2002 figure, since the population number has steadily decreased from 1997 to 2008.

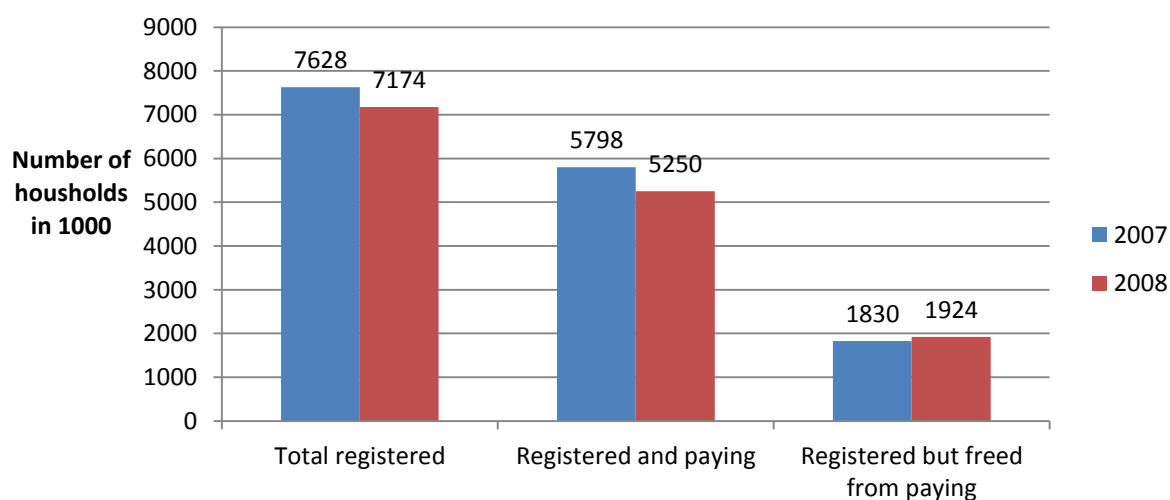
³³⁷ Total households based on the 2002 population census. In contrast to the KRRiT data, here the assumption was made that 98% and not 100% of all households are owners of a radio/TV device.

Figure 9: Percentage of households with unregistered



Source: author's calculations based on KRRiT (1995-2009) and Główny Urząd Statystyczny (2009a).

Figure 10: Radio/TV device registration and payment structure in 2007 and 2008



Source: author's calculations KRRiT (2008-2009) and Główny Urząd Statystyczny (2009a).

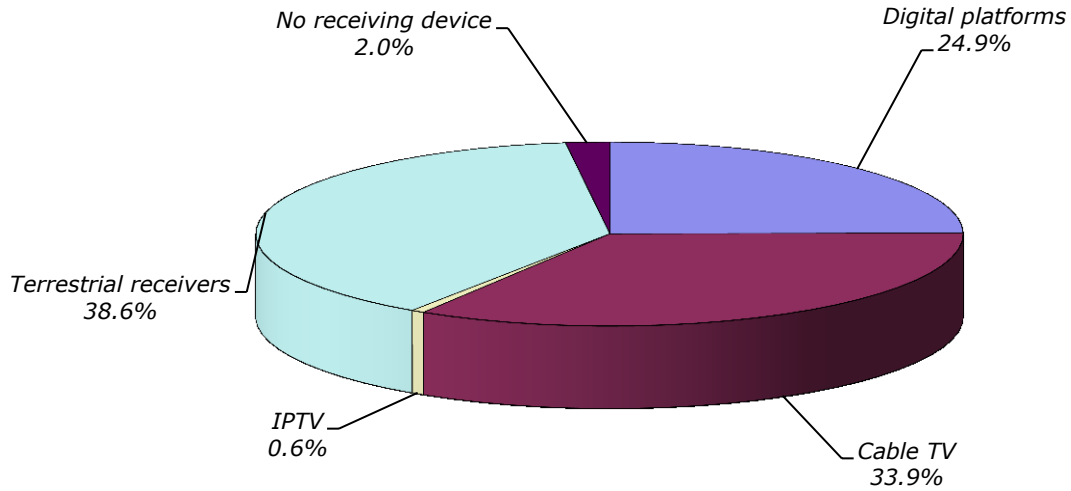
Assuming that 98% of all households have a TV or radio set, only 55% of those have in fact registered their TV/radio devices as of 2008. The year before, this percentage amounted to 58%, while in 2004 to almost 70%. If we take into consideration the actual public broadcasting fee payments, the following must be noted: not only did the absolute number of registered TV/radio sets decrease from 7.628.000 to 7.174.000 from 2007 to 2008, but the share of legitimate non-payers within this group rose from 1.830.000 to 1.924.000, resulting in an overall broadcasting fee payer drop from 5.798.000 to 5.250.000. This signifies that merely 39,4% of all Polish households indeed pay the public broadcasting fee as of 2008. It is highly probable that this number even fell in 2009, due to politically motivated encouragements not to register the broadcasting devices in expectation of a new media law

amendment, and due to the small media act amendment of April 2008, which legally widened the group of people freed from the licensee fee payments.

5.1.2. TV signal distribution market division

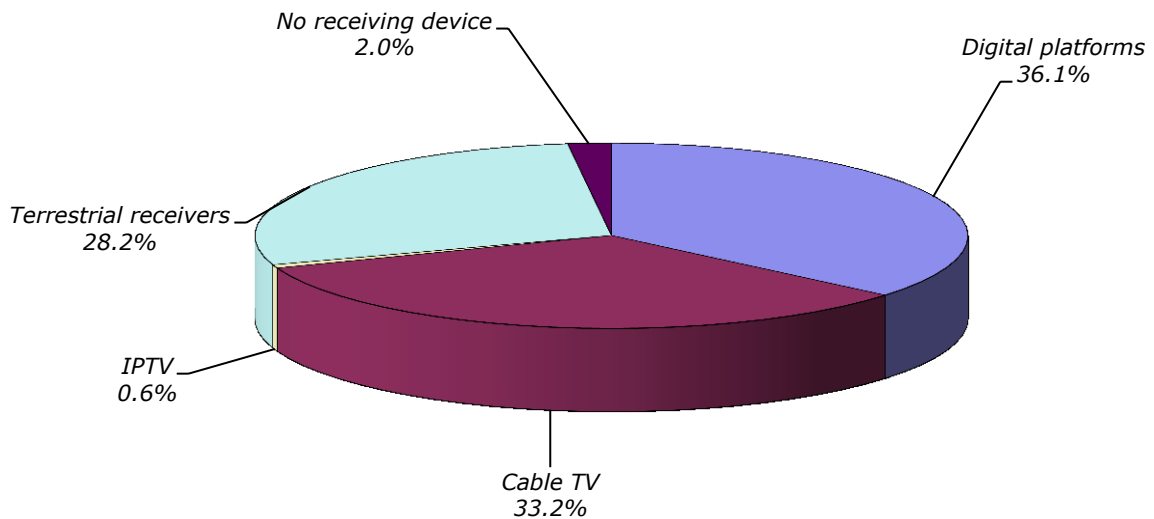
By January 2008, about 38,6% of all Polish households consumed television exclusively the terrestrial way. Cable TV was watched by 33,9% of the households and there were around 3,3 million digital platform subscribers, making up for almost 25% of the overall domestic units, with a clearly increasing tendency. The following year, in January 2009, digital platforms had already almost 5 million subscribers, making up for 36,1% of all households as the new number one broadcasting signal receiving option in Poland. Cable TV denoted an unchanged consumer base, being watched by 33,2% of the households. The biggest drop - from 38,6% to 28,2% - chronicled terrestrial TV consumption as of January 2009, which suggests that a majority of the digital platform subscriber base increase stemmed from households with previously exclusive terrestrial signal receiving. The relatively new promising technology digital television via a fast Internet connection, IPTV, is still a niche market with a coverage of roughly 0,6% of all Polish households. The Polish television market's division by transmission type in 2008 and 2009 is illustrated by figures 11 and 12.

Figure 11: Polish TV market division by transmission type in 2008



Source: author's composition based on KRRiT (2008), Pike (2010), and operator data.

Figure 12: Polish TV market division by transmission type in 2009



Source: author's composition based on KRRiT (2009), Pike (2010), and operator data.

It must be noted that the numbers and respective percentages of terrestrial and satellite signal receivers were to a certain degree deductively elaborated, assuming that those households, which subscribed to one digital platform do not use the offer of any other digital platform, nor cable television. In reality the household scenario disposing over two or more digital platforms and/or cable TV indeed occurs. This data bias results in a somewhat inflated digital platform household percentage on the one hand and in lower-than-reality percentages for cable TV households and especially for terrestrial signal reception on the other hand. Accordingly, the Polish Statistic Institute *GUS* estimated that in 2008 a higher percentage than the one presented above, namely 44,1% of all Polish households, still received their television signal the terrestrial way.³³⁸ The following technological analyses carry the same bias and must be treated with a similar distance, in spite of their contextually satisfying approximation.

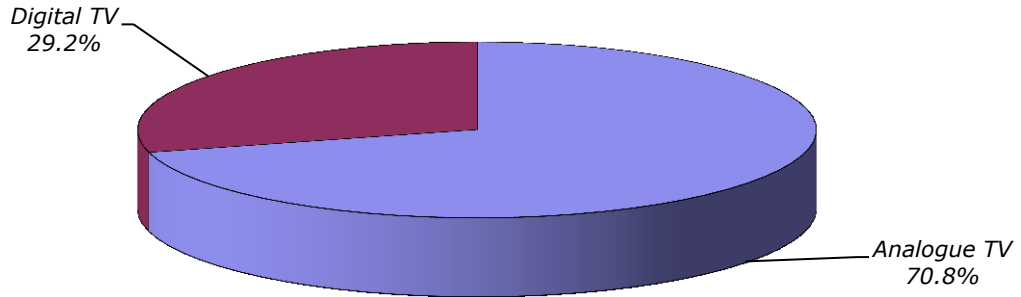
5.1.3. Transmission technology division: analog vs. digital

Analog transmission with over 70% of overall market coverage was in 2008 still the dominating type in Poland as far as television broadcasting is concerned. Within one year, however, this share dropped to 59,8% (as of January 2009), illustrating the digital broadcasting sector's impressive dynamic. While terrestrial broadcasting is in Poland exclusively reserved for analog signals - until the gradual establishment of multiplexes and the total switch-over latest in 2015 - cable TV providers gradually introduce digital television in addition to their standard analog offer. Satellite digital platforms, on the other hand, consist of exclusive digital broadcasting.

The overall augment in digital television consumption results from the increased number of digital platform consumers on the one hand, and from the gradual introduction of digital services by cable operators on the other hand. Accordingly, the number of digital cable television consumers indeed doubled from 2008 to 2009, yet still - as of January 2009 - only less than 10% of the 4,5 million cable TV households receive their signal digitalized. This percentage is very likely to increase in the months to come, since the introduction of digital TV is indispensable for cable companies to remain competitive vis-à-vis the popularity-gaining digital platform offers. The shares of analog vs. digital broadcasting in 2008 and 2009 are shown in figure 13 and figure 14.

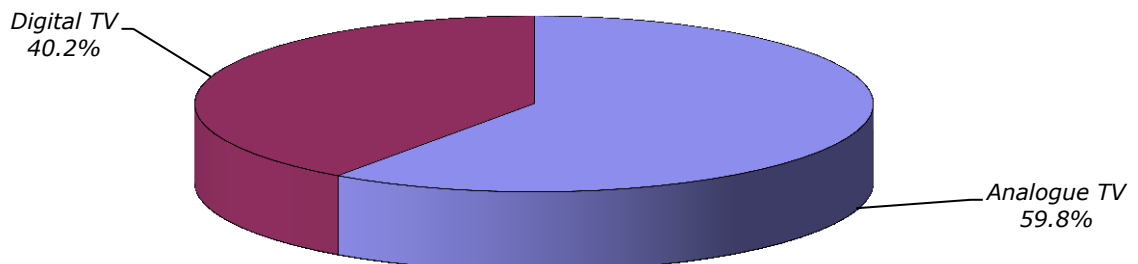
³³⁸ Główny Urząd Statystyczny (2009a).

Figure 13: Usage of analogue TV vs digital TV in Poland in 2008



Source: author's composition based on KRRiT (2008), Pike (2010), and operator data.

Figure 14: Usage of analogue TV vs digital TV in Poland in 2009

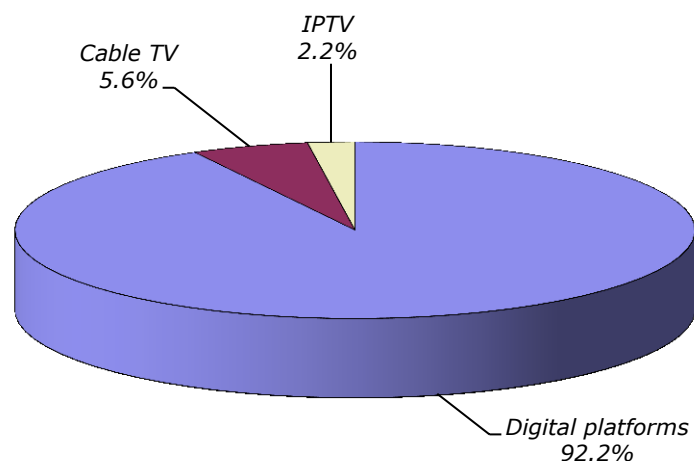


Source: author's composition based on KRRiT (2009), Pike (2010), and operator data.

5.1.4. Digital TV market division by distribution type

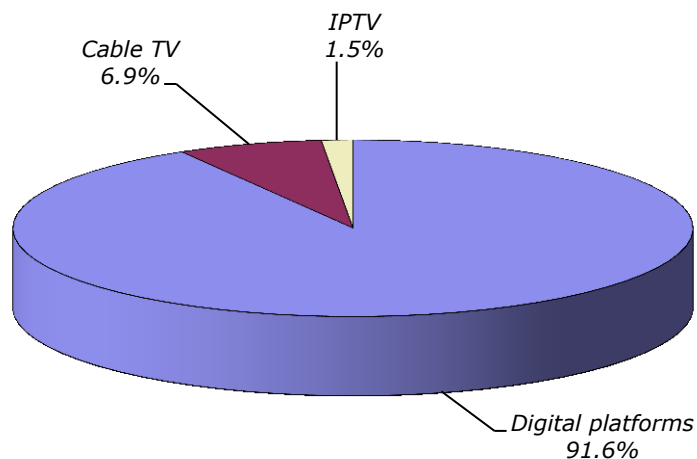
As indicated above, digital platforms make up for the major part of the digital broadcasting landscape. Cable TV, even though it amounts to about 33% of the total TV transmission sector, covered only 5.6% of the digital transmission market in 2008 and 6,9% as of January 2009. This relatively small percentage is mostly due to the considerable initial investment related to the technological step-up. Accordingly, out of 4,5 million cable subscribers, only 0,4 million take advantage of the cable companies' digital TV offers. This division is shown by the figures 15 and 16.

Figure 15: Poland's digital TV market division by transmission type in 2008



Source: author's composition based on KRRiT (2008), Pike (2010), and operator data.

Figure 16: Poland's digital TV market division by transmission type in 2009



Source: author's composition based on KRRiT (2009), Pike (2010), and operator data.

5.1.5. Summary of transmission type and technology division

Tables 4 and 5 summarize the 2008 and 2009 market shares of the broadcasting technology categories and the respective signal distribution types, giving an overview of Poland's transition phase between analog and digital transmission.

Table 4: Broadcasting forms and technologies in Poland in 2008

<i>Receivers of different broadcasting forms in Poland in 2008 in mil.</i>	Analog TV	Digital TV	Total
Digital platforms	0,0	3,3	3,3
Cable TV	4,3	0,2	4,5
IPTV	0,0	0,1	0,1
Terrestrial receivers	5,1	0,0	5,1
Total	9,4	3,6	13,3

Source: author's composition based on KRRiT (2008), Pike (2010), and operator data.

Table 5: Broadcasting forms and technologies in Poland in 2009

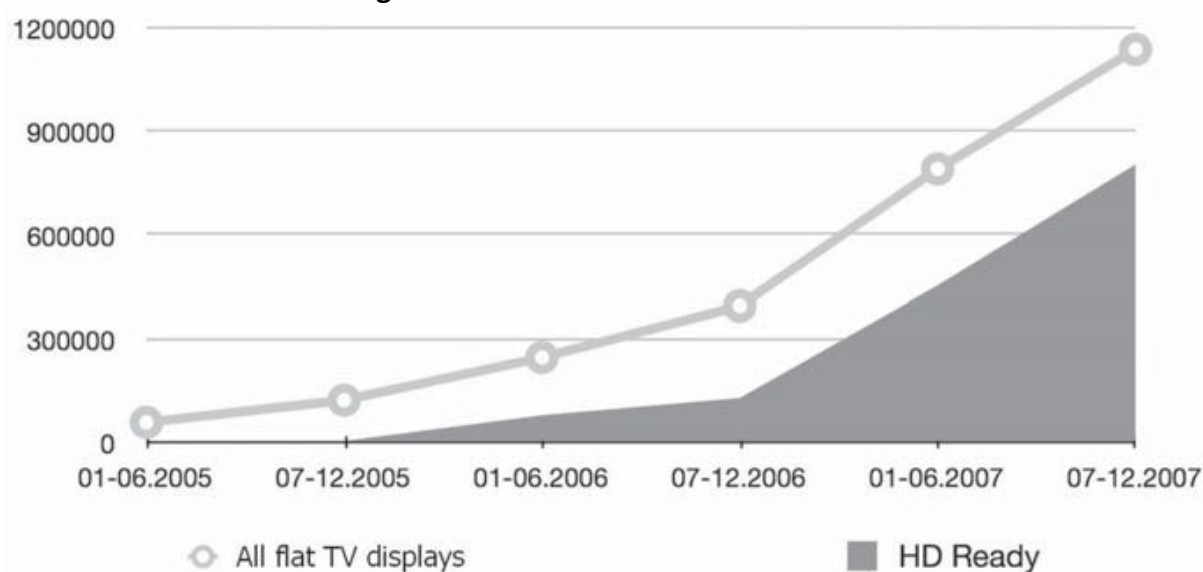
<i>Receivers of different broadcasting forms in Poland in 2009 in mil.</i>	Analogue TV	Digital TV	Total
Digital platforms	0,0	4,9	4,9
Cable TV	4,1	0,4	4,5
IPTV	0,0	0,1	0,1
Terrestrial receivers	3,8	0,0	3,8
Total	8,0	5,4	13,3

Source: author's composition based on KRRiT (2009), Pike (2010), and operator data.

Even though analog signal transmission is as of 2009 still the leading technology, the data above certainly indicates that digital broadcasting will be the dominating standard in the years to come. While the introduction of digital television for terrestrial broadcasting is a definite given latest in 2015, cable companies must gradually introduce digital services as well, in order not to be the only analog TV providers in the middle-term future. The high but indispensable investment costs involved predict a dynamic consolidation tendency on the cable television market, since for many smaller cable companies an investment of several hundred thousand Euros (Digital Head End, decoders) is surely out of reach.

5.1.6. HDTV receiver sales

A further indicator for the probable future digital development is the recent dynamic of rising HDTV receiver sales in Poland, demonstrated in figure 17.

Figure 17: Sales of TV sets in Poland

Source: Teluk (2008: 24).

The graphic shows an impressive dynamic from 2005 to 2007, which is further complemented by newer data. According to Samsung Poland, almost 2 million flat TV displays, most of which HD ready, were sold alone in 2008 with a rising tendency prediction for 2009, partly due to constantly dropping prices.³³⁹ This development clearly indicates the increased interest in digital offers, which in the near future must certainly become a standard for all signal distribution forms.

5.1.7. Review

The overview of the Polish technical market configuration showed that analog broadcasting is still the dominant transmission type with almost 60% of overall market coverage. Yet regarding the dynamic rise in digital television consumption over the last years and due to the upcoming switchover to digital terrestrial broadcasting latest in 2015, the importance of digital diffusion will certainly grow even more rapidly in the following months. As of 2009, terrestrial broadcasting is for the first time ever not Poland's most popular receiving type anymore, overtaken not only by cable TV, but also by digital platforms, which experienced a dynamic rise in popularity during the last few years, becoming the number one television signal receiving option in Poland.

³³⁹ Bójko (2009).

The further growth potential of digital platforms is supplementary indicated by their leading position in providing digital services. While digital broadcasting is also introduced by IPTV and by cable TV suppliers (to a less dynamic extent, due to relatively high investment requirements), terrestrial transmission will not enter the digital phase until the implementation of the first digital multiplexes, which are planned to be initiated in the months to come. The longer it takes for terrestrial TV to become digitalized, the more endangered its future significance, due to clear audience migrating tendencies towards alternative signal receiving options, whose turnaround will certainly be a difficult task for the future multiplex operators.

The rising impact of digital TV is also indicated by the dynamic sales growth of HDTV sets in Poland. It is in this context very likely that modern television device owners are not eager to wait much longer for terrestrial broadcasting to be digitalized but will look for the diffusion option, which allows them to fully utilize their high-tech appliances. It is remarkable in this connection - especially for public broadcasters - that these dynamic sales and migration developments on the Polish TV market seem to be reversely correlated with the readiness to publicly register TV receivers as probable subjects to broadcasting fee payments; yet this trend is not less plausible, considering the additional costs of new devices and cable TV or digital platform fees, so that an additional public broadcasting fee is rather being avoided, especially when highest government circles provide informal public absolution in this matter.

5.2. Interior structure of Poland's terrestrial TV market

The technical market configuration level naturally goes along with a concrete intrinsic market's structure. Analog and digital transmission, as well as terrestrial, cable, and satellite broadcasting technologies must offer the receivers a certain programmatic compilation, consisting of different TV stations and additional services. On the programmatic level channels compete against each other for the end-users' watching time with specific programs at specific times of the day. The economic reward within this competition level can be granted indirectly via the advertising market and directly via consumer transfers, be it as a monthly fee or in form of a punctual Video on Demand (VoD) payment.

The current status quo as of January 2010, ergo before the implementation of multiplexes in Poland, is that terrestrial TV signal distributors are at the same time the producers of the TV stations, which they broadcast. In contrast to that, Polish cable TV companies are basically pure TV signal distributors via cables; they are only on a local level also involved in the factual programmatic media good.³⁴⁰ Polish satellite broadcasters, on the other hand, produce predominantly thematic TV stations and also distribute them via satellite. Growingly powerful in this context are digital platforms, which provide a mix of own and licensed TV stations, offered in form of programmatic packages for the end-users. All three signal distribution types compete for consumers on this broadcasting sub-market, whose overall constellation was presented on the previous pages.

The following part of the paper will therefore analyze Poland's internal market scenario on its three interrelated segments: the recipient market, the advertisement market, and the signal distribution market. Since terrestrially broadcasted programs dominate in terms of overall audience reception due to their general availability within all signal distribution forms, the programmatic market configuration on the terrestrial sector will be presented first. Since Poland's dual broadcasting system is most tangible in this segment, a division between public and commercial channels will be made. Following that, the digital switchover potential on the terrestrial broadcasting market will be evaluated, including its problematic implementation procedure and the promising concept of mobile television. Subsequently, the terrestrial market participants will be regarded from the economic angle, since the major financial data indicates the broadcasters' middle- and long-term competitiveness. The players' short-term competitive status will be analyzed after that, in terms of the major programs' recipient market shares. Afterward, the advertisement market as most broadcasters' major revenue source will be evaluated. Subsequently, the major market players on the two remaining signal transmission segments will be presented, also including their current market positions, their product offers, and their financial statuses. In addition to the cable and satellite signal distribution section, also IPTV and ITV as innovative but still not very common digital TV providing services will be included into the economic market analysis, due to their considerable growth potential in the middle- and long-term future.

³⁴⁰ Since the local broadcasting level is neglected in this paper, the cable companies' direct media production activities are not taken into consideration either.

5.2.1. Public terrestrial television stations

Within the Polish dual broadcasting system, there is a co-existence of private and public broadcasters since 1993. TV stations are categorized as to their terrestrial reception into nationwide, over-regional, regional, and local ones. This paper will neglect local and regional stations and focus on the ones with the highest technical reception. As far as the stations' program compilation is concerned, the channels are further divided into universal ones, signifying a balanced widespread program structure, and specialized or thematic ones, meaning a focus on a specific topic, such as sports, news, or cooking.

Based on the Broadcasting Act adopted by the Polish Parliament on December 29th, 1992, there are 19 public broadcasters in Poland since 1994: 18 public radio associations and the public television corporation *TVP S.A.* *TVP* has its core business in terrestrial broadcasting with the two nation-wide universal terrestrial stations *TVPI* (reaching 99.6% of all analog terrestrial receivers) and *TVP2* (reaching 99.39% of all analog terrestrial receivers), which when taken together dominate the market as far as viewing rates are concerned.³⁴¹ In addition, *TVP* disposes over 16 regional broadcasting facilities, which are headquartered by *TVP Info* (technically reaching in total 76.52% of all analog terrestrial receivers). *TVP Info* was formerly known as *TVP3*. The change of name and programmatic framework from a documental-informative emphasis to a thematically information-focused station, programmatically competing in a straight line with the commercial stations *TVN24* and *Polsat News*, took place on October 6th, 2007. In the programmatic segment outside of the terrestrial broadcasting area *TVP* additionally disposes over the following satellite channels: *TVP Kultura*, *TVP Sport*, *TVP Historia*, *Bielsat TV*, and *TVP HD*.

5.2.2. Private terrestrial television stations

Due to restricted terrestrial resources, there is place for only one commercial nationwide analog TV concession in Poland in addition to the two public channels. This concession is held by the universal station *Telewizja Polsat* and signifies a terrestrial ubiquity of 85.6%. The two universal over-regional television stations *TVN* and *TV4* are only able to reach 47.10% and, respectively, 26.7% of all terrestrial analog receivers. Considerable changes in this field should not be expected until digital broadcasting will be fully implemented in this signal distribution segment.

³⁴¹ Details will be presented in the sections to follow.

In spite of its disadvantages in terms of terrestrial availability, *TVN* is holding up the competition against the nationwide broadcasters *TVPI*, *TVP2*, and *Polsat*. *TV4* (also called *Czwórka* or *Telewizyjna Czwórka*), which came into being in the year 2000 after the merger between the original terrestrial concession holder *Nasza TV* and the satellite channel *Polsat 2*, is also stabilizing its market position. This is mostly due to *TV4*'s tight cooperation with the *Polsat* group, based on the latter's indirect corporate integration with the former's owner, *Polskie Media*.³⁴² *TV4* is also capitally linked with the local TV net of *Telewizja Odra*, which retransmits large chunks of *TV4*'s program.³⁴³ The seventh non-local terrestrial TV station is *TV Puls*, which originates from the Franciscan station *Telewizja Niepokolanów*. This broadcaster was allowed to change its religious concession to a universal one in 2001, yet struggled financially, surviving only with *Polsat*'s financial support. From 2006 to 2008 Rupert Murdoch's *News Corporation* held 35% of the station's shares and after the broadcaster was granted additional frequencies in 2008, leading to an availability increase to over 25%, *TV Puls* was believed to become a serious competitor for *TVN*, *Polsat*, and *TVP*. Yet after Murdoch's withdrawal in November 2008 the station's future is not regarded as optimistically as during the two years before.

5.2.3. Terrestrial signal distribution changes and the digital switch-over

Currently the two techniques of analog and digital signal transmission co-exist in Poland's broadcasting landscape, while out of all signal distribution forms only terrestrial broadcasting is still exclusively characterized by analog TV transmission. Due to the lack of free frequencies, additional broadcasters are blocked from entering the terrestrial broadcasting market. In accordance with the 2006 Regional Radiocommunication Conference (RRC-06), this scenario is supposed to change latest by June 17th, 2015, when Poland's analog signals will be switched off completely, finalizing the so-called digital switchover.³⁴⁴ While the European Commission pushes the Community's members to finalize the terrestrial digitalization by January 1st, 2012, Poland's current progress pace in this matter rather indicates a finalization time, which will be closer to the final RRC-06 date.³⁴⁵ Concerning this, it is noteworthy that the European Commission reported in its

³⁴² KRRiT (2004b: 80).

³⁴³ Makarenko (2007b: 23).

³⁴⁴ International Telecommunication Union (2006).

³⁴⁵ Europa (2009b).

January 2009 working document that Poland is the only EU member country with an expected analog signal switch-off date of latest 2015, rather than 2012 or earlier.³⁴⁶

5.2.3.1. Poland's digital frequency potential

Independent of the exact timing, a redistribution of Poland's broadcasting frequencies will be the certain consequence in the near future. According to the RRC-06 stipulations, Poland's terrestrial frequency inventory allows for up to eight TV multiplexes.³⁴⁷ Seven of those were granted to Poland by the International Telecommunication Union (ITU) in the technologically more attractive UHF (Ultra High Frequency) range, and one in the less attractive VHF (Very High Frequency) range. In addition, Poland disposes over the equivalent of three nationwide digital audio broadcasting multiplexes (standard: T-DAB). While in 2007 the Ministry of Defense handed the frequency equivalent of about one multiplex over to civil disposition, the frequency equivalent of a further multiplex is still used by the army, and its eventual handing over for civil purposes is fixed for 2017 at the time being, ergo two years after the switch-over deadline.³⁴⁸

Each multiplex can give space for 4-5 TV channels when using the older compression method MPEG-2 or 7-8 channels when using the newer MPEG-4 technology. If High Definition technology is used, instead of 7-8 MPEG-4 channels only 4-5 can find space within one multiplex, yet of higher visual quality.³⁴⁹ The reasons for the consideration of the less yielding compressive method by some countries are above all the initially lower cost of implementation and MPEG-2's overall establishment, characterized by widely available and cost-effective set-top-boxes (STB), while MPEG-4 is still in the process to become a fully integrated standard.³⁵⁰ Poland will most probably opt for the more advanced but riskier and initially more expensive option.³⁵¹ This means that all of the seven currently analog non-local terrestrial TV programs can be transmitted digitally on one multiplex, resulting in a so-called digital dividend (the freed bandwidth after the replacement of currently analog TV stations) amounting to seven multiplexes.

³⁴⁶ Communications Committee (2009: 11).

³⁴⁷ UKE (2006a).

³⁴⁸ Cf. URTiP (2004a: 46), UKE (2009a: 14).

³⁴⁹ KRRiT (2006a: 33).

³⁵⁰ Ibid. (34).

³⁵¹ Międzyresortowy Zespół do Spraw Telewizji i Radiofonii Cyfrowej (2009a: 12).

To be more concrete, during the RRC-06 Poland was granted the following frequencies to be used for digital signal transmission:

- a) All frequencies in the range 174-230 MHz (in the VHF zone) as 8 MHz channels
- b) All frequencies in the range 470-862 MHz (in the UHF zone) as 8 MHz channels
- c) Three 1,5 MHz layers in the VHF zone to be used for digital audio broadcasting (standard: T-DAB)

Consequently, in the VHF zone, Poland has T-DVB-able frequencies amounting to 56 MHz (230 MHz minus 174 MHz) and in the UHF zone for 392 MHz (862 MHz minus 470 MHz), which sum up to 448 MHz (56 MHz plus 392 MHz). One multiplex holds 7 analog channels of 8 MHz each (with MPEG-4 coding and in SDTV), that is 56 MHz (7*8 MHz). Since Poland needs to replace exactly 7 analogue channels, 56 MHz need to be subtracted from 448 MHz, leaving 392 MHz as the digital dividend. Consequently, the dividend amounts for 7 multiplexes with 7 channels each (8 MHz each) in the SDTV³⁵² standard using MPEG-4 (392 MHz / 8 MHz / 7).

5.2.3.2. Poland's digitalization strategy

As of January 2010, Poland does still not have an officially and legislatively confirmed frequency allocation strategy in the course of the digital switch-over implementation. While the official 2005 switchover strategy³⁵³ avoids the question of the exact number of multiplexes and their eventual usage, the most concrete public documents are the public project plans for the implementation of terrestrial digital TV in Poland of September and October 2009³⁵⁴. According to both 2009 plans, elaborated by the Interdepartmental Team for Digital Television and Radio Broadcasting, legislatively appointed for that matter in 2006³⁵⁵, the following is valid:

- The compression method MPEG-4 is to be used.
- The technologically less attractive VHF DVB-T multiplex should be added to the three nationwide T-DAB nets and used exclusively for digital audio broadcasting.

³⁵² The Standard-definition television (SDTV) standard is the digital equivalent of the analog standards NTSC and PAL, as opposed to high-definition television (HDTV).

³⁵³ Międzyresortowy Zespół do Spraw Wprowadzania Telewizji i Radiofonii Cyfrowej w Polsce (2005).

³⁵⁴ Międzyresortowy Zespół do Spraw Telewizji i Radiofonii Cyfrowej (2009a), Międzyresortowy Zespół do Spraw Telewizji i Radiofonii Cyfrowej (2009b).

³⁵⁵ Prime minister directive: *Zarządzenie nr 3 Prezesa Rady Ministrów z dnia 2 stycznia 2006 r.* according to Międzyresortowy Zespół do Spraw Telewizji i Radiofonii Cyfrowej (2009a).

- One DVB-T multiplex equivalent is to be assigned to mobile television (DVB-H), operated by the March 2009 tender winner *Info-TV-FM*.
- One multiplex should be assigned for mobile communications purposes (e.g. LTE-Advanced, WiMax). In accordance with the 2007 World Radiocommunication Conference (WRC-07) agreement, it covers the range 790-862 MHz, which will probably remain military property until 2017.
- Multiplex no.1 (MUX 1) should hold all current analog terrestrial TV channels. The public offer will migrate to multiplex no.3, once established. The current commercial analog broadcasters are to receive the freed public TV frequencies after the *TVP* migration.
- Multiplex no.2 (MUX 2) should be put out to tender and used either for SDTV or HDTV and SDTV use. The multiplex should be free of charge until the analog switch-off; the operator can partly levy fees after the switch-off.³⁵⁶
- Multiplex no.3 (MUX 3) should be a public and free-of-charge multiplex for public television use.
- Multiplexes no.4 (MUX 4) and no.5 (MUX 5) should be put out to tender and used either for SDTV or HDTV and SDTV use. The access to these two multiplexes will rather not be gratis and the operators can include additional broadcasting services in their offers, such as Video on Demand (VoD).

It must be once more emphasized in this context, that while the mentioned frequency allocation is a probable scenario as of January 2010, it is still not an officially confirmed public strategy.³⁵⁷ In January 2010, the Ministry of Infrastructure issued a legislative proposal for public consultations based on the two plans.³⁵⁸ However, the proposal is even less defined than the mentioned strategy plans in terms of precise frequency allocation. Instead of that, the proposal explicitly mentions *TVP* as one multiplex operator in general, while the remaining multiplexes should be operated by entities, which are chosen by the *UKE* and *KRRiT* according to the Telecommunication Act Article 114 (Article 3). In doing so, the project assigns the decision making power to the two major frequency regulating institutions. In order to solve the responsibility and authority division between the *UKE* and the *KRRiT* in broadcasting frequency matters related to the digitalization process, in its Article 19 the project suggests an amendment of the Broadcasting Act's Article 37,

³⁵⁶ According to the September 2009 plan, four MUX-2 channels are to be chosen by the *KRRiT* based on other signal distribution forms' audience ratings and the remaining programs (at least three) are to be selected by the multiplex's operator. The October 2009 does not mention this specification.

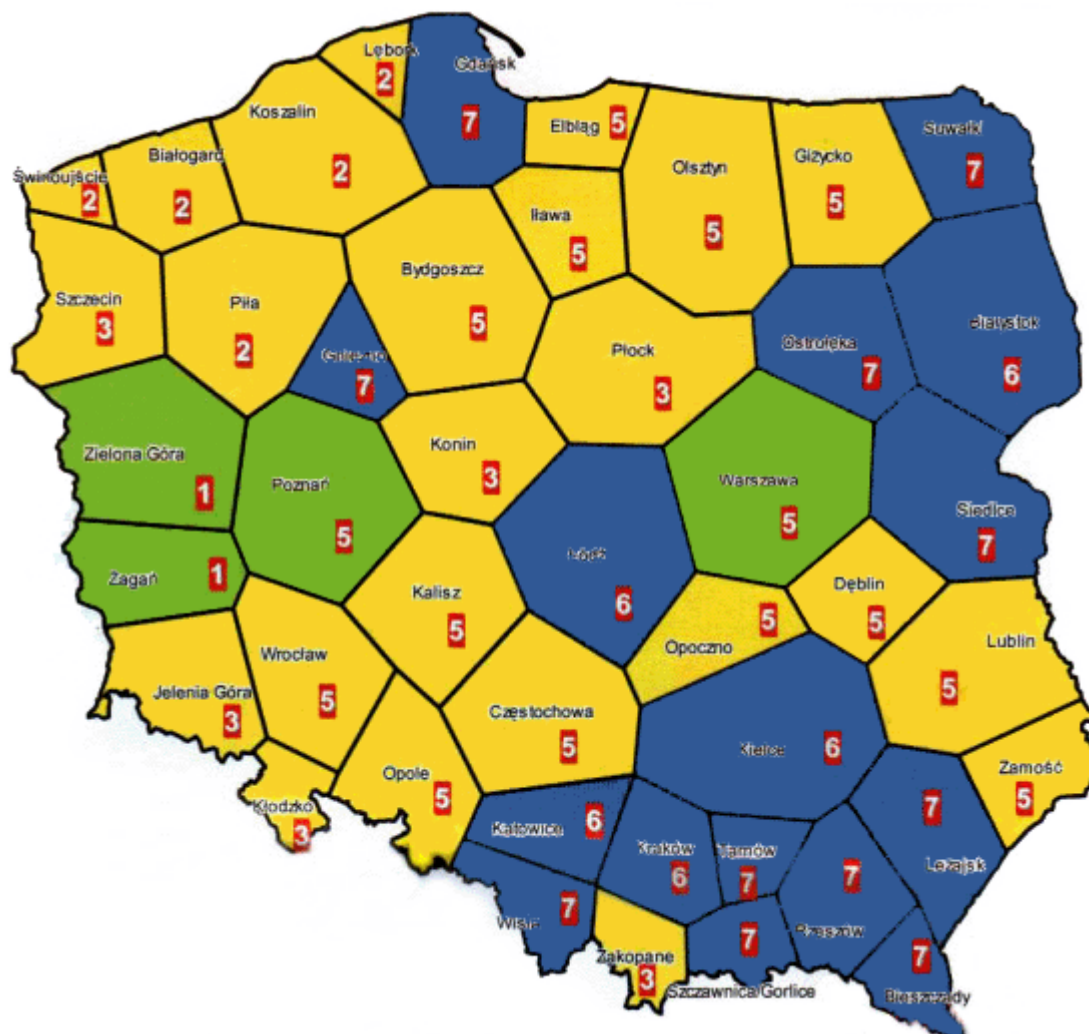
³⁵⁷ Analysys Mason (2009).

³⁵⁸ Ministry of Infrastructure (2010).

implicitly reducing the *UKE* co-decision power with respect to the choice of multiplex operators to a standpoint formulation. Accordingly, as far as the multiplex operator selection is concerned, the term “the concession (...) is issued by the *KRRiT* in accordance with the *UKE*” is replaced by “the concession (...) is issued by the *KRRiT* in accordance with the *UKE*, which formulates a standpoint, considering the conditions of Article 114 (...) Telecommunication Act”. The *UKE*, in turn, is according to Article 4 responsible for the most crucial technological parameters of the digitalization process. Even though it seems that by this legislative change the intention was to strengthen *KRRiT* as the main operator selection entity while assigning the technological supervision to the *UKE*, the projects clarity in this matter is doubtful, since a standpoint formulation does not imply, to which degree the *KRRiT* can defy the standpoint’s content and still issue a given concession “in accordance with the *UKE*”. Consequently, while the legislative project indeed addresses some of the critical issues related to the Polish digitalization - especially the responsibility division between the *UKE* and the *KRRiT* - it does not define them explicitly enough, leaving much space for paralyzing controversies. While the project may indicate the current governmental viewpoint in terms of institutional authority preferences to implement the digitalization process, it must be noted in this context, that the project will very likely change its scope and content during the started public consultations, whose rapid terminations are rather doubtful, along with further legislative instances which it must pass, until factually becoming a legislative act.

It is certain that this lack of official and especially legislative definition does not have a positive influence on the whole digitalization process in Poland. According to *UKE*’s official digital switch-over schedule, the first multiplex’s official starting date was September 30th, 2009, while the analog signal switch-off as the termination of the switch-over process is officially listed for July 31st, 2013.

Figure 18: The planned MUX 1 digital switchover by region



Analog switch-off dates	Digital switch-on dates MUX 1
1 = 09-10.2010	Phase I - September 2009
2 = 05-06.2011	Phase II - March 2010
3 = 09-10.2011	Phase III - July 2011
5 = 09-10.2012	
6 = 05-06.2013	
7 = 31.07.2013	

Source: based on Telewizja Cyfrowa (2010)

How inaccurate these semi-official declarations are is already indicated by the substantial problems accompanying Poland's digitalization's start. In spite of prior declarations, MUX 1 still did not start its transmission as of January 2010. According to *UKE* chairwomen Anna Strężyńska all digitalization levels will have a delay of up to one year, mainly resulting from

procedural reasons on *TVP*'s side.³⁵⁹ Accordingly, the current terrestrial analog broadcasters, which were supposed to enter the first multiplex, should agree on a mutual multiplex operator. While in September 2009 the commercial broadcasters chose *Emitel* as the multiplex operator, around the planned official digital transmission start it was announced that according to the Polish Public Procurement Law, *TVP* as a public corporation must announce a public tender for this purpose.³⁶⁰ It can take several months to finalize such a tendering procedure and it is naturally not certain that *Emitel* would be its winner, which would make further proceedings even more complicated. It is very surprising and naturally questionable in this context that this legal restriction was not noticed by any of the parties involved until the planned transmission start. A way out of the procedural impasse seems to be the restructuring of MUX 1 and MUX 2. Accordingly, the *KRRiT* initially agreed to the broadcasters' suggested conception that MUX 1 be in *TVP*'s hands, consisting of the three major public channels *TVP1*, *TVP2*, and *TVP Info*, complemented by four channels chosen by the *KRRiT*. According to this conception, MUX 2 should be in turn assigned to the current commercial terrestrial competitors, and should include the commercial channels *TVN*, *Polsat*, *TV4*, and *TV Puls* free of charge, complemented by three pay-TV channels, belonging to *ITI*, *Polsat*, and *TV Puls*. Additionally, *TVP* is supposed to free one space for regional broadcasting in the third multiplex.³⁶¹ The *UKE*, on the other hand, suggests that *KRRiT* selects maximal four out of seven MUX 2 programs (instead of deciding over all of them), while the remaining three should be chosen by the multiplex's operator on competitive terms.³⁶² As far as the broadcasters' suggestions is concerned, the *UKE*'s initial reservation stems from the lack of assurance that the remaining four MUX 1 channels won't go to *TVN*, *Polsat*, *TV4*, or *TV Puls*, and that *TVP* will migrate to MUX 3 after its initiation.³⁶³

5.2.3.3. The switchover's financing aspect

The investment requirements accompanying the digital switch-over can be divided into two cost groups. On the signal reception side, households with older television devices will require set-top-boxes (STB) in order to decode the digital signal. According to the

³⁵⁹ Szymanek (2009).

³⁶⁰ Cf. Lemańska (2009c: B-001), Fura (2009a), *Ustawa* (2004c) with subsequent amendments.

³⁶¹ Rut (2010).

³⁶² Fura (2009b).

³⁶³ Makarenko (2009b).

mentioned September 2009 project plan, up to 1,9 million households may need public help with financing the required STBs, which are estimated to cost about 250 zł per piece on average over the next switchover years. Therefore, the plan suggests the reservation of public funds amounting up to 475 million zł for that matter.³⁶⁴ The question how exactly the funding should be organized and where it should stem from, however, still remains unanswered. Interestingly enough, the October 2009 plan, prepared by the same interdepartmental task group, which elaborated the named September 2009 plan, also mentions the overall public STB costs involved, yet suggests that the government first observes, if the market solves the problem by itself, without a priori offering public help to the poorest.³⁶⁵ Both plans also mention the need for a public information campaign, whose costs (among others informative brochures and an Internet page) are generally to be covered by public authorities. According to the *UKE*, a budget-financed foundation (working name “Cyfrowa Polska”) should be set up, coordinating the necessary educative and social public campaign around the digitalization.³⁶⁶

In 2008, *TVP*, *Polsat*, and *TVN* offered to carry a considerable share of the STB costs, yet demanded the denial of access for new competitors to the first two multiplexes as compensation. According to suggestions by the three major market players, the first multiplex was supposed to include all current over-regional and national terrestrial providers, while the second multiplex should be reserved for existing and new thematic programs produced by *Polsat*, *TVN*, and *TVP*.³⁶⁷ The possibility of such a deal was publicly received ambivalently and wakened the Globalization Institute’s critique, which considered the possible market closure a clear violation of EU regulations.³⁶⁸ The *UKE*’s initial consideration for the broadcasters’ suggestion gave soon way to explicit disapproval for such a paid market entry restriction, finally opting towards market mechanisms as the deciding forces for the second, third and fourth multiplex’s interior competition.³⁶⁹

On the signal dispersion side, both plans expect that over 500 transmission stations and related devices require modernization or replacement. The October 2009 plan estimates the overall costs of the digital switch-over at several billion zł, implicitly indicating the major cost share on the signal distribution side.³⁷⁰ The September 2009, on the other hand, does not include this kind of estimation concerning the signal dispersion side, yet predicts

³⁶⁴ Międzyresortowy Zespół do Spraw Telewizji i Radiofonii Cyfrowej (2009b: 24).

³⁶⁵ Międzyresortowy Zespół do Spraw Telewizji i Radiofonii Cyfrowej (2009a: 26).

³⁶⁶ *UKE* (2009b).

³⁶⁷ Makarenko / Poznański (2009: 31).

³⁶⁸ Instytut Globalizacji (2009).

³⁶⁹ Dec / Lemańska (2008: B-016).

³⁷⁰ Międzyresortowy Zespół do Spraw Telewizji i Radiofonii Cyfrowej (2009a: 25).

that during the simulcast period (the phase between the first multiplex implementation and the total analog switch-off, in which both signal types will co-exist in the ether) the broadcasters' costs will rise by about 15%, while also falling by the same percentage after the finalized analog switch-off, resulting in overall savings as far as terrestrial broadcasting is concerned.³⁷¹ It is interesting in this context, that both plans published by the same team within only 21 days, differ substantially in the explicitness of the cost specifications. While the first plan focuses on the public side, explicitly demanding the reservation of considerable public funds for households below the poverty line, three weeks later this very subject is dropped and replaced by the emphasis on the signal supply side costs. Poland's biggest terrestrial signal distributor, the former state-owned *Emitel*, disposes over 350 transmission stations and estimates its own infrastructure innovation costs accompanying the digital switchover at 400 million zł.³⁷²

5.2.3.4. Possible reasons for the slow terrestrial digitalization tempo

The lack of a legislatively confirmed digitalization strategy, which transparently defines its concrete framework and the major instances' responsibilities during the switch-over process, has led to a scenario of stagnancy and complete ambiguity several months after the failed start of the first multiplex. Neither are the multiplex operators selected, nor is the multiplexes' interior composition decided upon. The questions of financing and deadlines are similarly in the open. It is almost grotesque in this context that in January 2010, more than three months after the planned and failed nationwide digital signal transmission by the first multiplex, the governmental digitalization strategy project was presented for public debate, in order to evaluate the target law - a process, which can take at least several months more.

It seems that most of the parties involved are not interested in the efficient implementation of the terrestrial digitalization process. Unfortunately, short-term financial and political reasons seem to outbalance the middle- and long-term advantages of a professional, well-balanced, and timely switchover. The main commercial terrestrial broadcasting corporations, *Polsat* and *ITi*, have their own digital platforms; a fast terrestrial digitalization would signify a direct competition to their own digital satellite offers within a segment characterized by enormous growth over the last years. Consequently, the later the

³⁷¹ Międzyresortowy Zespół do Spraw Telewizji i Radiofonii Cyfrowej (2009b: 24).

³⁷² Bendyk (2009: 35).

terrestrial digitalization is implemented, the better for the digital platform operators, since they will have more time to expand their own customer base, as well as their technological offer, making a possible switch to the multiplexes for the satellite platforms' subscribers as unattractive as possible. Moreover, it is likely that the terrestrial digitalization will introduce new competitors to the terrestrial broadcasting segment, with which the current terrestrial broadcasters will have to share the market. The probable commercial competitors' motivation to delay the switch-over process as long as possible may also be valid for the public broadcaster. Accordingly, *TVP* as well works on finally presenting a competitive digital satellite platform offer, whose customer base would of course be best built before the eventual switchover. Besides, in its current instable financial situation with shrinking public revenues, *TVP* is surely not eager to expand its competitor circle, since such a competition would very probably signify reduced advertisement revenues for all current terrestrial broadcasters; since Poland's population is rather stagnating and each day will always be 24 hours long - also after the switchover - more competitors imply an increased fragmentation of the financially crucial overall advertisement budget, resulting in lower revenues per broadcaster, unless the market will experience an unexpected growth impetus. What also plays a role in the overall reserved interest in the terrestrial switch-over process is that those households, which still watch television the analog way and do not have modern TV devices, are certainly the less attractive advertisement target group than those, who were already eager to invest in new TV equipment and digital TV reception via satellite platforms or cable TV. The government, in turn, seems to delay a proper switchover process, which still lacks a transparent legislative structure, on the one hand due to its relatively favorable relations with the commercial segment of the market, and on the other hand due the probable public costs involved (STBs, etc.), especially in times of a still perceived economic crisis atmosphere. The two regulation institutions, in turn, the *UKE* and the *KRRiT*, seem to be driven by differing action guidelines. While the *UKE* seems to foster a maximal competitive environment of the upcoming DVB-T spectrum, the *KRRiT's* attitude towards the future terrestrial broadcasting landscape seems to be more congruent with the broadcasters' intentions. Since the current opposition stands behind *KRRiT's* direction at present, the regulation institution's motives are likely connected to the preservation of *TVP's* strong market presence in terms of technical range. The *UKE*, in turn, seems to be one of the few instances, which indeed strive towards an open and competitive market structure without a preferential treatment for any of the suppliers. Yet the legislative lack of a well-defined and transparent responsibility and authority assignment between these two institutions certainly

hinders an efficient decision-making process with the realistic threat of complete paralysis. As long as such a legislative framework is not in place, preferably with the *UKE* as the central switchover institution, Poland's terrestrial digitalization process will be an unstable and unpredictable one.

5.2.3.5. Mobile TV as one result of the digitalization process

While the switchover focus clearly lies on stationary terrestrial broadcasting, one EU-promoted side-product of the planned digitalization will be the digital mobile television sector. Taking into consideration the pace of events with respect to the overall terrestrial digitalization process in Poland, the progress on the mobile TV market is astounding.

In October 2008, the *UKE* announced a public tender for the DVB-H operator.³⁷³ The number one decision criterion was for the potential operator to maintain a competitive framework within the multiplex, followed by the amount of quoted sum to be paid for the frequencies. Two corporations took part in the tender. The first one was *Mobile TV*, a consortium formed especially for the expected DVB-H operator function by Poland's four major mobile telecommunication operators *PTC*, *P4*, *Polkomtel*, and *PTK Centertel*, while the second tenderer was *Info-TV-FM*, a Zamość-based signal diffusion company, owned indirectly by the Cyprus-based *Rasting Limited*.³⁷⁴ Unexpected for some, *Info-TV-FM* won the tender, mainly due to its independence of the mobile communication market and its quoted investment sum, committing to start the DVB-H diffusion not later than three months after the frequency reception. According to the tendering criteria, the radio and television share within the multiplex must not be lower than 66%, while the share of additional services, such as interactive mobile games or quizzes, must be at least 5%. The DVB-H multiplex operator is obliged to include at least 16 radio or TV programs by at least 16 independent broadcasters, neither of whom can exceed a share of 50%. Programs originally created in Polish language should constitute for not less than 33%; independent European productions should amount to not less than 10% and European productions in general for more than 50%.³⁷⁵ Until May 31st, 2015, *Info-TV-FM* will receive frequencies for 31 major Polish cities, and after that date until the end of 2023 for the whole country. The mobile

³⁷³ *UKE* (2008).

³⁷⁴ *Magna Polonia* (2010). As of January 2010 *Rasting Limited* holds 54,46% of the Investment Fund *Polish Magna* (another 8,6% are held by also Cyprus-based *Evotec Management Limited*), which in turn holds 61,23% of *Info-TV-FM*.

³⁷⁵ *UKE* (2009c). The presented percentages are valid if not counting informational content, game shows, sports broadcasts, advertisements, teleshopping, and text transmissions.

multiplex operator quoted a sum of over 15 million zł to be paid to the Polish budget for the frequency reservation and is obliged to provide the necessary diffusion infrastructure, which is estimated to amount to 100 to 300 million zł.³⁷⁶

As an operator, *Info-TV-FM* must act as a frequency wholesaler and is not allowed to be involved in the end-user distribution. Therefore the corporation published an offer for potential distributors, which most naturally are mobile telecommunication operators, yet not only. However, the Polish mobile telecom companies are not eager to cooperate with the new mobile multiplex operator, claiming that *Info-TV-FM's* offer is unacceptable from the business point of view.³⁷⁷ The offer is presented in the tables below and signifies the following scenario for the operators:

³⁷⁶ Cf. UKE (2009d), UKE (2008), Świderek (2009a), Poznański (2009).

³⁷⁷ Świderek (2009a).

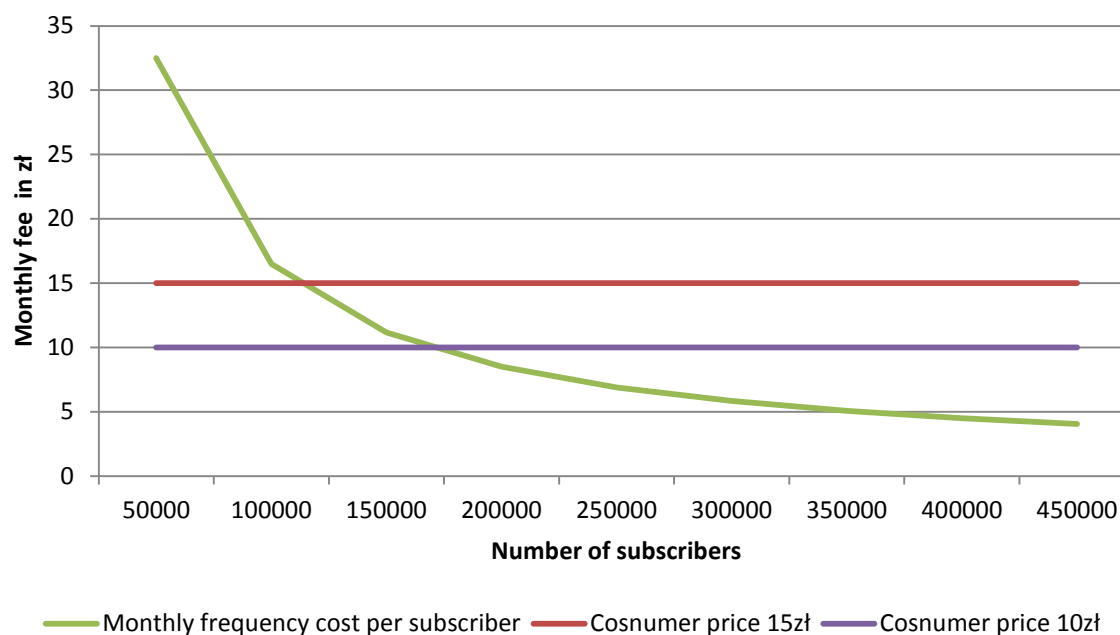
Table 6: Info-TV-FM's wholesale frequency offer

Installation fee in zł	2000000	
Discount when signing contract in 2009	100%	
Discount when signing motivation letter in 2009	50%	

Monthly fee for DVB-H net access	in zł	
Base value (below 50.000 subscribers)	1600000	Resulting monthly fees per customer within the subscriber range (without installation fee, premium fees, and operator's interior costs related) in zł
50.000-100.000 subscribers	1560000	>=33,3
100.000-150.000 subscribers	1520000	32,5-16,9
150.000-200.000 subscribers	1480000	16,5-11,43
200.000-250.000 subscribers	1440000	11,17-8,7
250.000-300.000 subscribers	1400000	8,5-7,06
300.000-350.000 subscribers	1360000	6,9-5,97
350.000-400.000 subscribers	1320000	5,83-5,19
400.000-450.000 subscribers	1280000	5,07-4,6
450.000 subscribers and more	1240000	4,5-4,14
		<=4,06

Variable costs	
Monthly fee per subscriber (including Free-to-Air access)	1,30 zł
Monthly fee per subscriber for pay-per-view channels	0,80 zł
Monthly fee per subscriber for premium channels	58%

Source: based on Info-TV-FM (2009).

Figure 19: Info-TV-FM's wholesale frequency offer structure

Source: based on Info-TV-FM (2009).

Relative to the mobile broadcasting service's number of end-consumers, the distributors would carry monthly costs per consumer (not considering the one-time installation fee, advertisement, and service costs) between 32,50 zł (after reaching the consumer base of 50.000) and 4,06 zł (for 450.000 and more consumers). *NFI Magma Polonia's* (*Info-TV-FM's* majority stock holder) CEO Albert Kuźmicz estimates the maximal realistic end-user costs to amount to up to 15zł monthly.³⁷⁸ Consequently, the break-even consumer base for the operators would be between 111.000 (with a monthly consumer price of 15zł) and 150.000 (with a monthly consumer price of 10zł). Considering Poland's mobile telecommunication market of about 18 million subscribers and 17 million prepaid card users, the offer does not seem to be unprofitable for the major operators in the middle-term, especially keeping in mind the 2012 European Soccer Championship in Poland.³⁷⁹ Accordingly, *PricewaterhouseCoopers* predicts that *Info-TV-FM* can have around 200.000 clients in 2011 and around 500.000 in 2013.³⁸⁰ Consequently the mobile operators' initial rejection does not seem to be purely economically motivated on a single-competitor basis. The situation seems more like a common boycott by the telecom corporations, who planned to be DVB-H operators themselves via *Mobile TV*, and now want to demonstrate that the

³⁷⁸ Jaślan (2009: 2).

³⁷⁹ Dec (2008: B-005).

³⁸⁰ Świderek (2009a).

choice of *Info-TV-FM* over their own offer was a mistake, possibly hoping of a re-tender. Concerning this, in December 2009 the *UOKiK* frisked the major mobile operators' offices, suspecting an illegal cartel agreement against *Info-TV-FM*.³⁸¹ As of January 2010, these suspicions have not been confirmed. Yet as natural as mobile operators seem for the distribution of mobile broadcasting, other entities as well show interest in the DVB-H market. Accordingly, four cable companies (*INEA*, *UPC Polska*, *Vectra*, and *Aster*), two digital platform operators (*Cyfrowy Polsat* and *Canal +*), and one mobile telephony operator (*CenterNet*), have already signed intention letters with *Info-TV-FM* and already initialized their testing of mobile television transmissions.³⁸²

In spite of these initial agreements, the future of Poland's DVB-H remains uncertain. Intention letter signers rather planned to reduce possible future costs, instead of demonstrating their certain readiness to actually offer DVB-H to their customers. According to the presented *Info-TV-FM* wholesale offer, intention letters signed until December 31st, 2009, are awarded with a 50% discount on the one-time installation fee of 2.000.000 zł. A contract signing until that date would however eliminate this fee completely.³⁸³ Intention letters are not binding and if the future development should evolve towards the factual implementation, 1,000,000 zł will be on the saving side for the *Info-TV-FM's* partners. Following this logic, the lack of intention letter signing by the biggest mobile telecommunication operators is a further indication for the mentioned broader motivation scope of uncooperativeness with *Info-TV-FM*. Since these mobile telecom operators demonstrated their definite financial interest in the DVB-H market by their eagerness to become the multiplex's operators, there are few legal economic arguments left for not signing at least the mentioned intention letters. The most probable scenario is therefore that Poland's mobile telephony operators jointly intend to force *Info-TV-FM* either out of the business or to lower its wholesale offer, so that a more considerable future margin share will be on the operators' side.

It would be advantageous for the Polish DVB-H market, that the cartel-like sabotage suspicions were an exaggerated interpretation of market-based negotiations of high monetary value. Disagreements among the suppliers and the wholesaler do not have to be perceived negatively but rather as a process of negotiations on a high level. For the frequency wholesaler and for the distributors DVB-H seems to be a profitable option from

³⁸¹ Pap (2009d).

³⁸² Magna Polonia (2009a-h). In the case of CenterNet the two companies signed an initial cooperation agreement with an intended contract signing latest on April 30th, 2010. UPC Polska retreated from its intention letter on November 2nd 2009.

³⁸³ If CenterNet signs its contract in April 2010, it will probably be also freed from the installation fee.

the economic point of view, since it is directly linked with consumer payments, which are expected to develop dynamically with a culmination point during the 2012 Soccer European Championship, which Poland will host. From the media-political point of view such a mobile television reception solution can positively influence the overall opinion dispersion probability as well as its plurality. From the technological viewpoint, innovative media solutions can be a motor for further innovations on the market. The European Soccer Championship in 2012 will probably be the most crucial period to draw a balance for Poland's digital mobile broadcasting sector.

5.2.4. Review

The information presented above, indicates a general terrestrial market division between the public television corporation *TVP* and the commercial broadcasters *TVN* and *Polsat*. *TVP*'s programmatic offer includes the nationwide stations *TVP1* and *TVP2*, as well as the bundled regional net of *TVP Info*. *Polsat* and *TVN* are the definite market leaders among the private terrestrial broadcasters. The remaining providers are *TV4*, which cooperates with *Polsat*, and *TV Puls*, which is the only program independent from the main competitors: *TVP*, *Polsat*, or *TVN*.

In the months and years to come, the terrestrial broadcasting sector will experience considerable changes in connection with the digital switchover. A wider programmatic spectrum may be one major consequence of the terrestrial digitalization, if implemented adequately. The signal distribution will be structured among multiplex operators, who will offer programmatic packages consisting of own and rented TV stations, as well as of additional digital services. The question, however, if the new scenario will not only introduce additional TV stations but also additional terrestrial broadcasters to Poland's TV market, which will be independent of *TVP*, *Polsat*, and *TVN*, still remains unanswered. This is mainly due to the lack of a well-defined legislative act in that matter, resulting in considerable implementation delays and disagreements between the parties involved, but also to the current competitors' vast interests not to accelerate the switchover process. The mobile television segment of terrestrial broadcasting is on the other hand very close to its final implementation, in spite of current power struggles between the frequency wholesaler *Info-TV-FM* and the mobile telephony companies as the major potential signal distributors.

5.3. Financial situation of the major terrestrial broadcasters

The data above introduced the major competitors on the terrestrial TV market, which as a signal distribution form has gradually lost significance over the recent years. The main reason for the technological migration is this diffusion method's limited programmatic scope, compared to alternative TV reception forms. The programmatic insufficiency, in turn, stems on the one hand from frequency scarcity, and on the other hand from the usage of analog broadcasting, which exploits the available bandwidth in an inefficient manner compared to digital signal transmission. The digital switchover can help terrestrial broadcasting's regaining its significance by considerably multiplying the terrestrial programmatic offer and introducing attractive technological reception solutions, which will partly deviate from the classic linear transmission form.

In order to get a deeper notion of the current and possible future terrestrial market compilation, some of the broadcasters' major financial data and market results should be taken into consideration. After presenting an overview of the main broadcasters' financial results, the following section will also take a deeper look at the recipient- and advertising market shares.

5.3.1. Private TV

The following section will deal with the overall financial situation of the major commercial broadcasters *Polsat*, *TVN*, *TV4*, and *TV Puls*, while the public broadcasters embraced by *TVP* will be presented subsequently.

5.3.1.1. TV Puls

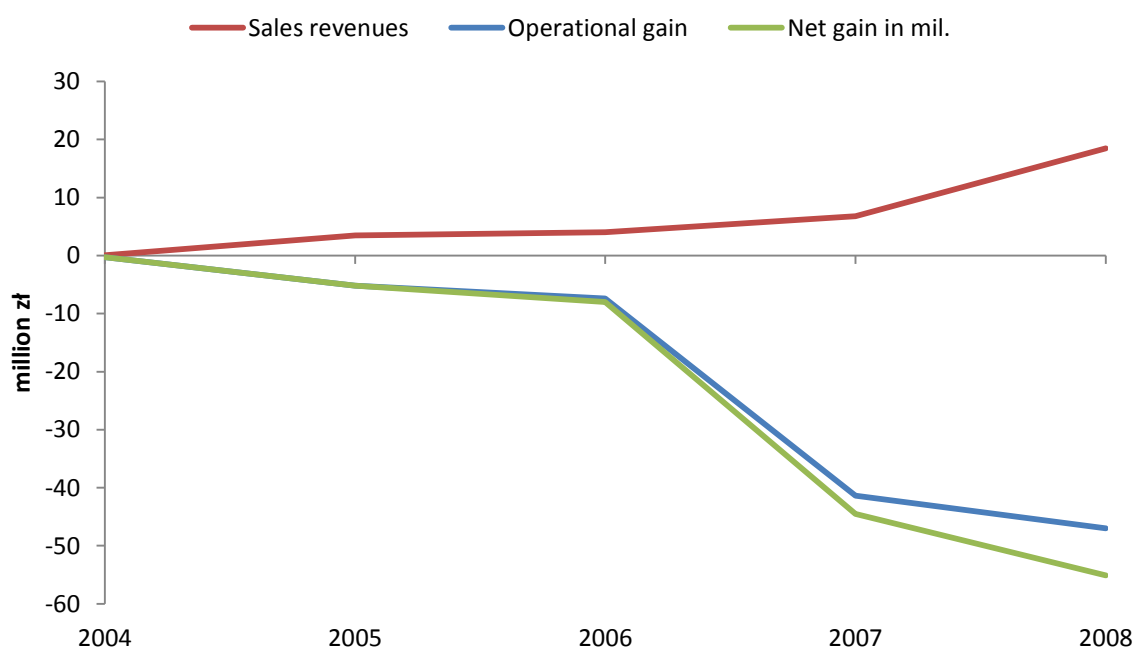
Many aspects of *TV Puls*'s financial conditions are kept secret up to this very day. When in 2006 and 2007 *News Corporation* invested in Poland's smallest terrestrial broadcaster, becoming its 35% co-owner, the transaction's investment dimension was not known. Except for Rupert Murdoch's statement of an estimated investment amounting to \$50 million, no official data was known to the public.³⁸⁴ The same is valid for *News*

³⁸⁴ Makarenko (2007a: 26).

Corporation's unexpected retreat from Poland's broadcasting market in 2008.³⁸⁵ Following this pullback, the Franciscans Fraternity, being *TV Puls's* initial owner, took over 51% of the shares and the broadcaster's CEO Dariusz Dąbski assumed the remaining 49%. This ownership structure changed again in September 2009 and February 2010, when the Franciscans sold further shares to Dąbski, so that the CEO is as of February 2010 *TV Puls's* sole owner.³⁸⁶

When regarding *TV Puls's* major financial data, we can see that between 2004 and 2008 its sales revenues presented a positive growth rate, while its gain development is almost a reverse mirror image of the revenues.

Figure 20: TV Puls's financial data 2004-2008



Source: based on TV Puls's financial statements for 2004-2008.

This situation is due to the fact that *TV Puls's* sales growth was accompanied by an even steeper costs increase over this time period. Yet in October 2009 the broadcaster's new owner announced that *TV Puls* broke even for the first time in its history and reached even an operational gain the month after, resulting from a 72% viewing rate increase over the last year and a 75% employee decrease, according to Dąbski.³⁸⁷ A positive revenue development

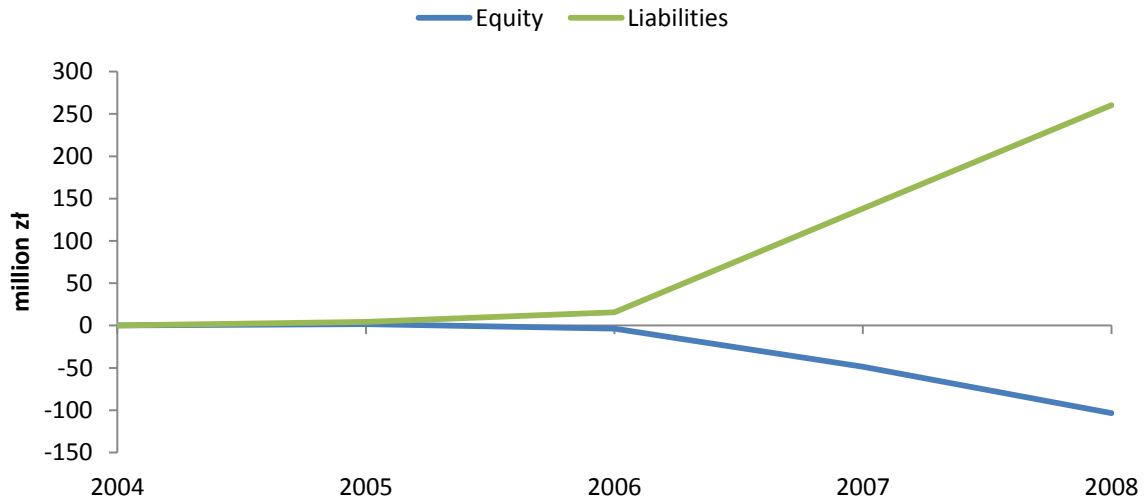
³⁸⁵ Tigi / Zbig (2008: 32).

³⁸⁶ Mib (2009), Makarenko (2010a: 26).

³⁸⁷ ISB (2009).

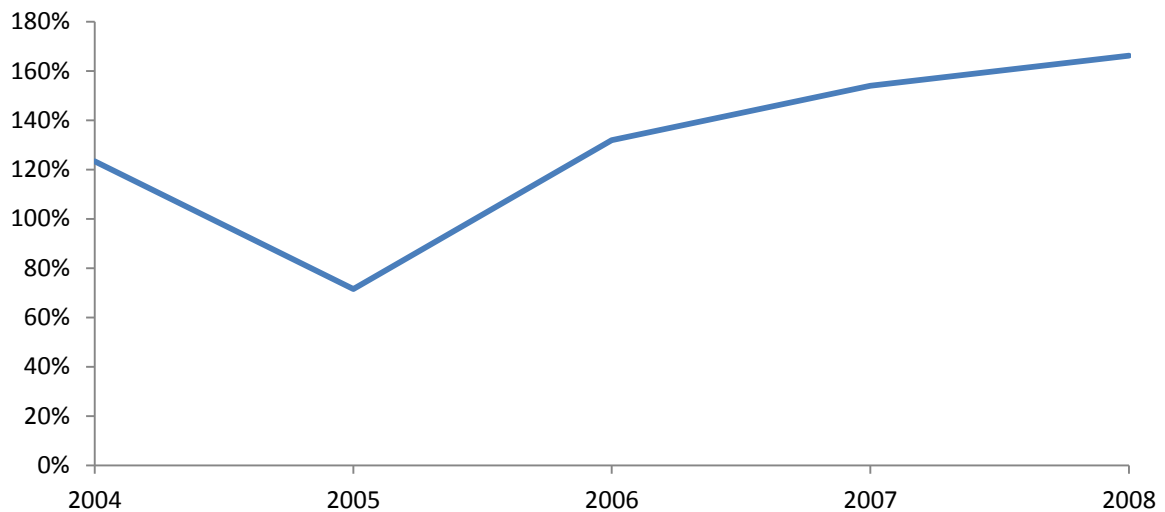
with the outlook for profits is often a predisposition for middle- and long-term efficiency, even despite temporal losses, yet a company's overall financial stability also depends on its indebtedness. Concerning this, *TV Puls* has a worrisome capital structure, which still questions the broadcaster's overall effectiveness.

Figure 21: TV Puls's capital structure 2004-2008



Source: based on TV Puls's financial statements for 2004-2008.

Figure 22: TV Puls's debt ratio 2004-2008



Source: based on TV Puls's financial statements for 2004-2008.

TV Puls had negative equity in 2004, and then again ever since 2006, intensifying over the following years. The fact that *TV Puls*'s total assets do not cover its total debt results in debt ratios of over 100%, being as high as 166% in 2008. Such a capital structure would signify certain bankruptcy for many companies. Nevertheless, Dąbski currently defines *TV Puls*'s value as "much more than 100 million zł".³⁸⁸ While this assessment may be even true, it seems certain, however, that *TV Puls* will not be able to survive much longer without a capital-intensive business partner to cover the rising indebtedness, while potential investors surely can carry on without *TV Puls*.

Accordingly, since *News Corporation* left *TV Puls*, the broadcaster is looking for a new shareholder. While in December 2009, Dąbski still negotiated with potential investors probably from both, Poland and abroad, in February 2010 *TV Puls* declared to freeze the search due to the lack of satisfying offers.³⁸⁹ Nevertheless, *TV Puls* is interesting for foreign investors, since it offers an easy way to enter Poland's terrestrial broadcasting market, which is in the process of being digitalized. While *TV Puls*'s small technical range has always been one of the main reasons for the channel's low viewing results and limited attractiveness for investors, subsequent to the switchover the broadcaster will catch up with the currently biggest terrestrial commercial market players *Polsat* and *TVN* - at least as far as technical ubiquity is concerned. For local companies, on the other hand, *TV Puls* is for the same reasons interesting as for foreign corporations, while being of even greater strategic significance for its current competitors. For companies like *ITI* or *Polsat* the partnership with *TV Puls* would signify the evasion of an additional competitor from outside of the market, at the same time creating the fundamentals for a future takeover of *TV Puls*'s valuable frequencies. It is hence of no surprise that among the potential investors corporations such as the *TVN* group, the local publishing giant *Agora*, or the German media group *Bertelsmann* are mentioned.³⁹⁰

Therefore, even though *TV Puls* does currently not belong to the market leaders in Poland, the broadcaster's possible future role in the digitalization process should not be underestimated, considering the new augmented technological potential.

³⁸⁸ Fura (2010).

³⁸⁹ ISB (2009), Makarenko (2010a).

³⁹⁰ Cf. Lemańska (2010: B-001), Ask (2009).

5.3.1.2. TV4

The station *TV4* is a result of the merger between *Nasza TV* and *Polsat2* in the year 2000.³⁹¹ Before the merger, *Polsat's* owner Zygmund Solorz-Żak convinced and possibly financially helped his business partner and owner of the local *Telewizja Odra* net Andrzej Kuchar to take over the majority of *Nasza TV's* proprietor *Polskie Media*. Kuchar's company *Trans Media Group* acquired 90% of *Polskie Media* in 1999 and in the same year sold 26,7% of it to Kuchar's Cypriot company *Rexon Overseas Ltd.*³⁹² *TV4* has ever since cooperated closely with *Polsat*, programmatically and commercially, and so did *Telewizja Odra* with *TV4*, by predominantly retransmitting *TV4's* program. The latter cooperation was naturally caused by two broadcasters' similar ownership structure and increased *TV4's* terrestrial availability, while wakening *KRRiT's* concerns due to the negligence of local content, for which *Odra* originally held its license.³⁹³

In February 2004 Solorz-Żak quietly took over 85% of Kuchar's *Trans Media Group*, and sold these very shares several months later to the mentioned Cypriot *Rexon Overseas Ltd.*³⁹⁴ The same year, *Trans Media Group* sold its shares in the local TV-net *Telewizja Odra* to *Polskie Media*.³⁹⁵ While in 1999 *Rexon Overseas* was clearly Kuchar-related, in 2004 and in the years to follow the Cypriot corporation is believed to be controlled by Solorz-Żak through his wife Małgorzata Żak and nominal Cypriot citizens within an intransparent ownership structure. *Trans Media Group's* remaining 15% are held by the also intransparent Cypriot corporation *Mon sunny*, which is probably similarly related to Solorz-Żak or Kuchar. The two business partners split after legal conflicts over the *Trans Media Group* transaction, which according to Kuchar lacked the monetary compensation by Solorz-Żak, while according to *Polsat*, Kuchar intended to annul the correct transaction due to the potentially higher resell price in 2007 after the market entrance by Rupert Murdoch.³⁹⁶

It seems that without the conflict between the two men, this transaction would have remained unnoticed. Kuchar made the issue public three years later, in 2007, by reporting it to the *KRRiT*, most likely as an act of economic revenge or power conflict with Solorz-Żak. This and numerous other examples indicate that many political and economic high-scale

³⁹¹ *Polsat2* reappeared several months later as an international satellite program.

³⁹² *KRRiT* (2000: 40). As a consequence, *Rexon Overseas* held 24% of *Polskie Media*.

³⁹³ *KRRiT* (2008: 61).

³⁹⁴ Makarenko / Kasperska / Harłukowicz (2007).

³⁹⁵ *KRRiT* (2008: 61), KRS data on *Polskie Media*.

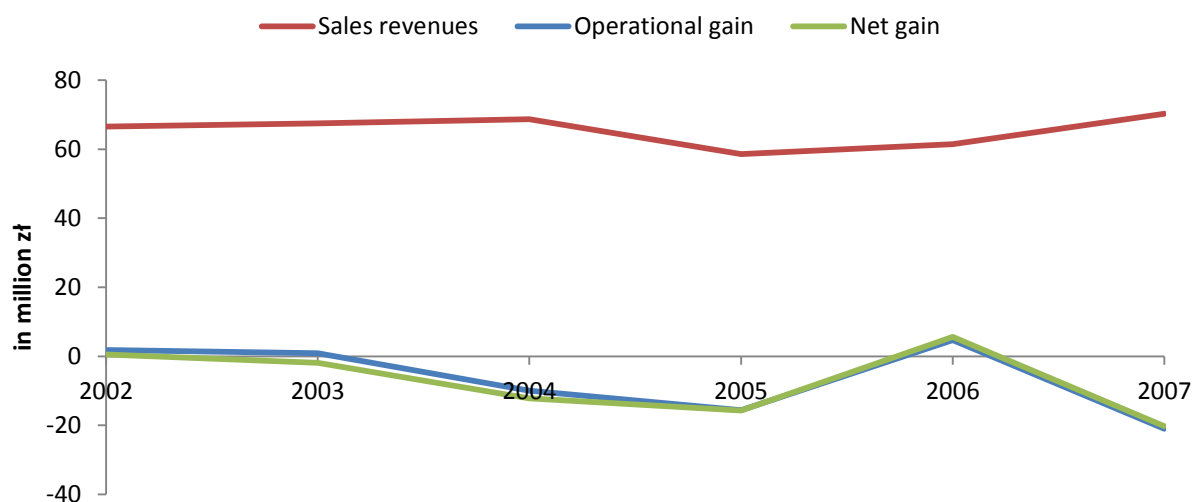
³⁹⁶ *Ibid.*

transactions in Poland, but certainly not exclusively there, only become public when the business partners get into conflict with each other.

Even though *Polsat*, Kuchar, and Solorz-Żak deny being capitally related to *Rexon Overseas* and *Mon sunny*, while at the same time declining to disclose the Cypriot corporations' ownership structures, it seems very probable that Solorz-Żak factually controls *TV4*. Not only do the two stations cooperate programmatically and commercially, *Polsat's* lawyers also represented *TV4* in its conflicts with the *KRRiT* in 2006.³⁹⁷ Hence, also according to the *KRRiT*, around 90% of *TV4's* owner *Polskie Media* are closely related to *Polsat*, while the remaining 10% are related to *TVN*.³⁹⁸ Furthermore, Solorz-Żak does not deny being interested to integrate *TV4* into the *Polsat* group.³⁹⁹ It seems therefore that right from the beginning of the digital switchover, Solorz-Żak will dispose over double the frequency space than his current commercial competitors in the new digital multiplexes, giving the second richest man in Poland a considerable competitive advantage in the future terrestrial broadcasting landscape.

When looking at *Polskie Media's* financial data, we can see that also *TV4* has problems with its profitability.

Figure 23: Polskie Media's financial data 2002-2007



Source: based on *Polskie Media's* financial statements for 2004-2007.

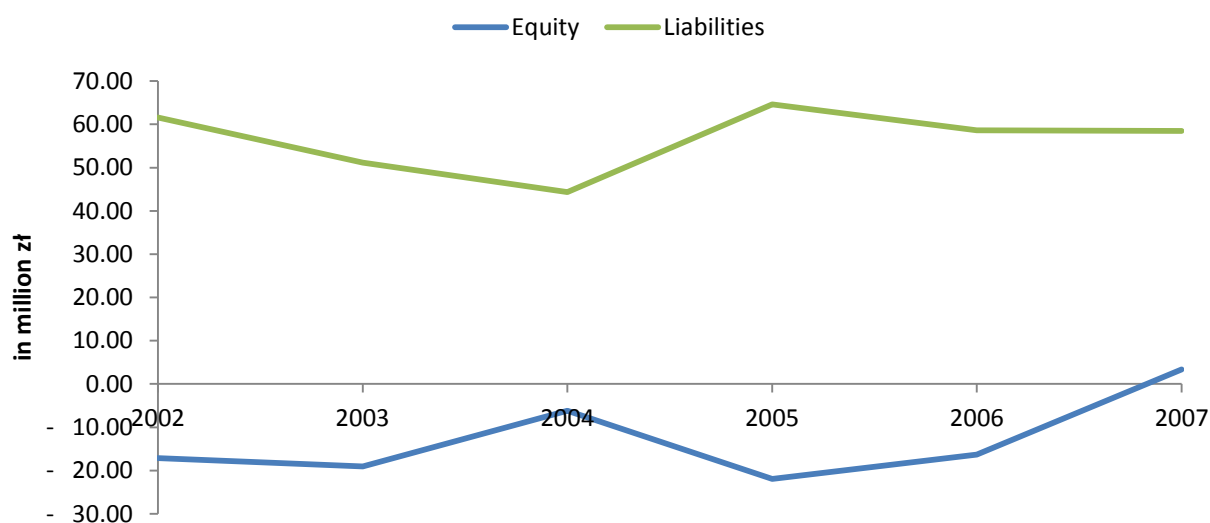
³⁹⁷ Ibid.

³⁹⁸ *KRRiT* (2004b: 80).

³⁹⁹ Berger (2007a).

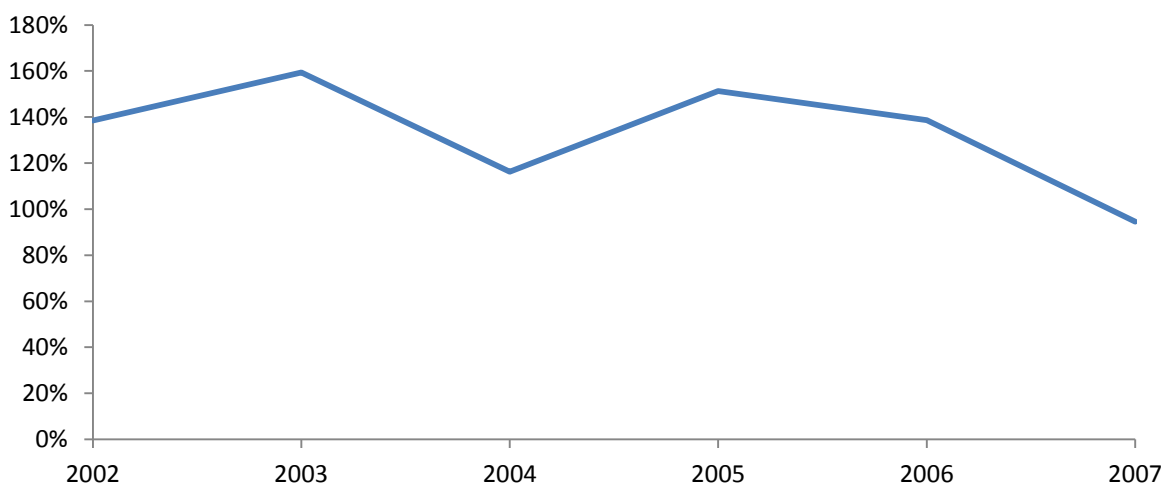
Stagnating revenues have resulted in losses for *Polskie Media* since 2003. The only positive result was achieved in 2006, yet not as an outcome of a positive sales minus costs sum, yet as a consequence of almost 7,8 million zł of ‘other operational revenues’. As in *TV Puls*’s case, also *Polskie Media*’s losses were accompanied by negative equity until 2007, when the group’s assets could for the first time cover its overall liabilities, as demonstrated by the charts below.

Figure 24: Polskie Media's capital structure 2002-2007



Source: based on Polskie Media’s financial statements for 2004-2007.

Figure 25: Polskie Media's debt ratio 2002-2007



Source: based on Polskie Media’s financial statements for 2004-2007.

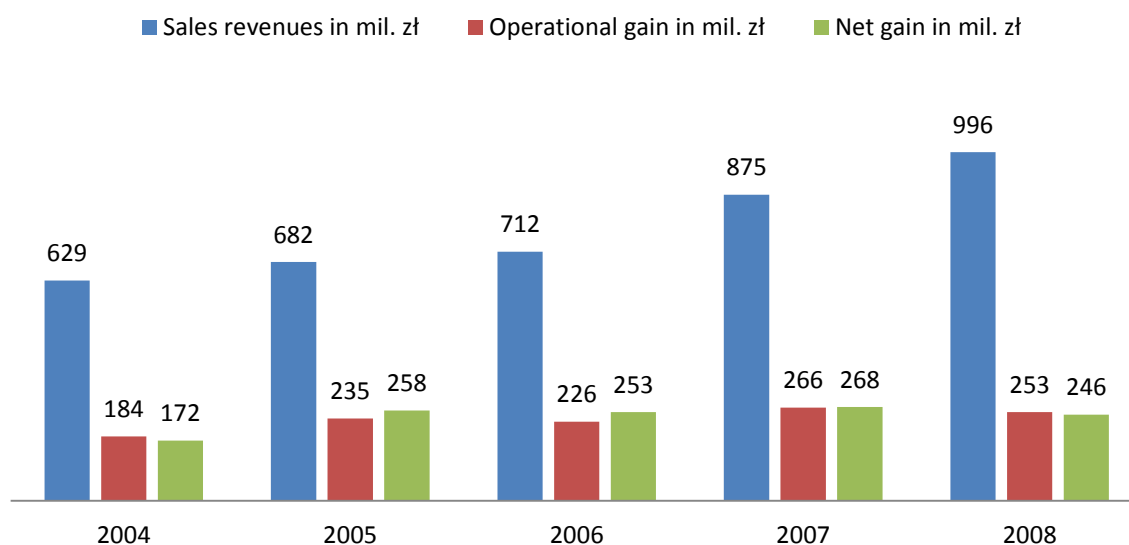
The 2007 debt ratio of 94,5%, which could be considered positive on the first glance relative to the previous years, was the result of a financial capital increase by almost 40%, whose overall framework has been kept secret.⁴⁰⁰ It seems probable, however, that *Polskie Media's* Cyprus owners, which very likely are closely related to Solorz-Żak, financially supported the broadcasting group within a framework of rising losses, by a simple cash infusion. Yet *Polskie Media's* business performance will very likely improve after the terrestrial digital switchover, despite the currently worrisome financial results. Like *TV Puls*, *TV4* will gain national availability probably within the next two years, thereby getting the realistic opportunity to significantly increase its overall efficiency.

Considering the two smaller terrestrial broadcasters' financial performances, it seems that *TV Puls's* and *TV4's* business situations are somewhat comparable. The major difference is, however, that while *TV Puls* still hopes for a strong financial investor, *TV4* seems to have one already, most likely even since 2004.

5.3.1.3. Polsat

The two smallest competitors' inferior market roles are best demonstrated by the disproportionately higher numbers, which the terrestrial sector's major players deal with. Accordingly, *Polsat* had over 996 million zł of total revenues in 2008 and its net gain accounted for 246 million zł. The following graphic shows the development of *Polsat's* revenues and gains between 2004 and 2008.

⁴⁰⁰ Berger (2007b).

Figure 26: Polsat's financial data 2004-2008

Source: based on Polsat's financial data, Prusek (2007), Prusek (2009).

While *Polsat's* revenues were continuously rising during these years, the group's profit structure is not characterized by such an unambiguous development. This is mostly due to a rising cost structure, to currency fluctuations, and over the last two years also to a weakened global economy. Accordingly, the first eight months of 2009 indicate a continuation of falling gains for *Polsat* with 142 million zł of net gains, predicting a final 2009 result of around 210 million zł, which is 36 million zł less than in 2008.⁴⁰¹ The presented data furthermore indicates that the broadcaster has also faced rising operational costs during the last years, which is a tendency that has affected all competitors on the market. All in all, *Polsat's* financial data indicates however an impressively strong market performance.

The presented results are predominantly created by the group's terrestrial flagship channel, yet *Polsat's* thematic satellite channels are gaining strategic significance within the group, and so is its digital platform, *Cyfrowy Polsat*. Since the overall viewing tendency indicates a growing demand for thematic channels in Poland, and *TVN's* offer in this segment is relatively established already, *Polsat* has introduced several new channels during the last years to be distributed over cable and digital platforms. The following table presents a compilation of *Polsat's* current thematic channel bundle.

⁴⁰¹ Prusek (2010).

Table 7: Polsat's thematic channels

Polsat's thematic channels	Transmission start (notes)
Polsat Sport	August 2000
Polsat Sport Extra	October 2005
Polsat Sport HD	October 2007
TV Biznes	September 2004 (owned by Polsat since February 2007)
Polsat News	April 2008
Polsat Café	October 2008
Polsat Play	October 2008
Polsat 2	March 1997 (coded since October 2008)
Polsat HD	September 2009
Polsat Futbol	September 2009
Polsat Film	October 2009
Polsat JimJam	November 2009
TV 4	April 2000 (90% indirectly held by Polsat)
Superstacja	October 2006 (does not belong to the <i>Polsat</i> group even though owned by Solorz-Żak-related company <i>Ster</i> : since 2007 50% and since 2009 100%) ⁴⁰²

Source: based on KRRiT (1994-2009).

In contrast to its major commercial competitor *TVN*, *Polsat* is not listed on the Polish stock exchange. Even though the digital platform *Cyfrowy Polsat* successfully entered the stock market, *Polsat's* debut was often announced, yet not finalized as of January 2010.⁴⁰³

In 2006 and 2007 *Polsat* was close to letting a foreign strategic investor enter the group. First, the *Bertelsmann*-held *RTL Group* offered 1 billion zł for 25% of *Polsat's* shares. Yet the transaction was not finalized, possibly due to unacceptable personnel demands by *RTL*.⁴⁰⁴ *Axel Springer* seemed even closer to signing the deal, offering €300.000 for the same shares as the *RTL Group*.⁴⁰⁵ Yet also this operation was not completed. In spite of assumptions concerning internal power struggles for future management positions, the price was probably the major reason for both transactions' failure. In a boom period on the

⁴⁰² Lemańska (2009d).

⁴⁰³ Cf. Pap (2008b), Makarenko (2004: 31).

⁴⁰⁴ Prusek / Makarenko (2006a: 22).

⁴⁰⁵ Prusek / Makarenko (2006b: 31).

Warsaw stock exchange, *Polsat's* main competitor *TVN* was by the investors valued at around 9 billion zł, while the named transactions would have valued *Polsat* at less than half this amount.⁴⁰⁶

According to the magazine *Wprost*, *Polsat's* owner Zygmund Solorz-Żak is the number 2 among Poland's richest people with an estimated wealth of 5,8 billion zł.⁴⁰⁷ According to the Forbes richest list, Solorz-Żak is even the first among the Poles (due to transparency uncertainties connected to Poland's more probable leader Jan Kulczyk), assuming position 701 in the world with an estimated wealth amounting to \$1 billion.⁴⁰⁸ Solorz-Żak's wealth development according to *Wprost* is presented by the following chart.

Figure 27: Solorz-Żak's wealth in bil. zł 2002-2009



Source: *Wprost* (2002-2009).

The graphic shows that in 2009 Solorz-Żak's wealth fell for the first time since 2003, still allowing *Polsat's* owner to be the most powerful private entity in Poland's broadcasting market.⁴⁰⁹ In addition to *Telewizja Polsat*, *Cyfrowy Polsat* and the programs related to it, the second-richest man in Poland also holds media production corporations, financial institutions, insurance companies, and since 2009 as well a Polish first-division soccer club, *Śląsk Wrocław*.⁴¹⁰ Since July 2008, Solorz-Żak controls *Telewizja Polsat* together with his close associate Heronim Ruta via the Cypriot corporations *Karswell* and

⁴⁰⁶ Prusek / Makarenko (2007: 36).

⁴⁰⁷ *Wprost* (2009).

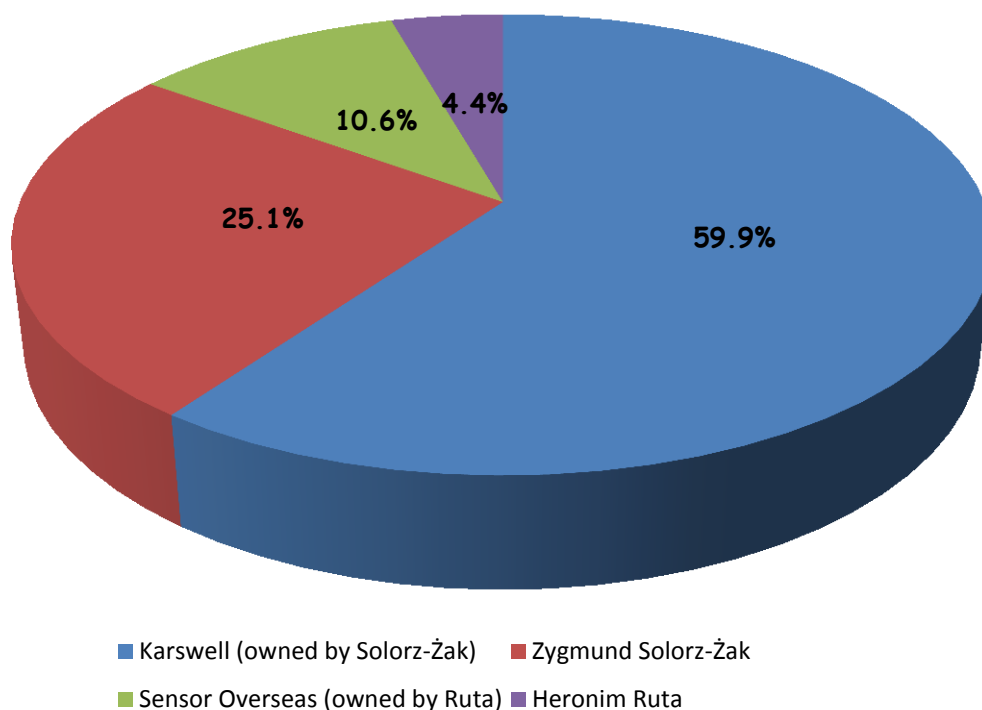
⁴⁰⁸ Forbes (2002).

⁴⁰⁹ *Wprost* (2002-2009).

⁴¹⁰ Gaw (2009).

Sensor Overseas.⁴¹¹ Since under certain size conditions Cypriot companies have a corporate tax-rate of 0%, while the Polish income tax amounts for 19%, the reasons for the gradual movement of Polish capital to Cyprus is obvious, especially considering *Polsat's* high dividends. Accordingly, in 2008 *Polsat* paid its shareholders a dividend amounting to 226 million zł. This payment resulted for Solorz-Żak's and Ruta's personal *Polsat* shares an income tax of over 11 million zł, while the Cyprus-based companies, in spite of their very same owners Solorz-Żak and Ruta, did not pay any taxes at all for this income.⁴¹² *Polsat's* ownership structure is presented by the graphic below.

Figure 28: Polsat's ownership structure 2009



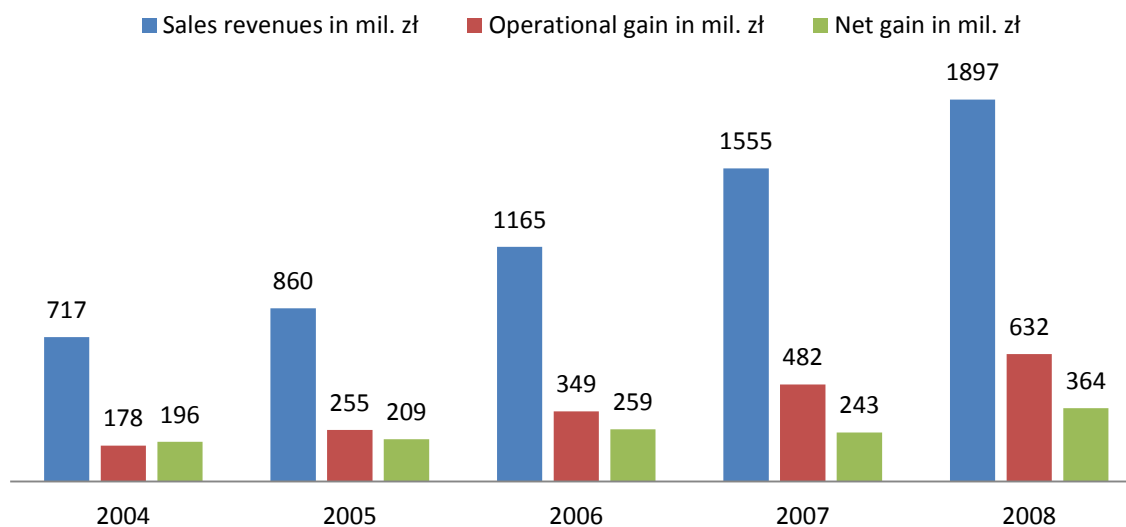
Source: Prusek (2010).

5.3.1.4. TVN

In 2008 *TVN* reported 1.8 billion zł of revenues and a net gain of 364 million zł. The following graphic shows *TVN's* revenue to gain development between 2004 and 2008.

⁴¹¹ Prusek (2008: 21).

⁴¹² Makarenko / Prusek (2009: 27).

Figure 29: TVN's financial data 2004-2008

Source: based on TVN's annual reports for 2004-2008.

TVN's data has partly similar characteristics as *Polsat's*, yet also very differing ones. Accordingly, even though *TVN's* revenues have steadily risen over the last years, with a considerable jump in 2007 and 2008, its net gain did not increase in the same manner, while its operational profits indicate a better development than *Polsat's*. In contrast to *Polsat*, *TVN's* 2008 data also implies a good crisis management, with considerably increased revenues and gains relative to the year before. A more detailed comparison of the two major commercial broadcasting corporation's financial data will be presented in the section 5.3.1.5.

Since the end of 2004, *TVN* is listed on the Polish stock exchange in Warsaw. The stock entered the Polish stock market at 7,10 zł per share, while this value almost quadrupled until 2007, only to fall again in mid-2009 to almost its initial value. In the second half of 2009 the stock gradually recovered and as of the beginning of 2010 it is oscillating between 13 zł and 15 zł.

Figure 30: TVN's stock value development 2004-2010



Source: inwestycje.pl.

The overall negative stock value fluctuations, especially starting from 2008, stand almost in contrast to the seemingly positive financial results. These share decreases are on the one hand connected to the global market crisis, while on the other hand being also related to *Telewizja n*'s gradual integration into the *TVN* group. Accordingly, in Mai 2008 *TVN* purchased 25% of the satellite platform *Telewizja n* from *TVN*'s main shareholder, *ITI Holding*. Formally, *ITI* sold *TVN* shares amounting to 25% of the Netherlands-registered *Neovision Holding BV*, which is the sole owner of Poland-registered *ITI Neovision*, which in turn is *Telewizja n*'s operator.⁴¹³ The transaction met with investors' skepticism and critique. The €95 million, which *TVN* paid *ITI* for the satellite platform, were interpreted as a highly inflated price to pay for an unprofitable digital platform with €35,3 million debts and the need for further investment.⁴¹⁴ The investment bank Merrill Lynch furthermore criticized the overall transaction's fundamentals. According to the analysts, since *TVN* and *Telewizja n* had the same majority owner, a close cooperation as in the case of *Polsat* and *Cyfrowy Polsat*

⁴¹³ ITI (2008c).

⁴¹⁴ Makarenko (2008a: 28).

would have sufficed. In Merrill Lynch's view, the transaction therefore raises concerns with respect to the high price involved, flowing from the publicly traded *TVN* group to the parent holding and Luxemburg-registered *ITI*, which questions the correctness of *TVN*'s corporate structure conditions.⁴¹⁵

In March 2009, *TVN* made use of its option to enlarge its *Telewizja n* portfolio to 51%, paying another €46,2 million for the shares and obliging itself to grant the platform an immediate loan of €25,1 million.⁴¹⁶ The market again reacted negatively to the transaction with *TVN*'s stock value drop of almost 15%.⁴¹⁷ The satellite platform's remaining 49% were taken over by *TVN* in December 2009 after respective announcements the month before, making the Warsaw-listed broadcasting corporation *Telewizja n*'s sole owner.⁴¹⁸ The third transaction's price amounted to €188 million, which negatively affected *TVN*'s stock value once more, displeasing especially *TVN*'s minority owners, who accused the major shareholder *ITI* to act against *TVN*'s interest.⁴¹⁹

For many observers, the *Telewizja n* transaction is a consequence of *ITI*'s financial problems, having a negative impact on the *TVN* group itself.⁴²⁰ It is possible that that the overall economic downfall, currency fluctuations, and a relatively high debt rate, partly assured by *TVN* shares, put *ITI* in a difficult financial situation. The following graphs indicate *ITI*'s financial status.

⁴¹⁵ Makarenko (2010b: 28).

⁴¹⁶ *TVN* (2009a).

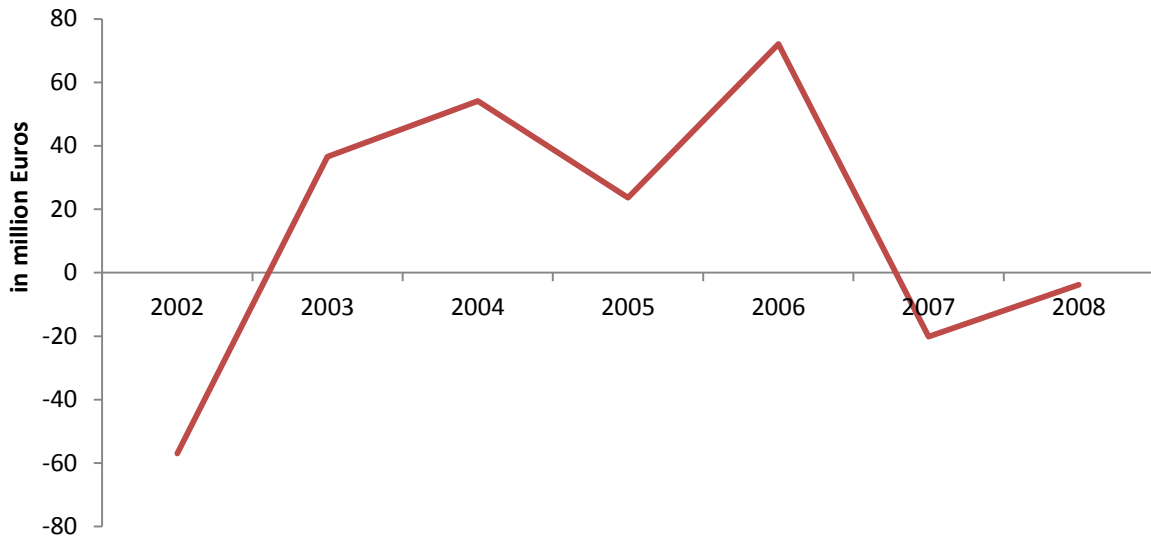
⁴¹⁷ Makarenko (2009c).

⁴¹⁸ *TVN* (2009b).

⁴¹⁹ Makarenko (2009d: 34).

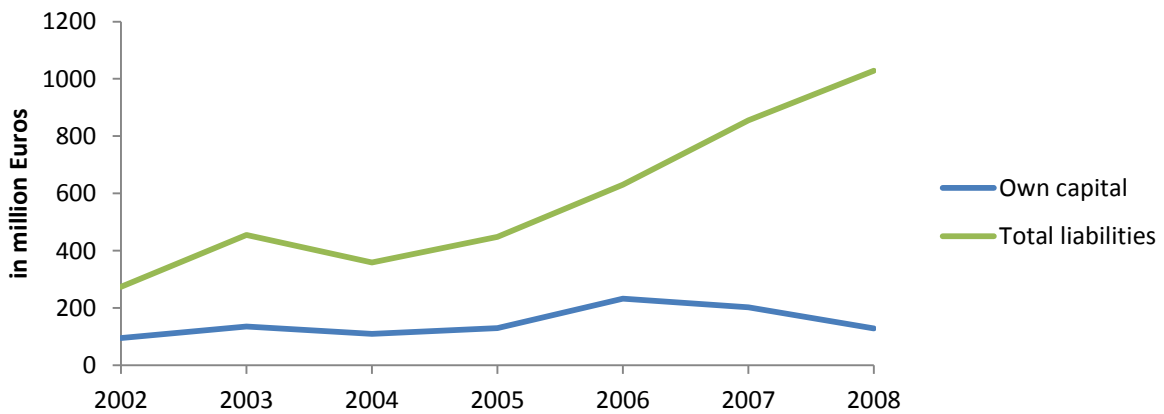
⁴²⁰ Cp. Misiak (2009).

Figure 31: ITI's profit development 2002-2008



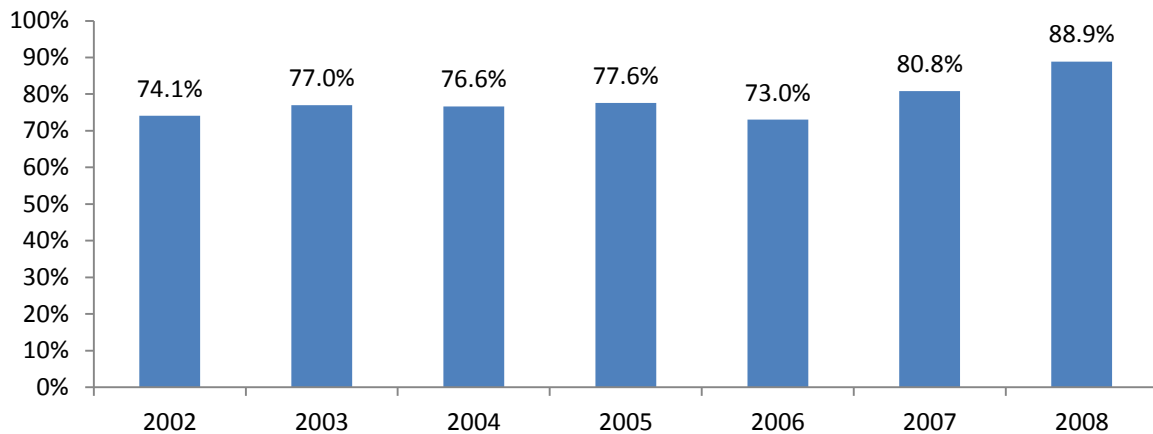
Source: based on ITI's financial reports 2002-2008.

Figure 32: ITI's capital structure 2002-2008



Source: based on ITI's financial reports 2002-2008.

Figure 33: ITI's debt ratio development 2002-2008



Source: author's calculations based on ITI's financial reports 2002-2008.

The data indicates *ITI's* fluctuating profit structure, which has especially been uncertain in the most recent years. From 2007 to 2008 *ITI* in fact managed to halt its loss tendency, which stated in 2006 and coincides with the initial investment requirements for *Telewizja n*. Yet the price for the profit reversal seems to have been an even higher indebtedness of the already considerable debt structure from the years before. The debt ratio demonstrates that in 2008 *ITI's* liabilities made up for almost 90% of the holding's overall assets.

Thus the *Telewizja n* transaction seems to have been necessary for *ITI* to receive the necessary financial funds to counteract its instable condition. While the high transaction amount was surely advantageous for the major *ITI* shareholders, who are at the same time the major *TVN* shareholders with respective decision power, especially the *TVN* minority shareholders may doubt the transaction's profitability from *TVN's* perspective. If viewing the *Telewizja n* transaction from this angle, it seems that the majority *TVN* shareholders, incarnated by *ITI*, which holds 57,36% of *TVN's* shares, were rather acting according to *ITI's* and their own interests, yet not to *TVN's*.⁴²¹ Interesting in this context is also the fact that in July 2008 *ITI* withdrew its shares from the Luxemburg stock exchange, which happened almost without media echo. Only the conservative weekly paper, *Gazeta Polska*, broadly discussed this step in one of its articles, while other media remained passive towards *ITI's* stock exchange retreat.⁴²² *ITI* itself issued merely one rather hidden notice in English on its Internet page, without providing the equivalent in Polish language.⁴²³ From *ITI's* perspective, if the holding has indeed been in a critical financial situation, the silent retreat signifies the lack of public attention for the factual extent of the interior crisis and is completely understandable; less understandable is the general lack of media reaction to *ITI's* silent withdrawal from the Luxemburg stock exchange, since the pure fact that a leading Polish media holding ceases to be publically listed, limiting thereby its transparency, surely deserves a proper public evaluation and discussion. It seems therefore that the leading mass-media corporations, from broadcasters to print publishers, are in friendlier terms and more integrated than they probably should be within a pluralistic media landscape of independent market participants.

While *TVN* is indeed *ITI's* flagship, the holding also has considerable shares in other sectors of the media market. Among other assets, *ITI* owns Poland's most successful Internet platform *Onet.pl*, it holds 53% shares of the successful print magazine *Tygodnik Powszechny*, the publishing house *Pascal*, the advertisement production- and movie

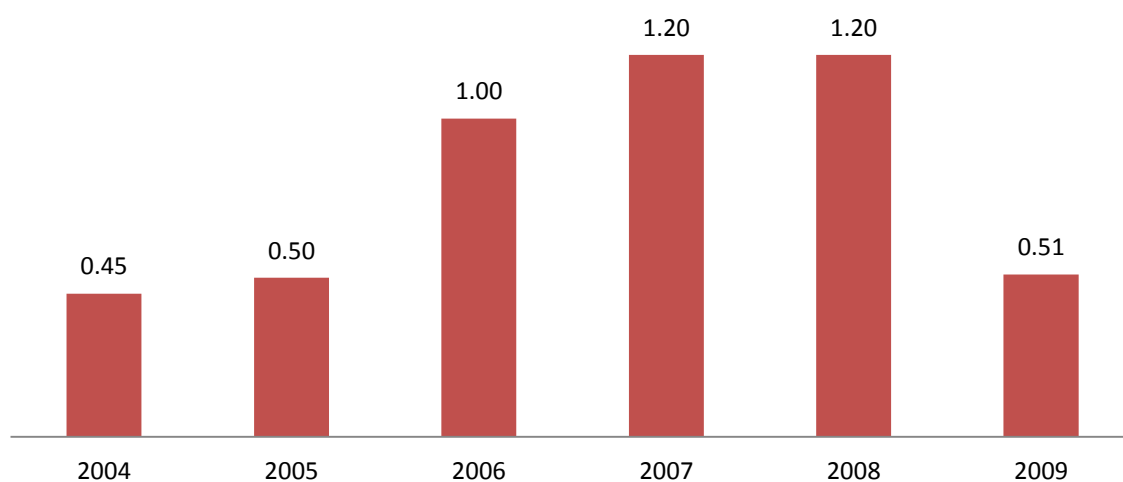
⁴²¹ TVN (2010).

⁴²² Misiak (2009).

⁴²³ ITI (2008a).

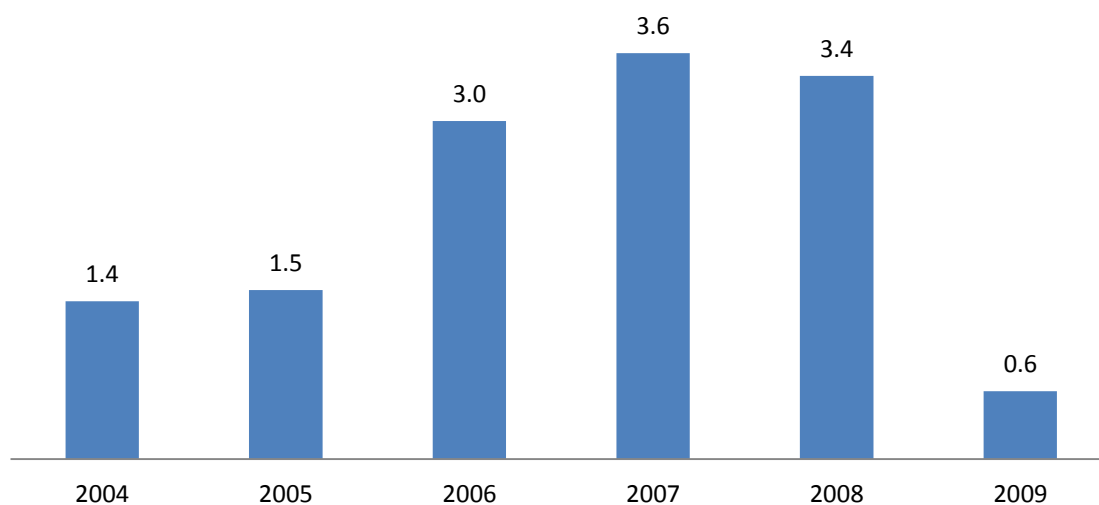
distribution company *ITI Film Studio*, as well the modern movie theatre network *Multikino*. *ITI's* major investment, which is not directly related to the media market, was the 2004 acquisition of *Legia Warszawa*, the most successful Polish soccer team.⁴²⁴ In 2008, the two Polish founders of *TVN* and *ITI*, Jan Bohdan Wejchert and Mariusz Walter, ranked 12th and 27th on *Wprost's* list of Poland's wealthiest people.⁴²⁵ In 2009, however, both men experienced a considerable loss of wealth, falling in the ranking to positions 40 and 44, respectively.⁴²⁶ Their wealth development is demonstrated by the following charts.

Figure 34: Mariusz Walter's wealth in bln zł 2004-2009



Source: *Wprost* (2004-2009).

Figure 35: Jan Weichert's wealth in bln zł 2004-2009



Source: *Wprost* (2004-2009).

⁴²⁴ GP (2008), ITI (2010).

⁴²⁵ *Wprost* (2008).

⁴²⁶ *Wprost* (2009).

The data very clearly indicates that *ITI's* co-founders experienced enormous financial problems in 2008 and 2009. Within one year Walter lost 57,7% and Wejchert even 82,4% of his wealth.⁴²⁷ The third *ITI* and *TVN* co-owner is the Swiss banker Bruno Valsangiacomo, probably Poland's richest foreigner and likely creator of *ITI's* intransparent ownership structure of exotic Liechtenstein and Antilles-based offshore subsidiaries.⁴²⁸

It seems therefore that *TVN's* future success not only depends on the group's core business, which is the production and management of television channels, but also on its group- and ownership-related environment. While *TVN's* major financial results improved from 2007 to 2008, despite the investments related to *Telewizja n's* partial integration into the group and the related operational loss share caused by the platform, the problematic transaction's negative financial effects will very probably be unambiguously reflected in the financial years 2009 and 2010. The group's results for the first three 2009 quarters already indicate an operational gain decrease. Even when excluding *Telewizja n*, *TVN's* 2009 revenues dropped compared to the first three 2008 quarters by 5,5%, with TV advertising revenues dropping even by 10%. Even though *TVN's* digital platform managed to double its subscriber base (including pre-paid customers), thereby considerably increasing its revenues in 2009, it still generated 68% more costs than returns. Overall, the first nine 2009 months resulted in a 49% net profit decrease for the *TVN* group - a result, which is likely already reflected in *TVN's* relatively low stock value. It seems that *TVN's* future highly depends on *Telewizja n's* future success; especially on the question of how soon the digital platform can at least operationally break even. The longer it will take for *Telewizja n* to become profitable, the higher the financial burden for the group will be. Taking into account *ITI's* likely problematic financial status quo, it is probable that the *TVN* group won't be economically able to maintain a loss-generating corporation of such capital intensity for a long time, not to mention the minority shareholders' limited readiness to do so. On the other hand it must be taken into consideration that if *Telewizja n* maintains or even accelerates its rapid subscriber growth, the satellite platform could in fact be profitable already in 2010. In such a case *Telewizja n* could in the middle-term certainly even make up for its likely excessive price, which *TVN* paid *ITI*.

Taking all this into consideration, it is certainly understandable why *TVN*, together with the other competitors on the terrestrial broadcasting segment as well as on the digital platform market, is not interested in a fast implementation of terrestrial digital TV. The new offer, which will be created by the terrestrial digitalization, will not only bring about a

⁴²⁷ Jan Wejchert died on Oct 31st, 2009. Lemańska (2009: B-001).

⁴²⁸ Cf. Misiak (2007), Piński (2005).

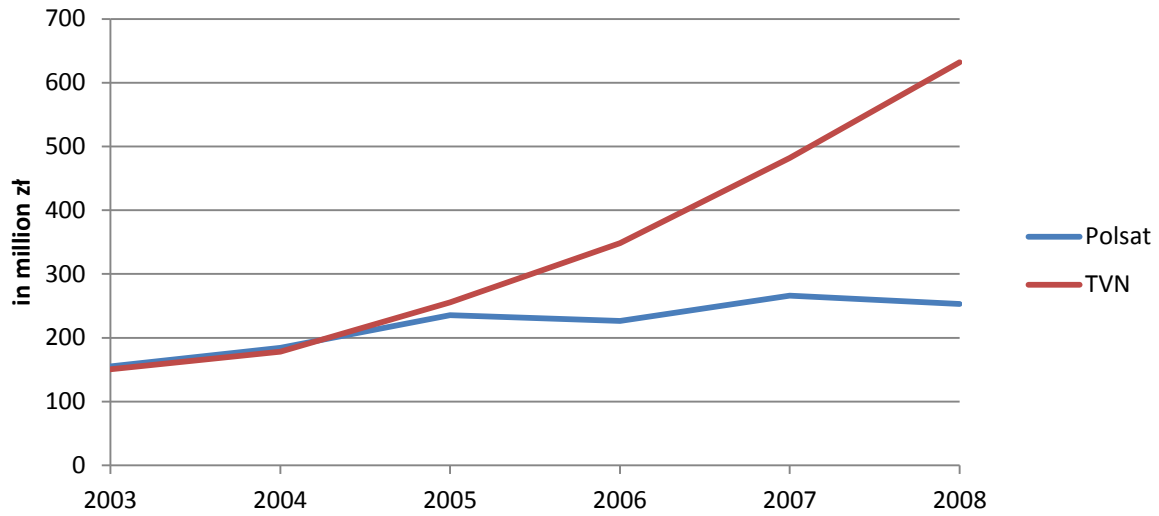
higher competition for advertising shares resulting in possible lower revenues for *TVN's* television channels, but will also introduce likely low-cost competition to the group's digital satellite platform. Therefore it seems that currently *TVN* is in the middle of a race against time, while the years 2010 to 2012 will certainly be of crucial importance, not only for *TVN* but for the whole broadcasting market.

5.3.1.5. Financial confrontation: Polsat vs. TVN

In order to get a notion of the two major broadcasters' factual market shape, it makes sense to confront their respective financial data with each other. Since *TVP* is a non-profit corporation, functioning on different financial terms and under different operational circumstances, both, favoring and limiting its business activities vis-à-vis its commercial counterparts, it is more reasonable to view the public broadcaster's financial data separately. It furthermore makes little sense to include *TV4* and *TV Puls* in the financial confrontation, since the two smaller competitors deal with considerably lower figures. The two minor broadcasters' major data was already presented and confronted in the previous sections and the most crucial conclusions have been drawn. While both, *TV4* and *TV Puls* have to deal with efficiency and especially liability issues, the former broadcaster seems to be in a more secure position with a strong investor backup, while the latter must still find a financially sound partner after Rupert Murdoch's market withdrawal. Still, both broadcasters have enormous middle-term potential due to their certain nationwide frequencies within the digitalized terrestrial broadcasting market. The confrontation of Poland's two high-scale commercial broadcasters, however, may give more insights as to the market's current and future leadership and market dominance scenarios, which is why *Polsat's* and *TVN's* data deserve a more detailed evaluation.

The following charts concerning the profit structures demonstrate that as far as the theoretically most important business indicator is concerned, namely the operational gain, *TVN* has clearly outperformed *Polsat* since 2005. While *Polsat* has maintained a smooth growth level since 2003, *TVN's* operational gain increases clearly from year to year. While in 2004 both broadcasters had an operational gain of around 180 million zł, in 2008 *TVN's* figure was with over 630 million zł 2,5 times higher than *Polsat's* in that year.

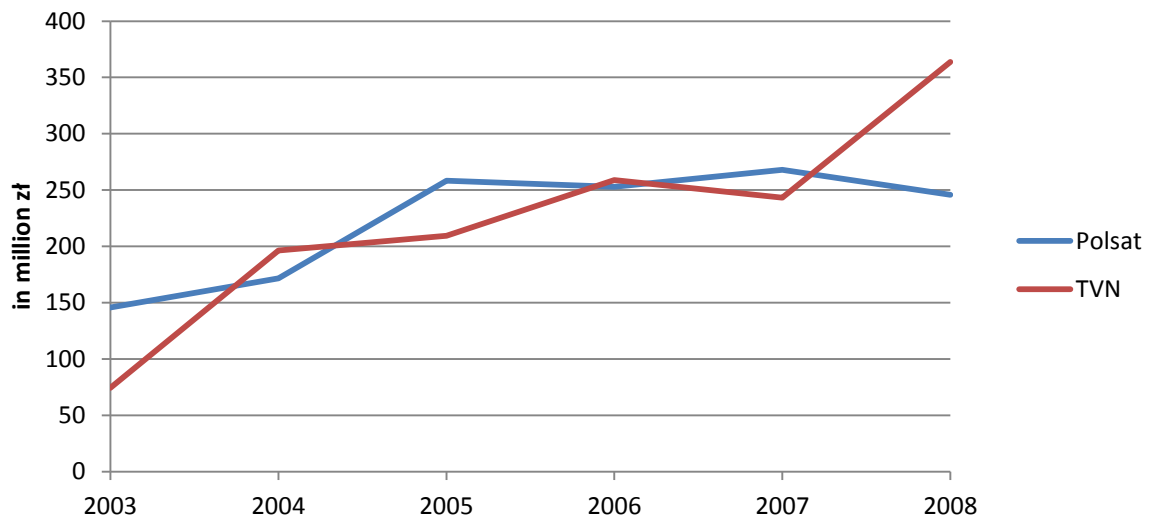
Figure 36: Polsat vs. TVN: operational gain 2003-2008



Source: based on TVN's and Polsat's financial statements for 2003-2008.

If we however regard the net gain as practically probably the most crucial business indicator, the scenario does not paint such a clear picture anymore.

Figure 37: Polsat vs. TVN: net gain 2003-2008

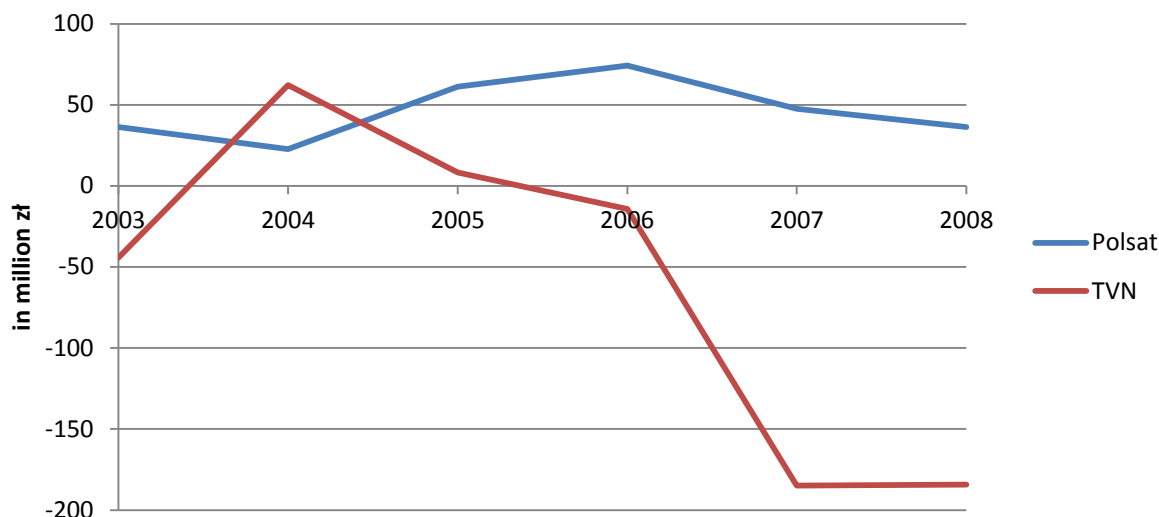


Source: based on TVN's and Polsat's financial statements for 2003-2008.

The net gain structure reveals that while operationally *TVN* seems to be more efficient, in terms of overall business performance the two major commercial broadcasters switch ranks from year to year. At least since 2003 till 2008 there has been no year, in which either *TVN* or *Polsat* would have maintained a higher net gain than its main private competitor. Even though this may have already changed, since the first 2009 quarters indicate a higher yearly net gain by *TVN*, it is clear that *Polsat* certainly outperforms *TVN* on the side-business level.

When regarding the gain resulting from financial operations, investments, equity holding, currency fluctuations, etc., *TVN* clearly seems to struggle in that area, while *Polsat* manages to maintain a steady gain structure also on this business level.

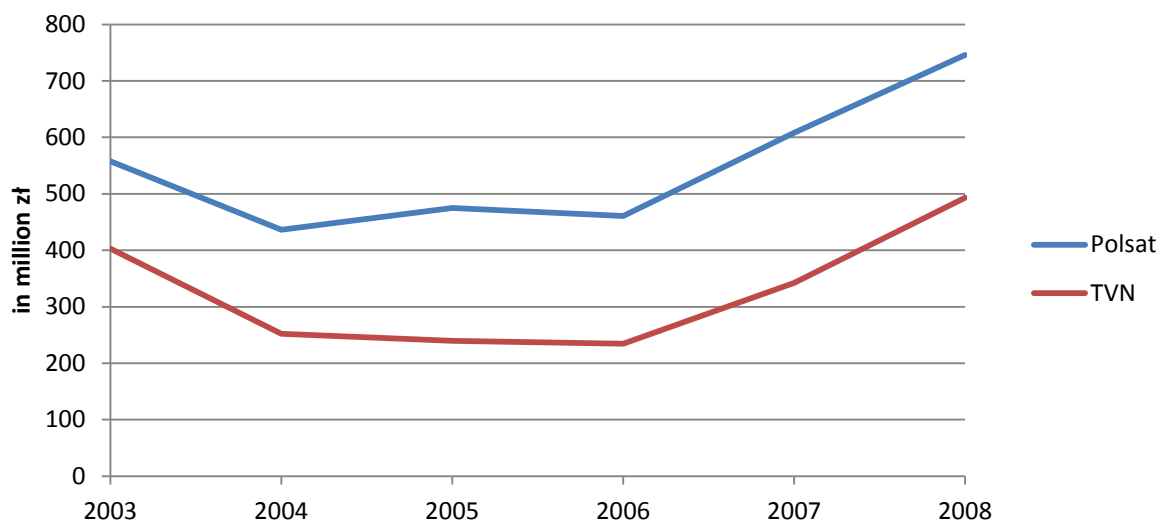
Figure 38: Polsat vs. TVN: financial balance 2003-2008



Source: based on TVN's and Polsat's financial statements for 2003-2008.

Clearly reflected in this data are *TVN's* investments and loss shares related to the digital satellite platform *Telewizja n*. The different performances in the operational and financial fields are also indicated by the two broadcasters' differing cost and capital structures. *TVN's* broadcasting costs have on average been over 40% lower than *Polsat's* between 2003 and 2008, which has certainly been the major factor for *TVN's* operational efficiency.

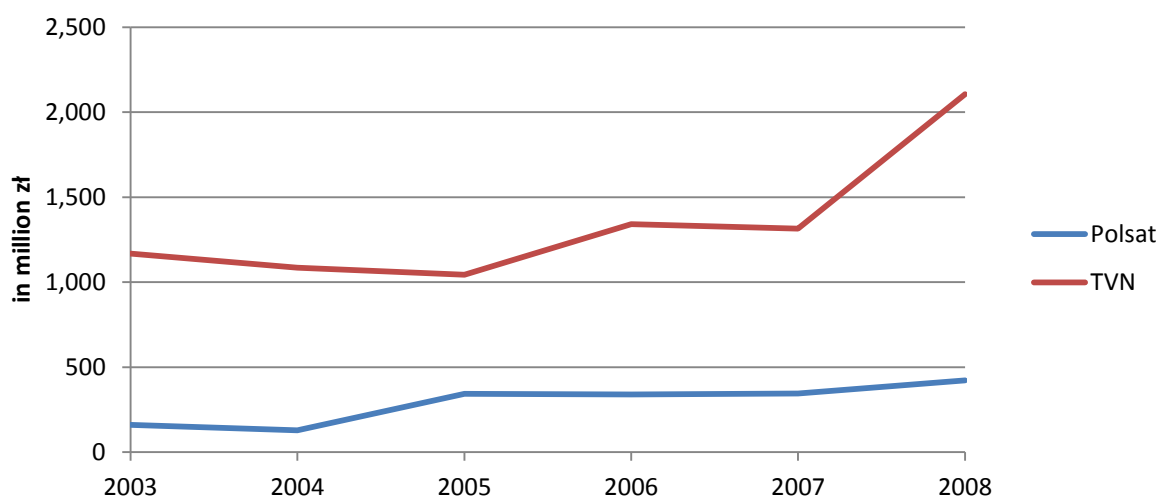
Figure 39: Polsat vs. TVN: operational costs 2003-2008



Source: based on TVN's and Polsat's financial statements for 2003-2008.

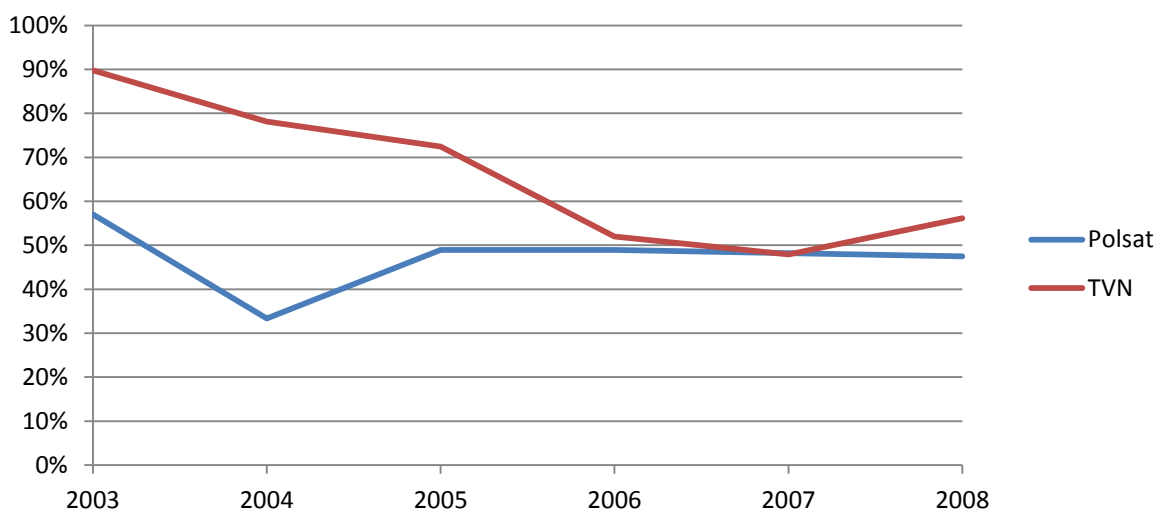
TVN's lower cost structure is undoubtedly related to the fact that the *ITN* broadcaster puts more emphasis on own productions (around 40% according to *TVN's* 3Q 2008 data), while *Polsat* rather relies on external services, which in 2008 amounted to 71% of its overall costs. In addition to the lower cost structure, *TVN's* further operational advantage over *Polsat* is an established net of profitable thematic channels and the ownership of Poland's most popular informational Internet platform *Onet.pl*. Yet *TVN's* weak financial performance, which decelerates its overall business growth, is also accompanied by a higher absolute and relative debt structure.

Figure 40: Polsat vs. TVN: liabilities and reserves for liabilities 2003-2008



Source: based on TVN's and Polsat's financial statements for 2003-2008.

Figure 41: Polsat vs. TVN: debt ratio 2003-2008



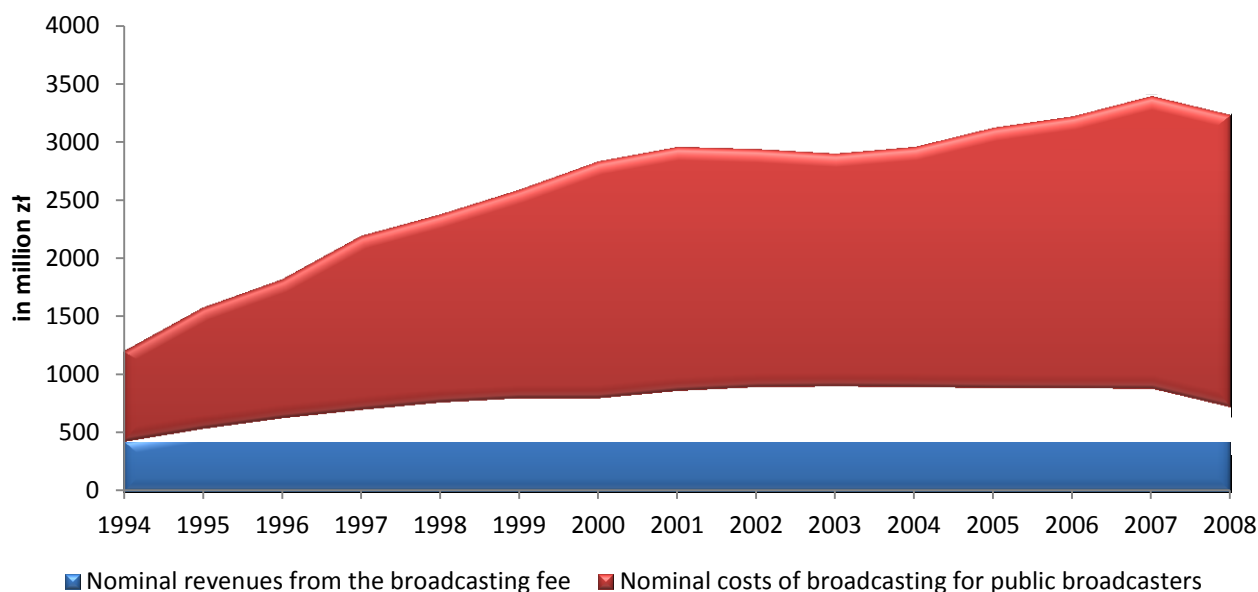
Source: based on TVN's and Polsat's financial statements for 2003-2008.

The charts demonstrate that while *Polsat* maintained a relatively stable liabilities-to-total-assets-ratio amounting to around 50%, *TVN* has in fact managed to decrease its very high debt percentage of 2003 (89,7%), yet in order to achieve and especially maintain a comparable debt ratio to *Polsat's* after 2007, *TVN* had to significantly increase its own capital in order to balance the similarly increased liabilities. The 2008 recapitalization, financed by share obligations in order to cover the debt connected to the *Telewizja n* investment, did certainly not counteract the subsequent stock price descent.

In this connection it is also necessary to keep in mind that behind *Polsat* there is Zygmunt Solorz-Żak, who appears to be financially able to increase *Polsat's* capital at any time by any amount, while behind *TVN* there is *ITI*, a financially struggling, intransparent holding with monetarily struggling owners. Yet in spite of its financial problems, *TVN's* operational performance with its low cost level and its established thematic channel net certainly places the *ITI* broadcaster in a business benchmark position. *Polsat's* smooth growth rate may on the other hand result the better option in the long term, especially since it is accompanied by a very stable financial backup and probably also by additional future multiplex space, held by *TV4*. One further intrinsic competition factor between the two broadcasters is the related digital platforms, which will be more closely evaluated in section 5.6. While Solorz-Żak's *Cyfrowy Polsat* is Poland's market leader, *TVN's Telewizja n* is currently the group's major financial ballast. The platforms' middle term performances, as well as *TVN's* future financial status are probably the most uncertain factors to decide over the broadcasting market's future dominance.

5.3.2. Public TV: TVP

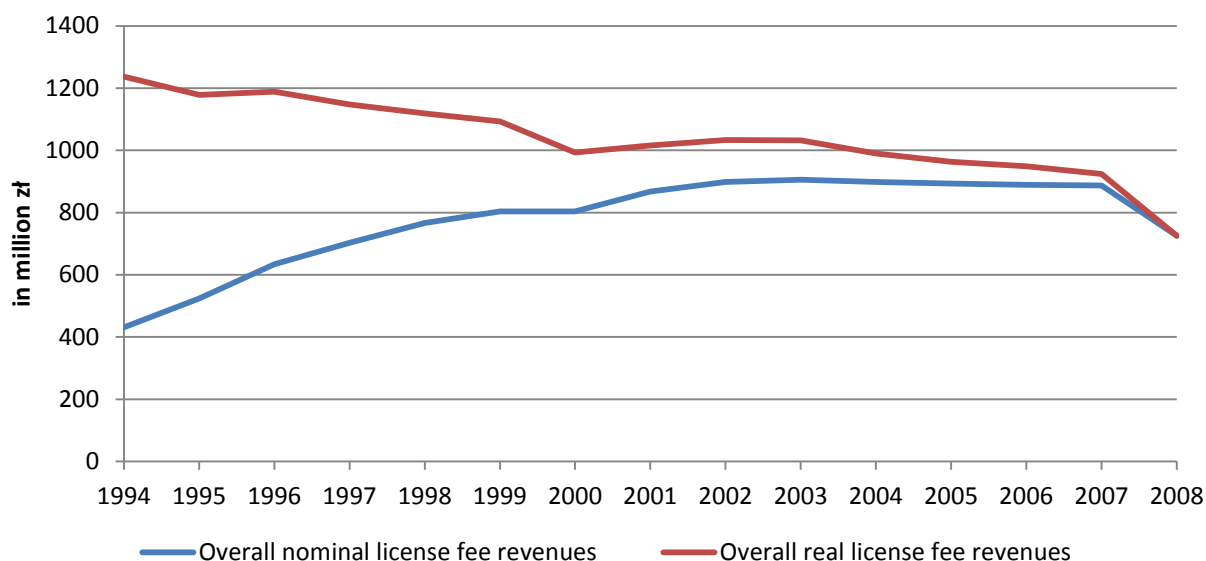
TVP S.A. is a fully government-owned media corporation, embracing the nationwide terrestrial stations *TVP1* and *TVP2*, a regional broadcasting net concentrated around *TVP Info*, and several satellite programs. The broadcaster is partly financed by commercial activities and partly by public fees, which in turn are redistributed by the *KRRiT*. The dynamic of overall radio and television public fee revenues, as well as of the public radio and TV broadcasting cost, are illustrated in the following chart.

Figure 42: Public broadcasting fee and cost dynamic 1994-2008

Source: author's compilation based on KRRiT (1995-2009).

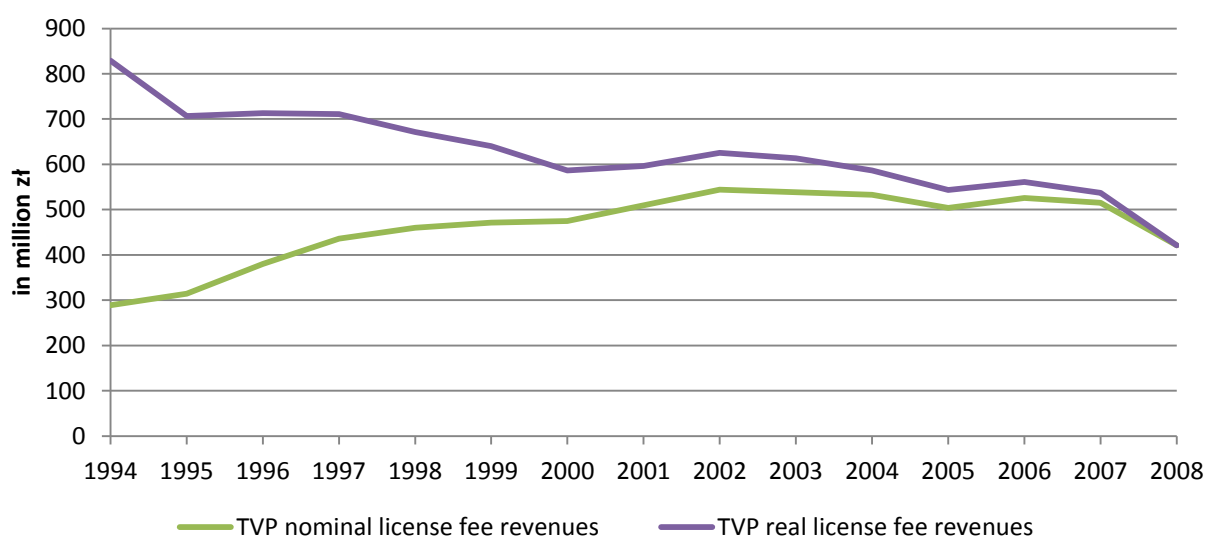
This data already indicates the financial dilemma, which public broadcasting faces: The increasing costs of broadcasting are not met by adequate increases in revenues from the broadcasting fee. The lack of revenue growth would not be very surprising, if all the receivers actually paid the public fee and its height had remained stable over the years. Yet as shown in the basic data section, not even 60% of all households have registered their broadcasting receivers. The stagnating and since 2003 even decreasing overall license fee revenues must be regarded in the context of market-based costs. With overall inflation, broadcasting costs per unit rise with overall price increases per year, so that even stable public license fee revenues lose factual purchasing value. Of course, as demonstrated by the graph above and by the following diagrams, the surplus costs of broadcasting certainly exceed the inflation factor; yet viewing the inflation-adjusted data for public license fee revenues provides undoubtedly a more accurate picture of their development.

Figure 43: Overall nominal and real license fee revenues 1994-2008



Source: author's compilation based on KRRiT (1995-2009).

Figure 44: TVP's nominal and real license fee revenues 1994-2008



Source: author's compilation based on KRRiT (1995-2009) and TVP (2006-2009).

The first graph demonstrates that while the overall nominal public license fee revenues had risen until 2003 and then began to fall rather smoothly, the real licensee fee returns are characterized by a noticeable downward trend already from 1994 on, which as of January 2010 has been maintained ever since. A very similar if not more drastic scenario is the case as far as the nominal and real *TVP* broadcasting fee revenues are concerned. Accordingly, the inflation-adjusted public fee revenues almost halved for the public television broadcaster from 1994 to 2008, while overall falling by 41% during this period. The difference is mainly

due to the fact that while in 1994 public television received 67% out of the overall license fee revenues, in 2008 it received only 59% of the whole collected amount.

The negative public broadcasting fee development is naturally represented in *TVP's* financial results. The following table gives an overview of the public broadcaster's most crucial financial data between 2003 and 2009.

Table 8: TVP's real financial results and estimates 2003-2009 (absolute data in million zł)

TVP SA summary of financial results	2003	2004	2005	2006	2007	2008	2009 est
Total revenue	1643,8	1664,9	1876,4	1961,4	2143,3	2251,9	2150,6
Public broadcasting fee revenues	538,3	532,6	503,9	525,4	515,0	421,1	314,0
Percentage of public fee in total revenues	32,7%	32,0%	26,9%	26,8%	24,0%	18,7%	14,6%
Advertising and sponsoring revenues	932,9	1013,0	1132,0	1171,0	1288,0	1375,0	1216,4
Further sales-related revenues	113,5	68,8	121,3	187,2	134,0	189,6	170,0
Overall sales and quasi sales revenues	1584,7	1614,4	1757,2	1883,6	1937,0	1985,7	1700,4
Further operational revenues	42,8	24,8	68,4	49,1	173,5	224,7	15,2
Financial revenues	16,3	25,6	50,8	28,7	32,9	41,5	35,0
Public mission costs*	1307,2	1350,3	1499,4	1600,9	1695,4	1875,9	1688,3
Overall operational costs	1490,5	1493,8	1627,4	1741,6	1842,1	2032,5	1829,3
Total costs	1537,9	1588,6	1763,9	1870,7	2036,9	2167,3	1950,6
Share of public mission costs in total costs	85,0%	85,0%	85,0%	85,6%	83,2%	86,6%	86,6%
Public mission costs covered by missions revenues	41,2%	39,4%	33,6%	32,8%	30,4%	22,4%	18,6%
Public mission costs covered by non-mission revenues	58,8%	60,6%	66,4%	67,2%	69,6%	77,6%	81,4%

*2003-2005 author's assumption based on later years ratios and differing data from other sources.

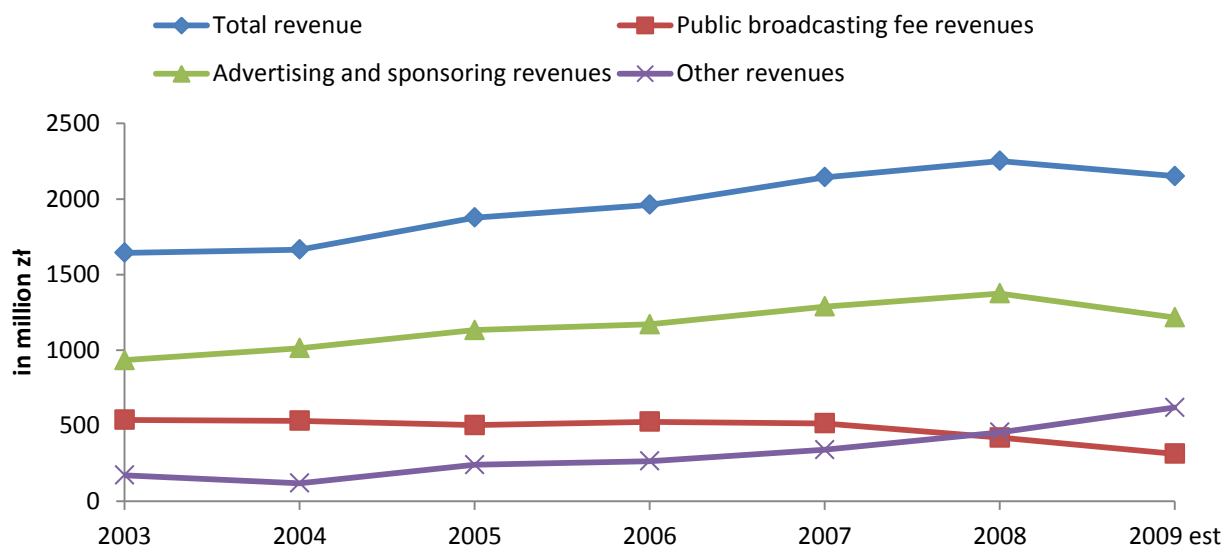
Sales Gain	94,2	120,7	129,8	142,0	94,8	-46,9	
Further operational gain	0,9	-61,4	-43,8	-70,1	-7,7	100,1	
Operational Gain	95,1	59,3	86,0	71,9	87,1	53,3	
Financial Gain	10,8	17,0	26,4	18,8	19,3	31,3	
Gross Gain	105,9	76,3	112,5	90,7	106,4	84,6	-200,0
Corporate Income Tax	38,1	27,6	54,3	33,5	20,4	-16,0	
Net Gain	67,9	48,8	58,2	57,3	86,0	100,5	-200,0

Own capital	985,276	1031,609	1077,736	1121,504	1194,033	1281,041
Liabilities and reserves for liabilities	417,3041	471,5299	572,0351	620,7356	637,6181	504,9038
Debt ratio	29,8%	31,4%	34,7%	35,6%	34,8%	28,3%

Source: author's calculation based on TVP's financial statements, TVP's public mission statements, KRRiT reports. The 2009 data represents estimates by KRRiT and TVP officials, completed by the author's assumptions.

The data indicates the public broadcaster's current problematic situation and its genesis. While *TVP's* overall revenues were rising between 2003 and 2008, its compilation has significantly changed over time. Accordingly, public broadcasting fee revenues were diminishing since 2006, while *TVP's* advertisement revenues, as well as other revenues have steadily risen until 2008.

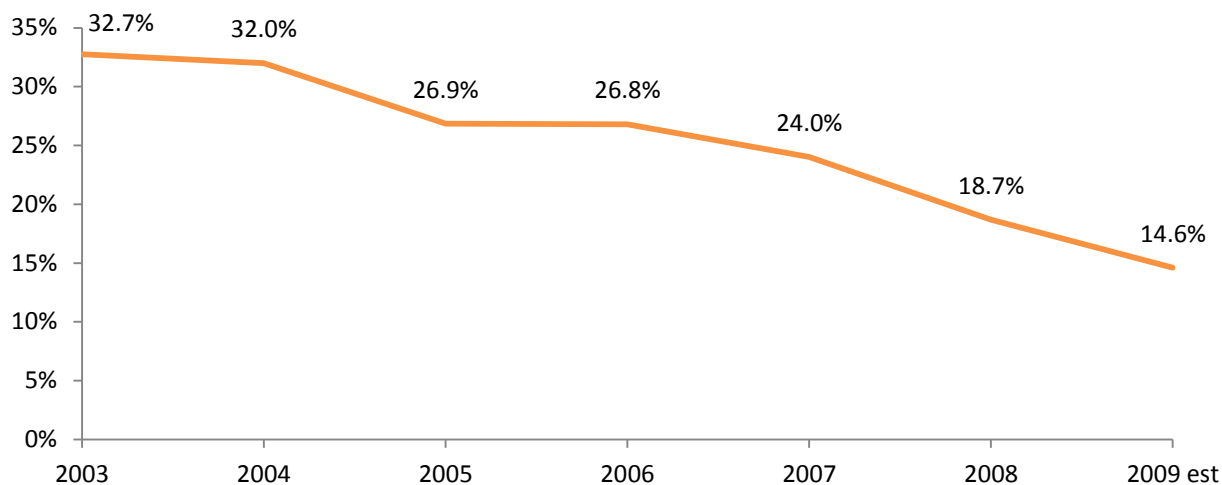
Figure 45: TVP's revenue break-down 2003-2009est



Source: based on Table 8 data.

Consequently, the public broadcasting fee's share in *TVP's* overall revenues has gradually decreased over time, amounting to 32,7% in 2003 and only for 18,7% in 2008 with an expected further decrease to 14,6% in 2009.

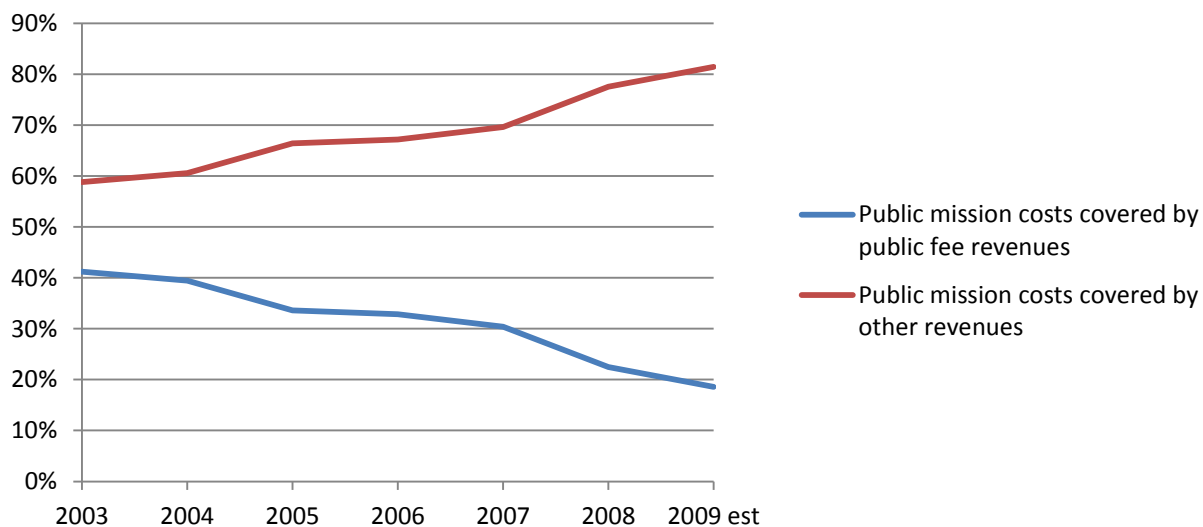
Figure 46: Percentage of public fee in total revenues 2003-2009est



Source: based on Table 8 data.

As a result, also the public service remit costs, which make up for the dominant part of the public broadcaster's overall costs, are covered to a lessening degree by broadcasting fee revenues and to a increasing degree by commercial returns.

Figure 47: Public mission financing sources 2003-2009est

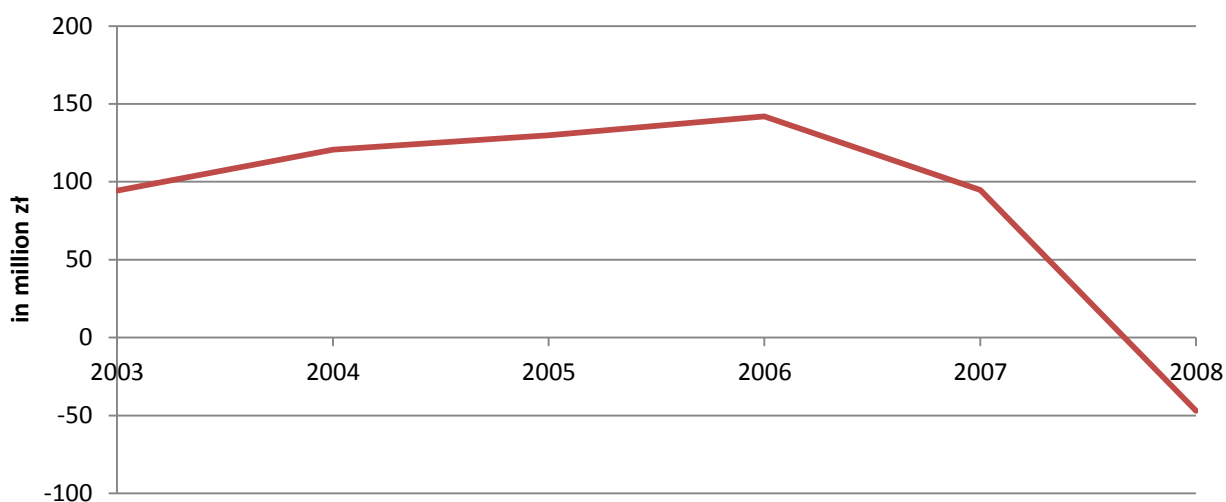


Source: based on Table 8 data.

Since furthermore broadcasting costs have steadily augmented over the years and *TVP's* public fee revenues have fallen, its advertising revenues had to grow faster than the cost

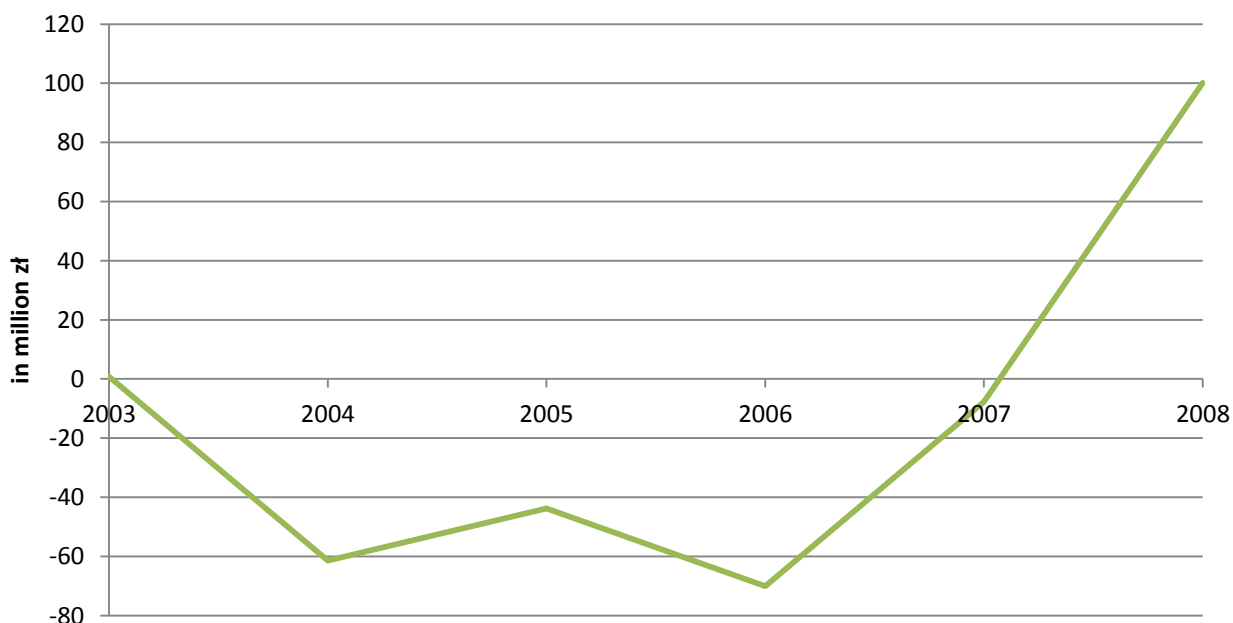
increase rate, in order to prevent financial losses. In 2008, however, *TVP's* operational costs exceeded its sales revenues and quasi-sales returns for the first time, causing a sales loss of 46,9 million zł. An overall loss could only be prevented by a considerable profit from further operational revenues, which were not directly related to broadcasting sales. The various gain levels are demonstrated by the following charts.

Figure 48: TVP's sales gain 2003-2008



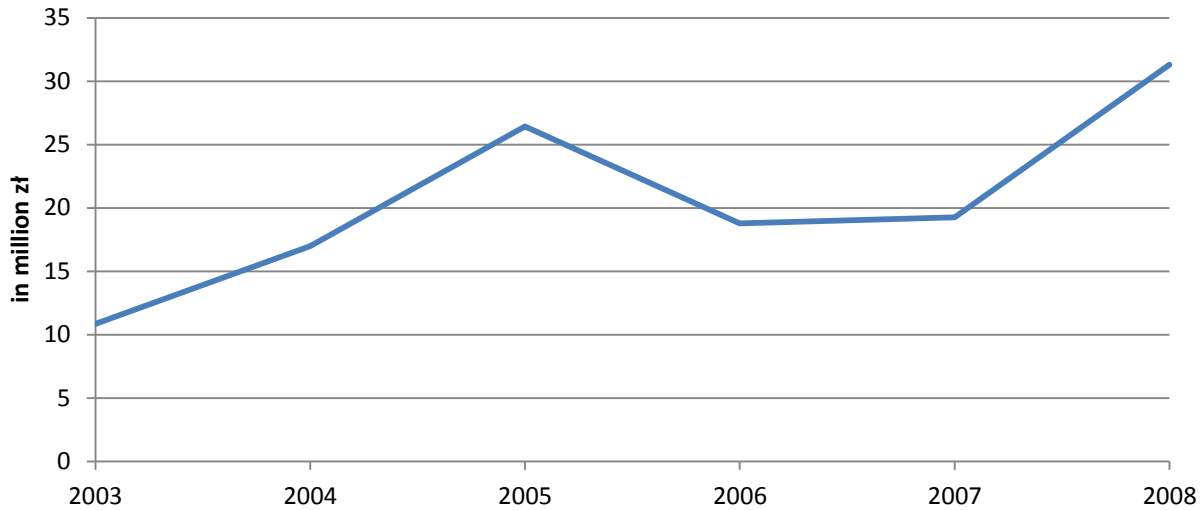
Source: based on Table 8 data.

Figure 49: TVP's further operational gain 2003-2008



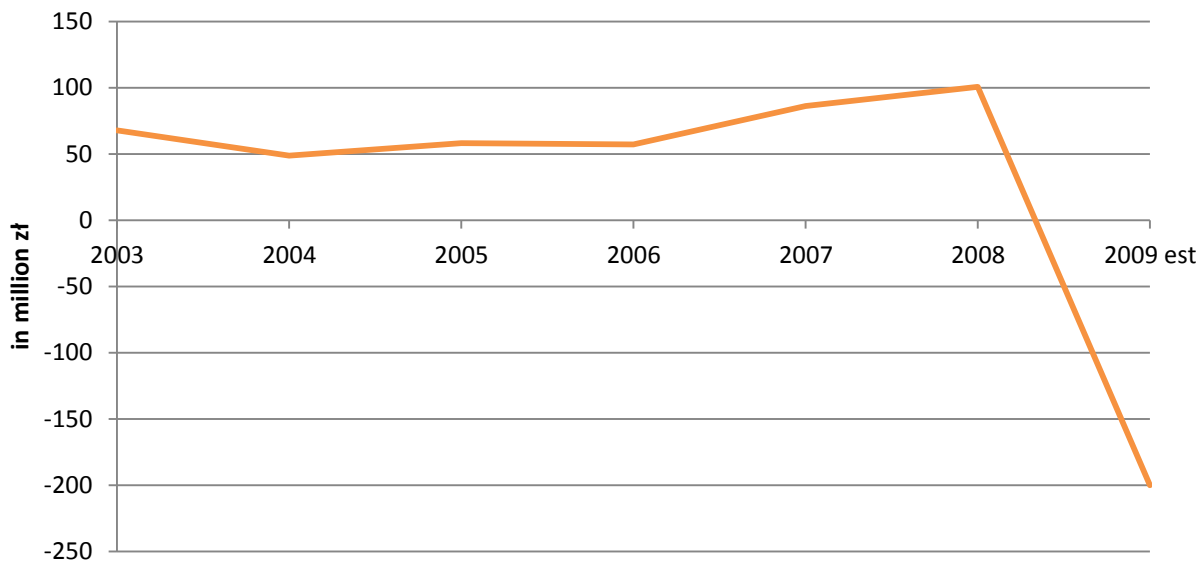
Source: based on Table 8 data.

Figure 50: TVP's financial gain 2003-2008



Source: based on Table 8 data.

Figure 51: TVP's net gain 2003-2009est



Source: based on Table 8 data.

According to the *NIK*, *TVP's* gain structure in 2007 and 2008 results from illegitimate accounting actions, which intentionally blurred the public broadcaster's real financial condition.⁴²⁹ In simple terms, in *NIK's* opinion *TVP* created unjustified reserves in 2007, in

⁴²⁹ Buczyński (2009: 33-34).

order to reduce and hide its actual profit level. The following year, in turn, *TVP* dissolved the 2007 reserves, in order to demonstrate a net gain, instead of factual loss.

Regardless of the accusations' correctness, *TVP's* critical situation could already be read in its 2008 financial data and dramatically intensified in 2009. In December 2009 *TVP's* interim chairmen announced an expected 2009 loss of around 200 million zł as an effect of further decreasing public fee revenues and a deterioration of the broadcaster's advertising market revenues.⁴³⁰

The estimates for 2010 are even worse as far as the revenue side is concerned, which is why chairman Romuald Orzeł announced to tackle the public broadcaster's costs, in order to prevent *TVP* from bankruptcy. Accordingly, Orzeł plans to reduce the regional budgets by 40 to 50 percent and the artistic along with technical personnel wages by 30 percent, in order to achieve a zero result by the end of 2010. Furthermore, *TVP* intends to receive a 100 million zł credit, in order to ensure the company's ability to pay the year's wages.⁴³¹ Fortunately for *TVP*, since its overall assets account for almost 1,8 billion zł and its debt ratio is below 30% as of 2008, such a credit would not automatically endanger the broadcaster's financial stability.

Nevertheless, *TVP's* serious financial condition is a fact as of January 2010 and there is no certainty that the public broadcaster will be able to economically recover by itself. The successful political campaign against public broadcasting payments, initialized in 2007, resulted in the system's marginalization by 2010, even without the planned legislative amendments. *TVP's* financial sovereignty is clearly endangered; the scarce public funds must to a very high degree be substituted by increased advertisement activity. Legislative regulations, however, considerably limit *TVP* in its commercial actions, for instance by not allowing the public broadcaster to pause programs for advertisement breaks. Furthermore, *TVP* is devoted to the public mission, which not always receives the necessary cost-covering funds from the market and whose costs makes up for the dominant part of the broadcaster's total costs. It must be noted in this context, however, that even though *TVP* separately calculates the public service remit costs and their commercial counterpart, the mission's share amounting to around 85% of all costs appears questionable. The doubts result from the calculation method used. Accordingly, *TVP* deductively determines the mission's costs by

⁴³⁰ MM (2009).

⁴³¹ Map (2010).

subtracting all non-mission costs from the total costs accrued. In doing so, *TVP* defines its sideline non-mission activities as basically embracing the broadcaster's advertisement department.⁴³² All costs connected to revenues, which were initialized as mission content but produced revenues, are also counted as public mission costs. It is clear that such a calculation is certainly as problematic as single entry bookkeeping, and results mainly from the lack of a clearly and rationally defined public service remit. As a consequence almost all programs broadcasted by *TVP* are declared as mission programs, even though many of those are most certainly not. Poland therefore still lacks a proper definition of the public mission and thereby for *TVP*'s most intrinsic sense. On the other hand, by factually providing alternative programmatic content, cultural content without market orientation, and a wider opinion spectrum than their commercial counterparts, *TVP* already fulfils a significant public role in a market like Poland's.

The presented data emphasizes therefore *TVP*'s main dilemma: on the one hand there are loud voices, demanding that a public broadcaster should focus on its public service, financed exclusively by the public broadcasting fee, and not interfere in the commercial broadcasters' business and their advertisement market. On the other hand the public TV provider has to face arguments, according to which *TVP* already *is* a factual competitor in all business lines of the TV market, shown for example by its direct programmatic competition with the private channels, and most notably by its constantly increasing presence on the advertisement market. Hence, according to these arguers, *TVP* should compete in this sector as any other broadcaster, meaning without any additional public funds, yet also without any legislative limitations vis-à-vis its commercial competitors.

This theoretical point of view conflict may seem significant on the first glance, yet *TVP*'s development during the last five years - with increasing involvement in commercial financing, with the more and more demand oriented-program structure, as well as the public broadcaster's strategic planning for the digital TV era - show clearly that *TVP* will most likely never be a pure public broadcaster, but is indeed transforming towards being an efficient and professional competitor on the Polish TV market. Seemingly paradox, this is also due to the diminishing public funds it receives. Taking into consideration the described intense political power struggles within *TVP* as well as its current financial problems, it

⁴³² TVP (2006-2009).

certainly is surprising how well the public broadcaster manages to produce two nationwide programs, a broad regional station net, and various satellite channels on a very competitive level.

If in 2007 the governmental goal was to weaken *TVP* financially, it was certainly achieved by 2010. While *TVP*'s bankruptcy is rather improbable with the state as its owner, the public broadcaster may lose attractiveness for viewers. Cost, wage, and personnel cutting measures may result in the loss of talented artistic and technical staff, a worse work environment, lower production budgets, and as consequence in lower production standards. This, in turn, may very likely result in the loss of public broadcasting audience, which is naturally an advantageous scenario for everyone interested in low *TVP* viewing rates, be it for economic and/or politic reasons.

Today's terrestrial broadcasters will enter a new broadcasting era very soon. The commercial broadcasters and *TVP* will compete on new grounds and under different market circumstances; often the first meters decide over a race's outcome, which is why the conditions at the inevitably approaching starting point will certainly be of significance. The following years will determine Poland's broadcasting landscape for the next decades to come. As of 2010 it seems that *Polsat* is financially and technologically best prepared for the complete digitalization, due to the group's extended market presence on various broadcasting sub-segments and because of its impressive financial backup by the corporation's wealthy owner Solorz-Żak. While the market's minor participants *TV Puls* and *TV4* face profitability and debt issues, the remaining big players *TVN* and *TVP* are also confronted with capital and financing problems, despite their operational profitability potential. Yet in spite of several economic and political risks, it would certainly be surprising if one of today's major broadcasters were indeed marginalized in the years to come, even if confronted with a more intense competition scenario.

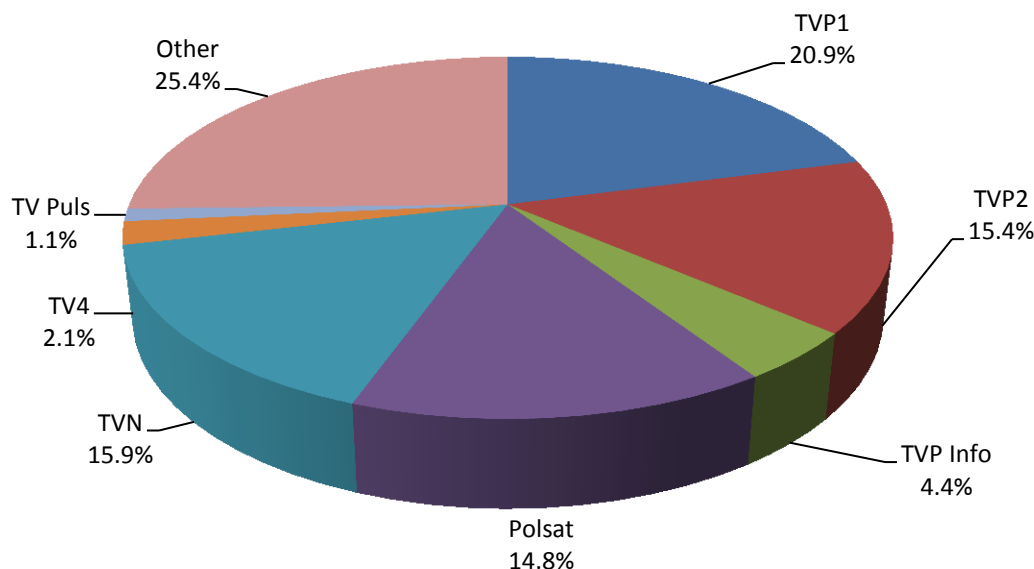
5.4. Poland's recipient market

After the overview of the major broadcasters' financial situation, an evaluation of the recipient market and advertising market shares will follow. The major broadcaster's financial

results are naturally tightly connected to these two interrelated TV markets, since the position on the recipient market clearly defines a competitor's potential position on the advertising market.⁴³³

Figure 52 illustrates, that *TVP1* is the most watched Polish television station with a market share of 20,9% in 2009. That year, for the first time in Polish broadcasting history, *TVP2* did not rank second but had to make way for *TVN*. The *ITI* flagship channel noted the second biggest audience in 2009 with 15,9%, in spite of the broadcaster's overall audience loss compared to 2008. *TVN* is followed by the second public broadcaster *TVP2*, which was watched by 15,4% in 2009, and the second commercial channel *Polsat*, whose 14,8% market share signified rank four that year.

Figure 52: Poland's TV market division 2009



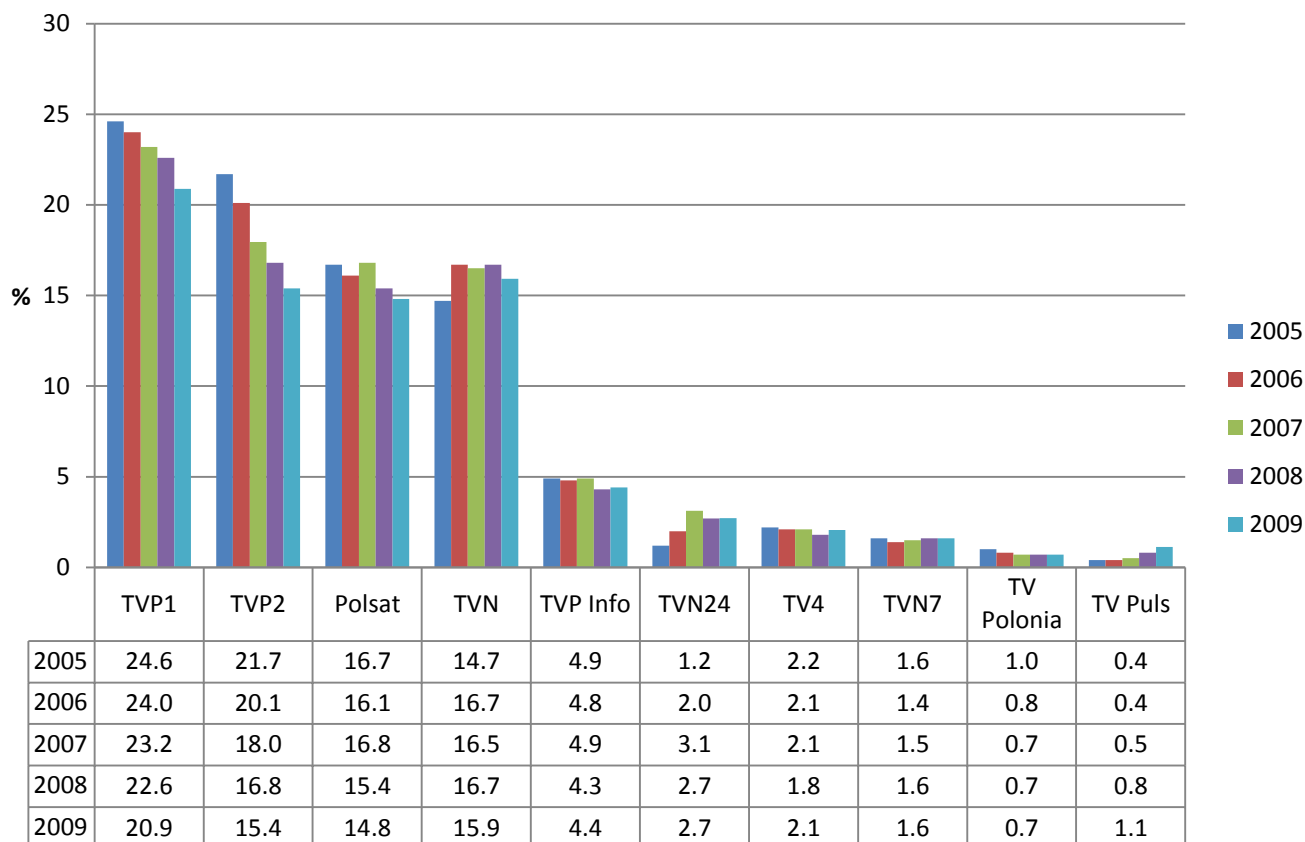
Source: KRRiT (2009).

These four programs currently dominate the market, and the stations, which follow them, are predominantly related to one of the three major broadcasting groups *TVP*, *Polsat*, or *TVN*.

⁴³³ The collected data that will be presented in the following part of this work predominantly stems from the Polish branch of the internationally operating telemetric corporation *AGB Nielsen Media Research*. Its major competitor's data, *OBOP (Ośrodek Badania Opinii Publicznej)*, differs partly significantly from the *AGB Nielsen* data, yet the overall yearly trends remain comparable. The *AGB Nielsen* recipient market data was chosen by the author due to its predominant use in this segment by the KRRiT over the last years.

Even though *TVPI* is still Poland's viewing rates leader, the yearly dynamic indicates a negative trend for the public broadcaster. Accordingly, figure 53 shows the market shares of Poland's major stations between 2005 and 2009.

Figure 53: Poland's major broadcasters' percental market shares 2005-2009



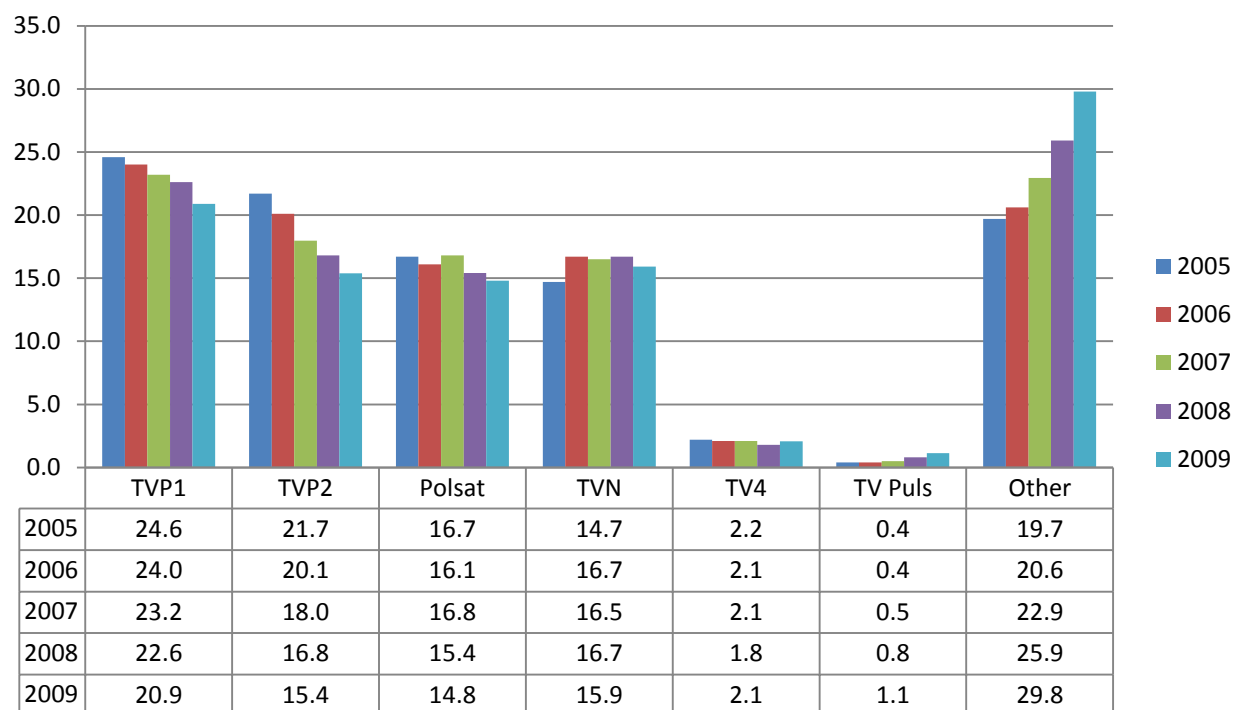
Source: based on KRRiT (2005-2009).

Both major public channels have gradually lost market shares over the recent years. *Polsat's* viewing rates have on a yearly basis decreased as well between 2005 and 2009 with only a temporary rise in 2007. *TVN's* audience shares have in turn generally risen during this period, despite relative yearly fluctuations. While in 2008 *TVN* and *TV Puls* were the only major broadcasters to increase their ratings, in 2009 all of the big four stations lost audience, while *TV4* managed to regain its shares of 2007 and *TV Puls* again increased its results. The two commercial leaders compete for the number one spot among the private broadcasters on a yearly basis. After *TVN* ranked first among the private broadcasters in 2006, *Polsat* regained its leadership position the following year, while in 2008 the hierarchy again changed with

TVN being also in 2009 the most popular commercial program in Poland. Worth mentioning is the 2008 and 2009 halt of constant market share gain by *TVN*'s informational station *TVN24*, which from 2005 to 2007 improved from 1.2% to 3.12%, making the station the most popular thematic program on the market behind the public *TVP Info*. Yet in 2008 also this popular news channel lost considerable audience shares, having been watched by only 2,7% in the years 2008 and 2009. From 2007 to 2009 *TV Puls* has managed to increase its relative audience by over 100%, which was certainly one major component of the station's increased sales figures, especially in the last two years. In spite of this noteworthy relative development, the absolute figure of 1,1% market share, however, does not necessarily imply certain success in the years to come.

The major broadcasters' audience losses also indicate advancing popularity of thematic channels. Following the global trend, it seems that also Poland's viewing behavior is more and more characterized by a changeover from general consumption to interest-related content choice. Thematic television stations seem to be the next logical step after the remote control gave viewers the power not to watch what they are not interested in. Thematic channels are a further step towards viewers' increased decision sphere in television consumption, complemented by nonlinear TV watching, such as Video on Demand. The following chart also demonstrates how the remaining channels, which are predominantly national and foreign thematic satellite channels, have gained importance over the last five years vis-à-vis the six major terrestrial offers.

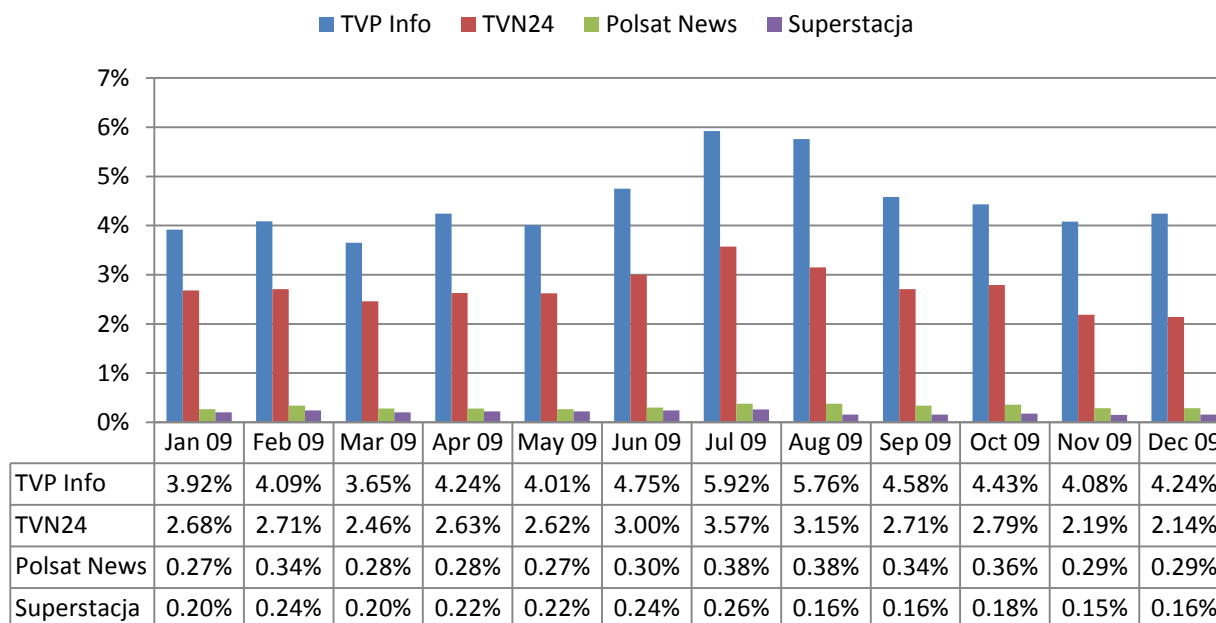
Figure 54: The six terrestrial channels vs. cable and satellite progrms 2005-2009



Source: based on KRRiT (2005-2009) and AGB (2009).

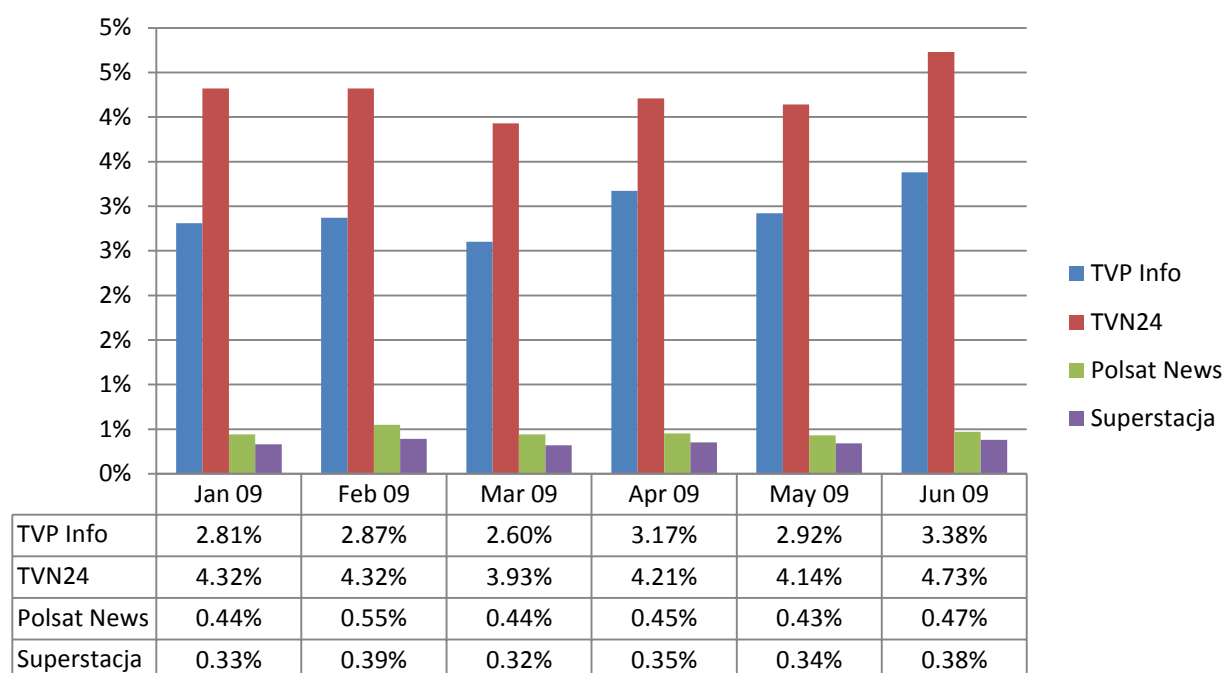
The number of thematic channels in Poland rises, with segments such as news, sports, or music becoming more and more popular, which is also due to the adequate package offers by satellite platforms and cable providers. Since in addition to the major universal stations news channels are probably the most crucial ones in the media-political context, the 2009 market-share development of Poland's major competitors in this segment is demonstrated in the chart to follow.

Figure 55: Poland's news channels' audience in 2009



Source: based on KRRiT (2005-2009) and AGB (2009).

The public *TVP Info* is the market leader among the news channels, yet to a considerable degree because of its terrestrial availability, which its competitors do not dispose over. When considering exclusively the cable and satellite viewers, *TVN24* even outruns *TVP Info* as indicated by audience data from the first half of 2009.

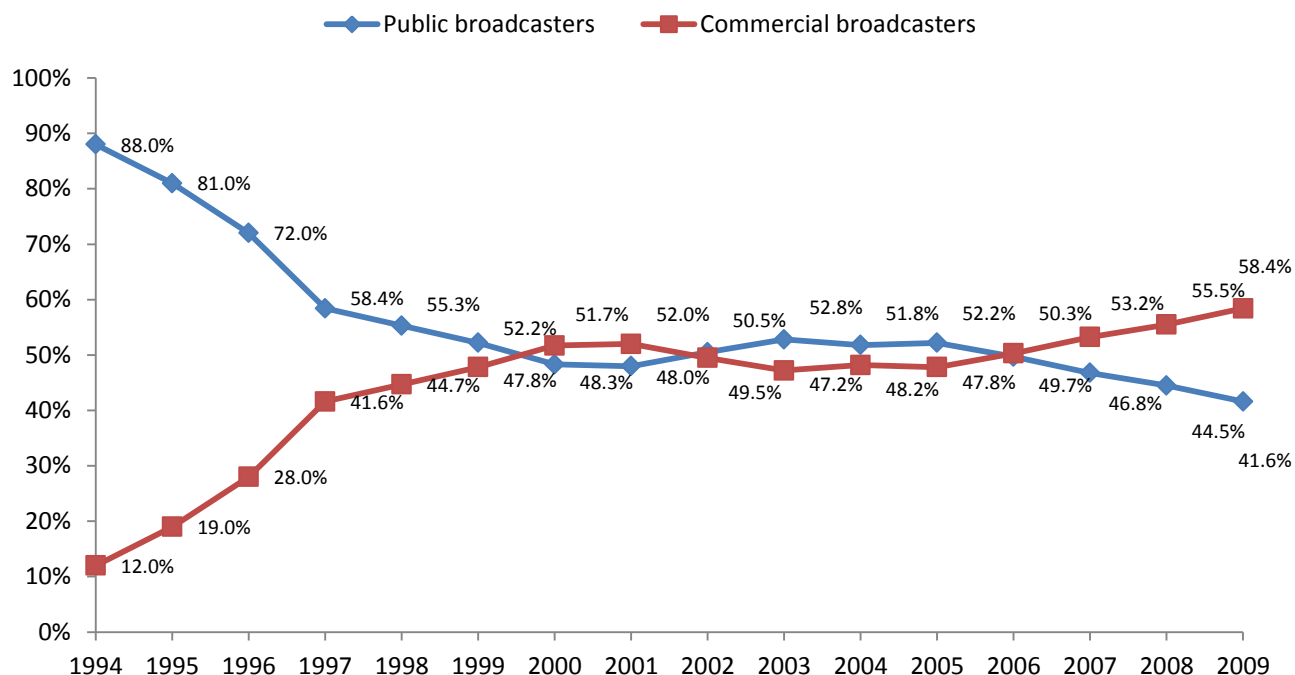
Figure 56: Poland's news channels' audience 1H 2009 - only cable and satellite receivers

Source: based on AGB (2009).

As far as thematic channels are concerned, the major broadcasters started to increasingly compete in various programmatic segments, launching sports, history, or business channels. Thus it seems unavoidable that the major universal channels' audience rates keep on falling with increased competition from the thematic offers. While *TVN* seems to be well prepared for the market segmentation, disposing over a number of established thematic channels, *Polsat* and *TVP* still look for the most suiting programmatic mix by introducing new channels and cancelling unsuccessful ones.

Even though all of the big four Polish channels are concerned by the negative trend of falling audience rates for their flagship products, the negative development seems to be the most drastic one for the public offer. This audience share decline of the overall programmatic public offer during the recent years is also shown by figure 57, which demonstrates the market share progress of the cumulated public stations versus all commercial broadcasters.

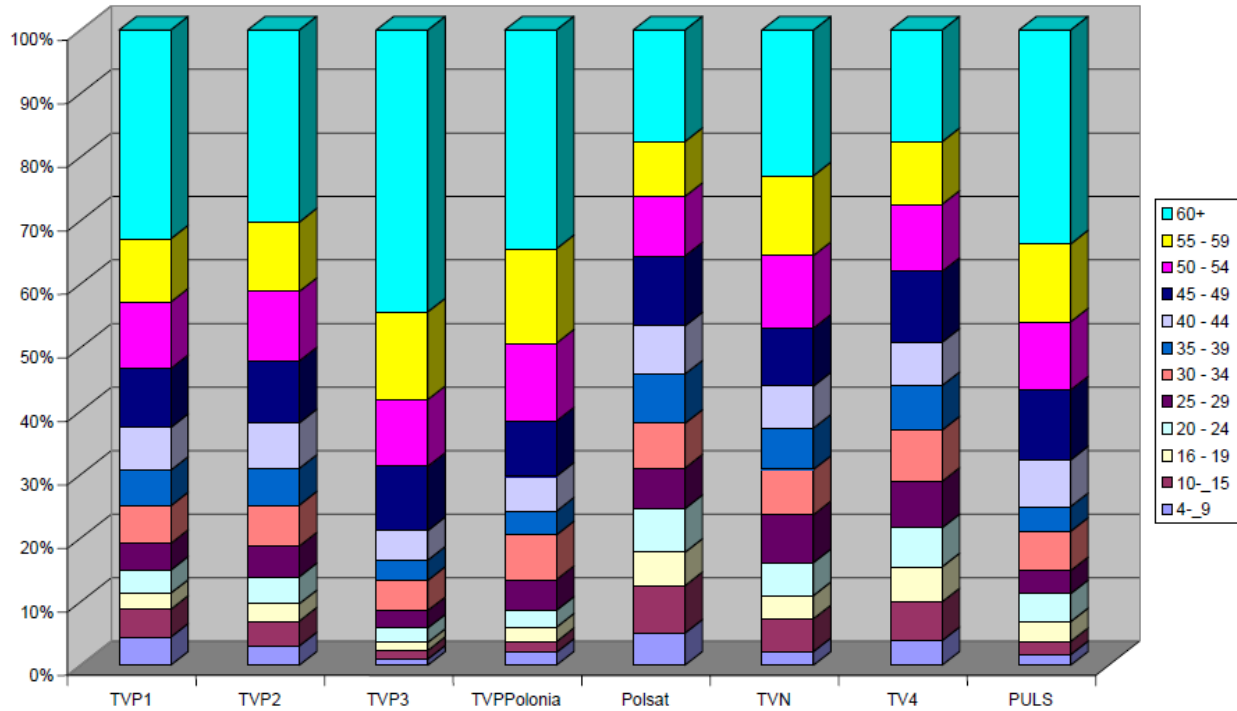
Figure 57: Market shares 1994-2009: Public vs. Commercial Broadcasters



Source: author's compilation based on KRRiT (1995-2009).

After a long lasting domination of the sector by public television, in the year 2000 private broadcasters made up for more than 50% of the recipient market for the first time in Polish television history. It was not until 2002 that the public TV sector could effectively counteract the constant market share decline, resuming the market majority until 2005. Yet during the subsequent years, the *TVP* channels again made up for less than 50% of the total recipient market, achieving historical lows of 46,8% in 2007, of 44,5% in 2008, and of 41,6% in 2009. Poland's public television popularity problems are also demonstrated by its auditorium's age structure.

Figure 58: Chosen broadcasters' audience age structure



Source: KRRiT (2008).

The public broadcasters' audience is on average older than the commercial TV viewers. While the major commercial stations, except for *TV Puls*, capture a relatively high share of the economically attractive consumer group between 15 and 49 years of age, the public broadcasters' audience is characterized by a high share of over 60-year-olds, who do not represent the major target group of most high-scale advertisers. While this age structure is from the media-political viewpoint a neutral or even positive one due to the public mission's care for all age groups, it is certainly suboptimal from the economic perspective, which categorizes the audience as to their respective marketing target potential.

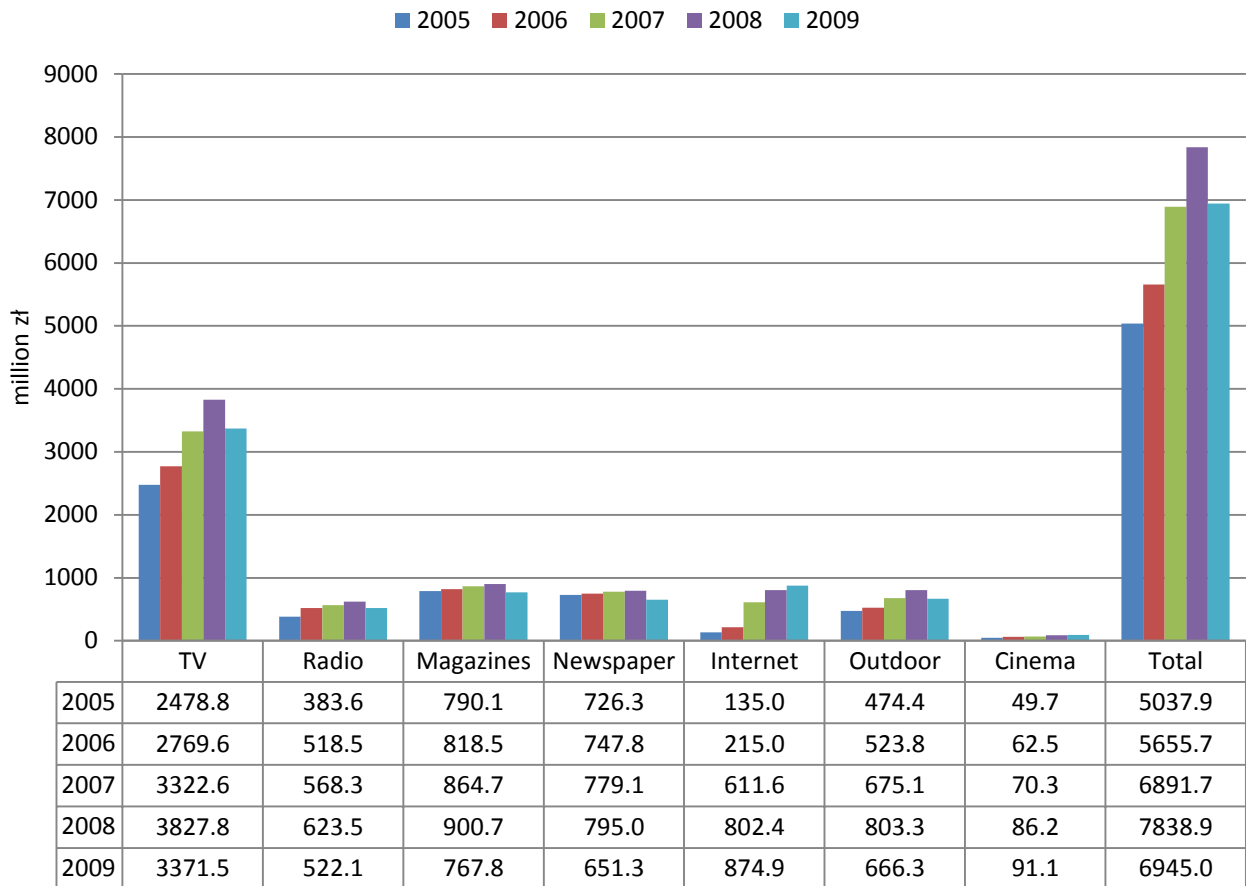
The shrinking and aging audience therefore indicates that public television is in a noticeably deteriorating state as far as the commercially regarded viewing market is concerned. Taking into consideration the private broadcasters' disadvantage in technical availability, the recipient market shares are potentially even more positive for the commercial transmitters as the data above indicates. This technological advantage, which *TVP* enjoys due to the nationwide terrestrial availability of two channels plus one regional offer, will certainly diminish after the digital switchover is finalized. It is probable that the public broadcaster loses even more of its audience, unless it won't be able to efficiently attract a younger

audience by fulfilling the public service remit in a more attractive way, yet without losing its intrinsic values.

5.5. Poland's advertising market

The recipient market shares do not mean much without their proper utilization on the advertising market. The second sub-market configuration should therefore be evaluated next. The advertisement market is very crucial for Poland's broadcasters, since it generates about 70% to 80% of their overall revenues. Advertisers are interested in maximizing their commercial message dispersion, which is why they chose the most optimal mass communication mix for their ads. While television has for almost two decades been the major advertisement medium, traditional and innovative mass communication forms also compete for the cumulated advertisement budgets. The advertisement market's expense allocation development for the last years is demonstrated by the following chart.

Figure 59: Poland's real advertisement market expense structure 2005-2009



Source: based on Starlink (2010) according to estimates concerning the advertisers' real expenses.

The chart shows that the overall advertisement expenses grew dynamically until 2008. In 2009, however, most of the mass communication channels, as well as the overall market, returned to their 2007 numbers and partly even undermatched them. While in 2008 the Polish advertisement market generated over 7,8 billion zł, the overall 2009 expenses were 11,4% lower. The yearly growth dynamic is presented by the following table.

Figure 60: Poland's advertisement market growth dynamic 2005-2009

	2005-2006	2006-2007	2007-2008	2008-2009
TV	11,73%	19,97%	15,20%	-11,92%
Radio	35,17%	9,60%	9,71%	-16,26%
Magazines	3,59%	5,64%	4,16%	-14,76%
Newspaper	2,96%	4,19%	2,04%	-18,08%
Internet	59,26%	184,47%	31,20%	9,04%
Outdoor	10,41%	28,89%	18,99%	-17,05%
Cinema	25,75%	12,48%	22,62%	5,68%
Total	12,26%	21,85%	13,74%	-11,40%

Source: based on Figure 58 data.

The data shows that the television market has grown and shrunk similar to the overall market dynamic in terms of expenses, which can be considered close to each sectors' advertisement revenues, while radio, outdoor, as well as the press sector advertising grew predominantly slower than the market (except for outdoor) and lost between 15% and 18% of their revenues in 2009 compared to their 2008 numbers. Only cinema and Internet advertisement, which had its major growth rate in 2007 with almost 185%, have also grown during the overall market decline year of 2009. The market's data has interesting implications as far as the respective mass communication means' advertisement market shares are concerned.

Figure 61: Poland's percental advertisement market structure 2005-2009

	2005	2006	2007	2008	2009
TV	49,20%	48,97%	48,21%	48,83%	48,55%
Radio	7,61%	9,17%	8,25%	7,95%	7,52%
Magazines	15,68%	14,47%	12,55%	11,49%	11,06%
Newspaper	14,42%	13,22%	11,30%	10,14%	9,38%
Internet	2,68%	3,80%	8,87%	10,24%	12,60%
Outdoor	9,42%	9,26%	9,80%	10,25%	9,59%
Cinema	0,99%	1,11%	1,02%	1,10%	1,31%

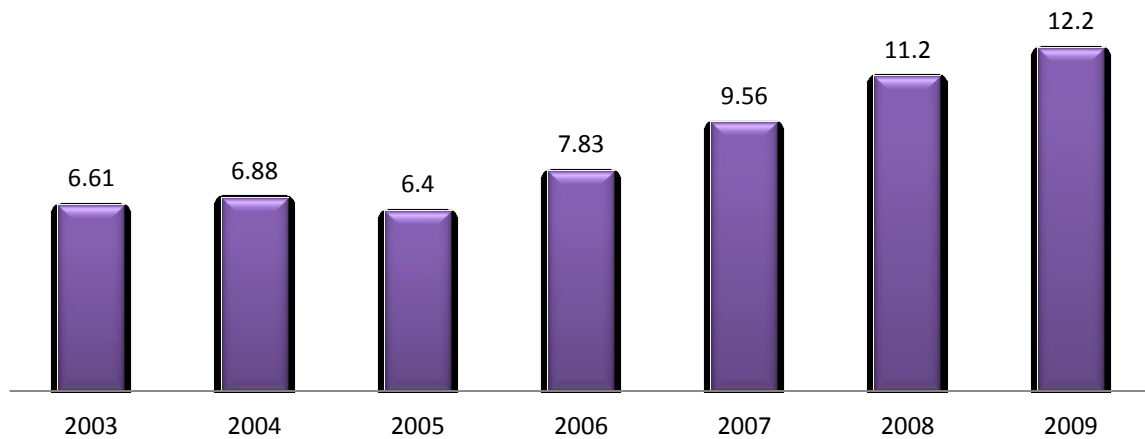
Source: based on Figure 58 data.

The data demonstrates that television is still the advertisement market's main component with an almost constant market share of 48-49%, nonetheless with a slightly declining tendency. While in contrast to that magazines and newspapers have gradually lost value for the advertisers over the last five years from a cumulated 30% in 2005 to 20% in 2009, the

radio advertisement share fell during the last four years from over 9% in 2006 to its 2005 share of about 7,5% in 2009. Outdoor advertising has fluctuated between 9% and 10% in the evaluated period, while cinema commercials, in spite of having the lowest absolute market share of about 1%, have gradually gained value for the advertisers between 2005 and 2009. Most impressive, however, is the Internet advertising market's growth, which increased from a market share of 2,7% in 2005 to 12,6% in 2009, placing this newest form of mass communication on rank two in the overall advertisement budget distribution for the first time in Polish advertisement history.

While according to *Starlink's* estimates the real advertising expenses have dropped for the television sector in 2009, the nominal expenses for TV commercials have increased, amounting to 12,2 billion zł, which indicates considerably higher discounts granted by the broadcasters this year. The following chart demonstrates this development.

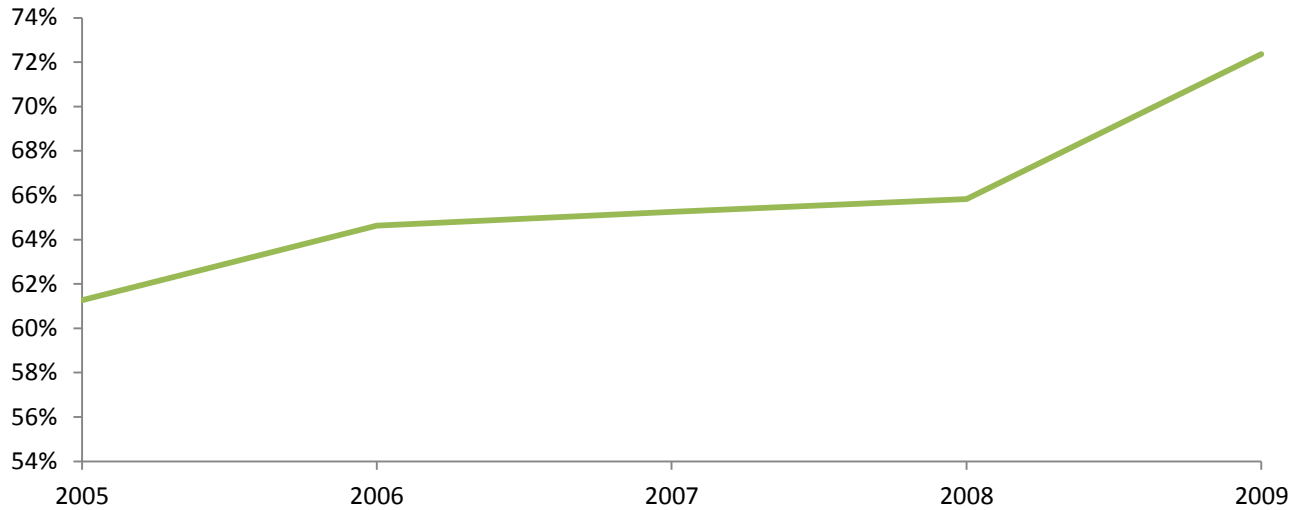
Figure 62: Poland's nominal TV advertising expenses in billion zł 2003-2009



Source: based on OBOP (2008-2010); according to official pricelistis.

The numbers indicate that the real expenses, ergo the broadcasters' advertisement revenues, made up for around 27% of their cumulated pricelist value in 2009, while this share has shown a declining tendency over the last five years. The overall discounts have increased from 61% in 2005 to 72% in 2009, as demonstrated by the following chart.

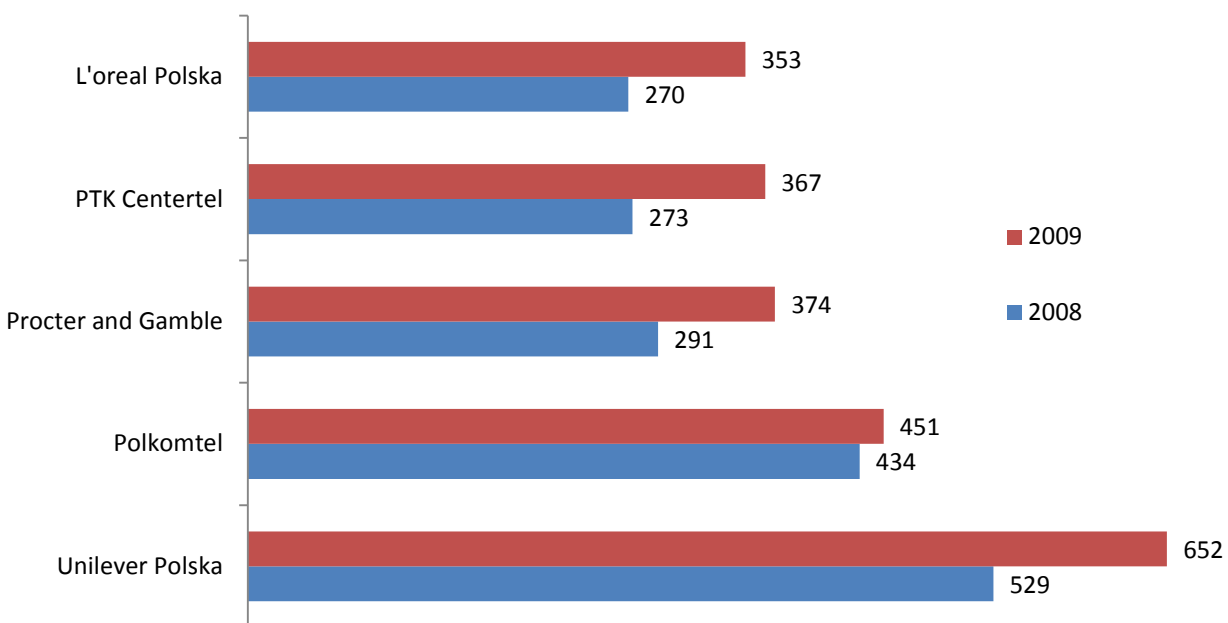
Figure 63: Percentage of granted TV advertisement discounts



Source: author's calculations based on Figure 58 and Figure 61 data.

Since the advertisers handled higher overall television ad expenses also in the crisis year 2009, it seems that the broadcasters' diminishing real revenues are merely a consequence of the crisis atmosphere, which decreased the stations' negotiation power vis-à-vis the advertisement companies. Taking into consideration that capital-intensive global players are among the major investors on the Polish advertisement market, as demonstrated by the following chart, such a negotiation balance is not an improbable scenario.

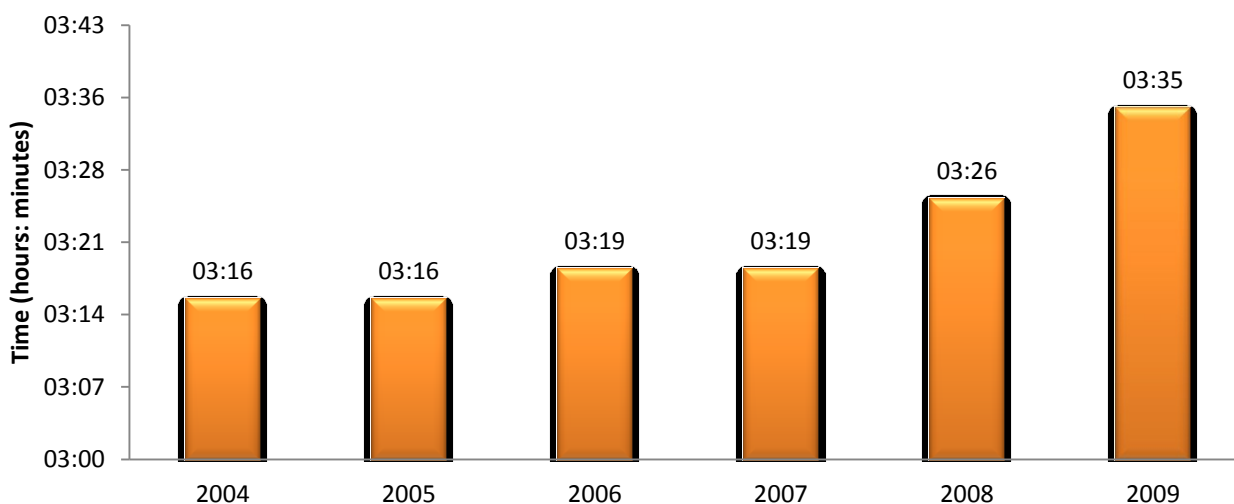
Figure 64: Poland's top 5 advertisers and their nominal TV expenses in million zł



Source: based on OBOP (2008-2010); according to official pricelists.

The factual value of Poland's television advertisement market is furthermore demonstrated by an overall rising TV consumption in Poland. The average Pole was watching television for three hours and 35 minutes every day in 2009, which is nine minutes more than in 2008 and 16 minutes more than in 2007.

Figure 65: Poland's daily television consumption time per person 2004-2009

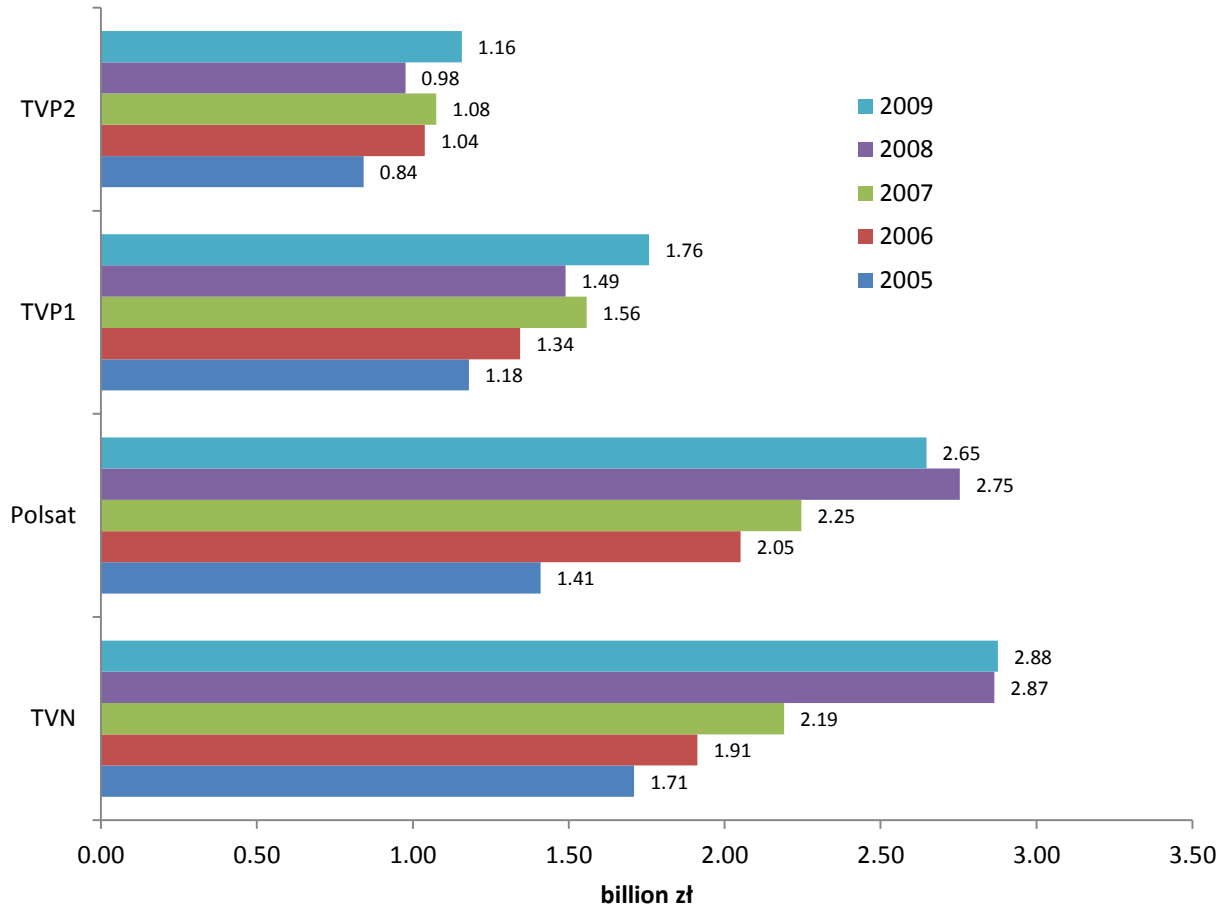


Source: based on OBOP (2008-2010).

In spite of the Internet’s rising significance, utilization, and commercial value, television remains an attractive consumption good, implying that the two mass communication forms may be complementary to a certain degree. It is probable that both mass communication forms may profit from each other with rising interweavements, while not excluding one another.

Poland’s broadcasters compete for the advertisers’ expenses via the analyzed viewing rates and commercial pricings. Advertisement revenues are the real consequence of this competition, which make up for around 70% to 80% of the broadcasters’ overall revenues. Poland’s television advertisement budget distribution dynamic among the major broadcasters is indicated by the following chart.

Figure 66: Major stations' advertisement revenues according to official price lists



Source: based on OBOP (2008-2010).

According to the *OBOP* data, *TVN* has for the last two years been the leader in advertisement revenues, earning 2,88 billion zł in 2009, followed by *Polsat* with 2,65 billion zł and the two public stations with commercial revenues amounting to 1,76 billion zł and 1,16 billion zł, respectively. When comparing this data with the broadcasters' official financial data, we can see that a considerable share of the earnings is just paper revenues. Accordingly, the presented data represents the broadcasters' revenues based on their price lists, not taking into consideration individually negotiable discounts, which reach double-figured percentages.⁴³⁴ The market's leader *TVN*, for example, had factual advertisement revenues amounting to 1,124 billion zł in 2009, which is not even 40% of the pricelist sales figure.⁴³⁵ Hence, the presented broadcasters' financial statements are a necessary reference when evaluating the competitors' pricelist sales figures.

When regarding the presented advertisement revenue data, it is striking that the public programs have significantly lower commercial revenues than their private competitors, in spite of their still strong reception market positions. One major reason for this seemingly paradox situation is the difference in the frequency of advertising units between public and private broadcasters.

Table 9: Percental share of advertisements in overall broadcasting time

	2005	2006	2007	2008
TVP1	7,60%	7,43%	10%	9,42%
TVP2	7,00%	7,35%	9,74%	9,48%
Polsat	14,52%	14,57%	14,91%	15,84%
TVN	12,52%	12,79%	14,57%	13,82%

Source: AGB (2009), KRRiT (2006-2009).

As shown in the presented chart, the commercial broadcasters take advantage of the maximum legal advertising time of 15% a day (or 20% in the case of teleshopping; the new European regulations regulate the hourly advertisement breaks with the same percentages), while the public broadcasters' advertising time made up for only about 50% of the legally allowed amount in 2005 and 2006, and rose to over 60% in the following two years. One major reason for this disproportion is legal limitations for the public broadcaster.

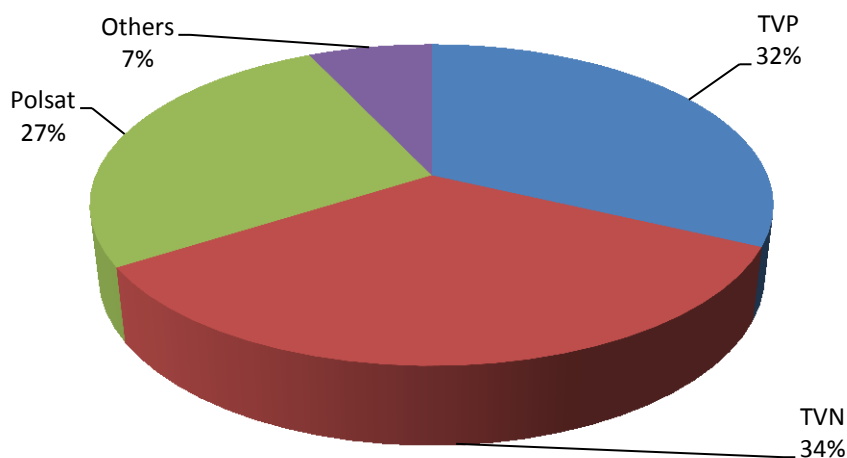
⁴³⁴ Fura (2009c).

⁴³⁵ TVN's financial statement for 2009.

Accordingly, the *TVP* channels are, for instance, not allowed to make advertisement breaks during programs, only before and after. In August 2007, *TVP* decided to bypass this particular regulation by splitting two of its programs in two parts, each with an own beginning and ending, between which the public broadcaster emitted commercials.⁴³⁶ In November 2008, initiated by *TVN's* complain, *TVP* was legally fined with 500.000 zł.⁴³⁷ In June 2009, the fine was upheld by the Warsaw appeal court.⁴³⁸

According to *TVN's* and *Starlink's* calculations, the advertisement budgets were divided among the major broadcasters in 2008 and 2009 as follows.

Figure 67: Real advertisement market shares in 2008



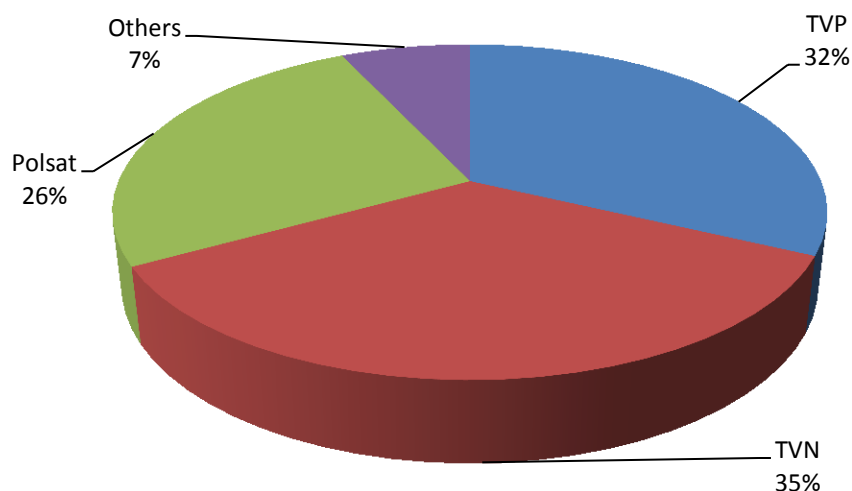
Source: Starlink (2010).

⁴³⁶ Cheko (2007).

⁴³⁷ Pap (2008c).

⁴³⁸ Awe (2009).

Figure 68: Real advertisement market shares in 2009



Source: Starlink (2010).

According to this data, the *TVN* group has the highest advertising market shares amounting to 35% in 2009, followed by the public stations with 32% and the *Polsat* group with 26%. It is significant to consider, however, that stations, such as *TV4* and *Superstacja* are tightly related to *Polsat*, yet not an intrinsic part of the group, which is why those stations' advertisement revenues are not taken into consideration in the presented market share configuration.

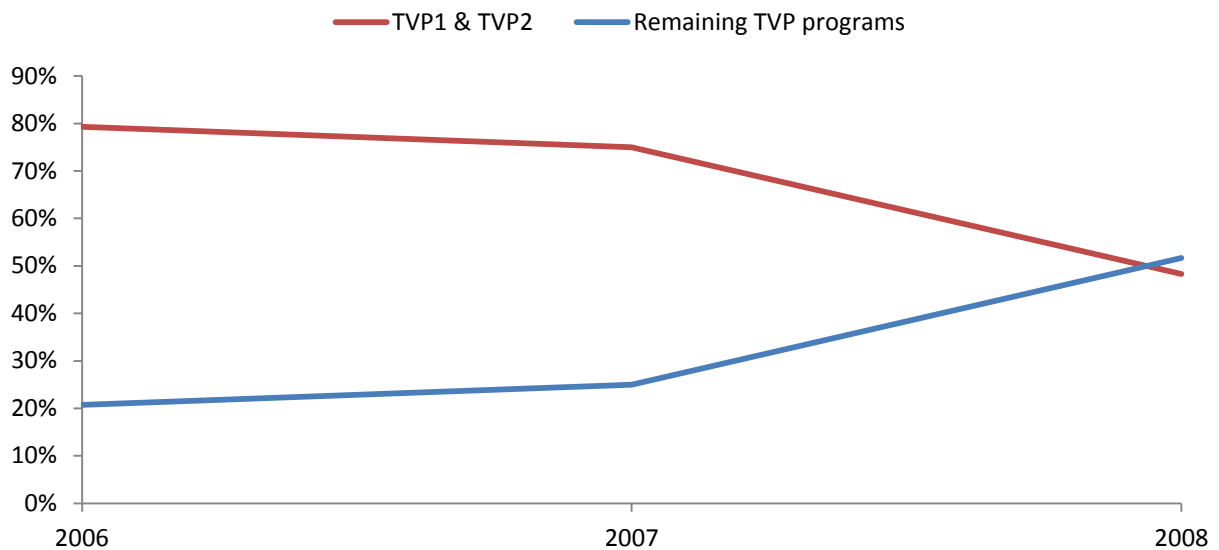
The market share data indicates higher revenues by the public *TVP* group, in spite of seemingly weaker nominal revenues by its flagships *TVP1* and *TVP2*, for example vis-à-vis *Polsat*. One reason for this status is the increased advertisement significance of *TVP*'s thematic channels. The following table and chart demonstrate that especially the regional net concentrated around *TVP Info*, yet also the remaining public thematic channels, intensified their advertisement activities during the last years.

Table 10: Overall advertisement time in minutes 2006-2008

	2006	2007	2008
TVP1	39 893	47027	47660
TVP2	37 659	46841	47980
TVP Info	19 372	26480	90086
TVP Kultura	163	2 390	4 894
TVP Sport	124	1 512	4 572
TVP Historia	-	-	129
TVP Polonia	617	921	2 557
Total	97 828	125 171	197 878

Source: based on KRRiT (2007-2009).

Figure 69: TVP's total advertisement time division 2006-2008



Source: based on Table 10.

The last chart shows that in 2008 *TVP* sold for the first time more advertisement units in its thematic programs than in its two major nationwide channels *TVPI* and *TVP2*.

The evaluation of Poland's advertisement market showed that in spite of a cumulated commercial revenue fall for the broadcasters in 2008, the television market still is and very likely will be in the middle-term future the major driving force for the overall advertisement segment. In spite of the Internet's growing popularity, TV consumption is growing as well, and so do the advertisers' expenses for this major means of mass communication. While many predict a takeover of one mass communication channel by the other, it seems that a gradual convergence of traditional television and the Internet is already on its way, yet without the elimination of either medium. Accordingly, it seems that instead of having just one device to surf the Internet and watch TV in the future, people will still have both, a computer and a television device, and even more gadgets, to consume online content, complemented by traditional broadcasting programs. The convergence of the Internet and television seems therefore productive for both media segments in the middle- and long term.

The major players on Poland's TV advertisement market are *TVN*, which also in accordance with its financial data is the operatively most efficient competitor on the market, and *Polsat*, whose sales numbers indicate a reserved but positive market performance. The major public stations have low advertisement revenues relative to their technical range and market position on the recipient market and compared to their commercial counterparts. The major reason is legal restrictions, which hinder *TVP* to fully utilize its potential for the advertisement market. *TVP's* thematic station helped the public broadcaster, however, to expand its commercial activity in the latest years and make up for a certain share of public fee losses. It seems that in times, when a public mission institution can't be guaranteed the necessary public funds to fulfill its task independently and effectively from the media-political point of view, the legal advertisement restrictions, which surely make sense when a proper public financing level is certain, should be loosened, in order to give the public broadcaster a chance to indiscriminately finance itself.

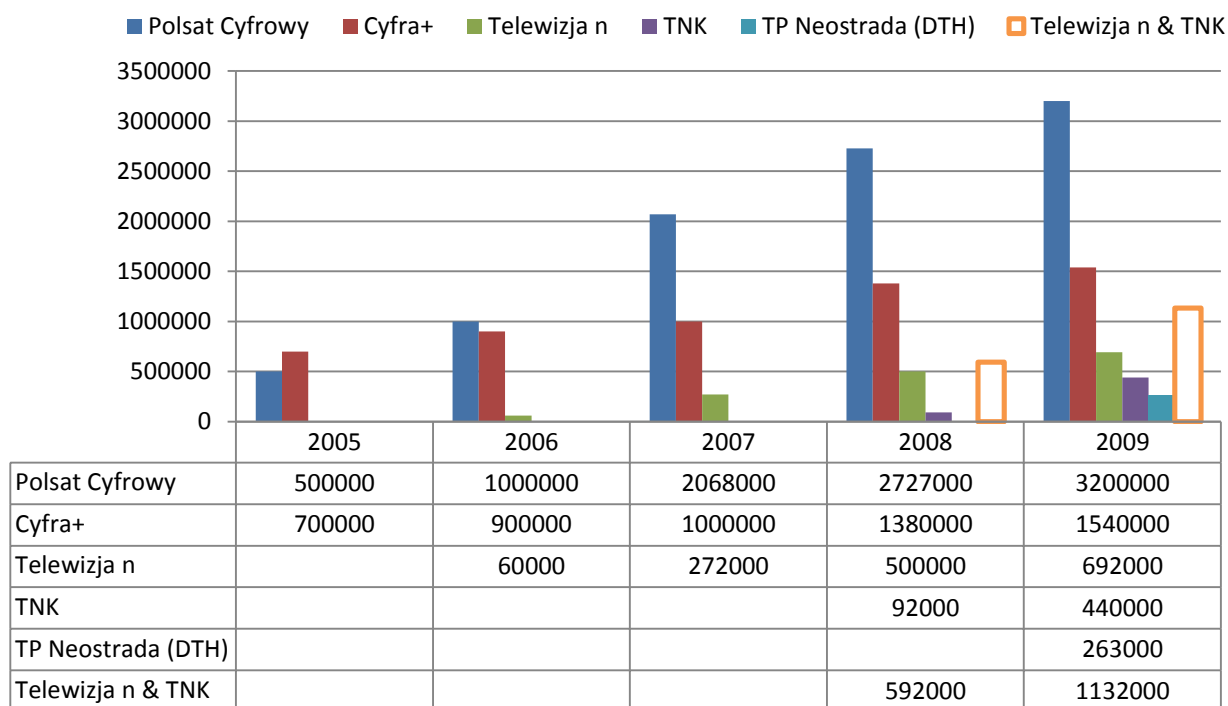
5.6. Digital platforms as the major satellite signal distributors

A quickly growing market in Poland is the sector of digital platforms. The expression “digital platform”⁴³⁹ is a clearly marketing-motivated term of Polish origin, which signifies a bundle of programs and additional services offered digitally by a certain provider via direct broadcast satellite, subdivided into programmatic sub-bundles, out of which subscribers can choose their proper “program package” and pay the respective periodic fee. The digital platform market has exponentially gained market share over the recent years, becoming Poland’s most popular TV signal reception type, watched by 36,1% of Poland’s households in 2009. The digital platform market is the technologically most advanced one, offering its clients the widest range of digital services. Digital platforms can in more international terms also be referred to as direct broadcast satellite (DBS) offers.

As of January 2010, five digital platforms compete for subscribers in Poland: *Cyfrowy Polsat*, *Cyfra+*, *Telewizja n*, *Telewizja na karte (TKN)*, and *Neostrada TP z Telewizją (DTH)*. The market share development among the named offers is presented by the following chart:

⁴³⁹ In Polish: “platforma cyfrowa”.

Figure 70: Poland's digital platform subscribers 2005-2009



Source: author's compilation, predominantly based on the suppliers' official statements.

The chart demonstrates that the year 2005 was the last year of market leadership for *Cyfra+*. Following the 2002 merger between *Cyfra+* and *Wizja TV*, only two offers were present on the Polish market until 2006: *Cyfrowy Polsat* and *Cyfra+*. In 2006 *Cyfrowy Polsat* took over the role as Poland's most popular digital platform, being the first one to achieve a customer base of one million subscribers. *Cyfrowy Polsat* has managed to maintain its dominance accompanied by steady growth rates, having 3,2 million customers as of January 2010. *ITI* introduced *Telewizja n* also in 2006, which has ever since increased its market presence, however not to a degree, which would endanger Poland's top two offers. Yet when combining *Telewizja n*'s customers with *TKN*'s (*Telewizja na karte*), which is *ITI*'s second digital platform launched in 2008, a cumulated 2009 subscriber amount of 1,1 million is certainly within reach of *Cyfra+*'s 1,5 million customers. Even though the two *ITI* offers are led separately, with the prepayment-based *TKN* having a slimmer program variety than *Telewizja n*, it is not unlikely that the two platforms will merge in the near future, with *TKN* becoming *Telewizja n*'s prepaid offer on the market. In 2009 the Polish telecommunications giant *Telekomunikacja Polska* entered the Polish DBS market, complementing its *IPTV* offer

with a digital platform, which after its first regular operating year gained a customer base amounting to 263.000.

The platforms sell their services by offering differentiated programmatic radio and television compositions of about 100 channels, as well as additional services within customer packages of diverse monthly fees. The providers gradually implement new programs into their offers including content in HDTV technology and interactive services. A comparison of the platforms' current programmatic offers is demonstrated in the following table:

Table 11: Poland's digital platforms and their programmatic offer

Channel's theme	Number of channels				
	Cyfra+	Cyfrowy Polsat	Telewizja n	Telewizja na kartę	Neotrada TP z telewizją (DTH)
General	8	10	10	7	7
For Poles abroad	1	2	1	1	1
Regional	2	2	2	2	2
Informative and parliamentary	6	6	5	5	5
Cultural and religious	2	1	2	2	2
Movie premium	7	4	5	0	3
Movie basic	11	7	11	0	4
TV Series	8	7	6	0	7
Sports	12	11	8	2	7
Documental and travelling	13	10	11	1	8
Education	1	1	2	1	1
Lifestyle	5	6	2	2	3
Hobby	3	2	1	1	1
Children and adolescents	5	7	9	1	6
Musical	9	6	8	3	8
Interactive	2	2	2	2	2
Teleshopping and board games	1	1	1	1	1
Erotic	1	2	2	0	0
Channel sum	97	87	88	31	68

Source: inspired by Wikipedia contributors (2010a); checked and confirmed on February 10th, 2010.

The table demonstrates that in spite of *Cyfrowy Polsat's* market leadership, *Canal+* and *Telewizja n* offer a wider programmatic spectrum with 97 and 88 channels, respectively.

TKN's limited offer of 31 channels demonstrates that the platform is still in its initial phase, while *TP* already offers a quite sizeable amount of 68 channels. Each platform weights its offer towards a different thematic compilation. While *Cyfra+* has the widest offer in most fields, including documental and travel programs, as well as in sports, film and music, *Cyfrowy Polsat* offers the most lifestyle programs, while *Telewizja n* is strongest in the children's program segment.

The platforms also compete in the field of additional digital services, which go beyond the standard quality channel offer, as shown in the table below.

Table 12: Poland's digital platforms and their additional service offer

Additional Service	Number of channels/services				
	Cyfra+	Cyfrowy Polsat	Telewizja n	Telewizja na kartę	Neotrada TP z telewizją (DTH)
HDTV	9	8	14		
Interactive services	3	3	3		
VOD	2		1		1
PPV		1			
Internet		1	1		1
Multiroom	1		1		
Time shift	1	1	1		
DVB-T	1		1		

Source: inspired by Wikipedia contributors (2010a); checked and confirmed on February 10th, 2010.

In the segment of additional services *Telewizja n* has the strongest offer, with 14 High Definition channels, three interactive programs, Video on Demand, Internet access, Multiroom audio, time shifting options, as well as with the possibility to watch terrestrial digital TV. *Cyfrowy Polsat* ranges third also in this category, indicating a price and marketing advantage by the market leader over the followers, rather than quantitative and qualitative programmatic dominance.

Cyfrowy Polsat indeed offers the cheapest package for 9,90 zł a month, which however includes only the terrestrially available and the free-to-air channels. The monthly fee increases with additional programs, reaching a maximum monthly fee of 87,80 zł. *Cyfrowy Polsat's* competitors do not offer such a basic package, which for *Cyfrowy Polsat* is

probably more a marketing tool with the middle-term goal of the customers' upgrading to more expensive packages, rather than a per se profitable offer. This must be certainly taken into consideration when evaluating *Cyfrowy Polsat's* market dominance. *Cyfra+* starts at 19,90 a month and can be as expensive as 168,90 zł. *Telewizja n's* least expensive offer is 38 zł, ergo the platform does not competitive in the lowest cost range. Yet *TVN's* DBS service is certainly competitive in the middle- and higher range subscription section, which is structured probably most transparently with each thematic section for an additional monthly fee of 16 zł. While *TP's* satellite TV offer is not structured thematically and can only be combined with an Internet subscription, starting at 59,90 zł, *TKN's* offer starts at 10 zł a month, rising relative to the decrease of concurrently prepaid months.⁴⁴⁰

The platforms have furthermore special periodical offers, drastically increasing their attractiveness from the potential consumer's point of view. For example, *Cyfra+*'s Christmas 2009 offer included a Full HD television device for 1 zł, while *Cyfrowy Polsat* offered six months of gratis TV consumption and a second subscription account decoder free of charge. *Telewizja n*, in turn, decreased its monthly fee for all thematic programs to only 48 zł.⁴⁴¹ Thus when regarding the Polish digital platform market, a dynamic competition scenario is observable with price and quality competition. The suppliers fight for customers not only against each other, but also against cable TV offers, and the terrestrial digital potential, which will bring about the traditional broadcasting segment after its switchover.

The following elaborations will present the platforms' basic financial characteristics, in order to fully reflect the market framework in this signal distribution segment.

5.6.1. *Cyfrowy Polsat*

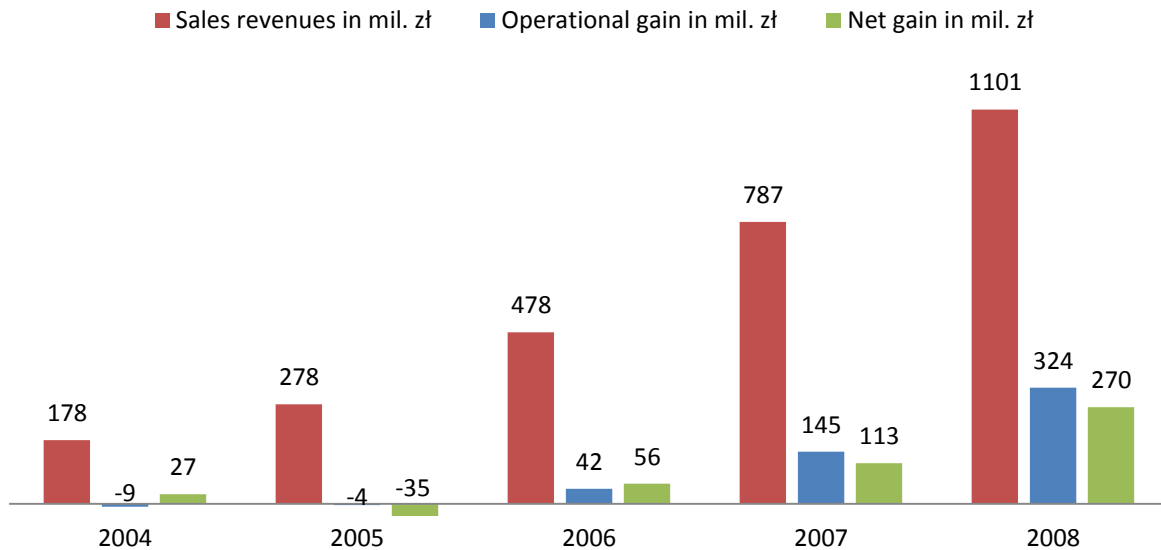
Among the five digital platforms, *Cyfrowy Polsat* is currently the most successful one with over three million paying customers. The demonstrated dynamic customer growth is naturally accompanied by a yearly growth in revenues. As demonstrated by the following chart, the year 2006 has for *Cyfrowy Polsat* been the first profitable one. During the last four

⁴⁴⁰ The suppliers' offers as of January 2010.

⁴⁴¹ Koryszewski (2009).

years *Cyfrowy Polsat's* profits have developed as dynamically as its sales, achieving a 2008 net gain of 270 million zł.

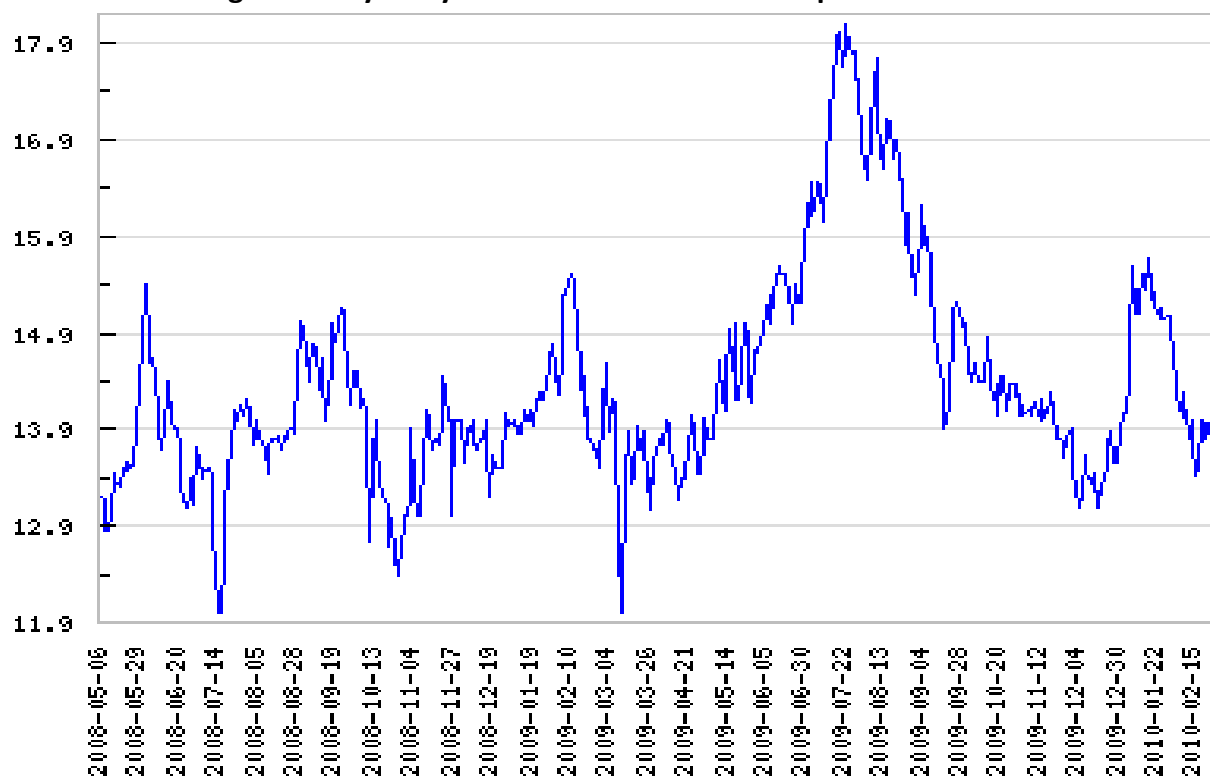
Figure 71: Cyfrowy Polsat's financial data 2004-2008



Source: Cyfrowy Polsat's financial statements 2002-2008.

As of January 2010, *Cyfrowy Polsat* is not only Poland's market leader, but also Europe's fourth biggest DBS provider behind the British *Sky Digital*, the French *Canal Sat*, and the Italian *Sky Italia*, which is certainly a noteworthy result.⁴⁴² As the only Polish digital platform so far, *Cyfrowy Polsat* successfully debuted on the Polish stock exchange in May 2008. The stock value development and its current status are demonstrated by the following chart.

⁴⁴² Cyfrowy Polsat (2010).

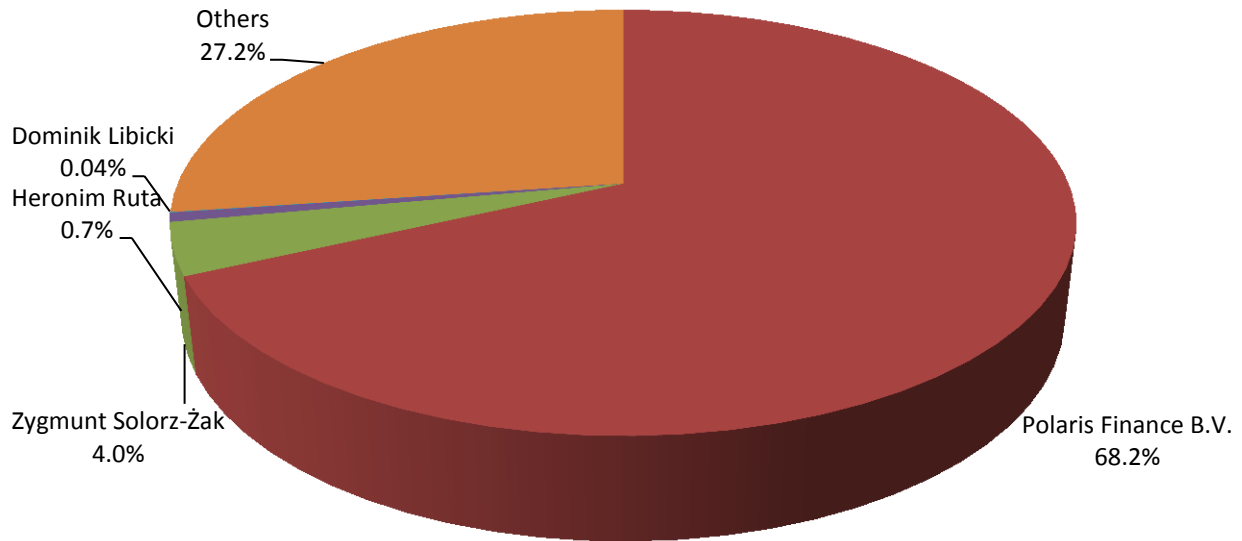
Figure 72: Cyfrowy Polsat's stock value development 2008-2010

Source: inwestycje.pl.

Since its debut, *Cyfrowy Polsat's* stock value has fluctuated between 12 zł and 15 zł, with a peak of over 18 zł in July 2009. This digital platform's stock performance led to its *WIG20* entrance in March 2009, which is Poland's major stock exchange index.⁴⁴³ *Cyfrowy Polsat* is a part of the *Polsat* group, while not being as directly integrated with *Polsat* as for example *Telewizja n* with *TVN*. The platform's majority owner is the Holland-based *Polaris Finance B.V.*, which in turn is controlled by *Polsat's* owner Zygmund Solorz-Żak, who is also *Cyfrowy Polsat's* supervisory board chairman. As presented by the following chart, noteworthy personal shares are furthermore held by Żak's close associates: the platform's supervisory board member Heronim Ruta and directors' board chairman Dominik Libicki.

⁴⁴³ Tom (2009).

Figure 73: Cyfrowy Polsat's ownership structure as of January 2010



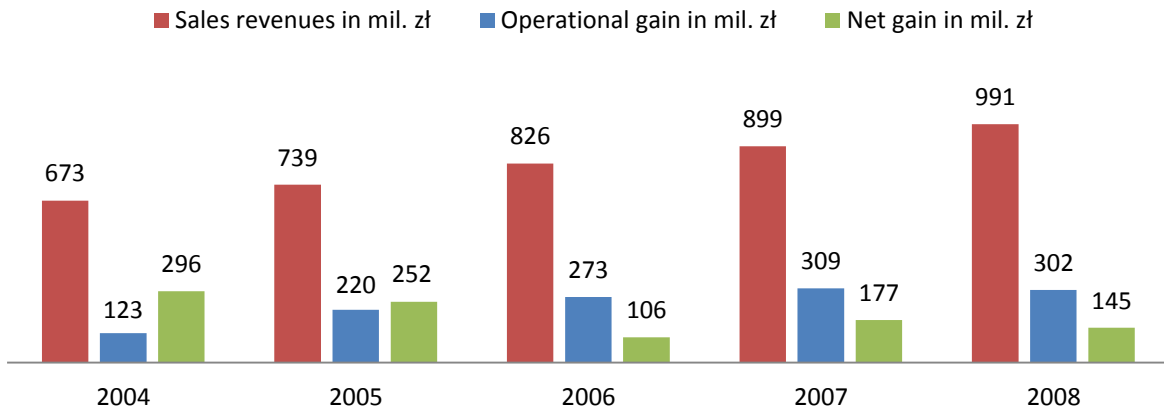
Source: Cyfrowy Polsat's financial statement 2009 and Prusek (2010).

5.6.2. Cyfra+

The second position among the digital platforms is held by *Cyfra+*. This digital platform is operated by Warsaw-based *Canal+ Cyfrowy*, whose majority shareholder (75%) is the French broadcasting group *Canal+*, which in turn is owned by the France-based international conglomerate *Vivendi SA*. The remaining 25% interest in the digital platform is held by *LGI Ventures*, a subsidiary of *Liberty Direct*, which is the owner of Poland's cable TV market leader *UPC Polska*.⁴⁴⁴ Ever since 2007, *Canal+ Cyfrowy's* platform *Cyfra+* has had half the subscribers than *Cyfrowy Polsat*, yet the two platforms revenue and profit dimensions have not been that far apart from each other during the recent years, as presented by the following chart.

⁴⁴⁴ Liberty Global (2010a).

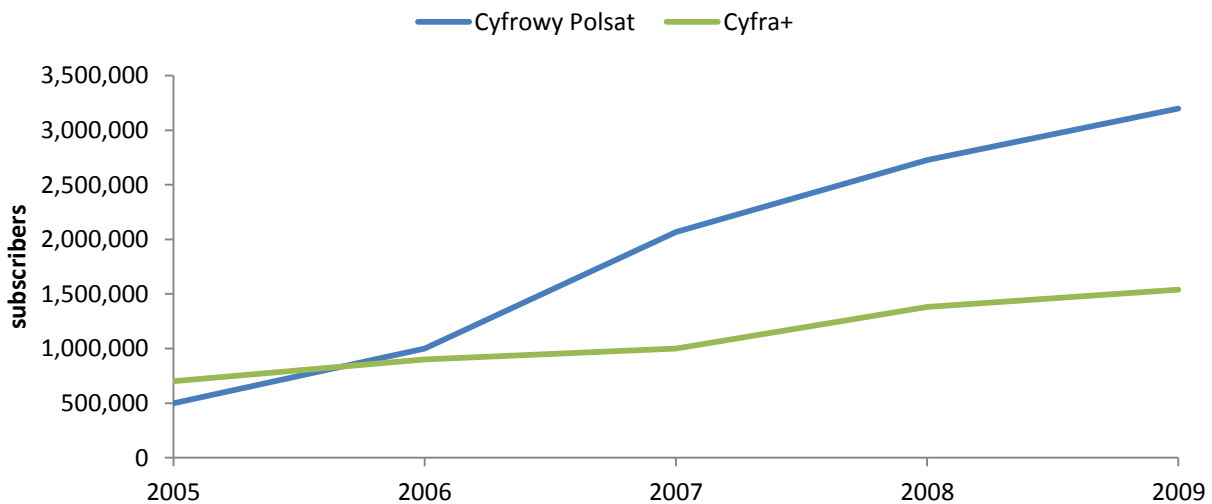
Figure 74: Canal+ Cyfrowy's financial data 2004-2008



Source: Canal+ Cyfrowy's financial statements 2002-2008.

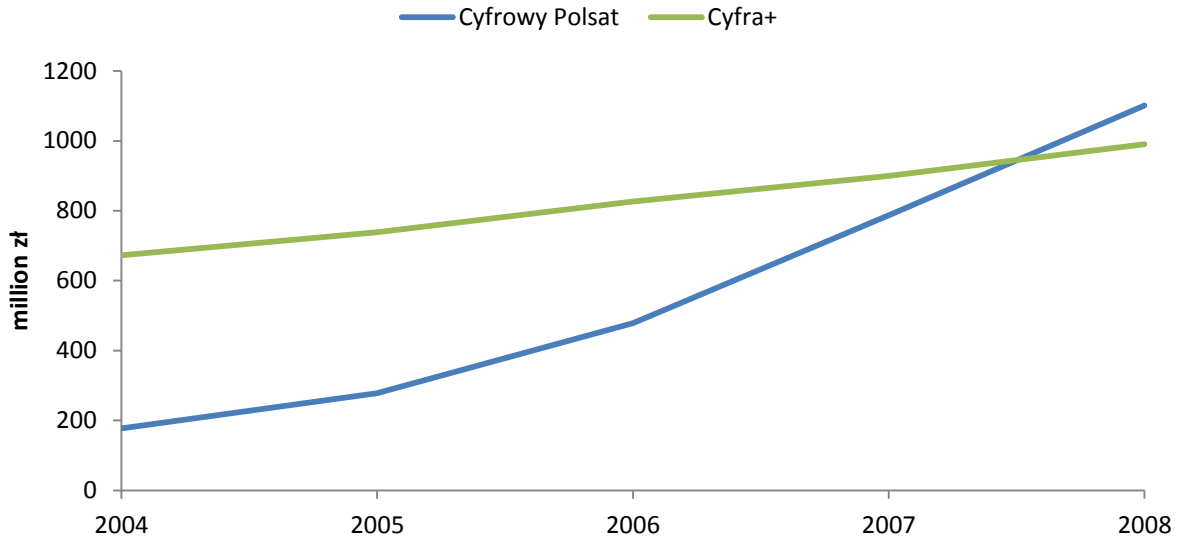
Due to the higher revenues per customer, *Cyfra+* has been the most profitable Polish digital platform until 2007. The following year, however, *Cyfrowy Polsat* outperformed *Canal+ Cyfrowy* in all major market numbers as demonstrated by the following charts.

Figure 75: The two market leaders' subscriber development 2005-2009



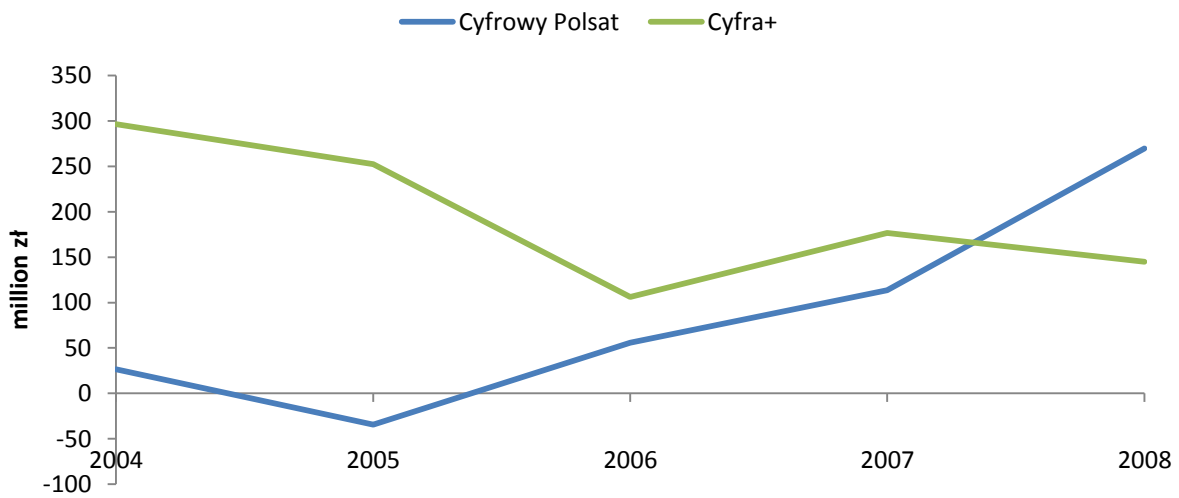
Source: author's compilation, predominantly based on the suppliers' data.

Figure 76: The two market leaders' revenue development 2004-2008

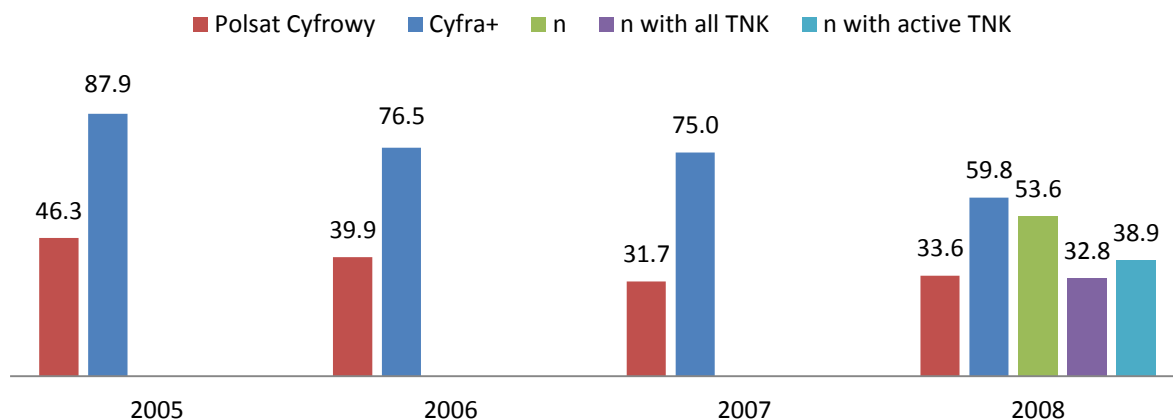


Source: author's compilation, predominantly based on the suppliers' data.

Figure 77: The two market leaders' profit development 2004-2008



Source: author's compilation, predominantly based on the suppliers' data.

Figure 78: Monthly revenues per customer in zł

Source: author's calculations based on previous figures' data.

In spite of rising revenues, which were certainly not growing as dynamically as *Cyfrowy Polsat's*, *Canal+ Cyfrowy's* profits have rather been downward sloping since the platform's first profitable year 2004. Poland's highest revenues per customer have neither been able to counteract the rising gap between the two market leaders, nor to distance the increasingly dangerous follower, *Telewizja n*. While the static perspective certainly indicates overall efficiency with a considerable gain of 145 million zł in 2008, it seems that in the middle term *Canal+ Cyfrowy* will rather have to fight to remain Poland's number two platform than to strive for the market leadership. The platform's significant advantage over *TVN's* offer is its market experience and certainly also its owner's financial strength, allowing *Canal+ Cyfrowy* to compete on a very high level, even against Solorz-Żak and *TP*.

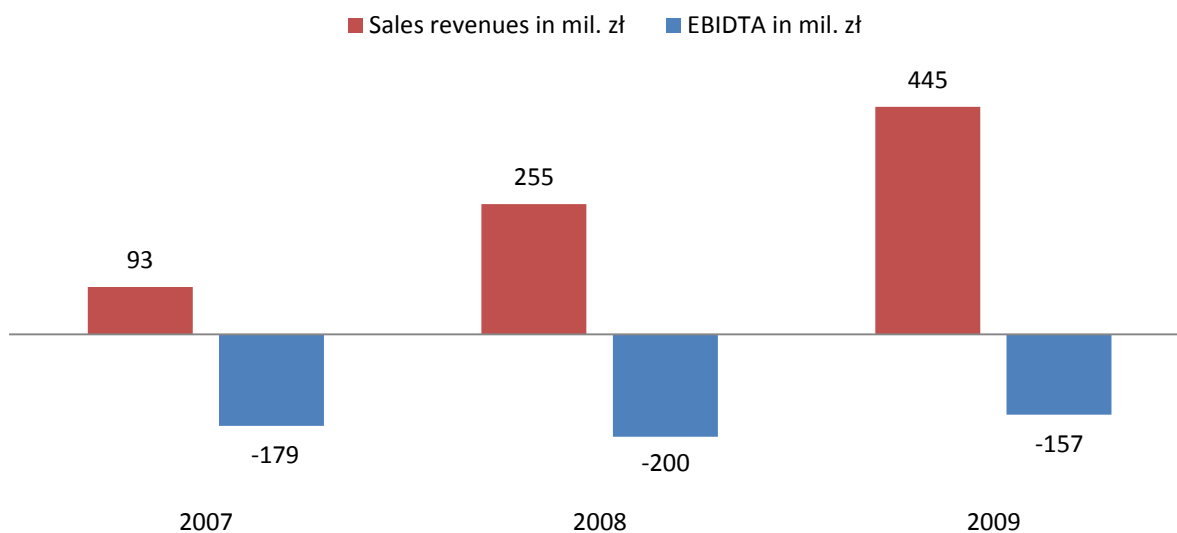
5.6.3. Telewizja n and TnK

TVN's Telewizja n, started its digital service in October 2006 and has already about 700.000 subscribers as of January 2010. In October 2008 *Telewizja n's* former official owner *ITI* complemented the offer by launching the prepaid platform *Telewizja na Kartę (TNK)*, which by the end of 2009 already had 400.000 customers. While *Telewizja n* and *TnK* are to a certain degree operated separately, with different homepages and different offers, both platforms' current owner, the *ITI*-owned *TVN* group, treats them consolidated in its financial

statements and presentations, with *TnK* being quasi presented as *Telewizja n*'s prepaid offer. It is noteworthy in this context that *Cyfrowy Polsat* and *Cyfra+* also have their prepaid versions, yet their offers are not that structured, having rather a marketing function for the subscription line of business than being a standalone offer. It seems that with the launch of *TnK*, *ITI* intended to fill the market gap for potential digital platform consumers, who however do not want to be bound by long contracts and obligatory monthly payments.

Yet as of January 2010, In spite of an impressive subscriber base growth since its launch, *Telewizja n* is even together with *TnK*'s operations still an unprofitable undertaking. Even though the platforms' revenues have risen considerably during the last three years, a positive financial result could not be achieved yet, as presented by the following chart.

Figure 79: Telewizja n's and TnK's financial data 2007-2009



Source: based on TVN financial statements 2007-2009.

Telewizja n is therefore a problematic asset for its current owner *TVN*, which had to pay a high price - especially in terms of stock value losses - for its parent holding's probable financial shortcomings. With a growingly instable *ITI*, the *TVN* group will probably struggle in the years to come, if it will still have to finance *Telewizja n*'s losses over a longer period of time. While the subscriber and revenue dynamic, as well as the probably highest technological standard among the competitors allows to expect profits maybe even in 2010, it is definite that the longer it takes for *Telewizja n* to break even, the more uncertain is its

future. One possible scenario is the platform's takeover by one of its competitors, most likely *Cyfrowy Polsat*.⁴⁴⁵ In such a case, even if the transaction were advantageous for *TVN* and *ITI* in the short term, *TVN* would certainly lose a considerable share of market power vis-à-vis its most immediate commercial competitor *Polsat*.

5.6.4. TP Neostrada (DTH)

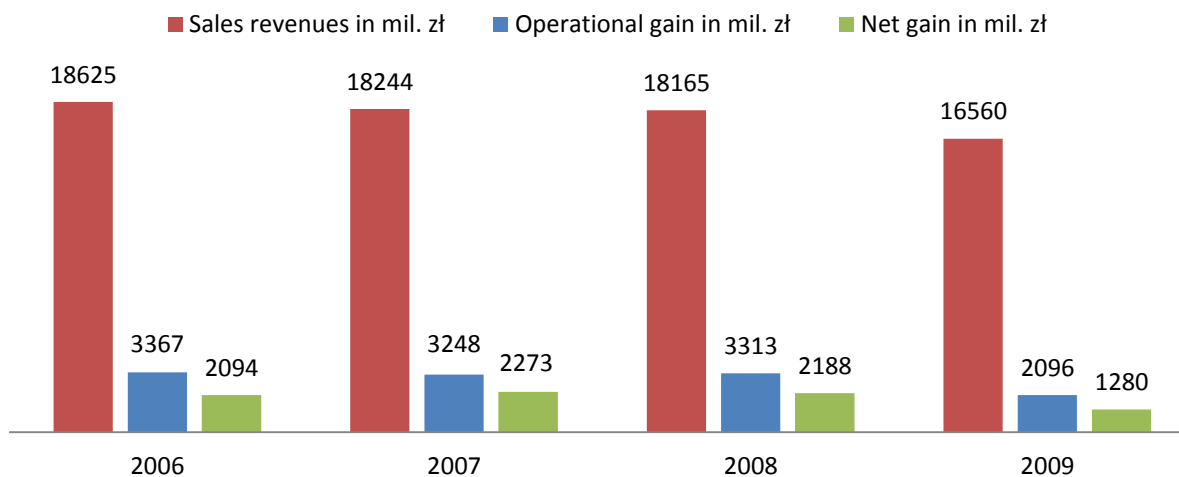
The newest digital platform is offered by the Polish telecommunication giant *Telekomunikacja Polska (TP)*. Its offer *Neostrada (DTH)* complements the group's IPTV offer *Neostrada (IPTV)*. Launched in October 2008, *Neostrada (DTH)* had over 260.000 customers in its first complete operational year 2009. While *TP* published complete financial statements for the whole group and its core businesses, such as stationary and mobile telephony or Internet providing, its television segment is financially not that transparent. It seems certain, however, that *TP*'s TV offer is unprofitable yet, which is no surprise given the recent market entrance, and will not break even unless achieving a subscriber amount of 600.000 to 900.000.⁴⁴⁶

TP is one of Poland's major corporations, being the sixth strongest asset in the *WIG20* index.⁴⁴⁷ With the decline of traditional telephony, *TP* still struggles to fully adjust to the changed market framework. While being overall financially superior in absolute figures vis-à-vis all mentioned broadcasters, *TP*'s most crucial numbers have been deteriorating during the last years, as shown by the chart below.

⁴⁴⁵ Lemańska / Dec (2010: C-001).

⁴⁴⁶ Świderek (2009b).

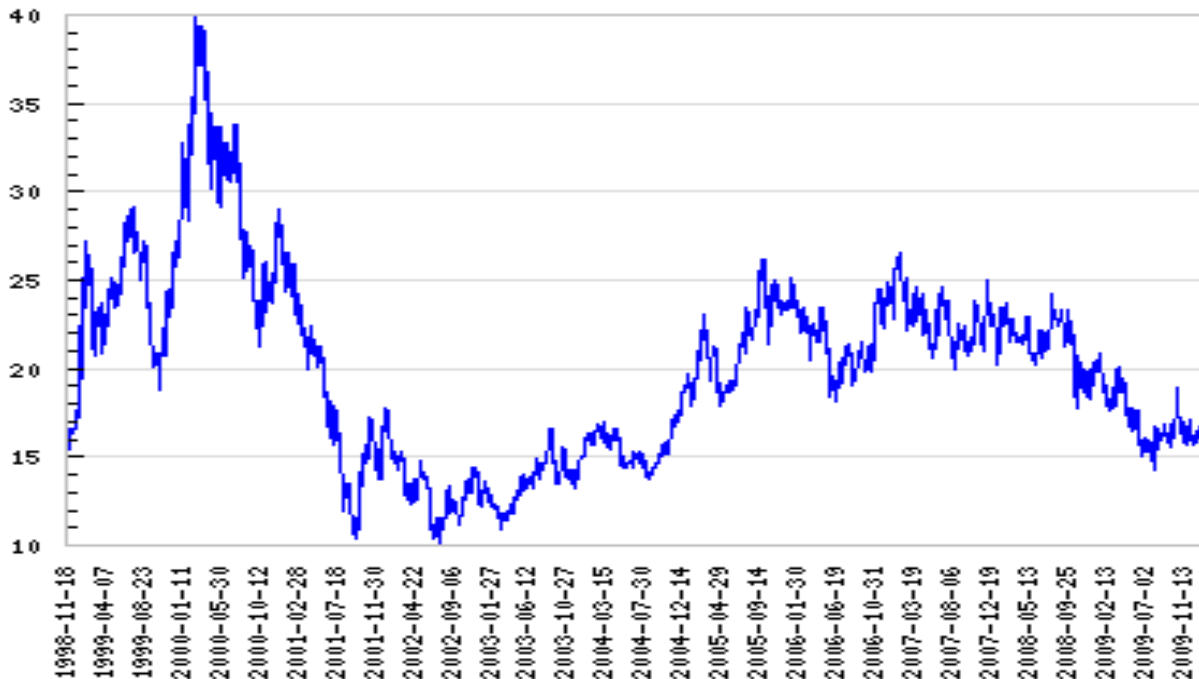
⁴⁴⁷ GPW (2010).

Figure 80: Telekomunikacja Polska's financial data 2005-2009

Source: based on Telekomunikacja Polska's financial statements 2006-2009.

Due to its dominant position on the telephone line market, the group had to face numerous anti-trust trials with fines of up to 75 million zł levied by the *UOKiK* and up to 339 million zł by the *UKE*.⁴⁴⁸ The legal struggles have had a negative impact on the group's market performance as well as on its stock value, which in the end of 2009 returned to its initial 1998 cost of 15 zł per share.

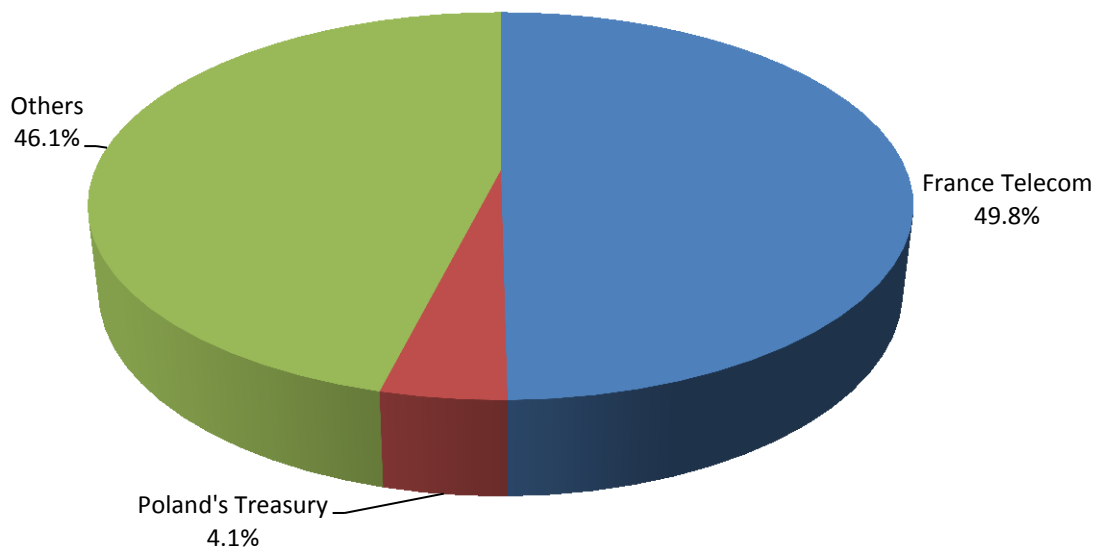
⁴⁴⁸ *UOKiK* (2007), Rożyński (2007: 22).

Figure 81: Telekomunikacja Polska's stock value development 1998-2009

Source: inwestycje.pl.

When considering *Telekomunikacja Polska's* impressive financial figures with revenues and gains counted in billions of złotys, it must be emphasized that its TV offer is for the telecommunication company rather a niche segment of its operations. Yet it is at the same time one of the promising future-oriented sectors, which may be able to counteract the corporation's gradually deteriorating position on the telecommunication market. It is an interesting Polish market characteristic that the former governmental telecommunication monopolist is predominantly held by foreign capital. As shown by the following chart, *France Telecom* holds almost 50% of *TP's* shares, being de facto the dominant decision institution in the corporation's activities.

Figure 82: Telekomunikacja Polska's ownership structure Jan 2010



Source: tp.pl as of 03.11.2009.

While as of January 2010 *TP*'s market performance in the television segment is inferior to the remaining platforms' results, *Neostrada*'s strong performance in its first year indicates enormous potential. *TP* already profits from internal spill-over effects, by offering its telephony customers broadcasting services, and will certainly increasingly do so in the middle-term future. Since *TP*'s TV offer is one of its few growing segments, it seems probable that the telecommunication giant will keep on investing in the promising audio-visual signal distribution market, possibly becoming a serious competitor for *Cyfrowy Polsat*, *Cyfra+*, and *Telewizja n* in the middle-term future.

5.6.5. The TVP platform

On September 15th, 2009, less than a week before Piotr Farfał's definite suspension as *TVP*'s chairman, the public broadcaster announced the start of its own digital platform.⁴⁴⁹ The initial gratis offer, mainly consisting of *TVP*'s own programs, was supposed to be complemented by a commercial one by December 2009. The costs involved for *TVP* were

⁴⁴⁹ Pap (2009e).

kept secret, while many predicted enormous expenses for the public broadcaster.⁴⁵⁰ Yet two months after the platform's launch, *TVP's* interim chairman announced that the public broadcaster will not follow up on the initialized project, primarily due to legal doubts concerning Farfał's contract extension with the Luxembourg satellite operator *SES Astra*.⁴⁵¹

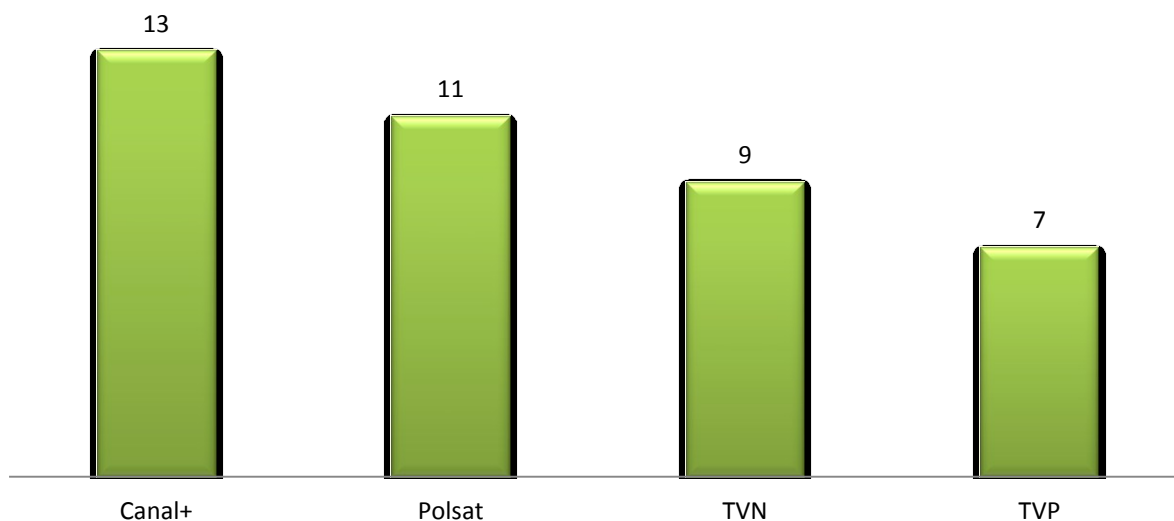
While Farfał's decision indeed wakens concerns, especially due to its timing, it is striking that *TVP* is the only leading Polish broadcaster without an own digital platform. From a strategic point of view it is critical that such a considerable market player refrains from a market segment of such dynamically rising significance. On the other hand, once the digital switchover is finalized, *TVP* will probably receive its own multiplex, with which it can try to compete with the DBS offers. Considering the profit potential accompanying digital platforms, *TVP's* market absence is almost incomprehensible; yet when considering the initial investment potential related to a digital platform launch, best exemplified by *Telewizja n*, and keeping in mind the public broadcaster's financial situation, it is only natural that *TVP* does not operate its own digital platform and very likely will not be able to do so in the middle-term future.

5.6.6. Programmatic structure of Poland's satellite TV market

The terrestrial programs are within the satellite and cable TV offer predominantly complemented by satellite programs, while the cable companies' channels are of rather local character. While the terrestrial programmatic compilation is still very limited in size, satellite broadcasting offers a more fragmented programmatic structure. Polish satellite programs are mostly created with the intention of distributing them through digital platforms and cable providers. Therefore, the owners of the digital platforms, as well as the public *TVP* group, are also the owners of many of the satellite stations watched in Poland, as shown by the chart below.

⁴⁵⁰ Lemańska (2009f: B-001).

⁴⁵¹ Makarenko (2009e).

Figure 83: Number of satellite channels run by Poland's major broadcasters in 2010

Source: based on KRRiT (2009), the broadcasters' websites, and empirical tests as of January 2010.

As demonstrated by the following table, the Polish broadcasters successfully compete with internationally renowned productions. Noteworthy in the context of Poland's viewing habits are especially the *Discovery Communications* and *Walt Disney productions* in their Polish language versions. As far as the originally Polish offer is concerned, *TVN's* satellite offer is certainly the most successful one with three products in Poland's top 30 satellite channels of December 2009. *TVN's* thematic flagship, *TVN24*, is furthermore the leader among Poland's satellite spectrum with respect to viewing rates. Even though *TVP Info* actually outperforms *TVN24* in terms of viewing rates, *TVP's* informational channel is due to its terrestrially availability not taken into consideration in this ranking, since it would contort the channels' comparability.

Table 13: Poland's top 30 satellite channels in December 2009

Rank	Channel	Market share	Owner
1	TVN 24	2,61	TVN
2	Disney Channel	0,97	Walt Disney
3	Mini Mini	0,84	Canal+
4	Disney XD	0,65	Walt Disney
5	AXN	0,64	Sony
6	Polsat Sport	0,63	Polsat
7	Cartoon Network	0,62	Time Warner
8	Discovery Science	0,61	Discovery Communications
9	Discovery	0,6	Discovery Communications
10	VIVA Polska	0,6	MTV Networks
11	Eurosport	0,5	TF1
12	Kino Polska	0,49	SPI International Polska
13	Discovery World	0,39	Discovery Communications
14	4fun TV	0,37	4fun Media
15	TVN Style	0,37	TVN
16	TVP Kultura	0,36	TVP
17	Ale Kino	0,36	Canal+
18	TVN Turbo	0,36	TVN
19	Animal Planet	0,34	Discovery Communications
20	National Geographic Channel	0,32	National Geographic Society
21	Comedy Central	0,29	Viacom
22	Polsat News	0,29	Polsat
23	Hallmark	0,28	NBC
24	BBC CBeebies	0,26	BBC
25	iTV	0,25	MNI
26	TV Silesia	0,25	Arkadiusz Hołda
27	HBO	0,24	HBO
28	MTV Polska	0,23	MTV Networks
29	Zone Reality	0,23	Chello Zone
30	Polsat Cafe	0,22	Polsat

Source: based on OBOP (2010).

5.6.7. Review

The digital platforms' popularity growth is accompanied by a growing number of specialized thematic programs, which indicates changes in Poland's viewing customs. Rather

than being presented a standard thematic mix by general channels, viewers increasingly opt for channels, which focus on a given subject. This form of viewing habit individualization seems to indicate the future trend in television consumption. By the choice of her thematic bundles, the viewer declares which type and content she wants to be presented. The broadcasters produce these specialized products and the signal distributors segregate the overall offer and provide the customer programmatic packages according to her expectations.

When regarding Poland's digital platform market it is striking that the two main commercial broadcasters also dominate this signal distribution type, sharing the market with one external competitor, the French *Canal+ Cyfrowy*. In doing so, *Polsat* and *TVN* do not only profit - or try to profit - financially from a promising signal distribution segment, they also have additional influence on the overall programmatic supply. From this perspective it is certainly problematic for *TVP* not to directly participate in the digital platform sector. From the strategic viewpoint, the public broadcaster should have invested in its own platform a decade ago, when its financial situation was rather stable. The probable reasons for the omission to do so were likely of political nature in the first place, yet with undoubted positive financial effects for its commercial competitors. *TVP's* current financial situation does certainly not allow thinking about such an undertaking in the near future, even though from the media-political and long-term financial point of view, a public digital platform can surely be considered desirable. It could give the public broadcaster a considerable influence on the programmatic satellite offer compilation on the one hand, while on the other hand making *TVP* more independent of both, public fee and advertisement revenues. While *TVP's* own thematic satellite programs indicate a move in the proper direction, those channels rather do not suffice if one of the major goals is to balance *Polsat's* and *TVN's* opinion-shaping market power.

5.7. Interior structure of Poland's cable TV market

A similar concept to the digital platforms' signal distribution method can be identified in the offer of cable companies. When digital platforms became an increasing threat to Poland's cable TV expansion, cable operators adjusted their offer in accordance with the

current concept of programmatic bundles and services. Hence cable companies also provide the viewers programmatic package options to be paid for by a respective monthly fee. Since digital television has become a standard offer in digital platforms, the digitalization of programs and services became also indispensable for cable companies, in spite of the high investment requirements involved.

The fierce competition with digital platforms during the recent years has hindered the Polish cable TV segment to maintain its dynamic development over the last decade. While in 2008 the number of cable TV customers accounted for about 4.5 million, which was about 33.9% of all households, the absolute consumer number stagnated in 2009, even signifying a slightly diminished market share of 33.2%. While the supplier density is smaller on the cable TV market than on the other main signal distribution segments, concentration tendencies also characterize this sector. Even though there were more than 600 registered cable TV operators by the end of 2009, about 72% of the market is held by the top-10 cable TV providers, as demonstrated by the following table.⁴⁵²

Table 14: Polands top-10 cable operators

Rank	Operator	Number of subscribers	Cities	market share
1	UPC Polska	1019000	116	22,15%
2	Vectra	740000	155	16,09%
3	Multimedia Polska	670000	2000	14,57%
4	ASTER	380000	3	8,26%
5	TOYA	160000	4	3,48%
6	INEA	133500	7	2,90%
7	Stream Communications	108367	16	2,36%
8	Petrus	45000	11	0,98%
9	Promax	32200	18	0,70%
10	Sat Film	25000	1	0,54%
	Others	1286498		27,98%

Source: based on Pike (2010) as of 30.09.2009.

In contrast to digital platforms, cable companies still offer their subscribers analogue programs, while their digital offer is still in the process of becoming the dominant consumption component. The initial stage of the switch-over to digital transmission is best exemplified by the fact, that the biggest cable TV provider in Poland, *UPC Polska*, did not

⁴⁵² KRRiT (2009: 62), Pike (2010).

introduce digital services for its subscribers until March 2008.⁴⁵³ On the other hand, cable TV provides offer Internet and telephone services, allowing for the so-called “triple-play” service, to a considerably wider and more developed degree than digital platforms. Consequently, the cable companies’ subscriber base embraces also other telecommunication segments, not necessarily related with television, as demonstrated by the table below.

Table 15: The cable companies’ operational segments

Rank	Operator	Number of subscribers						
		Total	TV programs			Internet	Telephony	
			Analogue	Digital	Local		Stationary	Mobile
1	UPC Polska	1019000	825100	193900	700000	437800	168600	0
2	Vectra	740000	515000	225000	500000	237000	56000	0
3	Multimedia Polska	670000	555000	98000	500000	311000	211000	0
4	ASTER	380000	380000	79000	33000	165000	64000	36000
5	TOYA	160000	160000	28000	185000	69000	14000	0
6	INEA	133500	123200	57200	118000	64100	17000	0
7	Stream Comm.	108367	68808	4064	60000	31805	3690	0
8	Petrus	45000	33000	5000	33000	15000	3000	0
9	Promax	32200	32200	5000	32000	13500	0	0
10	Sat Film	25000	23000	2000	25000	15800	2000	0

Source: based on Pike (2010) as of 30.09.2009.

The reason for the still low usage of digital TV via cable is related to the relatively high costs of the digital cable switchover, amounting to several million Euros. Such an investment can only be carried by the major market players, which is the reason for an accelerated market concentration among Poland’s cable companies. Yet between 2007 and 2009 Poland’s leading companies impressively managed to equalize the technological battle against the digital platforms. Their digital services and programmatic offer is as of February 2010 even superior to the digital platforms’ as demonstrated by the tables below.

⁴⁵³ Szewczyk / Roguski (2008).

Table 16: Poland's cable operators and their programmatic offer

Channel's theme	Number of channels											
	UPC Polska		Vectra		Multimedia Polska		Aster		Toya		Inea	
	analogue	digital	analogue	digital	analogue	digital	analogue	digital	analogue	digital	analogue	digital
General	9	10	9	10	9	8	8	8	8	9	9	11
For Poles abroad	2	2	2	1	2	0	2	1	2	2	2	2
Regional	2	3	0	3	0	1	1	0	0	1	1	3
Informative and parliamentary	6	7	4	6	6	1	6	5	6	7	1	6
Cultural and religious	2	3	2	3	2	2	3	1	2	3	2	3
Movie premium	0	7	0	7	0	7	0	7	0	7	0	6
Movie basic	3	8	5	12	5	9	6	9	6	12	0	10
Series	2	8	3	9	4	8	4	6	1	7	0	5
Sports	7	13	3	15	5	9	3	10	3	16	0	11
Documental and travelling	8	15	11	16	8	16	4	11	10	21	0	14
Education	0	1	1	1	0	1	0	0	0	2	0	2
Lifestyle	5	9	3	11	2	9	2	6	2	10	0	6
Hobby	2	4	1	1	1	1	1	2	1	2	0	2
Children and adolescents	6	10	4	11	4	8	4	4	5	10	0	10
Musical	5	8	7	8	4	6	4	8	3	12	2	11
Interactive	1	1	1	2	1	0	1	0	0	1	1	1
Teleshopping and board games	1	1	1	2	1	0	1	0	1	1	3	3
Erotic	0	3	0	7	0	6	0	1	0	7	0	2
Channel sum	60	113	57	125	54	92	50	79	50	130	19	108

Source: inspired by Wikipedia contributors (2010a); checked and confirmed on February 10th, 2010.

Table 17: Poland's cable operators and their additional service offer

Service	Number of channels/services					
	UPC	Vectra	Multimedia	Aster	Toya	Inea
Interactive services	5	1	2	1	3	1
HDTV	8	13	12	13	15	10
VOD	1		1	1		
PPV						
Timeshift	1	1	1	1	1	1
EPG	1	1	1	1	1	1
Multiroom	1	1				

Source: inspired by Wikipedia contributors (2010a); checked and confirmed on February 10th, 2010.

Despite the introduction of multiple digital services within a short period of time, it will still take some time for cable companies to gain the reputation of being technologically as advanced as digital platforms. In the mind of most Poles digital services on the highest level are still associated with satellite services rather than cable television. Yet considering the presented configuration of digital programs and services via cable, it is probable that cable TV providers - at least the biggest ones - will be able to compete on equal terms with *Cyfrowy Polsat*, *Cyfra+*, or *Telewizja n*.

It is interesting in this connection that none of the major Polish broadcasters - neither *TVN*, nor *Polsat*, nor *TVP* - is involved in the cable TV sector. The most considerable link between to the cable segment is *Liberty Global's* 25% interest in *Cyfra+*. The cable market is rather characterized by foreign investment, initially due to the more liberal legal framework for the cable TV sector, allowing for 49% of foreign capital from the very beginning.⁴⁵⁴ The following part of the paper will present Poland's four major cable companies, which together embrace over 60% of the market.

⁴⁵⁴ The Communication Law of 23 Nov 1990 already allowed a foreign capital share of 49% for cable companies.

5.7.1. UPC Telewizja Kablowa

UPC Polska (United Pan-Europe Communications) is the successor of *PTK (Polska Telewizja Kablowa)*, a cable company, which had been present on the Polish market since 1989. *PTK* was established by the American corporation *At Entertainment*, which in 1998 also marketed the first digital platform in Poland: *Wizja TV*. In 1999 *PTK* was taken over by *UPC* and integrated into the Dutch corporation as *UPC Polska*, whose majority stakes are held by the U.S. conglomerate *Liberty Media Group (LMG)*. *UPC Polska*, with the assistance of its sister company *ChelloMedia*, also acquired *Wizja TV* from *At Entertainment*, which in 2002 merged with *Cyfra+*, thereby becoming majoritarianly French property. The deal between *UPC* and *At Entertainment* amounted to \$1,15 billion, which for years remained the biggest transaction on the Polish media market.⁴⁵⁵ *UPC Polska's* parent corporation still holds a 25% share in *Cyfra+*, for which it received an \$18,4 million dividend in 2009.⁴⁵⁶

Since 2005, following the merger between US-based *Liberty Media* and Dutch-based *UnitedGlobalCom*, *UPC Polska's* parent company is now fully integrated into the Fortune 500 and NASDAQ-listed international media corporation *Liberty Global*, which is the largest cable services provider outside of the USA.⁴⁵⁷ In 2009, *Liberty Global's UPC broadband division*, embracing ten European and four non-European markets, had revenues amounting to \$4.1 billion, yet the media group finished the year with a loss of \$412 million, marking the corporation's third loss year in a row after \$423 million in 2007 and \$789 million in 2008.⁴⁵⁸ *Liberty Global's* stock value could not be shielded from these results, falling from July 2007 to September 2008 by about 80% to \$10 a share. As of January 2010, however, investors seem to have regained optimism concerning the corporation's broadband undertakings, with *Liberty Global's* stock value per piece rising to over \$25, as presented by the following chart.

⁴⁵⁵ Makarenko (2005b: 31).

⁴⁵⁶ Liberty Global (2010a).

⁴⁵⁷ Cf. Leske / Prodhan (2009), Liberty Global (2010b).

⁴⁵⁸ Cf. Liberty Global (2009), Liberty Global (2010c).

Figure 84: Liberty Global's stock value development

Source: uk.finance.yahoo.com.

While *UPC* has not published separate financial data for its Polish section during the last years, *Liberty Global* reported revenues for *UPC Polska* amounting to \$277,9 million in 2009, \$312,8 million in 2008, and \$229,3 million in 2007, indicating considerable financial strenght.⁴⁵⁹

5.7.2. Vectra

Vectra is a Gdynia headquartered corporation, present on the Polish cable market since 1991. The cable corporation has for years been enlarging its market presence mainly by acquisitions of smaller local competitors, exemplified by the 2008 takeover of *Ślubice's JimSat*.⁴⁶⁰ Yet also considerably larger transactions make up for *Vectra's* current success. In 2003, *Vectra* purchased *Dami* from *Polsat's* owner Solorz-Żak for an estimated \$35 million, becoming Poland's second largest cable company by gaining about 100.000 additional subscribers.⁴⁶¹ Two years later, the Gdynia-based company bought *Śląska Telewizja Kablowa*

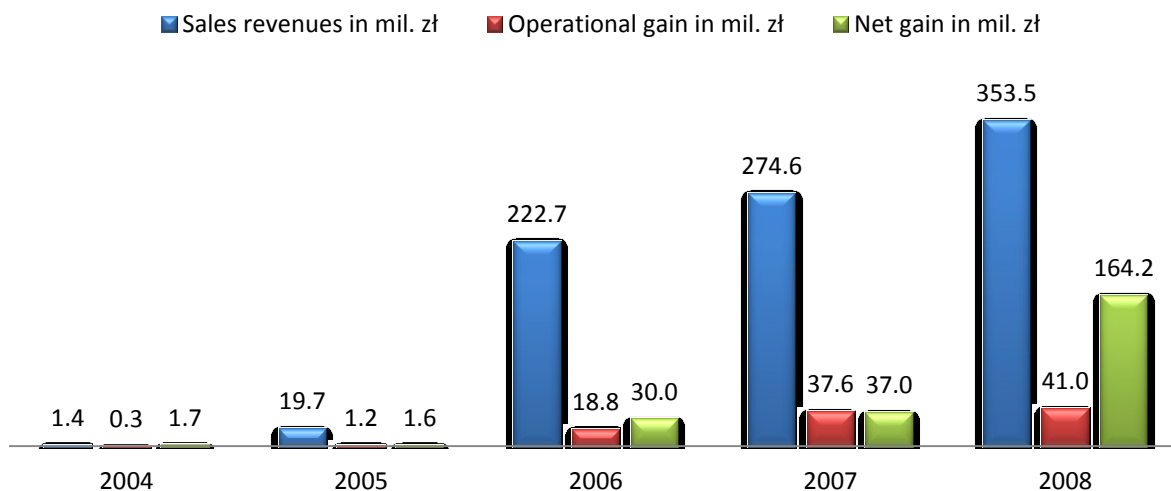
⁴⁵⁹ Liberty Global (2010a).

⁴⁶⁰ Bryl (2010).

⁴⁶¹ Makarenko (2003).

and purchased the publically-traded Warsaw-based cable provider *Spray* in 2009.⁴⁶² *Vectra's* dynamic growth is also reflected in its financial data as shown by the following chart.

Figure 85: Vectra's financial data 2004-2008



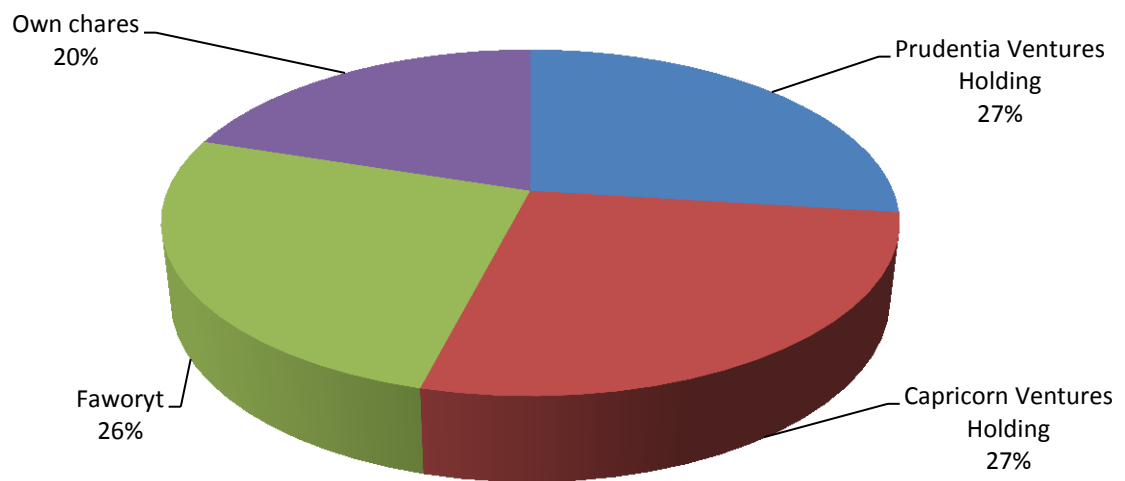
Source: Vectra's financial statements 2005-2008.

During the last four years, *Vectra's* revenues and gains were rising steadily. The most noticeable growth year has for Vectra been the year 2006, in which its revenues rose by over 1000% and its net gains by 1875%. The year 2008 also brought about a noteworthy net gain increase by over 440%, yet the 164 million zł net gain is to a considerable degree related to *Vectra's* financial operations accompanying its operational profits of 41 million zł. A substantial share of it is most likely paper profit, related to the 2008 repurchase of 20% own shares from *Vectra's* former investor *BRE Bank*. The transaction amounted to 264 million zł, valuing the cable company at 1,32 billion zł.⁴⁶³ The remaining owners are likely closer to the company's original ownership structure than *BRE Bank* as a factually external investor was. *Vectra's* ownership structure is demonstrated by the following chart.

⁴⁶² Cf. Tigi (2007), D (2009: 35).

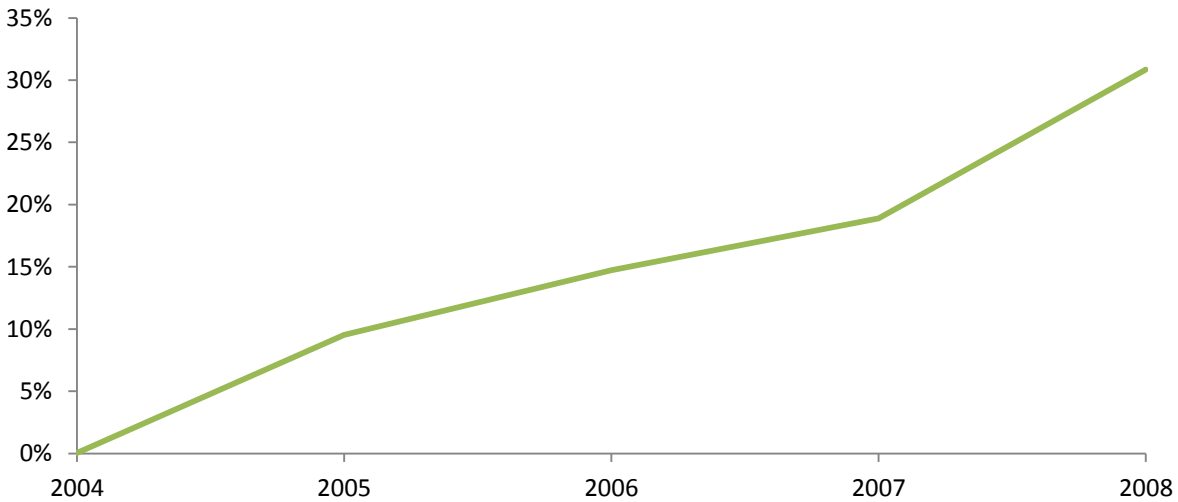
⁴⁶³ BRE Bank (2008).

Figure 86: Vectra's ownership structure



Source: Vectra's financial statements 2005-2008.

Vectra's positive financial situation is also demonstrated by its debt ratio. In spite of rising external capital significance during the recent years, a 2008 ratio of 31% is a very healthy figure, especially when considering the 2008 repurchase of 20% own shares. The development also indicates that one major source of the 2004 to 2005 revenue increase is the augmented involvement of external capital. In spite of its steady rise during the following years, *Vectra's* debt ratio was as of 2008 still far from being worrisome for the company.

Figure 87: Vectra's debt ratio 2004-2008

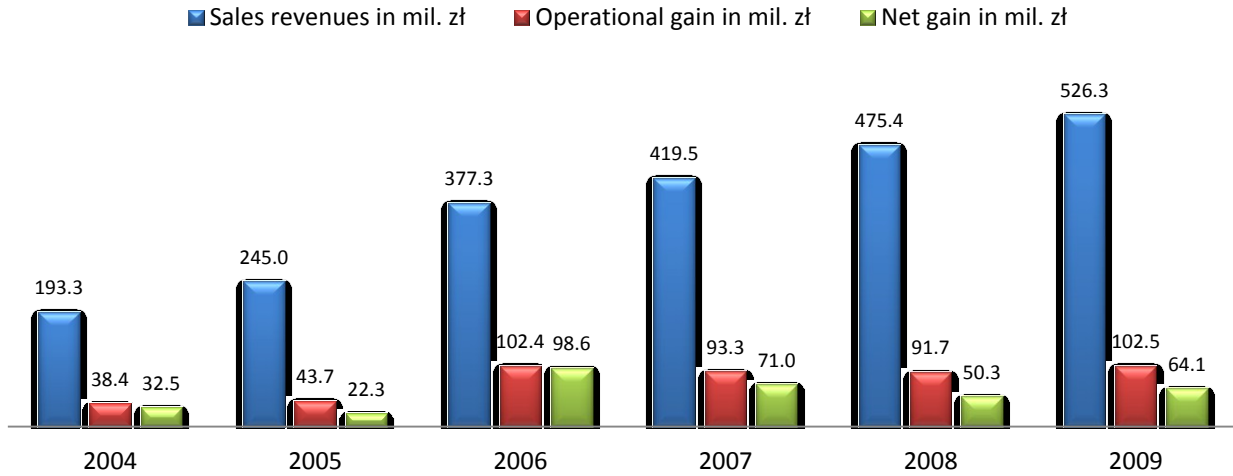
Source: Vectra's financial statements 2005-2008.

5.7.3. Multimedia Polska

Multimedia Polska was established in 1991 as a limited liability company (*Multimedia Sp. z o.o.*). From 1999 on, the corporation has been closely related to Ygal Ozechov and Tomek Ulatowski, both graduates from US universities with work experience in companies like *Arthur Anderson* or *Bank of America*. Ozechov's British-based company *Emerging Ventures Limited* is *Multimedia Polska's* strategic foreign investor since 1999 and both men are ever since the cable operator's supervisory board members.⁴⁶⁴ The investor helped the cable company to acquire or to merge with several direct competitors, gradually expanding *Multimedia Polska's* market position. As demonstrated by the following chart, the company's revenues were steadily growing during the last years, accompanied by a similarly positive profit structure.

⁴⁶⁴ Multimedia Polska (2010).

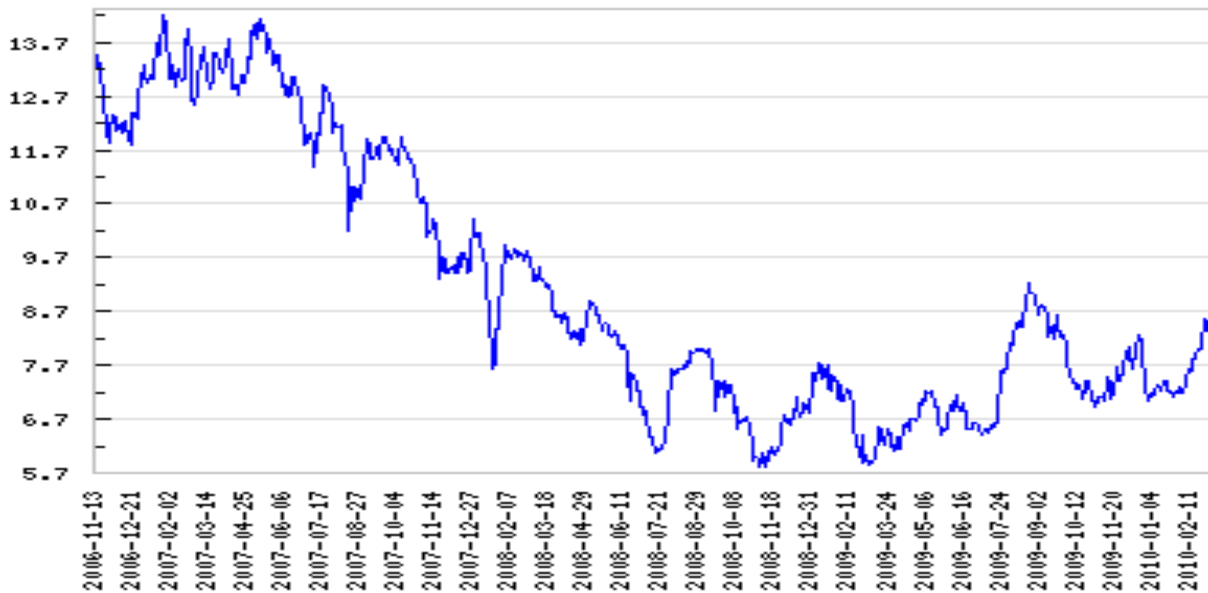
Figure 88: Multimedia Polska's financial data 2004-2009



Source: Multimedia Polska's financial statements 2004-2009.

In November 2006 the company entered the Polish stock exchange.⁴⁶⁵ The initial success deteriorated in the framework of an overall GPW crisis, slowly recovering by the end of 2009 and the beginning of 2010 as presented by the following chart.

Figure 89: Multimedia Polska's stock value development

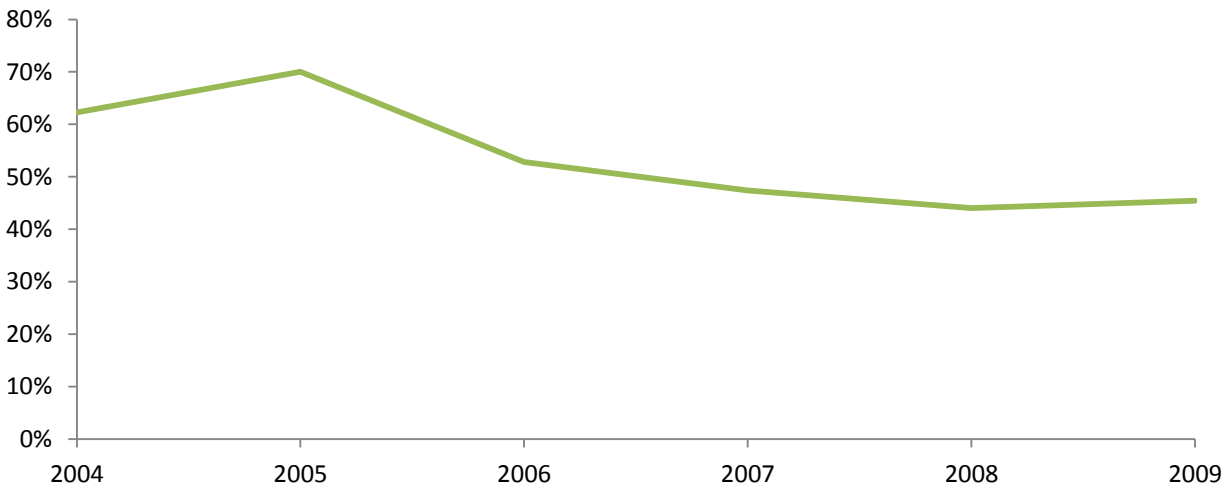


Source: inwestycje.pl.

⁴⁶⁵ Makarenko (2006).

In spite of the value losses on the Polish stock exchange, *Multimedia Polska's* revenue and profit development can be evaluated positively, accompanied by the company's healthy debt ratio of 45% in 2009.

Figure 90: Multimedia Polska's debt ratio 2004-2009

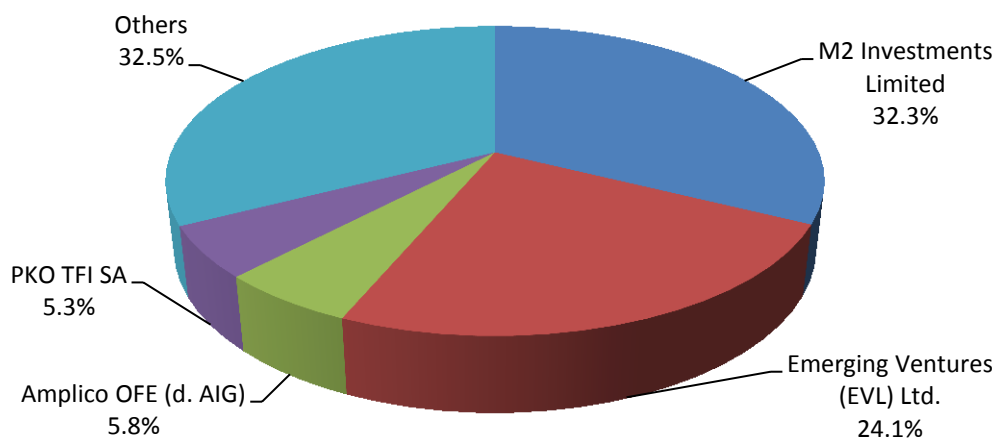


Source: Multimedia Polska's financial statements 2004-2009.

In 2009 Ozechov and Ulatowski purchased over 32% of *Multimedia Polska's* stocks by their Cyprus-based company *M2 Investments Limited*.⁴⁶⁶ The resulting ownership structure as of January 2010 is presented in the following chart.

⁴⁶⁶ Multimedia Polska (2009).

Figure 91: Multimedia Polska's ownership structure



Source: bankier.pl.

In 2007, *Multimedia Polska* was the first Polish cable company to introduce HDTV and Video on Demand.⁴⁶⁷

5.7.4. Aster City Cable

Aster City Cable came into being in 1994 as a result of the merger between several cable providers in Warsaw. In 1998 *Aster City Cable* was the first operator to introduce the Internet into its cable offer.⁴⁶⁸ Five years later, the corporation, which in 2003 shortened its name to *Aster*, was also Poland's first cable company to introduce digital TV.⁴⁶⁹ Currently, *Aster* consists of three divisions in Warsaw, Cracovia and Zielona Góra forming the *Aster group*, which was taken over by the international investment fund *Mid Europe Partners LPP* in 2005. The fund purchased *Aster* for 1,6 billion zł, which topped the mentioned 1999 *Wizja TV* deal, being as of January 2010 still the biggest investment on the Polish television

⁴⁶⁷ Ag (2007).

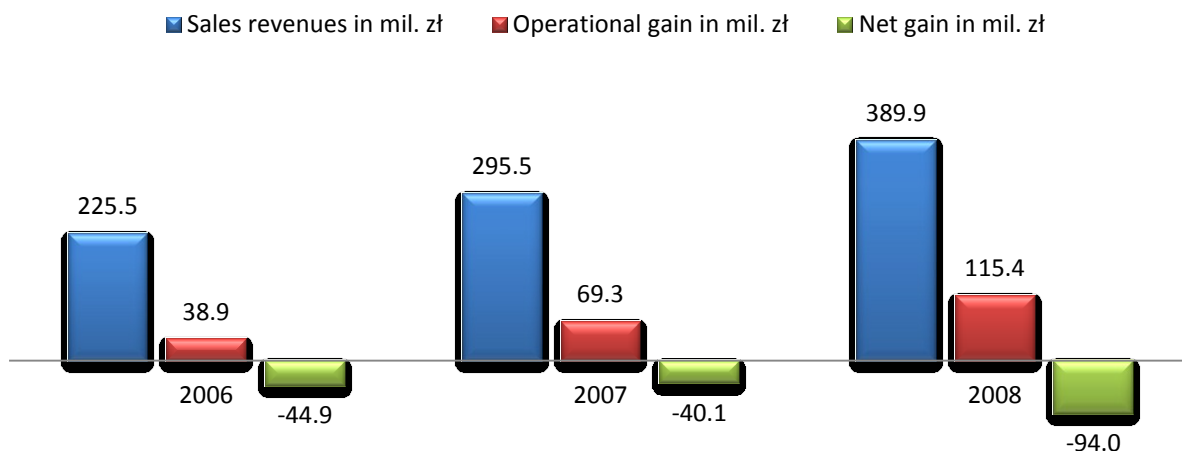
⁴⁶⁸ Kucharz (2004: 4-5).

⁴⁶⁹ D (2004).

market.⁴⁷⁰ Aster's former owners were the Polish *Elektrim*, as well as the investment fund consortium *Hicks Muse Tate & Furst, Emerging Markets Partnership* and *Argus Capital Partners*.⁴⁷¹ In 2008, *Aster* as the first cable operator in Poland introduced the so-called quadruple play, by offering a package of television services, Internet services, domestic telephone services, as well as mobile phone services.⁴⁷²

Despite *Aster's* impressive pioneer work, its financial data draws an ambivalent picture. While the company's revenue and operational profit structure reflects a highly positive dynamic, the cable operator financing costs have resulted in continuous overall losses over the last years.

Figure 92: Aster's financial data 2006-2008



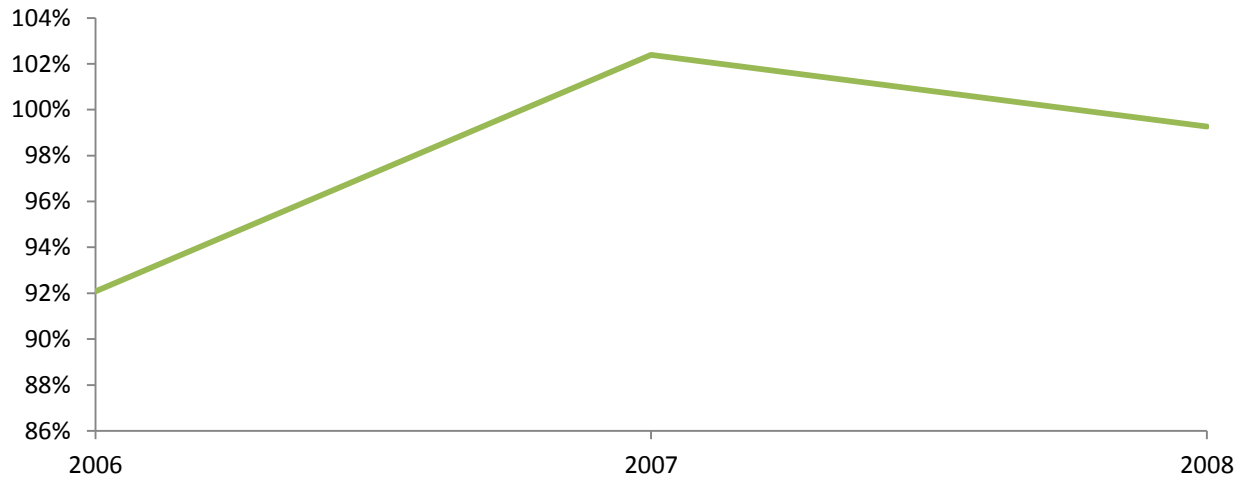
Source: Aster's financial statements 2006-2008.

In spite of *Aster's* operational success, its indebtedness of over 1,7 billion zł hinders the cable company to present adequate net profits. As presented by the following chart, the recent years' debt ratios of around 100% signify a complete lack of equity.

⁴⁷⁰ Makarenko / Rożyński (2005: 30).

⁴⁷¹ Węglewski / Tyśnicki (2002: 21).

⁴⁷² Makarenko (2008b: 34).

Figure 93: Aster's debt ratio 2006-2008

Source: Aster's financial statements 2006-2008.

Aster's financial situation makes Poland's number four cable company the primary takeover candidate in times of a gradually increasing concentration probability, not only on the local level, but also within Poland's top ten cable operators. Accordingly, market leader *UPC* signaled its interest in acquiring *Aster* already in 2005 and repeated this intention by the end of 2009.⁴⁷³

5.7.5. Review

According to the research corporation *Informa Telecoms & Media*, cable TV suppliers will dominate the global digital market with a market share of over 60% by 2012, while digital platforms will make up for about 25%, and terrestrial digital television for 15% of the world's digital TV supply.⁴⁷⁴ Yet taking into consideration the dynamic market structure of digital technology, such far-going prognoses have to be evaluated with a certain distance. Moreover, global market predictions do not necessarily imply the same proportions for the Polish market. Poland's digital time-lag and its country-specific characteristics have to be taken into additional consideration.

⁴⁷³ Makarenko (2005c: 31), Boguszewicz / Zielińska (2009: B-001).

⁴⁷⁴ Frankowska (2008).

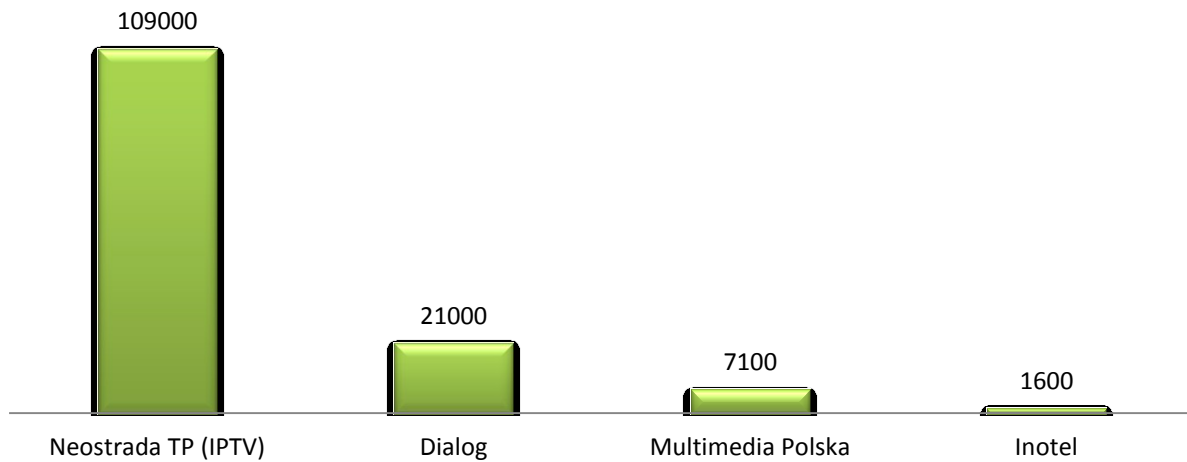
Nevertheless, it seems probable that cable TV will play a major role in Poland's future digital TV landscape. The market concentration is compared to the remaining TV signal distribution forms still relatively small in this sector. Due to the segment's potential, however, especially concerning the new phase of digitalization, this scenario is very likely to change in the middle-term future. Cable companies offer their customers multiple options in addition to television reception, such as the Internet and telephony services. While Poland's digital platforms have also entered the triple-play market through cooperation with telecommunication companies, the cable operators' Internet and telephony offers are more established due to their longer market presence and relative independence of telecom companies. As a consequence, cable companies may increasingly gain from internal spill-over effects, which *ceteris paribus* increase each customer's value. On the other hand, cable companies have for years been lagging behind as far as digital offers are concerned. While digital platforms are already established on the market of advanced digital services, the leading cable companies are still in the digital switchover process. As a consequence, purchasing-power possessing customers, who seek the highest digital technology level, would still rather think first of digital platforms than of cable companies, in spite of a current comparable offer in this segment between these two signal distribution options.

5.8 Poland's IPTV market

Several corporations provide Internet Protocol Television in Poland. The market leader in this segment is *Neotrada (IPTV)* - an IPTV service provided by *Telekomunikacja Polska* since 2006.⁴⁷⁵ Other Polish IPTV providers are *Dialog Media*, *Multimedia Polska*, *Jambox*, *Playmax*, and *Inotel*. Four of the major providers' subscriber base, as of 2009, is demonstrated by the following chart.

⁴⁷⁵ Gryniewicz (2006: 24).

Figure 94: Poland's major IPTV providers' customer base 2009



Source: compilation by the author based on Szewczyk (2010), ISB (2010a), PP (2010), Dec (2009).

Even though IPTV is forecasted to play a more significant role in the future, it still constitutes for a small part of the Polish TV signal distribution sector with a market share of less than 1%. Yet the IPTV segment grows steadily with faster Internet connections allowing for a more and more advanced programmatic service structure. As demonstrated by the following tables, Poland's IPTV offer is by 2010 contextually fully able to compete with the other two digitalized TV signal distribution forms, that is digital platforms and cable television.

Table 18: Poland's IPTV providers and their programmatic offer

Channel's theme	Number of channels					
	Neostrada TP	Dialog Media	Multimedia	Jambox	PlayMax	Inotel
General	7	8	7	10	10	9
For Poles abroad	1	2	1	2	2	2
Regional	2	0	1	3	2	2
Informative and parliamentary	5	5	3	6	7	6
Cultural and religious	3	2	3	4	2	3
Movie premium	5	5	7	7	6	7
Movie basic	5	8	8	12	13	8
Series	9	7	9	6	6	4
Sports	12	12	8	12	13	12
Documental and travelling	10	14	10	15	14	11
Education	1	0	1	1	1	1
Lifestyle	4	7	3	6	5	4
Hobby	1	1	1	2	2	1
Children and adolescents	8	8	9	9	6	9
Musical	8	6	9	10	9	8
Interactive	2	0	1	2	1	1
Teleshopping and board games	1	1	1	2	1	0
Erotic	0	4	6	0	3	2
Channel sum	84	90	88	109	103	90

Source: inspired by Wikipedia contributors (2010c); checked and confirmed on February 10th, 2010.

Table 19: Poland's IPTV providers and their additional service offer

Service	Number of channels/services					
	Neostrada TP	Dialog Media	Multimedia	Jambox	PlayMax	Inotel
Interactive services	1	1	1	7	1	3
HDTV		4	10	10	7	7
VOD	1	1	1	1	1	1
PPV						
Timeshift	1	1	1	1	1	1
EPG	1	1	1	1	1	1
Multiroom		1				

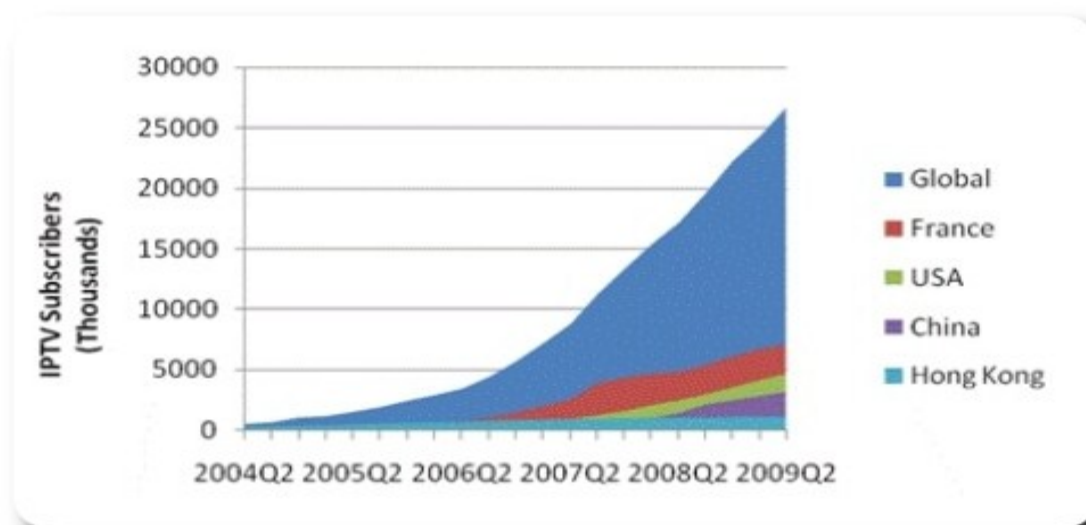
Source: inspired by Wikipedia contributors (2010c); checked and confirmed on February 10th, 2010.

Poland's IPTV potential is indicated by the capital behind the major market players. While at the back of market leader *Neostrada* stands Poland's major telecommunication

corporation *Telekomunikacja Polska*, *Dialog Media* is fully owned by Poland's copper and silver giant *KGHM*, and *Multimedia Polska* is Poland's number three cable company.⁴⁷⁶ Also Poland's digital platforms are interested in this emerging signal distribution market. Accordingly, *TVN's Telewizja n* and *Netia*, which is one of Poland's leading telecom companies, announced the start of their common IPTV offer by the end of 2009. Yet due to ongoing negotiations between the partners the launch has been postponed to 2010.⁴⁷⁷ *Polsat Cyfrowy*, Poland's market leader in the digital platform segment, as well considers investing in the IPTV market.⁴⁷⁸

The market's growth potential is also indicated by the global IPTV development. By the first half of 2009, the world's IPTV segment accounted for around 27 million subscribers, with France, the USA, and China being the global leaders in this sector, as demonstrated by the following chart.

Figure 95: Global IPTV subscriber development



Source: Boguszewicz (2009).

Compared to other European countries, Poland's IPTV market is still in its initial phase with an estimated subscriber base of less than 150.000. According to the

⁴⁷⁶ Dialog (2010).

⁴⁷⁷ ISB (2010b).

⁴⁷⁸ Lemańska (2008: B-003).

telecommunication research group *Dataxis*, out of 13,5 million European IPTV subscribers the French market makes up for more than 7,5 million, with each of the three major French competitors having alone more customers than any other European country's cumulated subscribers. *France Telecom*, for example had 25 million subscribers by the third quarter of 2009, while the whole Italian market accounted for 826.000 subscribers.⁴⁷⁹ Noteworthy is also Germany's *Deutsche Telekom*, which in 2009 signed its millionth customer.⁴⁸⁰

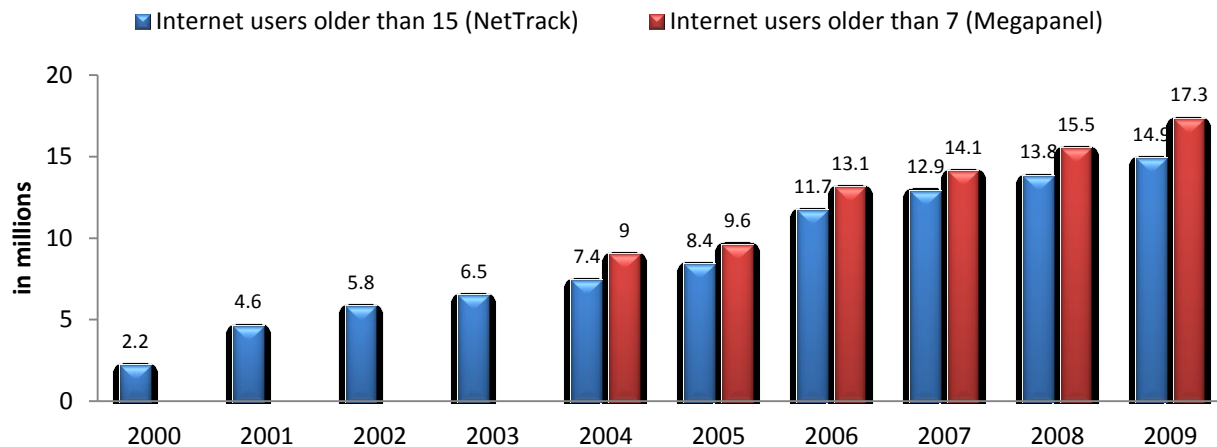
5.9. Poland's Internet Television segment

As already mentioned in the technological section of this paper, IPTV and Internet Television are different technological solutions, even though they both use the Internet protocol as their major component. The first major difference between the two concepts is the fact that while IPTV uses a closed and controllable IP framework, Internet TV uses the open and likely more vulnerable framework of the overall Internet. The second major difference concerns the reception device usage. While IPTV follows the traditional TV concept of being focused on television devices accompanied by set-top-boxes with a user's reception apparatus being physically linked to the service, Internet TV is predominantly received over PCs, while being mechanically completely independent of the reception device.⁴⁸¹ Internet-based solutions gradually gain attractively, due to their simplicity and availability within a framework of a rapidly rising number of Internet users. As shown in the following chart, Poland is no exception of this global trend.

⁴⁷⁹ *Dataxis* (2010).

⁴⁸⁰ *Mw* (2010).

⁴⁸¹ *Good* (2005).

Figure 96: Poland's Internet user development 2000-2009

Source: based on Kita (2009).

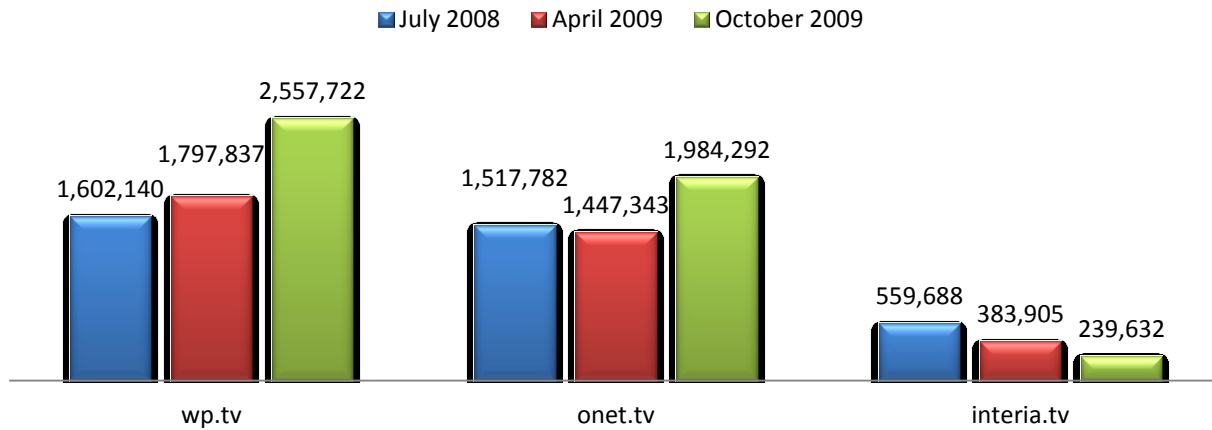
The Internet Television market is lead by US services, yet local providers are gradually creating a Polish ITV infrastructure. The major global players in this innovative segment are US projects, such as the *NBC*, *Fox*, and *ABC* joint venture *Hulu*, the *Skype* and *Kazaa* creators' service *Joost*, and *AOL*. Video sharing services, such as *YouTube*, are a special type of Internet TV, which is mostly not defined as ITV. Accordingly, *YouTube*-like services usually do not offer own or licensed material, but provide a platform for users to upload video content to share with other users.

After Polish pioneer services in the Internet television segment, such as *COMTV.pl*, or *Lemon TV*, Poland's major web portals gradually launched their ITV offers as well. In 2005, *TVP* was the first major Polish broadcaster to launch its IPTV service by the name of *ITVP*.⁴⁸² In 2008 *TVP* combined its webpage with its Internet TV offer into the platform *tvpl*.⁴⁸³ Poland's top three Internet TV offers are as of October 2009 run by the popular Internet portals *Wirtualna Polska (WP)*, *Onet*, and *Interia*, as presented by the following chart.

⁴⁸² Gryniewicz / Makarenko (2007: 36).

⁴⁸³ Ścibior (2009).

Figure 97: Poland's top 3 Internet TV services



Source: based on Megapanel PBI/Gemius.

All three web services belong to significant players on the media and telecommunication market. *WP* is owned by *Telekomunikacja Polska*, *Onet* is a part of the *TVN* group, and *Interia* is held by the *Bauer* press group. The ITV providers' strong overall positions in the web service segment are demonstrated by the following table concerning Poland's most popular websites.

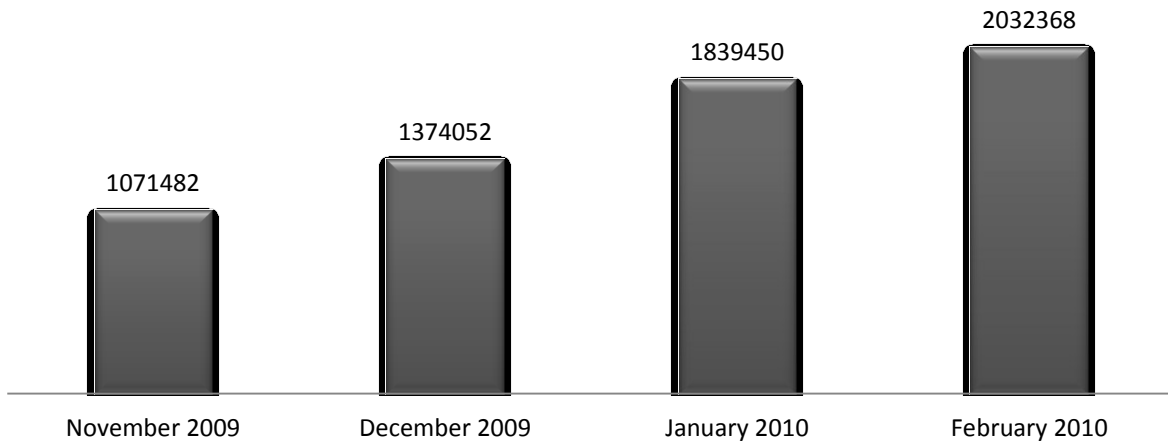
Table 20: Poland's most popular websites

Rank	Service	Real users	Visits	Range
1	Google	15 790 256	3 861 896 440	91,73%
2	Onet.pl	12 307 767	3 464 352 361	71,50%
3	Allegro.pl	10 938 728	3 592 942 175	63,55%
4	nasza-klasa.pl	10 894 626	8 479 642 025	63,29%
5	Wirtualna Polska	10 801 103	2 254 301 426	62,75%
6	Gazeta.pl	10 460 571	919 909 406	60,77%
7	Interia.pl	10 369 087	1 261 564 317	60,24%
8	youtube.com	9 727 236	1 166 822 369	56,51%
9	O2.pl	9 463 990	1 195 338 035	54,98%
10	Wikipedia	8 193 519	199 821 745	47,60%
11	GG Network	6 301 839	181 500 126	36,61%
12	Microsoft	5 799 803	68 215 920	33,69%
13	Mozilla	5 723 242	25 181 112	33,25%
14	Infor	4 494 649	61 350 050	26,11%
15	Polskapresse	4 217 252	112 401 933	24,50%
16	Spilgames	4 142 702	463 401 837	24,07%
17	Axel Springer	3 841 658	58 706 213	22,32%
18	dobreprogramy.pl	3 717 453	31 016 994	21,60%
19	Money.pl	3 710 991	48 293 838	21,56%
20	Pino.pl	3 705 363	37 823 823	21,53%

Source: Megapanel.

The first chart demonstrated Poland's ITV ranking until October 2009. Up to that month *Ipla*, an Internet TV service launched by *Polsat's* owners in 2008, was not included in the calculations due to missing data, yet *Ipla's* results in the subsequent months are considerable. Accordingly, by February 2010 *Ipla* already had over two million real users, thereby significantly improving its market position within only four months as demonstrated by the chart to follow.

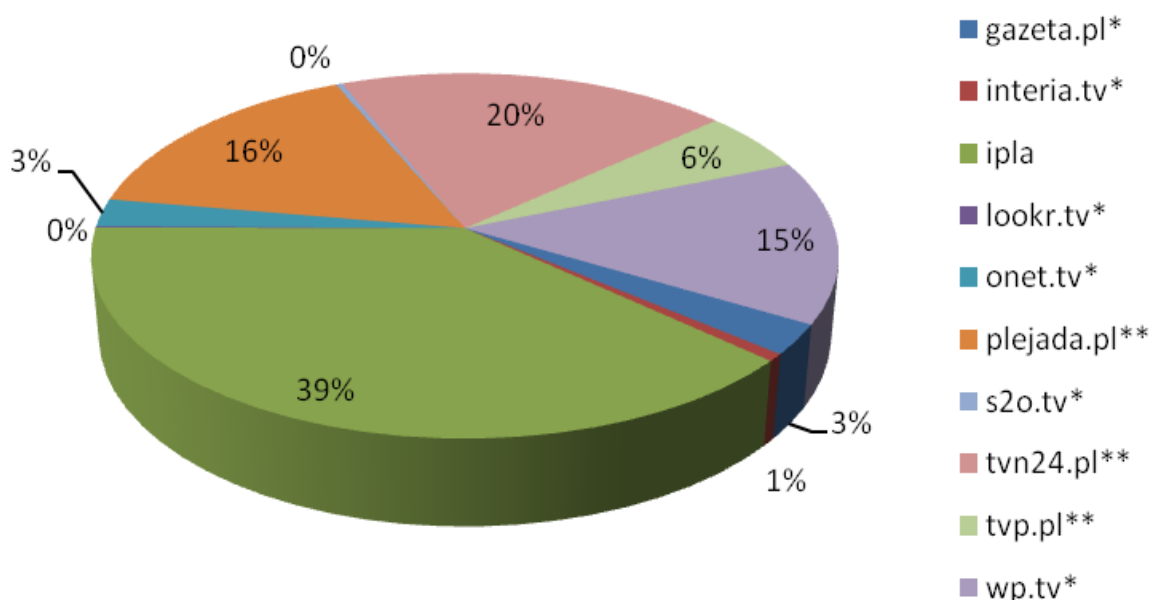
Figure 98: Ipla's real monthly users



Source: GemiusTraffic.

Polsat's service is furthermore the market leader as far as the viewing time per user is concerned with over one hour daily per average user. Even though the market research data to follow does not differentiate between watching, searching, and reading time spent on the respective services, *Ipla's* current dominance in this segment is still noteworthy.

Figure 99: Poland's ITV viewing time per user market shares



Source: Megapanel PBI/Gemius, December 2009 and Iplas compilation based on gemiusStream and gemiusTraffic.

* Viewing time includes searching and reading time

** Includes considerable non-TV material

Ipla's current success is due to its combination of thematic channels with free and payable VoD content. *Polsat's* main competitor *TVN* also entered the VoD segment in February 2010, extending its *onet.tv* offer by providing *TVN* and *Warner Bros.* productions free of charge with *vod.onet.pl*.⁴⁸⁴ In the context of Poland's Internet Television landscape also the service *Iplex* is worth mentioning, since it provides its extensive VoD database free of charge for any user, by using advertisement spots in the beginning of each stream as the major financing method. A further interesting element in this connection is *Rzeczpospolita's* audio-visual service. Accordingly, *Rzeczpospolita*, which is one of Poland's leading newspapers, implemented a video content stream in its Internet version by the end of 2009, via which the newspaper's journalists upload interviews, opinions and short political magazines.

⁴⁸⁴ Droba (2010). Premium content is partly financed by advertisement breaks.

The growing Internet Television market and the considerable involvement by leading representatives of Poland's classic mass communication forms implies a gradual interconnectedness between the Internet, the press sector, and audio-visual media content, as well as a tendency towards non-linear TV consumption preferences.

5.10 Review

The elaborations above demonstrated that the Polish TV market is in its final transition phase from analog to digital broadcasting. Even though analog signal transmission still dominates Poland with market coverage of over 60%, the proportions will drastically change in the short- and middle-term future until the total switchover to exclusive digital broadcasting is finalized in 2015. Accordingly, while in 2008 digital television accounted for barely 30%, this share has risen to over 40% within only one year.

As presented in the first part of this paper, the TV market's major product is the programmatic media good. Competition among program providers takes place on three interrelated markets: the recipient market, the advertising market, and the TV signal distribution market. The TV signal distribution market includes three major competing methods of transmission: the terrestrial method, the satellite method, and the cable method. IPTV can be considered the fourth and Internet TV the fifth signal distribution sector, due to both technologies' gradually rising significance for the audio-visual segment, both globally and locally.

On the terrestrial market, which despite a serious yearly drop still embraced over 28% of overall TV consumers in 2009, the distributors are also the ones to create and compile most of their programmatic media product as such. The reason for that lies in the scarcity of frequencies and in the bulkiness of analog signals, allowing for a very narrow programmatic landscape. The implementation of multiplexes will alter this very issue and therewith the overall terrestrial broadcasting market configuration. Currently Poland's terrestrial programmatic market is characterized by a co-existence of public and private competitors. Public broadcasting with its flagships *TVPI* and *TVP2* is leading the recipient market, yet not

dominating it, due to strong market positions by the two major commercial broadcasters, *Polsat* and *TVN*. Even though in a single-channel perspective *TVPI* still leads the recipient market, it is gradually losing viewers, while *TVP2* has lost its second position to *TVN* for the first time in 2009.

In spite of the public broadcasters' still considerable market positions on the recipient market, the commercial providers *Polsat* and *TVN* are the clear market leaders on the advertising market. This seemingly paradox scenario is explained by *TVP's* lower amount of sold advertising units. With the gradual degeneration of revenues from the public broadcasting fee, *TVP* is however very likely to free more advertising time in the near future. In spite of discriminating regulations in that matter, *TVP* is forced to extend its commercial activities, in order to prevent both, a financial disaster and the plunge to meaninglessness. The lower *TVP's* overall funds are, the lower is its competitiveness and the fewer the potential receivers of public mission content. However, the higher *TVP's* commercialization, the lower the probability of the public mission's suitable fulfillment. It seems that only a proper balance of public and commercial funds can maximize both, the public mission's realization and its effectiveness in terms of factual range. This balance is as of January 2010 far from being achieved with *TVP's* decreasing popularity and increasing financial problems due to the collapse of the public broadcasting fee system and restrictive regulations on the advertising market for the public broadcaster.

Out of *TVP's* commercial competitors, *TVN* is operationally the most profitable one, due to its flagship's high popularity, its established thematic channel mix, and its high level of self-produced and cost-effective media content. While being operationally efficient, *TVN's* financial side of the business burdens the broadcaster's overall commercial market performance. The major reasons for this condition are *TVN's* majority holder's deteriorating financial situation and *TVN's* still unprofitable but capital-intensive digital platform *Telewizja n*. Both reasons are tightly related to each other, since *TVN* had to purchase *Telewizja n* from its financially troubled parent company *ITI* at an excessive price. *TVP's* second major competitor, *Polsat*, has indeed more modest operational results than *TVN*, yet is financially backed by Poland's second richest man and his interindustrial capital group. While *TVN* is still financially troubled by its digital platform, *Polsat* is capitally connected to the DBS sector's leader, *Cyfrowy Polsat*. The two minor market participants, *TV4* and *TV*

Puls, rather struggle operationally and financially and requiring capital-intensive investors in the middle-term future.

The satellite way of TV signal distribution is in the Polish context embodied by so-called digital platforms. These platforms offer programmatic packages, consisting of own and external media goods. In addition to traditional programs transmitted digitally, the platforms offer supplementary services, such as interactive television or high definition TV. The satellite TV market has until 2007 been divided among three digital platforms: *Cyfrowy Polsat*, *Cyfra+*, and *Telewizja n*. In the years 2008 and 2009 two new competitors entered the market: *TP's Neostroda* and *ITI's TNK* (later bought by *TVN*). With 3,2 million customers as of January 2010, *Cyfrowy Polsat* embraces the highest number of subscribers in a signal distribution segment, which embraces over 36% of Poland's households. The owners of *Cyfrowy Polsat* (the *Polsat* group) and *Telewizja n* together with *TNK* (both *TVN* and formerly *ITI*) are also the major commercial players on the terrestrial distribution market. *TVP's* absence from the satellite signal distribution market is astounding from a certain angle. It can partly be explained by management inefficiencies resulting from the broadcaster's public character but also by the scarcity of public funds for the DBS purpose. While this status was supposed to be corrected by *TVP's* digital platform launch in 2009, the project turned out to be a fiasco, due to intransparent legal and political issues accompanying it, and was frozen only weeks after its commence.

The third major method of distributing TV signals is cable transmission. The Polish cable TV market is characterized by a relatively high number of local and regional cable TV providers. Nonetheless, the market is currently in a major concentrating process, which is essentially due to the new technological and financial challenges accompanying the gradual implementation of digital broadcasting. The cable market leaders are *UPC Polska*, *Vectra*, *Multimedia Polska*, and *Aster*, who have a cumulated market share of over 61%. Since the Polish cable TV market is still in its initial phase of digital transition, further market concentration can be expected. Concerning this, it seems likely from the economic point of view that, in spite of financially strong competitors in this segment, the dominating players from the two remaining signal distribution sectors, *Polsat*, *TVN*, and *TVP*, will also intent to play a certain role on the cable TV market in the years to come. In the short-term it seems,

however, more probable that *UPC* or *Vectra* will take over one of their major competitors, most likely the debt-ridden *Aster*, therewith extending their market dominance.

The new concept of IPTV is currently still not a realistic rival for the other signal distribution methods. Yet with further technological advancements, resulting to a substantial degree from faster Internet connections, the role of IPTV can, and probably will, noticeably increase in the future. The same is valid for Internet Television, which breaks with spacial and temporal dependencies of classic television consumption. It is certain, however, that these new signal distribution concepts put a large pressure on the other broadcasting methods to work on more customer-oriented overall service solutions. Digital platforms and cable operators have already started to implement respective solutions, while terrestrial TV still waits for its digitalization. The traditional linear one-way watching method is more and more complemented by timeshift solutions, on-demand services, interactive functions, and Internet-proximity. Considering the communication model and its imperfections related to the television channel, these types of non-linear and multiway solutions bear a highly constructive potential for the messages understandability and feedback proximity, if used adequately.

As far as the digital switchover is concerned, digital platforms, IPTV and Internet TV are the most advanced broadcasting options, consisting of exclusively digitalized services. While cable TV providers gradually implement digital TV with a still dominant share of analog customers, terrestrial broadcasting will remain completely analog until the initiation of the first multiplexes. The full extent of the digital switchover and the resulting reconfiguration on the TV signal distribution market will be observable most likely after 2015 - under positive circumstance even two years earlier - , when analog frequencies are planned not to be protected anymore.

The major question in this connection is which corporations will be chosen as operators for the multiplexes, and what degree of autonomy these operators will be granted in terms of channel choice. When observing the handling of this issue by Poland's regulation authorities, it seems likely that the terrestrial frequencies will be redistributed in a manner, which will allow the current market players, if not to maintain their current positions, than at least to have a considerable advantage over potential new entrants. Accordingly, it is in the understandable economic interest of *Polsat*, *TVN*, and *TVP* to limit the market access for new

competitors. It is less understandable from the macroeconomic and media-political viewpoint, however, why the central regulation institutions also seem to be inclined to guarantee the current terrestrial broadcasters partly double the frequency space than any new competitor could receive. Taking into consideration the current TV market structure, as well as the initial public planning with respect to this subject matter, it can be assumed that the chance to correct mistakes made in the concession phases between 1993 and 1997 will not be taken. The current competitor compilation may remain without considerable alterations, while only enlarging the programmatic spectrum broadcasted by today's market participants. Yet what gives hope in this context is the extent of additional terrestrial frequency space, which would even allow for new entrants if the current players marketed also their thematic channels terrestrially. This extended ether space makes the status quo's retention even with the assistance of all parties involved nearly impossible. Potential for market share variances may be most seriously expected by a new investor in *TV Puls*, which as a current terrestrial broadcaster also holds guaranteed frequencies in the new terrestrial landscape, unless it won't be *Polsat* or *TVN*. In addition to increased economic competition potential on the market, the digital switchover may also help public broadcasting to counteract its decreasing market performance and overall troublesome financial state. It may give *TVP* the chance to catch up in terms of digital availability and signal distribution market shares vis-à-vis its major commercial competitors, *Polsat* and *TVN*, if adequately positioned in the multiplexes. The addition of independent market participants, as well as a strong public market performance, could due to their market deconcentration character positive influence economic plurality, as well as opinion diversity and the journalistic quality spectrum.

The future months and years will show if the redistribution of frequencies will signify a factual reconfiguration on the terrestrial broadcasting market, or if it will merely give the current players a chance to diversify their programmatic structure. How economically and media-politically fair the new frequency allocation will eventually be, also depends on the question which institution will ultimately be the deciding one. Accordingly, while the *UKE* fosters market-based tenders, the *KRRiT* seems to be more inclined to maintain a considerable influence on the final outcome in terms of multiplex operators and the resulting channel content. As of January 2010 Poland still lacks a transparent legislative act to clearly define the competencies and decision guidelines in that matter, which has led to multiple

paralyzing conflicts between Poland's major electronic communication institution *UKE* and the country's main broadcasting regulator *KRRiT*, thereby considerably delaying the switchover process.

6. Public involvement in the Polish TV sector

After having analyzed the interior composition of Poland's television market, its degree of public involvement can be derived and evaluated. The market control mechanisms described in the theoretical sections are executed internally by the public broadcaster *TVP* and externally by three of Poland's major regulation institutions, the *UOKiK*, the *UKE*, and the *KRRiT*.

6.1. External Market control

Market access control, behavior control, and structural control are the major external mechanisms to regulate a given sector. On the Polish broadcasting market, the *UOKiK* is supposed to base its regulative decisions on economic principles, the *UKE* on technological criteria, and the *KRRiT* predominantly on media-political postulates. Since any broadcasting market is highly dependent on these three disciplines, such a regulatory mix seems to be adequate, provided a transparent field of action differentiation and a functioning power balance among the institutions is granted. The following elaborations will describe the three institutions' general characteristics and their fields of action on the Polish broadcasting market.

6.1.1. Economic regulation: the UOKiK

Today's central competition and consumer protecting institution, the *Urząd Ochrony Konkurencji i Konsumentów (UOKiK)*, origins from the antitrust institution *Urząd Antymonopolowy (UA)*, created in 1990 by the Antitrust Act subsequent to Poland's political transformation in 1989.⁴⁸⁵ In 1996 the antitrust institution's responsibilities were substantially extended to additionally embrace consumer protection, giving the body its today's name. In 2000 the institution received further authority in the fields of public subsidy control and overall product safety through the Competition and Consumer Protection Act.⁴⁸⁶ Through this act, *UOKiK's* chairman became the institution's central organ (Art.24, Nr.1). In the course of Poland's EU accession on May 1st, 2004, the antitrust and consumer protection legislation was harmonized with the European Union law. The *UOKiK* became Poland's member body in the EU's *European Competition Network (ECN)*, and its chairman represents Poland in the European Union's cross-border *Consumer Protection Cooperation (CPC)*. In 2007 the new Competition and Consumer Protection Act changed the *UOKiK's* operative framework.⁴⁸⁷ According to the new law, the *UOKiK's* chairman could now financially punish a company for overall consumer interest violations (Art.24) with a fine of up to 10% of the corporation's previous year revenues (Art.106). While before the 2007 act the *UOKiK* was obliged to initiate antitrust proceedings upon a company's request (Art.44), the new law abolished the imperative initiations, replacing them with an exclusive ex officio procedure upon non-binding notifications, which were now not only limited to corporations but to every private and legal person (Art.100). An amendment to the 2007 act also altered the chairman's election procedure for the *UOKiK*. According to the 2000 law, the Prime Minister appointed *UOKiK's* chairman in an open recruitment procedure for a cadency of five years (Art. 24.2). Once appointed, the chairman could only be recalled by the Prime Minister in case of exceptional circumstances, such as legal prosecutions or severe violations of her obligations (Art. 24.5). While the law's major amendment of February 2007 did not change this particular procedure, the small amendment of April 2007 abolished the

⁴⁸⁵ *Ustawa (1991)*.

⁴⁸⁶ *Ustawa (2000b)*.

⁴⁸⁷ *Ustawa (2007a)*.

chairman's five year cadency, the open recruitment, as well as the limitations of the chairman's recalling.⁴⁸⁸ These changes were highly criticized by the then oppositional party *PO*.⁴⁸⁹ However, after winning the subsequent parliamentary elections in October 2007, *Platforma Obywatelska* did de facto not alter the institution's political dependencies at all. The 2008 Civil Service Act indeed reinstated the chairman's open recruitment procedure, yet as of January 2010 Poland's Prime Minister can still recall the *UOKiK*'s chairman at any time without presenting particular reasons.⁴⁹⁰ Current Prime Minister Donald Tusk made use of this regulation in April 2008 by replacing Marek Niechciał, who was appointed the *UOKiK*'s chairman by Tusk's predecessor Jarosław Kaczyński only 14 months earlier, with Małgorzata Krasnodębska-Tomkiel, without presenting any particular reasons for this crucial personnel decision.⁴⁹¹ As a consequence, the *UOKiK*'s chairman as the institution's central authority is highly dependent on the ruling party and its prime minister. This factual lack of political independence is certainly critical for an institution, which has the authority to allow or forbid high-volume company amalgamations, to judge about anticompetitive behavior, and to decide over public subsidies for corporations.

The *UOKiK*'s activities have influenced Poland's television market by its economic configuration control. The major market players have been subject to numerous investigations, partly resulting in non-monetary punishments, such as the obligation to adjust subscription regulations, and partly resulting in monetary fines. The table below sums up *UOKiK*'s actions against the major companies, which are active on Poland's television sector.

⁴⁸⁸ *Ustawa* (2007b).

⁴⁸⁹ Cf. Aziewicz (2007).

⁴⁹⁰ *Ustawa* (2008b).

⁴⁹¹ Cf. Niklewicz (2008: 25), Poznański (2007: 24).

Table 21: UOKiK's investigations against companies involved in Poland's TV market

Corporation	Number of UOKiK cases between 2003 and 2010	Number of non-financial punishments	Number of financial punishments	Monetary amount of punishments
Telekomunikacja Polska	48	14	10	140941462,7
Multimedia Polska	14	3	1	41724
Aster (City Cable)	7	1	2	1975553,7
Canal+ Cyfrowy	6	2	1	7368712,05
Polsat Cyfrowy	6	1	1	993597
TVN	6	3	-	-
Vectra	4	1	2	12347,73
Polsat	4	1	-	-
TVP	3	-	-	-
ITI	2	-	-	-
Polskie Media	1	1	-	-
UPC Polska	1	-	-	-
TV Puls	-	-	-	-

Source: author's compilation based on UOKiK (2010).

While according to the presented table, *Telekomunikacja Polska* is the clear leader as far as the amount of cases and the monetary punishments are concerned, none of *UOKiK's* investigations has so far dealt with *Neostrada TP z TV*, *TP's* television offer. The telecom giant received most of its considerable fines in connection with monopolistic behavior in the field of its telecommunication infrastructure, impeding competitors from offering clients telephony and Internet connections on competitive terms. Yet the sum of almost 141 million zł of penalties between 2003 and 2010 is certainly worth mentioning, since it has resulted in an average yearly burden of over 20 million zł for the market leader in Poland's IPTV market, being at the same time the newcomer in the country's digital platform sector. While Poland's number three cable company, *Multimedia Polska*, ranks second in terms of overall *UOKiK* cases, out of all the analyzed market participants to be fined by Poland's central antitrust and consumer protection institution, it received the lowest monetary punishment amounting to almost 42 thousand zł for withholding information from the *UOKiK*

investigators.⁴⁹² The second-highest monetary fine, following *TP*, had to be paid by *Canal+ Cyfrowy*. The digital platform provider was fined with over 7,3 million zł for anticompetitive behavior in connection with its sponsoring agreement with the Polish soccer union *PZPN*.⁴⁹³ While the cable company *Aster* and the digital platform *Polsat Cyfrowy* received fines for consumer interest violations, related to unfair subscription contracts and deceptive advertisement, amounting to almost two million and, respectively, almost one million zł, the cable market vice-leader *Vectra* was fined for anticompetitive behavior and for withholding information from the investigators with over 1,2 million zł.⁴⁹⁴

The *UOKiK* as Poland's central antitrust and consumer protection institution supervises the competitors' market behavior from the economic angle. In addition to ensuring a fair competition among the major market players, the *UOKiK* also protects the cumulated consumer interests. With respect to the model of regulation policy, the *UOKiK* executes structural market control by deciding over high-volume mergers, joint ventures, and amalgamations; Poland's central economic control institution also exercises behavior control to counteract market failures by evaluating and potentially fining anticompetitive actions by investigated corporations vis-à-vis their competitors and the overall consumer interest.

As demonstrated above, several of the major players in the television broadcasting segment have been subject to *UOKiK* investigations and fines. While this type of economic market guidance is crucial for every economy in order to minimize anticompetitive and welfare-reducing actions, the executing institution's independence is a definite predisposition for legitimate and just market control. It seems however that Poland's *UOKiK* lacks this theoretically indispensable independence, being substantially tied to the ruling party's interests. Before 2007, the *UOKiK* was obliged to initialize investigations upon the market players' notifications, and its chairman's office was protected by a five-year cadency and strict recall regulations. After several amendments of the Competition and Consumer Protection Act starting in 2007, the *UOKiK* may or may not investigate a reported case of competition and consumer interest violations; the central authority in such matters is the *UOKiK*'s chairman, who can be replaced by the prime minister at any time without clinical

⁴⁹² UOKiK (2009a).

⁴⁹³ UOKiK (2006).

⁴⁹⁴ Cf. UOKiK (2008), UOKiK (2009b), UOKiK (2009c), UOKiK (2004), UOKiK (2005).

causes and explanations. These legal regulations have transformed the *UOKiK* from a factually market controlling institution to a potentially powerful instrument for the ruling party to side with favored corporations against their unprivileged competitors.

6.1.2. Technological regulation: the UKE

The *Urząd Komunikacji Elektronicznej's* predecessors were the *Urząd Regulacji Telekomunikacji (URT)* and the *Urząd Regulacji Telekomunikacji i Poczty (URTiP)*. Similar to the *UOKiK*, also the *URT's*, the *URTiP's*, and the *UKE's* central institution was, or respectively is, the institution's chairman, who is protected by a five-year cadence, allowing for a recall only in severe cases of legal violations. Yet in practice this regulation body's political independence has been limited by legal amendments, which allowed for the replacement of the respective existing institution by a newly created one. Accordingly, the September 2001-elected *SLD-UP* government legally eliminated the *URT*, whose chairman's cadency was about to last three more years, and replaced the institution and its new chairman in March 2002 by the very similar *URTiP*.⁴⁹⁵ By the end of 2005 the newly elected *PiS-LPR-Samoobrona* government, in turn, replaced the *URTiP* by the *UKE* through a similar legal procedure, thereby shortening the *URTiP* chairman's cadency by almost two years.⁴⁹⁶ In contrast to their predecessors, the *UKE* with its chairwoman Anna Streżyńska has as of January 2010 managed to remain in place, in spite of the 2007 change of government.

According to the Telecommunication Act, the *UKE* is Poland's central institution in postal and telecommunication services (Art 190.1).⁴⁹⁷ It is the decisive organ in the field of terrestrial and orbital frequency infrastructure management and electromagnetic compatibility (Art. 192.1.1), as well as in the field of postal regulation (Art. 192.1.2). The *UKE* cooperates with the *UOKiK* in antitrust matters on the telecommunication market (Art. 192.1.14) and with the *KRRiT* in the field of the audio-visual frequency spectrum (Art. 192.1.15). The *UKE* has also the authority to impose fines on entities, which violate *UKE* regulations (Art. 209), up to a maximum of 3% of the respective company's previous year's

⁴⁹⁵ *Ustawa* (2002).

⁴⁹⁶ *Ustawa* (2005b).

⁴⁹⁷ *Ustawa* (2004d).

revenues (Art. 210). The *UKE*'s chairman is appointed by the *Sejm* upon the prime minister's recommendation and the *Senat*'s agreement for a five-year cadency, which can only be disrupted by severe legal violation, illness, or resignation (Art. 190). Since the UE accession in 2004, the *UKE* represents Poland in European institutions, such as the *Communication Committee*, the *European Regulators Group*, or the *Radio Spectrum Policy Group*.⁴⁹⁸

An example of Poland's central telecommunication institution's national activities is the planning and implementing of the UMTS frequency net distribution.⁴⁹⁹ A further one is the mobile telephony market, which is regulated by the *UKE*. If the competition and price level falls below a certain acceptable level, the institution invites new players to enter the market and to internally impose pressure upon the existing competitors.⁵⁰⁰ The *UKE* has also the authority to impose fines on companies, which do not follow specific *UKE* guidelines, both, in terms of their frequency licenses and fair market behavior. Accordingly, similar to the previously described *UOKiK* situation, *Telekomunikacja Polska* has also been the *UKE*'s major target with cumulated fines amounting to over 540 million zł only between August 2006 and December 2009.⁵⁰¹ The *TP* fines were largely imposed in connection with the corporation's telecommunication infrastructure inaccessibility by market competitors. As far as the broadcasting segment is concerned, *Polsat Cyfrowy* has so far been the only company to be fined by the *UKE* for withholding information with a 300.000 zł penalty in April 2009.⁵⁰²

As the central regulating body for the Polish telecommunication sector, the *UKE* exercises market access control, behavioral control, and structural control. On Poland's television broadcasting market this institution's role is however rather limited to a shared initial market access control on the terrestrial signal distribution market. As presented in the legal section of this work, the *UKE* is responsible for the audio-visual frequency planning in collaboration with the *KRRiT*. Due to the lack of a clear hierarchy and accountability structure between these two regulating bodies, Poland's terrestrial digitalization process still waits for a confirmed implementation strategy as of March 2010.

⁴⁹⁸ *UKE* (2006b).

⁴⁹⁹ *URTiP* (2004b).

⁵⁰⁰ Szewczyk (2009).

⁵⁰¹ *UKE* (2009e). In 2002 and in 2005 *TP* was additionally fined with 1 million zł and 10 million zł, respectively, by the *URTiP*.

⁵⁰² *Ibid.*

6.1.3. Media-political regulation: the KRRiT

According to the Broadcasting Act, the *KRRiT* is Poland's central broadcasting regulation body (Art. 5ff.). Being the licensing authority in all signal distribution segments, the *KRRiT* holds the major market access control mechanism. By guarding over the programmatic compliance with existing legislative standards, including the advertisement and public mission section, the council also exercises behavioral control on the broadcasting market. Within the licensing procedure, structural control based on the programmatic suitability as to the overall broadcasting landscape is to some extent also a part of *KRRiT*'s regulation activities.

As one major reinforcement mechanism, the *KRRiT* has the authority to impose financial fines of up to 50% of the respective yearly license fee on broadcasters violating programmatic regulations and advertisement guidelines (Art 53).⁵⁰³ Such violations, which allow for monetary *KRRiT* punishment, include programmatic content not fulfilling the quantitative norms for originally Polish and European programs (Art. 15), advertisement time exceeding the legally defined limitations (Art16a), advertisement content crossing the legal framework (e.g. alcohol and cigarette commercials, hidden advertisement) (Art. 16b, Art. 16c, Art. 17), programmatic content contradicting moral and ethical standards (e.g. protection of minors, prohibition of discrimination) (Art. 18), and infringement against restrictions with respect to so-called major events (Art 20, Art 20b). As far as the major television market players are concerned, only *Telewizja Plus* managed to maintain a clear record in terms of financial fines by the *KRRiT*. The following tables shows the cumulated fines, which Poland's major TV broadcasters had to pay as of January 2010, roughly divided by violation type.

⁵⁰³ Broadcasters, which are freed from the broadcasting license fee payments, can be fined with up to 10% of their previous year's revenues.

Table 22: KRRiT fines by broadcaster and type in zł (only TV)

Broadcaster	Program-related Fines	Advertisement-related fines	Total
Polsat	438000	1610000	2048000
TVN	6140	671000	677140
TVP	410036	70000	480036
TV4	55000	255900	310900
Canal+	6000	180000	186000
Superstacja	2700		2700

Source: author's compilation based on KRRiT (1995-2009).

According to *KRRiT's* punishments, *Polsat* is the major violator in both, the programmatic and the advertisement section. All commercial competitors, except for *Polsat*-related *Superstacja*, have paid the majority of their fines for violations against advertisement restrictions, while *TVP* had to pay the dominant share of its fines due to programmatic infringements. The broadcasters' program-related fines predominantly stem from violations against violence and sex regulations relative to the broadcasting time, while the advertisement-related punishments are mostly related to exceedances of advertisement time limitations, and hidden or forbidden commercials. Yet also broader moral standards have been subject to legal actions by the *KRRiT*. One drastic example is the 500.000 zł fine imposed on *Polsat* in 2006 for mocking the handicapped *Radio Maryja* journalist Magdalena Buczek and another one is the 471.000 zł fine inflicted on *TVN* in 2008 for showing a miniature national flag tucked into dog dejection. The *KRRiT's* major punishment mechanism, the withdrawal of a broadcaster's license, has not been executed yet as of January 2010 with respect to Poland's major television market players. Nevertheless such a measure can be activated by the *KRRiT* for several reasons, among others on the grounds of a monopolistic position (Art. 38.2.3).

As extensively described in the political section of this work, the *KRRiT* is despite its decentralized member appointment regulations and asymmetric cadencies not free from political impact. In contrast to the *UOKiK* and similar to the *UKE*, the *KRRiT's* boards are difficult to replace without changing the legal environment. Legal amendments, however, limit this regulation institution's political independence to a considerable degree, as proven by *KRRiT's* history, in which incomplete cadencies dominate. On the other hand, such

personnel reconfigurations relative to the prevailing political power structure are not an automatism but require either a majority in Poland's two chambers plus the presidency, or a majority in the *Senat* and a 2/3 majority in the *Sejm* (in order to outvote a possible presidential veto). Accordingly, even though the current *PO-PSL* government dominates both Polish chambers, Lech Kaczyński's vetoes as well as the lack of agreement between *SLD* and *PO* have as of March 2010 prevented the current government from implementing its Broadcasting Act amendment plans, which among other things would legally exchange the currently opposition-related *KRRiT* authorities. Since the *KRRiT* is the dominating body to decide over public broadcasting directors, any power struggle concerning the central broadcasting institution must be above all considered in terms of personnel control over the major public broadcasting entities.

Together with the *UKE*, the *KRRiT* is accountable for planning and implementing Poland's terrestrial digital switchover. Yet as already mentioned, the lack of an explicit legal act, which would transparently define the responsibilities and decision procedures between the two regulation organs, as well as the less market-oriented digitalization policy by the *KRRiT* vis-à-vis the *UKE*, have resulted in Poland's terrestrial landscape being as of January 2010 still an analog one, despite prior semi-official plans and postulates.

6.1.4. Necessary changes in the external regulation framework

The elaborations above have demonstrated that the three major regulation institutions, which influence Poland's broadcasting market from differing angles and with different approaches, the *UOKiK*, the *UKE*, and the *KRRiT*, are not politically independent entities. While the *UOKiK* is within its current legal configuration entirely dependent on the respective prime minister, who has the authority to exchange this major economic control institution's chairman ad libitum, the *UKE*'s and *KRRiT*'s degree of sovereignty highly depends on the political power configuration in the *Sejm*, in the *Senat*, and in the presidential palace. As long as no coalition dominates all three political power institutions, nor has in addition to the *Senat* dominance the necessary 2/3 *Sejm* majority to overrule any presidential veto, neither the *UKE*'s chairman, nor the *KRRiT*'s members can be under normal

circumstances legally recalled before their respective cadency endings. Yet as Poland's post-communistic past has proven, the named political power dominance is far from being improbable. One of the consequences of such political power concentration is the option of amending any crucial act, officially founded on tackling the respective institution's internal functionality by improving its legal framework, yet factually paving the way for personnel replacements within this very institution before the actual cadency endings. Such degree of vulnerability is certainly problematic for public entities, which are inter alia supposed to guide the broadcasting market, which is in turn - at least theoretically - supposed to control especially the respective governing coalition in power vis-à-vis the country's citizens. In other words, with a sufficient political majority constellation, the rulers have the legal option to control the institutions which control these very rulers. A loop scenario is the consequence, which clearly contradicts power control, power plurality, and power decentralization postulates.

Via personnel control within the major regulation institutions a political power option can not only delegate actions for and against corporations depending on their degree of "loyalty", but it has also direct influence on the public broadcasting sphere. Since the public broadcasting supervisory boards, which nominate and recall the respective public broadcasting directors, are practically appointed by the *KRRiT*, almost direct programmatic public broadcasting control by the ruling option, which fulfils the named political dominance criteria, is the eventual effect. As a consequence, a sufficiently powerful governing coalition can not only exercise pressure on private broadcasters through the major three regulation institutions, it can also almost entirely control the public broadcasting sphere. *TVP's* political independence therefore depends on *KRRiT's* sovereignty, which is in turn highly dependent on the respective political power constellation in the *Sejm*, the *Senat*, and in the presidential palace. Only in exceptionally balanced power constellations apolitical media experts are probable to be chosen as *KRRiT* supervisors. Mostly, however, the respective political organs will choose candidates, whose future decisions they can influence. In a decentralized political power scenario, this implies a political power struggle and interior coalitions in the *KRRiT*. In a centralized political power structure, especially following a sufficiently considerable legal amendment, the *KRRiT*, and as a consequence also the public broadcasting entities will be homogenous political bodies following the government's guidelines.

This high degree of factual and potential politization acting on the three crucial regulation bodies, and therewith the fragile sovereignty of public broadcasting, calls for procedural changes and questions the existence of public broadcasting itself. It is critical that the *UOKiK* as the central economic regulation organ is entirely dependent on the prime minister. Its central decision body, the chairman, can be exchanged at will without antiseptic reasons. Doubtlessly, this scenario is unacceptable in a democratic and pluralistic system and requires adequate legislative changes. The *UOKiK* chairman's sovereignty should not depend on the government in power, but be untouchable throughout her cadency, of course leaving enough space for exceptional situations of legal violations, under which recalling must be possible if not mandatory. The *UKE*'s chairman and the *KRRiT* supervisors theoretically enjoy such a sovereignty which the *UOKiK* is currently lacking. Yet also these institutions' autonomy must be strengthened. It is unacceptable that a sufficient political majority can easily erase the crucial institutions' postulated independence by simple amendments. It is certainly constructive that respective personnel exchanges require a factual political dominance and are not tied to a simple change in political power. Yet this mechanism does not suffice, in order for those institutions' nature to be adequately sovereign. It is unquestionably understandable that each political option prefers to implement political changes with their own people in strategic offices. Yet those regulation institutions should not form a part of regular politics within a healthy system, but control certain economic, technological and media-political mechanisms entirely independent of political considerations. While the negation of the current status seems undoubted, factual improvement suggestions are more difficult to identify. The most obvious solution is to further strengthen the respective institutions' cadences in such a manner, that even respective legal amendments must respect them. In other words, even if a political option managed to implement legal changes, which eliminate, or actually rename, the control organs or their supervisory boards, they should not come into being until the respective chairmen's or the supervisors' cadencies expire. Additional professional qualification criteria, such as an adequate educational background and work experience in the area of concern, should be indispensable to hold such crucial control functions of public interest, in order to minimize the probability of strictly political supervisors, directors, and chairmen. Certainly, even those changes would not guarantee the regulation institutions' political independence, yet they

could indisputably increase their probability, especially in connection with a conscious public opinion. This brings us full circle, since the preconditions for a conscious public opinion are broadcasted opinion plurality and various levels of journalistic quality, which in turn are most effectively provided within a competitive market framework of multiple independent commercial entities and complemented by a strong public broadcaster, which again is best assured by sovereign and efficient public regulators on stable legal foundations.

6.2. Internal Market control

As far as public broadcasting is concerned, whose independence is tightly related to the political personnel constellation within the *KRRiT*, the high potential for political abuse raises the question of its socio-political right to exist. If especially *TVP* were merely a political organ under the control of each new government, causing considerable public costs and interfering with economic market mechanisms in the broadcasting sector, public broadcasting would indeed lack the proper socio-political justification. However, even within its current imperfect legislative and political framework, *TVP* as the major public broadcasting entity still fulfills a considerable economic and media-political function in Poland's television landscape.

6.2.1. TVP and its economic function

TVP is a fully government-owned media corporation embracing the nationwide terrestrial stations *TVPI* and *TVP2*, a regional broadcasting net concentrated around *TVP Info*, and several satellite programs. The broadcaster is partly financed by commercial activities and partly by public fees, which in turn are distributed by the *KRRiT*. *TVP* is directed by a one to five member directors' board, which is elected by the public broadcasters supervisory board with a 2/3 majority rule. The *TVP* supervisory board is in turn appointed by the *KRRiT*, also requiring a 2/3 majority.

TVP is by some considered an unnecessary public element, preventing the Polish television market from being an economically functional one. The public broadcasting fee represents according to the critics' view a public subsidy, distorting the economic justice among the competitors. The PSB furthermore holds frequencies, which could be redistributed among the commercial competitors, in order to expand their operational range and enlarge the scale of proven market mechanisms. These are the major economically motivated arguments against the existence of Poland's public broadcaster, which are plausible to a certain degree, while lacking the consideration for the complete amplitude of a dense, economically high-volume market with immense socio-political significance and country-specific characteristics.

Concerning this, several important parameters need to be taken into consideration, when evaluating this internal market instrument from the economic perspective. First, the broadcasting market is a sector of strategic national significance, above all due to its closeness to the public and its resulting opinion influence potential on the country's citizens. Second, it is a capital intensive market with considerable economies of scale and consequential fixed-cost depression. Third, the overall frequency scarcity allows a priori only for a quite limited amount of terrestrial competitors. A market, which is strongly influenced by diminishing long-run average costs, naturally tends towards a monopoly scenario, which is critical for every market of strategic significance. Currently, the two *TVP* programs, *Polsat*, *TVN*, *TV4* and *Telewizja Plus* exploit the natural terrestrial ether resources with analog broadcasting. Taken the broadcasters' technical range parameters into consideration, Poland's broadcasting market disposes over a maximum frequency space of about five nationwide channels. Keeping in mind the military's frequency utilization, this number would currently be reduced to four. In such a dense market monopolization tendencies are even stronger and often more difficult to transparently identify and prove. One additional factor is the trend of capital relocation to countries like Cyprus or Luxemburg, which not only offer preferential tax treatment but also allow for intransparent fund structures. Complex and blurry capital organizations, which are impossible to be fully captured by Poland's regulating authorities, are the consequence. As a result, the institutions can't know for sure whether *TV4*, for instance, indirectly belongs to *Polsat* or not. Intervention measures are also limited in scope, since in such situations Polish authorities deal with officially sovereign

foreign companies. Even though the upcoming digitalization expands the possible number of coequal terrestrial competitors, the high entry costs and the current ineffective course of the switchover process do not predict a substantial multiplication of market participants. In a dense market as the Polish TV sector concentration tendencies are natural and rational for the competitors from the commercial viewpoint. Monopolistic structures, however, imply overall welfare losses as a result of a disproportion in negotiation power between the market's demand and supply side.

On highly competitive markets with a multitude of suppliers the overall welfare is maximized, so that direct market intervention is dispensable. Yet within such a market framework as in the Polish broadcasting case an internal regulation instrument in form of a strong direct broadcaster signifies potential counterbalance for welfare-reducing economic market monopolization. While anticompetitive agreements among the commercial suppliers are probable even within a regulated market structure, public broadcasting's transparency and legal status reduces the probability of a complete lack of plurality. Even in the theoretical scenario of a unified commercial broadcasting front, a considerable part of the market will remain independent from such a possible market concentration. Considering the mentioned extreme scenario, the difference between a hundred percent monopolization and a fifty-fifty market division is immense, not only in terms of overall welfare.

Direct public broadcasting can however only reliably fulfill this market balance role when being economically and politically independent. Poland's legal framework, however, does not guarantee such necessary independence for the public broadcasters. Within an unfavorable political constellation a legal amendment can exchange all *KRRiT* members according to one political option and as a consequence also replace *TVP's* supervision and by that also its management. It is also possible that this very political option is linked to the commercial part of the sector in a way, that all parties involved, except for the consumers, profit: the respective political option due to access to favorable media coverage and the private broadcasters due to favorable legal decisions, which protect and strengthen their market positions. Consequently if a strong political option, which is able to replace *TVP's* directors for example by means of a legal amendment, is additionally linked to an informally cartelized and dominant commercial segment of the broadcasting market, complete monopolization is the consequence, despite the existence of public broadcasting. While such

a scenario is indeed a possible one, it is certainly not the likeliest option. Accordingly, none of Poland's post-transitional political options in power has managed to concentrate the broadcasting market in such a dominant way so far. The *SLD-PSL* government accomplished to take over *TVP* and to have *Polsat* as the strongest commercial broadcaster on their side, yet *TVN* remained in opposition to the former government. The *PiS* government also managed to take control over public broadcasting, yet both major commercial players, *TVN* and *Polsat*, remained in strong opposition. The current *PO-PSL* government, in turn, seems to be in positive terms with *Polsat* and *TVN*, yet has been so far unable to take control over their common public opponent. The presidential veto stood in the legal amendments' way, which is why the current government considerably contributed to *TVP's* alarming financial situation, possibly according to the motto: what you can't control, you can weaken and destroy. A weak public broadcaster signifies for *Polsat* and *TVN* higher market shares, while a nonexistent or *PO*-controlled public broadcasting sector would very probably imply complete market dominance by such a hypothetical alliance, which would certainly be characterized by a very narrow broadcasted opinion spectrum.

Yet in spite of recurring threats, Poland's broadcasting market has so far managed to defend itself from complete economic concentration. In this context *TVP's* significance is best illustrated by its hypothetical elimination, as betokened in the previous paragraph. Since all commercial market participants are driven by profit maximization and most political parties by voter maximization, a mutually profitable alliance between a strong political option and a more or less unified broadcasters' fraction is not an improbable scenario. A strong public broadcaster counteracts such market unification, since in its conception it is driven by very differing forces than commercial and political entities. Even if the described worst-case scenario of a politically arranged unification between commercial and public broadcasting is not excluded by Poland's legislative framework, it is not the most likely one and, what is even more important, it is changeable. Accordingly, Poland has become a strong democracy, so that even in such a hypothetical scenario of market monopolization by one political option, voters have the indirect power to help reestablishing a possibly disturbed balance on the broadcasting market, latest during each subsequent election. It is remarkable in this context that such a hypothetical retrieving of the public broadcaster - even with the most constructive and public-good oriented intentions - would obviously require the same

questionable takeover instruments as used by the previous hypothetically destructive rulers, at least temporarily. Yet without public broadcasting as an internal regulation instrument, such a rapid reestablishing of broadcasted opinion balance would surely be more complex, due to the commercial competitors' far-ranging autonomy. *TVP* is therefore of high economic importance in Poland's broadcasting context, in spite of its undoubted economic shortcomings. In times of political power balance the public broadcaster is a factual monopolization counterforce and in times of political and economic concentration it is a potential balance for each coming political cadence. As long as Poland's political system maintains at least a minimal political level of plurality, *TVP* will in the middle- and long run also remain a major instrument to counteract welfare-reducing monopolization tendencies by fulfilling its described economic function of market stabilization.

6.2.2. TVP and its media-political function

Opinion plurality is the central normative ideal for every broadcasting market's functionality. Consequently, *TVP's* major media-political function is corresponding to the presented economic one. While commercial broadcasters may limit the broadcasted opinion spectrum based on the expected long-term profit structure, public broadcasting must at least fill the gaps left behind. In addition to pure demand-orientation, it is also imaginable that in a dense broadcasting market as in the Polish one commercial players will take sides in agreement with one political option by providing the public only one predefined version and analysis of events, which the public interest embraces. It is politically rational for a government, for instance, to offer the private entities rewards for favorable media coverage. The rewards can take the form of favorable legal amendments, which for example close the market for new competitors, or favorable controlling and decision-making by regulation entities, such as the *UOKiK*. Assuming a purely commercial market, an opinion monopoly can be the consequence of such an alliance between one political option and the commercial broadcasters, which highly contradicts the society's factual opinion spectrum. The resulting underrepresentation of the disfavored political opinion spectrum may further weaken it due to certain influence mechanisms on the voters, which mass media disposes over. Public

broadcasting acts as a balancing instrument counteracting such opinion monopolization tendencies. Only in the extreme case of political and economic concentration, which embraces the whole commercial sector and manages to control public broadcasting as well, opinion plurality will be on its lowest level. Yet also in such a democratically critical situation it is in the voters' hands to alter the opinion monopoly scenario in each new governmental cadence. Any strong political option can make use of the actual legal bias and rapidly release *TVP* from the control of the described hypothetical politico-economic alliance. Without public broadcasting such a fast broadcasting opinion demonopolization would be most likely impossible, due to the right for private entities to broadcast according to their will, and due to the informal character of respective alliances between the world of politics and business. In a market of low entry barriers and a multitude of commercial competitors opinion plurality is likely maximized by market mechanisms, yet in a compact and high-volume broadcasting sector analyzed market failures and informal alliances can rather minimize the broadcasted opinion spectrum, presenting the public a distorted mirror of its society. *TVP* is therefore crucial as an instrument, which keeps the broadcasted opinion plurality and diversity on a high level, at least in the middle- and long term. While competitor maximization is the major directive for adequate opinion plurality, public broadcasting is crucial in naturally dense markets, in order counteract opinion diversity's minimization by means of the so-called public mission.

The second major media-political function is public broadcasting's role as the maintainer of a certain journalistic quality level. This function is of course closely related to the first one. In a competitive market with multiple broadcasters, various levels of journalistic quality will likely be represented. In a dense market, however, mainstream media coverage tendencies will dominate. Taking into consideration the modern infotainment phenomenon, which favors soft news over hard news, neglects background information, provides picture sequences in an attractive and emotional but rather not informative way, it is questionable that within certain market structures the results of demand-orientation are congruent with socially desirable media content. Public broadcasting is to set journalistic quality standards, which not only entertain the viewers but also inform and even educate them. Even though *TVP* is not free from market-demand influences, since public broadcasting must as well be efficient enough to attract the desired audience, it can combine the demand for visual

entertainment while maintaining journalistic standards, therewith increasing the quality bar also for its commercial competitors.

6.2.3. Necessary changes in the internal regulation framework

While in Poland's specific broadcasting market framework *TVP* fulfills crucial economic and media-political functions by counteracting monopolization tendencies and fostering competitor and opinion plurality, its sovereignty is strongly limited by its legal framework. The described incomplete political *KRRiT* independence implies the analog lack of autonomy for *TVP*. Any political option, which holds the presidency and disposes over majorities in Poland's two chambers, or which does not control the president but the *Senat* and 2/3 of the *Sejm*, is able to exchange the *KRRiT* supervisory board, which can in turn exchange *TVP's* supervision and direction. Political neutrality is therefore certainly not guaranteed in the long term. In the short term such neutrality, or rather political plurality within *TVP*, can be maintained, depending on the respective political power constellation during the critical personnel appointments. The asymmetric cadencies within *KRRiT* as well as their decentralized appointing mechanisms foster political plurality and possibly even objectivity, while the discussed legal amendment option threatens public broadcasting's sovereignty. Yet even without this radical takeover option, *TVP's* decision structures can be subject of political negotiations of a more extended political context. Accordingly, *SLD* was involved in negotiations with both *PO* and *PiS* concerning the political price of their decision to outvote or to maintain the presidential vetoes concerning the planned governmental amendment of the Broadcasting Act. The eventual favorable voting for *PiS* most likely signified the loss of control over *TVP2*, which is currently in the post-communists' hands. Such a framework is far from being optimal for the proper functioning of the public broadcasting sector. Yet even in its politicized version it is due to its integration in Poland's overall political power struggle still superior to the lack of internal market regulation, which in most of all possible scenarios balances economic and media-political concentration and even monopolization tendencies. The suggested cadency sovereignty within the central

regulation institutions, especially within *KRRiT*, would also imply a more robust *TVP* autonomy, while complete political independence is surely utopian in the Polish context.

In order to maximize *TVP*'s efficiency as an economic and media-political balancing instrument, its financial stability must be guaranteed. The current license fee system de facto collapsed by the end of 2009, which is not only due to according measures by Poland's current government but also to the system's very nature as a practically voluntary donation structure. Among several possible mechanisms, the broadcasting fee's tax binding is imaginable, yet only in a way, which avoids the public budget redistribution system. Last but not least, the public service mission must be concretized from its current general version, which de facto embraces almost every media content from informative journalism, over sports, to entertainment. Based on a reasonably defined public service remit, a financial and programmatic separation of *TVP*'s commercial media content and public mission programs must be maintained and fostered in a transparent and communicative way, so that the public as its major financer becomes constructively involved in this valuable public media good.

7. Final recapitulation

This work examined Poland's television landscape, in order to investigate the proper degree of public regulation in this particular market. In order to do so, a theoretical fundament was created first, divided into the major technological parameters accompanying the market, and the two main theoretical approaches influencing this industry: the theories of competition policy and media policy. This theoretical base gave answer to fundamental questions concerning the specifics of television markets in general and suggested normative postulates for the empirical analysis to follow. Based on the technological and theoretical foundations, Poland's television market was presented in its broader context. Country-specific characteristics as to the market's integration into its wider socio-political framework called for considering the Polish television sector's historical development, beginning at the country's major political transition in 1989. Poland's television market was subsequently analyzed from three major angles: from the political, the legislative, and the economic

perspective. Each viewpoint introduced crucial factors determining Poland's factual television market framework and whose neglect would have caused the overall analysis and its conclusions to be deficient. The detailed analysis of the market's broad framework allowed for a definition of its public market involvement level and its shortcomings according to economic and media-political postulates, on whose base refinement suggestions could be formulated.

When analyzing a broadcasting market, it is indispensable to capture its major technological traits. Audio-visual signals can be sent and received in two major technological ways. Analogue and digital data conversion determine the bandwidth which an audio-visual signal requires. Digital signal transmission as the newer and more robust method allows for higher resolutions and takes up less bandwidth than analog signal diffusion. Due to the natural scarcity of especially terrestrial frequencies, the choice of conversion method directly determines the number of potential competitors on the market. The three major signal distribution types are: terrestrial, satellite, and cable broadcasting. These main signal diffusion methods are completed by new, Internet-based techniques, such as IPTV or Internet Television, which in the middle- and long-term future may form a major threat to the three more traditional signaling forms.

In addition to the signal distribution market, the television sector can be divided into two further major sub-sectors: the recipient and the advertisement market. All three sub-markets are interrelated and guided by predominantly economic parameters. The broadcasters compete for viewers on the recipient market via specific media content, its form, and its viewing costs. They compete on the advertisement market for other corporations' marketing budgets via their predicted and factual audience rates. The signal distribution market is in turn characterized by the suppliers' competition for direct monetary consumer payments via programmatic bundle offers. Since terrestrial broadcasting is the only free-of-charge viewing option in its current analog configuration⁵⁰⁴, satellite and cable suppliers, as well as the newest forms of signal transmission, must attract viewers by more elaborated offers in terms of programmatic quantity, quality, and additional services.

⁵⁰⁴ The public broadcasting fee is not taken into consideration here, since it is independent of the signal reception type and the factual consumption.

All three sub-markets deal with programmatic media content as their major direct or indirect market object. Unique programmatic goods can be categorized according to their greater content, form, and target group. The most general programmatic division can be identified in form of information versus entertainment. While the information category embraces media content, such as news, political magazines, or history programs, the entertainment section basically covers all remaining sections ranging from sports broadcasts to quiz or talk shows, music programs, and television movies. Regarding the major programmatic division between information and entertainment, the basic difference is that the latter is explicitly and dynamically demand-oriented, while the former is believed to follow certain static guidelines, which go beyond momentary market demand, in order to provide objective, educative, and socially informative content of public interest. Since market rules strongly influence all types of programs within a commercial market framework, also the thematic area of information has in recent years experienced considerable transformation in this direction. One result of market-oriented informative programs is the infotainment phenomenon, combining the two major genre elements into a new model. Yet the increased visual and emotional attractiveness for viewers is often accompanied by considerable information loss. Entertaining soft news, wrapped in eye-catching picture sequences, or personalized emotional talk shows thrust hard news and background information aside. The infotainment's simplified consequence is pure customer satisfaction, instead of balanced citizen information and public education. The instruments used by infotainment content deepen the general mass communication problems, which global television currently has to face. A message's classification based on emotions rather than on public interest result in emotional language, banal coverage without background information, and rushing picture sequences, formally coding the presented content into small and inexorable information bits, which the average viewer is generally unable to fully decipher. Communicational noise as well as the lack of an adequate feedback channel lead to an abyss between the coded sender's and the decoded receivers' message. New technologies accompanying television broadcasting, however, gradually counteract these communication biases, at least potentially. A gradual approximation of television content and Internet-related services enables the viewer to leave the linear consumption model behind by taking advantage of integrated TV device hard-disks or provider-based timeshift services. Interactive elements, as well as

Internet usage through the TV device, offer access to more immediate feedback channels and background information. To which degree those instruments will be used by the viewer in order to receive and process high-quality content of public relevance is however questionable, due to the apparent disproportionately high demand for entertainment.

A broadcasting market, which is free from public regulation, does not exist. Therefore, any statements concerning the mechanisms and consequences of an internally sovereign TV market without public intervention must be made with caution, due to its lack of profound empirical fundamentals. All the world's countries have opted for a certain level of broadcasting market interference, which is mostly relatively significant in comparison with other industries. There is a wide range of public intervention levels, mechanisms, and instruments throughout the global broadcasting systems, which are not only adjusted to technological, political, legal, and economic country specifics but also to individual interpretations of the major theoretical postulates in this matter and their hierarchical balancing. The two major theories behind broadcasting regulation are economic competition theory and media-political theory.

Economic competition theory and the theory of media policy differ in the system of norms and intrinsic system procedures. Accordingly, for economic theory the central norm is individual welfare, while the aspect of quality is a subjective one. For media policy, on the other hand, opinion plurality and journalistic quality stand above market mechanisms. As far as the intrinsic systems are concerned, economic competition differs from media-political competition above all in the different interpretation of the success-determining third party. While from the economic point of view the consumers play the decisive role based on their subjective needs, media policy considers economic competition insufficient for maintaining a satisfying degree of plurality and journalistic quality, calling for an institution to guard over the programmatic structure.

In spite of the named differences, both theories detect failures on the TV market. From the economic viewpoint these market failures are the result of the existence of the partly public good information, of merit goods, of externalities, of structural problems, and of information asymmetries. Media theory, on the other hand, considers economic competition based on the demand-supply mechanisms as the source of market failure in the broadcasting segment. Even though based on differing arguments, both theories consider the assumed

failures a striking justification for regulative market interference. While economic policy in its pure form intends to counteract the market imperfections in order to ensure a fair competition framework, media-political institutions are supposed to guard over opinion diversity and a satisfying level of journalistic quality. In both cases the resulting regulating institutions need to consider the special configuration of the particular TV market. The synthesis of the theories' respective norms with consideration for the factual market's absolute and relative status quo⁵⁰⁵ results in plurality as the common normative postulate.

The spectrum of both theories' implementation possibilities based on their hierarchy and balance ranges from complete governmental control to pure economic market mechanisms. Complete governmental control over the broadcasting market implies media-political theory dominance over economic competition postulates and gives the authorities indeed a hypothetical chance to implement the whole spectrum of the public service remit while having the undivided viewer attention. It allows for a comfortable broadcasting environment, which is independent of viewing rates and consequently of consumers' actual demand. While such a scenario may superficially seem desirable from the media-theoretical point of view, it actually bears enormous inefficiency potential, both, economically and media-politically. Concerning this, a sector without commercial competition is not sensitized to technological advancements, therefore constraining its overall development, user-orientation, and value creation, especially in comparison with more open systems. Pure public broadcasting furthermore implies a natural centralization of transmitted opinions, in spite of the public service remit's plurality approach. An opinion monopoly will due to its self-interest always have plurality-averse tendencies. This is vis-à-vis economic dominance not less true for a monopolistic public broadcasting body, which is certainly limited in factual independence, precisely because of its governmental proximity. For the same reason such a body also lacks effective external control; within a framework of absent sovereign competitors the only possible realistic control institution left is a public one, which in a broader picture necessarily implies a certain self-reference set of problems, being above all susceptible to political exertion of influence. Consequently, a wholly public-run governmental sector may be based on constructive intentions, yet the successful

⁵⁰⁵ The TV market's absolute status quo refers to its technological and economic framework, while relative status quo refers to the market configuration at a given moment.

counteraction of destructive political opinion monopolization is rather improbable in this scenario.

An entirely commercialized broadcasting market as the opposite implementation extreme of the two major theories' hierarchical spectrum seems to be an economically reasonable solution on the first glance due to its efficiency-promoting demand orientation, yet only as long as multiple independent broadcasters can factually compete within a fair environment. Crucial in this context is that even in the long run a critical number of economically and politically sovereign competitors must be able to maintain on the market, in order to ensure a satisfying level of opinion plurality. Since capital-intensive sectors have a natural concentration tendency, a public institution counteracting this propensity seems indispensable.

When broadcasting markets fail to include and uphold a high-enough number of commercially and politically sovereign competitors, a compromise between the two extremes in the form of a dual broadcasting market is an acceptable solution if adequately implemented and guarded. Such a duality counteracts the monopolization tendency, which is present on both, the public and the commercial side of the market. As far as opinion plurality is concerned, the same mutual control mechanism is in effect, positively affecting the overall opinion diversity and journalistic quality spectrum. The most famous argument in favor of publicly co-financed broadcasters competing with commercial ones is the assumption of merit goods on the TV market, which need to be fostered publicly, independent of the economic demand and supply. While the merit-good character of television content is surely not an absolute one but rather relative to the supplier density on the TV market, within the dual broadcasting system the public broadcasters' role is to provide these very merit goods, thereby realizing the so-called public service remit. At the same time, there is commercial competition on the dual broadcasting market, which follows the standard market rules. Most PSBs are involved in both segments of the market, which is one of the major sources of the concept's criticism. If the public broadcaster's public and commercial activities are not clearly separated, unfair and competition-distorting market subsidies can be the result.

Accordingly, there are sufficient counterarguments questioning the need for public service broadcasters. This is especially the case when publicly sponsored broadcasters use the public funding beyond the public service remit by providing commercial programmatic

services as privileged competitors on the advertising market vis-à-vis their private pendants. It seems logical that the dual broadcasting system, especially with its dual financing conception of public broadcasters, should be considered a transitional model until an adequate level of sovereign competitors is achieved and its maintenance guaranteed. Yet since such a guarantee is difficult to get or provide, the PSB may be considered a safety break against concentration tendencies, even within a competitive market framework. Public broadcasting as such does not have to be the focus of criticism, but its means of integration in functioning market structures. Accordingly, a fair structure needs to be found, in which public funding will be goal-oriented and economic competition on the advertising market will be fair.

In order to assess a specific broadcasting market in terms of public regulation, in addition to the generally valid theoretical conclusions the sector's unique compilation needs to be taken into consideration before drawing final conclusions. This means that the existing supplier density and the respective hierarchy on the recipient and advertising market need to be analyzed as well when evaluating a specific television market. Furthermore, the financial status of both public and commercial competitors needs to be regarded in order to assess the consequences of possible changes. Yet before analyzing the market's economic structure, its legal perspective should be considered first, in order to establish the level of implementation of the theoretical postulates. It is also necessary to consider technological changes and challenges of the TV market, as well as its political framework. All of these dimensions need to be taken into consideration when empirically regarding a country's television sector such as the Polish one, under the premise of its adequate extent of public market involvement. The legislative structure of the Polish TV market represents the implementation of the theoretical postulates. The political framework in turn indicates the factual compliance with the legislative acts' meaning. Last but not least the concrete market structure viewed from an economic perspective accompanied by technological market specifications completes the analysis, from which conclusions as to a country's factual and potentially adequate degree and deflection of public market involvement can be drawn.

The transformation on the Polish TV sector is closely connected to the socio-political transformation of the country. The abolition of the Soviet party control system lead to multiple TV and radio broadcasters, which operated within a legal grey zone until the

market's legislative framework was implemented in 1992 by the Broadcasting Act. This central act restructured public broadcasting and defined the conditions for commercial transmitting, thereby determining the dual character of the Polish TV market. Due to terrestrial frequency scarcity and the postulate to maintain a significant role for public broadcasters, in the opening phase of Poland's broadcasting sector there was space for only one commercial nationwide concession assigned to *Polsat*, one regional Pay-TV concession for *Canal+*, and three over-regional TV concessions for *TVN*, *Nasza TV*, and *TV Niepokolanów*. Out of these, in addition to the public channels *TVP1* and *TVP2*, *Polsat* and *TVN* grew to be strong market players among the programmatic TV providers. These two commercial market players - together with *Canal+* as the Polish pioneer in the DBS sector - also dominate the creation and distribution of digital satellite TV by the establishment of growingly popular digital platforms. Cable television has also played a crucial role in the overall progress of Poland's TV sector, dynamically developing from a semi-communal freedom-seeking movement to a professional and concentrated high-volume sector.

Hence in addition to terrestrial signal transmission, which was for decades the most popular broadcasting type in Poland, cable and satellite transmission complete the major broadcasting trio. While satellite broadcasting pioneered in digital signal transmission, introducing for example high definition formats as well as further interactive television consumption elements, Poland's cable diffusion is on its way to finalize the digital switchover. As of January 2010 Poland's terrestrial market remains the only fully analog signal transmission type due to procedural complications accompanying its planned switchover. The delays are inter alia due to the lack of a concrete legislative act, which would define and allocate the switchover-related responsibilities and authorities between the two major media-market related institutions, the *KRRiT* and the *UKE*.

Poland's broadcasting market related legal framework can be considered the two major theories' superstructure. While Poland's competition law can be considered the legal implementation of the theory of competition policy, media political postulates found their way into several acts, such as Constitutional law, the Broadcasting Act and the Advertising law. The correction of presumed market failures takes legislatively place on various levels of market regulation, in accordance with the theoretical background. Accordingly, competition policy regulates the economic market structure of the TV sector, trying to protect the

economic competition from unfair behavior on three levels. First, the market participants are supposed to be protected from one another. Second, consumers should be secured from dominant market players. Third, suppliers are to be protected from the state.

From the perspective of media policy, the central law is the Broadcasting Act. Backed up by constitutional regulations, this act implements a public institution as the central regulator of the programmatic landscape. In doing so, the Broadcasting Act realizes the media-theoretical need for an institutional third party, which decides over the adequate level of opinion plurality. The act additionally defines the dual broadcasting system, imposing a co-existence of commercial suppliers and publicly co-financed public broadcasters. Further regulations as to the desired programmatic framework, are not only valid for public broadcasters but also for commercial transmitters. Intellectual Property Law regulations bear additional restrictions. The most immediate legislative challenge is the digitalization of terrestrial broadcasting in Poland. The carrying out of the frequency redistribution is assigned to the two major regulating bodies, the *UKE* and the *KRRiT*, whose postulated cooperation in this matter may end in destructive conflicts for the enormously important switchover due to the lack of a proper legal hierarchy definition.

In contrast to that, public broadcasting is rather adequately defined within the Polish legislation. Its public service character is emphasized, while its commercial activities are subject to the same regulations which apply to commercial broadcasting entities. The three institutions *UOKiK*, *KRRiT*, and *UKE* regulate the audio-visual mass communication market in their respective fields of actions, which naturally overlap in certain areas, not always accompanied by adequate hierarchy solutions. Many fields of economic and media-political theory have indeed been tackled by Poland's legislative framework, yet since the major postulates are supplier maximization and opinion plurality, its structure is still incomplete and requires further refinement, especially in the fields of new technologies and market openness. The factual status of the legal framework is best reflected by its political sphere. A properly defined and adequately guarded and executed legislative structure is resistant to illegitimate political interferences, or at least minimizes their extent. If such political involvement crosses a certain corruption line of acceptance, the legal framework is either suboptimally defined or improperly executed. Of course, no system is free from corruption

affairs, yet their commonness and overall extent can provide at least a suiting feedback and impression area in this subject matter.

After two decades of political and social transformation, the relationship between the media and politics is still a tense one. This relation can be regarded as a state of permanent conflict, which is characterized by mutual exercise of influence intents. Politicians try to sway the media-political landscape, since television is still the dominant media type as far as mass communication of political messages is concerned. Therefore, political agents will strive for maintaining a media content scenario with a generally positive attitude towards its own political group of interest, or if necessary, for converting the existent imperfect one into a subjectively more favorable one. The broadcasters, in turn, are due to the concentrated and high capital-volume character of the media market by its very nature involved into politics, since high scale businesses influence politics within each political system, and vice versa. Poland is no exception to that rule, which was demonstrated frequently during the last 20 years, most notably by the infamous “Rywingate” scandal.

These political interferences have several reasons. First, the TV market has an immense opinion creating potential, which is the most natural reason for political interest in it. Second, the market is a high-capital one, thereby naturally attracting corrupt behavior. Third, the market’s intrinsic compilation with a more or less direct governmental involvement in the overall TV market regulation, embodied by *KRRiT*, offers potential for fraudulent activities. Last but not least, the publicly co-financed strong market participation by *TVP* gives room for an intensive and repeated tug-of-war for the public broadcaster’s control, indirectly fought over within the partly politicized *KRRiT* structures. As a consequence, Poland’s main broadcasting regulation institution is the main target of direct and indirect politically motivated takeover intentions as far as its own directing personnel is concerned and as a result also with respect to the public broadcasting branches’ management.

As far as the empiric market structure is concerned, the Polish TV market is in its final transition phase from analog to digital broadcasting. Even though analog signal transmission still dominates Poland with market coverage of over 60%, the proportions will drastically change in the short- and middle-term future until the total switchover to exclusive digital broadcasting in 2015. Accordingly, while in 2008 digital television accounted for barely 30%, this share rose to over 40% within one year.

On the terrestrial market, which still embraces over 28% of overall TV consumers in 2009, the distributors are also the ones to create and compile most of their programmatic media product as such. The reason for that lies in the scarcity of frequencies and in the bulkiness of analog signals, allowing for a very narrow programmatic landscape. The implementation of multiplexes will alter this very issue and therewith the overall terrestrial broadcasting market configuration. Currently Poland's terrestrial programmatic market is characterized by a co-existence of public and private competitors. Public broadcasting with its flagships *TVPI* and *TVP2* is leading the recipient market, yet not dominating it, due to strong market positions by the two major commercial broadcasters, *Polsat* and *TVN*. Even though in a single-channel perspective *TVPI* still leads the recipient market, it is gradually losing viewers, while *TVP2* has lost its second position to *TVN* for the first time in 2009.

In spite of the public broadcasters' still considerable market positions on the recipient market, the commercial providers *Polsat* and *TVN* are the clear market leaders on the advertising market. This seemingly paradox scenario is explained by *TVP's* lower amount of sold advertising units. With the gradual degeneration of revenues from the public broadcasting fee, *TVP* is however very likely to free more advertising time in the near future. In spite of discriminating regulations in that matter, *TVP* is forced to extend its commercial activities, in order to prevent both, a financial disaster and the plunge to meaninglessness. The lower *TVP's* overall funds are, the lower is its competitiveness and the fewer the potential receivers of public mission content. However, the higher *TVP's* commercialization, the lower the probability of the public mission's suitable fulfillment. It seems that only a proper balance of public and commercial funds can maximize both, the public mission's realization and its effectiveness in terms of factual range. This balance is as of January 2010 far from being achieved with *TVP's* decreasing popularity and increasing financial problems due to the collapse of the public broadcasting fee system and restrictive regulations on the advertising market for the public broadcaster.

Out of *TVP's* commercial competitors, *TVN* is operationally the most profitable one, due to its flagship's high popularity, its established thematic channel mix, and its high level of self-produced and cost-effective media content. While being operationally efficient, *TVN's* financial side of the business burdens the broadcaster's overall commercial market performance. The major reasons for this condition are *TVN's* majority holder's deteriorating

financial situation and *TVN*'s still unprofitable but capital-intensive digital platform *Telewizja n*. Both reasons are tightly related to each other, since *TVN* had to purchase *Telewizja n* from its financially troubled parent company *ITI* at an excessive price. *TVP*'s second major competitor, *Polsat*, has indeed more modest operational results than *TVN*, yet is financially backed by Poland's second richest man and his inter-industrial capital group. While *TVN* is still financially troubled by its digital platform, *Polsat* is capitally connected to the DBS sector's leader, *Cyfrowy Polsat*. The two minor market participants, *TV4* and *TV Puls*, rather struggle operationally and financially and require capital-intensive investors in the middle-term future.

The satellite way of TV signal distribution is in the Polish context embodied by so-called digital platforms. These platforms offer programmatic packages, consisting of own and external media goods. In addition to traditional programs transmitted digitally, the platforms offer supplementary services, such as interactive television or high definition TV. The satellite TV market has until 2007 been divided among three digital platforms: *Cyfrowy Polsat*, *Cyfra+*, and *Telewizja n*. In the years 2008 and 2009 two new competitors entered the market: *TP*'s *Neostroda* and *ITI*'s *TNK* (later bought by *TVN*). With 3,2 million customers as of January 2010, *Cyfrowy Polsat* embraces the highest number of subscribers in a signal distribution segment, which embraces over 36% of Poland's households. The owners of *Cyfrowy Polsat* (the *Polsat* group) and *Telewizja n* together with *TNK* (both *TVN* and formerly *ITI*) are also the major commercial players on the terrestrial distribution market. *TVP*'s absence from the satellite signal distribution market is astounding from a certain angle. It can partly be explained by management inefficiencies resulting from the broadcaster's public character but also by the scarcity of public funds for the DBS purpose. While this status was supposed to be corrected by *TVP*'s digital platform launch in 2009, the project turned out to be a fiasco, due to intransparent legal and political issues accompanying it, and was frozen only weeks after its commence.

The third major method of distributing TV signals is cable transmission. The Polish cable TV market is characterized by a relatively high number of local and regional cable TV providers. Nonetheless, the market is currently in a major concentrating process, which is essentially due to the new technological and financial challenges accompanying the gradual implementation of digital broadcasting. The cable market leaders are *UPC Polska*, *Vectra*,

Multimedia Polska, and *Aster*, who have a cumulated market share of over 61%. Since the Polish cable TV market is still in its initial phase of digital transition, further market concentration can be expected. Concerning this, it seems likely from the economic point of view that, in spite of financially strong competitors in this segment, the dominating players from the two remaining signal distribution sectors, *Polsat*, *TVN*, and *TVP*, will also intent to play a certain role on the cable TV market in the years to come. In the short-term it seems, however, more probable that *UPC* or *Vectra* will take over one of their major competitors, most likely the debt-ridden *Aster*, therewith extending their market dominance.

The new concept of IPTV is currently still not a realistic rival for the other signal distribution methods. Yet with further technological advancements, resulting to a substantial degree from faster Internet connections, the role of IPTV can, and probably will, noticeably increase in the future. The same is valid for Internet Television, which breaks with spacial and temporal dependencies of classic television consumption. It is certain, however, that these new signal distribution concepts put a large pressure on the other broadcasting methods to work on more customer-oriented overall service solutions. Digital platforms and cable operators have already started to implement respective solutions, while terrestrial TV still waits for its digitalization. The traditional linear one-way watching method is more and more complemented by timeshift solutions, on-demand services, interactive functions, and Internet-proximity. Considering the communication model and its imperfections related to the television channel, these types of non-linear and multiway solutions bear a highly constructive potential for the messages understandability and feedback proximity, if used adequately.

As far as the digital switchover is concerned, digital platforms, IPTV and Internet TV are the most advanced broadcasting options, consisting of exclusively digitalized services. While cable TV providers gradually implement digital TV with a still dominant share of analog customers, terrestrial broadcasting will remain completely analog until the initiation of the first multiplexes. The full extent of the digital switchover and the resulting reconfiguration on the TV signal distribution market will be observable most likely after 2015 - under positive circumstance even two years earlier - , when analog frequencies are planned not to be protected anymore.

The future months and years will show if the redistribution of frequencies will signify a factual reconfiguration on the terrestrial broadcasting market, or if it will merely give the current players a chance to diversify their programmatic structure. How economically and media-politically fair the new frequency allocation will eventually be, also depends on the question which institution will ultimately be the deciding one. Accordingly, while the *UKE* fosters market-based tenders, the *KRRiT* seems to be more inclined to maintain a considerable influence on the final outcome in terms of multiplex operators and the resulting channel content. As of January 2010 Poland still lacks a transparent legislative act to clearly define the competencies and decision guidelines in that matter, which has led to multiple paralyzing conflicts between Poland's major electronic communication institution *UKE* and the country's main broadcasting regulator *KRRiT*, thereby considerably delaying the switchover process.

It is unquestionable that Poland's broadcasting market needs to implement certain adjustments to its framework, in order to maximize its economic and media-political potential within an adequate level of public market involvement. First, legislative changes are necessary in order to minimize the political abuse potential within the major regulating institutions. In addition to unnecessary restrictions in the advertisement time allocation, the major regulation institutions' sovereignty must be legally strengthened. The *UOKiK*, the *UKE*, and the *KRRiT*, are not politically independent entities. While the *UOKiK* is within its current legal configuration entirely dependent on the respective prime minister, who has the authority to exchange this major economic control institution's chairman ad libitum, the *UKE's* and *KRRiT's* degree of sovereignty highly depends on the political power configuration in the *Sejm*, in the *Senat*, and in the presidential palace. As long as no coalition dominates all three political power institutions, nor has in addition to the *Senat* dominance the necessary 2/3 *Sejm* majority to overrule any presidential veto, neither the *UKE's* chairman, nor the *KRRiT's* members can be under normal circumstances legally recalled before their respective cadency endings. Yet in the Polish context the named political power dominance is far from being improbable. One of the consequences of such political power concentration is the option of amending any crucial act, officially founded on tackling the respective institution's internal functionality by improving its legal framework, yet factually paving the way for personnel replacements within this very institution before the actual

cadency endings. Such degree of vulnerability is certainly problematic for public entities, which are inter alia supposed to guide the broadcasting market, which is in turn - at least theoretically - supposed to control especially the respective governing coalition in power vis-à-vis the country's citizens. In other words, with a sufficient political majority constellation, the rulers have the legal option to control the institutions which control these very rulers. A loop scenario is the consequence, which clearly contradicts power control, power plurality, and power decentralization postulates.

The most obvious solution is to eliminate any kind of direct governmental dependence and to further strengthen the respective institutions' authorities' cadences in such a manner, that even respective legal amendments must respect them. In other words, even if a political option manages to implement legal changes, which eliminate, or actually rename, the control organs or their supervisory boards, they should not come into being until the respective chairmen's or supervisors' cadencies expire. Additional professional qualification criteria, such as a respective educational background and work experience in the area of concern, should be indispensable to hold such crucial control functions, in order to minimize the probability of strictly political supervisors, directors, and chairmen. Certainly, even those changes would not guarantee the regulation institutions' political independence, yet they could indisputably increase their probability, especially in connection with a conscious public opinion.

In the economic competition sphere, monopolization tendencies have to be offset. The *UOKiK* needs to guard over respective practices within this high-volume sector, especially by the commercial market giants *Polsat* and *ITI*. In order to do so, however, the institution's sovereignty and objectivity needs to be legally guaranteed first by unfastening it from its current direct governmental dependence. While antitrust control is indispensable to maintain a fair market environment, the probably best method to counteract concentration processes, is to foster competitor plurality. The *UKE* demonstrated in the mobile telephony market that introducing new players to the market leads to sufficient competitiveness and a dynamic consumer-oriented market structure. The Polish broadcasting market requires a similar approach, especially on the terrestrial market, which counts only very few competitors. The upcoming digital switchover in this sector is a chance to extend the supplier spectrum.

Considering the *UKE*'s experience on related markets, it seems most reasonable to entrust this regulation body with the respective multiplex tendering procedures.

In addition to the suggested innovations on the external regulation level, Poland's broadcasting market also requires crucial changes in its internal regulation sphere. Above all, *TVP*'s role as an economic and media-political balancing and stabilization organ requires the necessary legislative, political, and economic support. Accordingly, *TVP*'s financing needs to be secured, through a balanced mix of extended commercial presence and sufficient as well as stable public aid. A clear and transparent separation between *TVP*'s commercial and public activities must be defined and implemented. This separation must not only be transparent for the broadcasting expert but also understandable for the average consumer. A public mission definition, which embraces practically all fields of broadcasting from entertainment to sports events, is a farce and cannot receive positive attention by the viewer. Hence, the public mission needs to be narrowed down to its culturally, socially, and politically educative and informative character. It furthermore needs to be recognizable by the user also in the most banal way, for instance by branding public mission content with a respective logo, which is easily distinguishable by the television audience. This is significant, because the audience is the public broadcasters' financial carrier and factual owner, so that an identification and interaction with the PSB needs to be fostered. The most optimal option would be to stabilize public broadcasting financing based on the realistically forecasted costs of a well-defined public service remit. Stability must be ensured through a reliable collecting method, since Poland's current one has failed to do so. An income tax linkage is imaginable, yet only in connection with a bypass of the budget redistribution mechanism, as budgeted financing most certainly implies destabilizing political interferences and immense governmental dependencies for public broadcasting. Once transparently enough separated by a properly defined and implemented public mission scheme, the commercial part of public broadcasting should follow the same regulations, restrictions, and rights as its commercial counterparts. If commercial broadcasters are granted 12 minutes of advertising per hour, *TVP* should act within the same framework for its commercial operations. The commercial profits should be used for both, the extension of commercial competitiveness and technological pioneering, especially in the field of public service remit fulfillment, in order to constantly improve this public sphere's efficiency. Concerning this, educative and informative public

mission content does not have to imply the lack of entertainment in its broader sense. Technological solutions in the fields of media graphic design and interactivity can combine topics of public interest with an attractive viewer interface and understandable language.

The advances of Internet-based television broadcasting models can widen respective horizons in this matter and should therefore be promoted. Their interactive and non-linear consumption possibilities have the potential to eliminate the noise- and feedback-related communication asymmetries of traditional broadcasting, especially in connection with undesired imperfections of the infotainment phenomenon. Similarly important in this context is media education already in schools, in order to foster an increased awareness of the consumed content. In this regard, the public broadcasting service mission should not only focus on qualitatively high-level informational mass-messages but also on the form of their transmission, since the crucial factor for effectiveness is the adequate reception by the viewer, who needs to understand and distinguish facts, opinions, and entertainment elements, which per se do not contradict the public interest approach of educative and informative media content.

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