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**THE POLITICS OF DTT POLICY-MAKING IN  
BULGARIA: THE SIGNIFICANCE OF PATH  
DEPENDENCIES AND INSTITUTIONAL  
CHARACTERISTICS**

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A thesis submitted in partial fulfillment of the requirements of the  
University of Westminster for the degree of Doctor of Philosophy

September 2015

## **ABSTRACT**

This thesis examines the politics of the policy process concerning the introduction of digital terrestrial television (DTT) in Bulgaria. Bulgaria is an Eastern European post-communist country and a member of the European Union (EU) since 2007. The policy of digitalisation of terrestrial broadcasting is studied from a domestic perspective that focuses on the relevance of the national institutional structures and their response to internal and external (notably EU) influences. The thesis relies primarily on the ‘new institutionalist’ theoretical approach to examine how historical path dependencies and state capacities have enabled or disabled certain types of behaviour by public and private actors which have in turn shaped the policy process. In this respect, the role of the EU is seen as refracted through the prism of domestic arrangements, capacities and interests.

The thesis demonstrates that the weak institutional capacities of the Bulgarian state, political patronage, clientelism and cronyism, failed to ensure a clear, fair and transparent DTT switchover policy. Sectoral broadcasting characteristics including the prominence of pay-for platforms and small market size contributed to this result, yet the thesis argues that the extent of their impact has been determined by structural characteristics within which the decision-making process has taken place. The thesis shows that far from genuine public interest objectives - such as increased media plurality, a stronger role for PSB, more competition within and between platforms, and efficient use of spectrum - the DTT transition in the country has served to reinforce path-dependencies and historical continuities. This last point has been observed in relation to digital television policies in Western countries, such as Britain and the USA (Galperin, 2004a) and Sweden and Spain (Suarez Cantel, 2011: 318). More research is needed to confirm or not this conclusion in relation to other (post-communist) countries and other sectors.

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## **DECLARATION**

I declare that all the material contained in this thesis is my own work.

Signature: .....

Name: Imir Rashid

Date: 29 September 2015

## ABBREVIATIONS

<b>ABBRO</b>	Association of Bulgarian Radio and Television Operators
<b>ABTO</b>	Association of Bulgarian Television Operators
<b>BACCO</b>	Bulgarian Association of Cable Communication Operators
<b>BCC</b>	Constitutional Court of the Republic of Bulgaria
<b>BHC</b>	Bulgarian Helsinki Committee
<b>BMB</b>	Balkan Media Barometer
<b>BNR</b>	Bulgarian National Radio
<b>BNT</b>	Bulgarian National Television
<b>BSP</b>	Bulgarian Socialist Party
<b>BTC</b>	Bulgarian Telecommunications Company
<b>CCB</b>	Corporate Commercial Bank
<b>CEE</b>	Central and Eastern Europe
<b>CEDB</b>	Citizens for European Development of Bulgaria
<b>CEM</b>	Council for Electronic Media
<b>CJEU</b>	Court of Justice of the European Union
<b>CPC</b>	Commission for Protection of Competition
<b>CRC</b>	Communications Regulation Commission
<b>CVM</b>	Cooperation and Verification Mechanism
<b>DG</b>	Directorate General
<b>DTT</b>	Digital Terrestrial Television
<b>EAO</b>	European Audiovisual Observatory
<b>EBU</b>	European Broadcasting Union
<b>EC</b>	European Commission
<b>EP</b>	European Parliament
<b>EU</b>	European Union
<b>IREX</b>	International Research and Exchanges Board
<b>LEC</b>	Law on Electronic Communications
<b>LPB</b>	Law on Public Broadcasting
<b>LRT</b>	Law on Radio and Television
<b>MEP</b>	Member of the European Parliament
<b>MP</b>	Member of Parliament
<b>MRF</b>	Movement for Rights and Freedoms
<b>MSI</b>	Media Sustainability Index
<b>MTG</b>	Modern Times Group
<b>MTITC</b>	Ministry of Transport, Information Technology and Communications
<b>NBMG</b>	New Bulgarian Media Group
<b>NCRT</b>	National Council for Radio and Television
<b>NGO</b>	Non-governmental organisation
<b>NMSS</b>	National Movement Simeon The Second
<b>NSI</b>	National Statistical Institute
<b>NURTS</b>	National Radio and Television Stations Management
<b>ORF</b>	Österreichischer Rundfunk
<b>ORS</b>	Österreichische Rundfunksender

**OSI**  
**PSB**  
**SAC**

Open Society Institute  
Public Service Broadcaster  
Supreme Administrative Court

## **CHAPTER 1: Introduction**

### **1.1 Context and main argument**

The main technical characteristics of the digital terrestrial television (DTT) are already well known. It allows for better picture and sound quality; lower transmission costs; interactive services (although restricted in comparison with other digital TV reception platforms); increase of spectrum capacity through compression techniques which can squeeze up to ten channels into the amount of spectrum previously needed for one (Levy, 1999a: 27). In Europe, the member states of the European Union (EU) have been led by supranationally set objectives of additional spectrum release, and the efficient use and harmonisation of radio frequency bands to boost the social and economic development of the Union. Nationally, the transition to DTT allows for a complete reorganisation of the old analogue system through the issuing of new digital terrestrial licences, diversification of media ownership, an increase of competition among transmission platforms and a redefinition the role of public service broadcasting in the new digital age. In this respect, the switch from analogue to digital television has the potential to greatly affect three main actors: industry players, citizens, and governments, allowing more choice for citizens and new market opportunities for the industry and the governments (Freedman, 2008: 176-186). In this process, however, “many established interests are threatened and many new ones have arisen” (Hart, 2004: 1). In their analysis of the political economy of DTT, Albornoz and García Leiva (2012: 303) have argued that “the transition from analogue to DTT benefits some individuals, organizations and interests, but penalizes others.” Who gets what, and who are the winners or losers as a result, are key questions then. Before answering these questions, however, we have to look at the various factors and the interactions between participating actors that have shaped policy initiations, their implementation and outcomes. Arguably, the answers should also distinguish between the strength and impact of different types of factors and take into consideration actors and their powers at both domestic and

international levels. Moreover, it is important to consider the specific historical characteristics and socio-political development of any particular domestic environment, within which the decision-making is taking place.

This thesis provides a case study of Bulgaria to demonstrate how those considerations have a bearing on the decision-making, implementation and outcomes of national DTT policies. Bulgaria is an Eastern European post-communist country, which as of 2007 is a full member of the European Union (EU). The introduction of DTT in Bulgaria is therefore placed within the broader context of the EU. Yet, the study employs a bottom-up analytical approach (Franchino and Radaelli, 2004: 948) and focuses on the relevance of the *domestic* conditions and arrangements that mediate between various internal and external socio-political factors and actor constellations. For analytical purposes, in this study, the EU is regarded as an *external* actor and intervening factor, which potentially impacts on domestic policy-making structures and demands changes when national policies do not ‘fit’ (Börzel and Risse, 2003; Bulmer and Radaelli, 2005) with the ones agreed on at the supranational level.

The research questions addressed in this thesis are:

1. Where did the issue of digital terrestrial television in Bulgaria come from? Who set the agenda? What have been the objectives and benefits sought?
2. What have been the national and supranational actors and factors that have facilitated or constrained the transition? How have these actors and factors affected the policy making process and its outcomes?
3. What have been the outcomes of the transition to DTT for the Bulgarian broadcast landscape, including public service television?

Digital television initiatives in Bulgaria started to emerge in the first years of 2000s. In 2001 the Bulgarian Telecommunication Company (BTC), the then state-owned telecommunications operator, was licensed to establish a network for experimental digital terrestrial broadcasting (Stefanova, 2001 in Ibroscheva and Raicheva-Stover, 2009: 99, see also Ognyanova, 30/10/2001). Digital broadcasting started as a pilot

project on 26 May 2003 in the capital city of Sofia, using one multiplex<sup>1</sup> with a capability of carrying six channels (European Commission, 2007 in Ibroscheva and Raicheva-Stover, 2009: 99). These were the years in which most Western European countries had begun introducing pilot digital television services and many others had started developing transition plans and strategies. Bulgaria was aware of the upcoming transition and had started working on a national digitalisation strategies in the early 2000s, along with the most technologically and economically advanced countries of Western Europe (as covered in Chapter 3). However, while 23 of the 28 member states managed to complete the digital switchover by the deadline recommended by the EU (2012), Bulgaria was one of the few member states - along with Romania, Poland, Hungary and Greece - to complete the transition from analogue to digital after this deadline (EAO, 2013). In the meantime, in 2011, the European Commission started an infringement procedure against Bulgaria, for non-compliance with the EU electronic communications framework and the competition rules embedded in it. The Commission's Directorate General (DG) for Competition argued that the rules on the basis of which the licensing of the multiplex operators was carried out in 2009 were disproportionate and discriminatory. According to the Commission, the assignment of five digital broadcasting licences to two multiplex operators "via two contest procedures", where applicants associated with content providers (including those outside the territory of Bulgaria) and broadcasting network operators were not allowed to participate, "limit[ed] without justification the number of companies that could potentially enter the market" (European Commission, 2013a). The government eventually did introduce changes in the laws and licensed a third multiplex operator; however, that did not satisfy the European Commission. As a result, on 2 July 2013, the Commission referred Bulgaria to the Court of Justice of the European Union (CJEU) (CJEU, 2013) and officially gave start to the litigation procedure against the country. Two years after the beginning of the court case and six years after the undertaken licensing, on 23<sup>rd</sup> April 2015 the CJEU announced its decision, upholding that of the Commission (CJEU, 2015; Ognyanova, 24/04/2015). The actions of the Bulgarian state are now awaited.

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<sup>1</sup>The multiplex is a stream of digital TV and radio channels that are compiled for broadcast. Depending on the technological standards used, a single multiplex can include up to ten television channels.

This is the simple formal story of the introduction of DTT in Bulgaria and the context within which this study has developed. Although the above paragraph gives an overview of how the process evolved, it does not explain how the process of DTT policy-making in Bulgaria came to such a stage that the European Commission decided to intervene in it, or why the Commission pursued the infringement procedure even though legislative amendments were eventually made to allow one more multiplex operator to enter the market. It is worth mentioning that in recent years more than 85 per cent of the EC's infringement procedures have been resolved prior to reaching a litigation phase (European Commission, 08/06/2015). This means that the introduction of DTT in Bulgaria has become one of the minority 15 per cent of unresolved pre-litigation cases. This includes all of the policy areas under the scope of EU's competition rules. As seen in Chapter 3, in two other EU countries, France and Italy, the European Commission has intervened on the basis of similar competition concerns, yet the governments in those countries have reacted upon the demands of the Commission and cases have been resolved before reaching the EU court.

In order to explain why the case has developed differently in Bulgaria, this thesis makes use of the so-called 'new institutionalist' theoretical approach for the study of public policy making. This approach has already been applied to the study of digital broadcasting. For instance, Galperin (2004a: 18) has used the approach to analyse the introduction of digital television in Britain and the United States. In line with the institutionalist approach, Galperin (2004a: 19) has argued that institutions matter because they

determine whose voices are heard, whose interests are weighed, and which proposals are deemed acceptable. Therefore, in order to understand why certain stakeholders are consistently more effective than others, why certain governments are capable of imposing losses on powerful incumbents and others are not, and why diffused interests are represented in some cases and not others, we need to examine the institutional fabric that underlies policymaking.

The “institutional fabric” is referred in this thesis as the institutional *structure* within which actor interests, ideas and preferences are negotiated and certain decisions are taken or not taken (Freedman, 2010; Freedman, 2014). In Bulgaria, this structure has inherited features from its historical (post-communist) past, notably weak state and institutional capacities which have allowed certain types of behaviour by public and private actors (individual or collective) that have often overridden formal rules through informal practices and shaped policy decisions and non-decisions. As demonstrated in this thesis such behaviour, characterised by political patronage, clientelism and cronyism, has resulted *from* and at the same time has served to further weaken the regulatory capacities of the state. The state has so far failed to ensure fair, justified and transparent DTT switchover policies in line with the demands of the EU. In this respect, drawing on Galperin (2004a), the thesis suggests that far from genuine public interest objectives such as increased media plurality, a stronger role for PSBs, more competition within and between platforms, and efficient use of spectrum, the DTT transition in the country has reinforced path-dependencies and historical continuities. In addition to this broader structural setting, the thesis points to more specific *sectoral* factors of the broadcasting market, such as its size and the extent of terrestrial viewership, and argues that these have indeed influenced the outcomes of the DTT transition in Bulgaria, yet the extent of their impact has been determined by the structural characteristics mentioned above.

## **1.2 Methods and data collection**

In order to address the research questions, this thesis relies predominantly on ‘documents’ and applies the so-called ‘document analysis’ (Karppinen and Moe, 2012), a qualitative research method. Documents, explains May (2011: 191), are “means of enhancing understanding through the ability to situate contemporary accounts within an historical context”, and more importantly, “[t]hey can tell us a great deal about the way in which events are constructed, the reasons employed, as well as providing materials upon which to base further research investigations.” In addition to documents, this research makes use of a set of qualitative interviews. According to Lindlof & Taylor (2002: 175), interviews are used to “gather information about things or processes that cannot be observed effectively by other



means” as well as to “verify, validate, or comment on information obtained from other sources” (original emphasis removed). Thus, as Karppinen and Moe (2012: 186) have suggested, documents were complemented by interviews with policy makers and other stakeholders, in order to triangulate documentary sources and gain a deeper understanding of the context of the policy making process on DTT in Bulgaria. The following section aims to explain what kind of data was collected and how, the limitations of the adopted methods, and the way these were addressed in order to provide a reliable account of the policy process carried out in the country. Karppinen and Moe (2012) have argued that it is important to know “what we talk about when we talk about document analysis”. I therefore begin with providing information on the types of documents consulted for the purposes of this study.

The documents collected came from both public as well as private institutions and individuals. These were gathered both from domestic and non-domestic (mostly European) sources. Domestically, I particularly benefitted from verbatim reports of the meetings of the parliamentary committees on media and telecommunications, where law proposals and draft laws were discussed and voted initially. The work of two parliamentary committees were examined, namely the two standing media and telecommunications committees formed under various governments between 2005 and 2015. The reports of those meetings included a list of participants, through which interested parties and actors could be seen, and most importantly their participation and the positions expressed were helpful for identifying who wanted what and who backed/opposed whom. I was satisfied with the openness of not all, but most of the comments in the committee meetings (more in the media than in the telecommunications committee) and the plenary sessions, where the draft laws were voted. Other sources that were equally helpful included the verbatim reports of the meetings of the executive organ (the Council of Ministers), the minutes, decisions, reports and positions of the media regulator or otherwise referred to as the content regulator, the Council for Electronic Media (CEM). In addition, decisions of the telecommunications regulator, known as Communications Regulation Commission (CRC); press releases, public consultations and digital switchover plans of the Ministry of Transport, IT and Communications (MTITC); positions and decisions of the national competition regulator, the Commission for the Protection of Competition

(CPC); court decisions, e.g. of the Supreme Administrative Court (SAC) and the Bulgarian Constitutional Court (BCC), were used. I also consulted reports produced by domestic and foreign non-governmental organisations (NGOs), such as the Balkan Media Barometer (BMB), the International Research and Exchanges Board's (IREX) Media Sustainability Index (MSI), the Open Society Foundation's Mapping Digital Media reports, as well as DigiTag and Digi.TV's reports on digital developments in other Central and South Eastern countries (CEE). Domestic trade associations, namely the Association of Bulgarian Radio and Television Operators (ABBRO) and the Bulgarian Association of Cable Communications Operators (BACCO) provided only a very limited number of documentary sources that were of use in this thesis. A general criticism towards those organisations is to increase the transparency of their work and provide the public with up-to-date reports on their activities and lobbying. ABBRO's last activity report, for example, was published in 2007. Documents from non-domestic sources included EU directives, communications, European Commission's decisions of infringement procedures, press releases, memos, monitoring and progress reports, newsletters (where relevant policies and jurisdiction have been discussed by EU officials, e.g. DG Competition's newsletter) and EU courts' decisions.

Almost all of the documents were available online and collected from the websites and archives of the institutions at stake. The EC's Letter of Formal Notice and the Reasoned Opinion issued as part of any formal infringement procedure against a member state are not available online. In the Bulgarian case, however, the Reasoned Opinion was leaked online (accessed via Ognyanova, 31/03/2012), while a copy of the Letter of Formal Notice was given to me by one of the interviewees. I also visited the library of the Bulgarian Parliament in December 2013 to collect the verbatim reports of the standing parliamentary committees on media and telecommunications from the early 2000s, as these were not published on the website of the institution.

The documents listed so far have been used in the meaning of Karppinen and Moe's (2012) "documents as sources", that is the usage of documents as providers of factual information on events and policy actions and the historical background of their development. In addition, however, the authors identify also a more constructivist

approach to “documents as texts” which regards documents as value-laden and discursive outcomes of policy makers. In this respect, instead of facts documents provide the context and the meaning of what has been reported in certain documents (Karppinen and Moe, 2012: 186-187). Thus, in the meaning of the authors’ “documents as texts”, I have benefitted from the availability of online newspaper sources that have helped to acquaint myself with the context of the policy decisions and the informal influences of particular individuals. I also used a web blog (<http://nellyo.wordpress.com>), maintained by the Bulgarian media law scholar, Nelly Ognyanova, who has provided well-informed, insider information and analysis on key media regulatory and legislative issues, including the digitalisation process in Bulgaria. Ognyanova has been assigned with regulatory, legislative and policy development duties in different phases of her career (Nenova, 29/05/2001; Ancheva, 18/07/2006). Therefore, her blog and other publications, in the weekly *Kultura* or online newspapers, have served as primary sources for the purposes of this research. All those materials have been beneficial for understanding the context of the policy issues at stake, the network of actors involved and for identifying the discourse of and about the interested parties. According to May (2011: 209), “[d]ocuments do not stand on their own, but need to be situated within the contexts in which they are produced.” The documents obtained from various public and private sources complemented each other and allowed me to follow the logic of their own creation. Of course, knowledge of the Bulgarian language and context was essential in reading and analysing the documents, as the meanings and discourse of the expressions needed familiarity with the national language.

I also conducted about 15 qualitative interviews with policy-makers, experts and academics in Sofia and Brussels in February, March and April 2013. The duration of interviews varied between 30 minutes to 1 hour 30 minutes. Interviewees included representatives of the European Commission, the European Broadcasting Union (EBU)<sup>2</sup> representing public service broadcasters, national representatives in Brussels, the national regulators, the Bulgarian public service television (BNT), industry representatives, technical experts, academics and journalists. Some interviewees

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<sup>2</sup> Although the EBU is not an EU institution, it works closely with it and the EU member states on a wide range of broadcasting matters.

were contacted with a ‘cold email’, others with the help of a ‘snowball’ technique through recommendations and contacts. I was very lucky to receive a response to my first cold email, which was sent to an EC representative of DG Competition, at the initial stages of my research. Responding to my email, the person included in ‘carbon copy’ the names of Commission’s representatives from other Directorate Generals (DG) in order for me to get in touch with. After the actual interview, the same person also connected me with other relevant names in Brussels. I also used various networking opportunities, for instance conferences and workshops, to reach potential interviewees. I found the snowball technique to be highly beneficial for this research. People to whom I talked were keen to refer me to others they thought would be helpful for this research. Obviously, I have been conscious of May’s (2011: 145) warning that “researchers have to be aware that they inherit the decisions of each individual as to who is suitable for interviewing.” In my case, this was not a major issue, as the recommended people’s positions were relevant for this research, and a number of those recommended were people whose names I had come across in documentary sources and I asked the interviewees for their contact details. I had planned to meet a few people, especially in the beginning of my fieldwork in Bulgaria, with the sole purpose of reaching out potential interviewees. In most of the cases, without the snowball strategy I would have not been able to gain access to the people that I managed to talk to.

Access, however, is just one of the challenges of interviewing. Obtaining helpful information is what counts in the end. Unfortunately, and with the benefit of hindsight, I did not succeed in obtaining substantial new information that was not already available in documentary materials. Obtaining useful information depends essentially on the willingness of the interviewee to speak more openly and touch upon more sensitive areas. According to Löblich and Phaff-Rüdiger (2012: 208), it is often the case in policy research that the information the interviewees hold can be very sensitive, therefore they might not feel free to speak and choose to apply conscious self-censorship (Baumgarten and Lahusen 2006: 186 in Löblich and Phaff-Rüdiger, 2012). Indeed, this was the case with some of the interviewees, who refused to answer some delicate questions and claimed that it was not them who should be asked those questions. Others gave mostly official responses. In order to “move

beyond official representation”, however, it was not an easy task to follow May’s (2011: 144) advice to seek the trust and establish rapport with interviewees, especially public officials in my case. The guarantee of anonymity for all interviewees prior to each interview did not make much difference. Nevertheless, the interviews still contributed to this research by, first, drawing my attention to the issues that were of major concern for the experts that had observed or personally participated in the DTT decision-making process at various stages. Second, the fact that a number of interviewees (academics, industry representatives, members of regulatory bodies) advised me to look at the online archives of certain newspapers (e.g. *Kapital* and *Dnevnik*) helped increase the credibility of those sources for use in this thesis. In relation to this, third, interviewees, although not always openly, helped to confirm causal relationships and linkages between certain policy decisions and private actors that had influenced their design. Fourth, interviewees contributed with additional documents that I could not have accessed otherwise.

### **1.3 Contribution to knowledge**

The thesis has aimed to make a three-fold contribution to the field of communications policy research. First, it looks at the transition from analogue to digital terrestrial broadcasting in a country where switchover policies and issues, although followed by a few journalists and academics, lack a comprehensive and large-scale analysis of how certain institutional structures and sectoral characteristics have affected the policy-making and outcomes of DTT switchover in Bulgaria. The existing publications, comprising journal articles (Ibroshcheva and Raicheva-Stover, 2009; Spassov, 2009; Ognyanova, 2009) and more recent country reports provided through the Open Society Foundation’s Mapping Digital Media and the University of Oxford’s Democracy in Central and Eastern Europe projects, have greatly contributed to identifying key issues at stake in relation to the DTT transition in Bulgaria. In contrast, however, this thesis offers an in-depth and analytically advanced framework to explain the role of domestic institutional structures and capacities in shaping policy-making and its outcomes, by allowing certain types of behaviour of public and private as well as formal and informal actors. Thus, this study utilises analytical tools from the discipline of political science to explain the

role of the state and its powers to carry out a public policy of key importance for the future of broadcasting in the country. It presents a detailed explanation of the origins of the DTT policy process in Bulgaria, the role of historical path-dependencies and the formal and informal powers and strategies of dominant actors to influence policy-making.

Second, this thesis sheds light on how and to what extent the EU matters in national politics and policy-making and determines the outcomes of public policies. It adds to the debate about the depth and volatility of the EU impact on member states' policies, shaped through the prism of domestic institutional settings and capacities.

Moreover, and third, the question of the EU impact is looked through the specificities of the CEE region and thus the study contributes to advance media policy research in this particular region. The transition to digital television within the legacy of the post-communist 'systemic social transformations' of the CEE countries has been under-researched. Jakubowicz (2007a: 48) has suggested that "the general question that needs to be asked in the face of all of these new policy and regulatory challenges is whether post-Communist countries are at all prepared to tackle them and to reorient their media policy to take advantage of the opportunities created by the new media technologies to advance social, economic, and civilization change." Therefore, the undertaken research contributes to an understanding of the role of broader political, social and economic post-communist transformations in approaching digital transition as an opportunity for change and the role of the European Union in this change.

#### **1.4 Chapter outline**

This thesis consists of eight chapters. Following this introductory chapter, Chapter 2 presents the conceptual underpinnings of the thesis and builds a theoretical framework. It first considers John Kingdon's agenda setting theory in order to highlight the complexity and ambiguity of the policy-making process and identify the various elements (problems, policy choices and politics) of this process. In addition, referring to stakeholder analysis and advocacy coalitions the chapter

acknowledges the role of various interests, demands, ideas and belief systems in the decision-making process, on the basis of which interactions between actors take place. Beyond this pluralist side of decision-making, the chapter stresses the need to utilise a more critical element, such as power, to understand whose interests and ideas are preferred and why, and how non-decisions and policy inactions empower certain interests as much as actual decisions do. The second part of the chapter also focuses on the use of the so-called ‘new institutionalist’ approach, according to which institutional structures matter in defining policy (in)actions. Continuity and path-dependencies of previous structures and policies are introduced here in order to help explain how current policies and structures have been formed and how they allow certain types of actor behaviour to shape decision-making. Finally, the chapter refers to the literature on Europeanisation of CEE countries, where the EU impact has been strongest through top-down rule adoption. Additionally, the chapter recognises the EU as a legitimating factor which has been used in attempts to justify and reinforce certain actions, positions and interests. The chapter also draws on literature which explains the EU impact as ‘diffused’ because of the absence of clearly defined and detailed DTT rules, whilst domestic actors, capacities and political will have contributed to a selective response to the EU.

Chapter 3 reviews the literature on analogue switch-off policies in EU member states, both from Western and Eastern Europe. It starts by looking at the EU objectives for switching-off analogue broadcasting and the mechanisms of EU intervention on national DTT transition policies. It then reviews the digital switchover motivations in selected older EU member states and observes two types of incentives: 1) externally-oriented for more socio-economic gains and increase of competitiveness vis-à-vis other countries, and 2) internally-shaped by public and private institutions and actors that characterise the domestic broadcasting structures. In addition, the chapter establishes connections between the political systems and national path-dependencies in those Western European member states in order to explain their approaches to DTT policy-making. The chapter also includes examples of EU intervention in national DTT transition policies as regards licensing of broadcasting or multiplex operators and provision of state aid to help the switchover. The chapter finally looks at the introduction of DTT in CEE countries and attempts

to link certain country-specific socio-political (structural) conditions and defining factors of the broadcasting sector with either less or more troublesome transitions and digitalisation outcomes. Comparisons with Bulgaria are established, too. Overall, the chapter demonstrates that structural conditions, including broader political and institutional characteristics, in which the broadcasting sectors of the particular countries operate, define policy-making processes and determine to what extent the sectoral factors that characterise national broadcasting markets can influence outcomes.

Chapter 4 is a background chapter that aims to present the development of the post-communist political and media structures in Bulgaria. The first part distinguishes between two phases of post-communist political development: 1) from 1989 to 2001, characterised by bipolar political division and struggle over institutional resources between former communists and the newly established opposition, and 2) from 2001 to 2014 (when the last general election took place), identified with the formation of a more diverse multi-party political environment with growing populism. These two phases included a common feature that is a capture of the state's key capacities and resources and their channeling into private beneficiaries. Although more pluralist in the second phase, this structure established a political culture of clientelism and rent seeking, with a strong interdependence between public and private actors. Against this political background, the second part of the chapter looks at the adoption of the first broadcasting legislation after almost a decade of struggling over it; the emergence of the first private broadcasting activities in a highly unregulated manner which gradually became ossified into the broadcasting status quo; the licensing of the first commercial nation-wide broadcasters, and the outcomes for the public service Bulgarian National Television (BNT). Overall, the chapter demonstrates how the more general political structure established following the break of the communist regime has been reflected in the early broadcasting policy-making in the country. This established continuities and path-dependencies, which persisted well into the DTT policy-making period that emerged around the second part of 2000s.

Chapter 5 is the first empirical chapter. It covers the decision-making process and the adoption of the legislative framework for DTT in Bulgaria. It starts with a section



that focuses on the major problem of the broadcasting policy domain – the beginning of the analogue local terrestrial licensing after five years of suspension. The analysis of the initiated analogue licensing process introduces the readers to the policy issues, actors and their capacities immediately prior to the start of the DTT legislative decision-making in 2008. It demonstrates the significance of past policies into subsequent choices and the lack of capacity of the media regulator to cope with the created confrontational situation between pro-licensing (mainly cable operators) and anti-licensing actors (incumbent terrestrial broadcasters and temporary terrestrial local television licensees). More importantly, the section shows the *use* of international digitalisation decisions as an opportunity for some actors to block and cancel the licensing procedures, leading to the rising of the DTT on the policy agenda. The next part of the chapter focuses on the decision-making process concerning the amendment of the two legislative acts – the Law on Radio and Television (LRT) and the Law on Electronic Communications (LEC) - and the creation of a brand new Law on Public Broadcasting. Overall, the section demonstrates the lack of transparency and coordination of the decision-making process. Moreover, it shows how the Bulgarian DTT policies were established within a clientelistic environment between specific business and political elites who managed to insert highly controversial legislative amendments that were later picked on by the European Commission (as seen in Chapter 6). Most interestingly, after illustrating in the beginning of the chapter the struggle of the terrestrial incumbents and the temporary licensees to cancel the analogue terrestrial licensing process, towards the end of this chapter it is demonstrated that the licensing policy abruptly changed by introducing a legislative amendment, which provided an opportunity for cable operators to obtain a permanent licence through an accelerated procedure to be carried out by the telecoms regulator. The complete change of the logic of the cancelled tenders is to come as a result of the changes in the ownership structures of the previously pro-licensing operators, which had now entered the sphere of political influence having established closer political links that enabled them to shape policies in their favour.

Chapter 6 looks at the process of implementation of the undertaken digitalisation legislation and the amendment of the digitalisation plan (DVB-T Plan). It is this

chapter in which the impact of the EU is mostly observed. It demonstrates how the Bulgarian policy makers have *used* the shadow of the EU to intensify the urgency for adopting decisions and taking actions, without being fully convinced of their applicability. As a result, the presence of the EU factor contributed to diminished public debate, transparency, and accountability that in turn created inefficiencies and delays in the implementation of the DTT policies in Bulgaria. The observations here have confirmed the suggestions of the literature on the Europeanisation in the CEE, which has argued that the EU's impact is often 'diffused' by domestic capacities and political will to undertake the costs of the requirements of the EU demands. In addition, it is shown here that the Bulgarian policy makers responded selectively to the European Commission's more coercive intervention on the basis of supranational competition rules. Therefore, instead of action, the subsequent Bulgarian government has undertaken policy *inaction* that in turn has benefitted those private players who had gradually become dominant in the DTT transmission side.

Chapter 7 discusses the outcomes of the DTT transition in Bulgaria. It develops three main arguments. Firstly, it argues that the transition to DTT in Bulgaria did not bring any of the expected benefits to the general public. It has resulted so far in missed opportunities for both public and private broadcasters to enhance pluralism and engage with audiences. Secondly, it argues that the sectoral characteristics of the domestic broadcasting market- have been either ignored or only selectively taken into consideration by national decision-makers. These included: restricted (advertising) market, high penetration of paid-for cable and satellite platforms, low monthly subscription fees for pay TV viewership and a terrestrial system dominated by socially disadvantaged and economically less profitable segments of the population. The outcomes once again suggest that this can be explained on the basis of weak state capacities and their inability to resist private actors and their interests allowing the latter to take over public decision-making effectively.

Finally, Chapter 8 sums up the main arguments presented in the thesis.

## **CHAPTER 2: Analysing the politics of policy-making: Actors, Powers, Institutions and the EU**

### **2.1 Introduction**

This chapter discusses the key conceptual and theoretical tools this thesis draws upon for the analysis of DTT policy-making in Bulgaria. It has three main sections.

The first section is divided into three parts. It starts by looking at the agenda-setting model developed by John Kingdon (2011) and argues that, although highly enlightening for the analysis of public policy making, its overly pluralistic approach to decision-making requires complementary tools for explaining policy adoption. In order to account for the role of the agency in the policy process more concretely, the second part of the section reviews Van den Bulck and Donders' (2014a, 2014b, 2014c) application of the stakeholders' analysis and the so-called advocacy coalitions framework in studying EU broadcasting policy-making. The stakeholders' analysis has been useful for identifying key actors, their interests and demands in the policy process, while the advocacy coalition framework advances this understanding by focusing on the processes of interaction between those actors on the basis of their ideas and belief systems. Most importantly, however, the third part of the section comes to acknowledge the role of power in the policy-making process, shaping actors' interests, ideas and interactions. Here, the use of power is explored not only in terms of its impact on actual decision-making but also nondecision-making or, as called by Freedman (2010; 2014), policy noise and policy silence.

The second section of the chapter adopts a new institutionalist approach to provide a theoretical explanation of how institutions, which include formal and informal rules and their use, empower certain actors and constrain others, and in this way determine how power is shaped. For the purposes of this research the institutionalist concept that has been found most useful is path-dependence. Path-dependence stresses the relevance of past institutions and policies, which continue to determine present policy decisions and their outcomes. Path-dependence is complemented with a vision

that actors' strategic behaviour for benefit maximization indeed matters, yet this behaviour is, once again, shaped by institutional characteristics of a more structural kind, which in this conceptual framework are set in a path-dependent context.

The final and third section of the chapter is devoted to explore the mechanisms of the EU's top-down impact in relation to rule adoption in CEE countries. This is used in subsequent chapters in order to explain the behaviour of Bulgarian policy-makers and their response to EU demands in the implementation of DTT policies in the country.

The main argument that runs through the chapter is that the introduction of DTT television in Bulgaria can be best approached by employing a critical analysis of the policy-making process, in which not only actors and their interests matter, but also their power and capacity to shape policy. Institutional characteristics determine how this power can be exercised and how it is distributed between different actors (collective and individual). History and path-dependence on past institutional structures and policies are seen as crucial, because they provide a contextual framework for the behaviour of domestic actors. The European Union, perceived as both an actor and a factor in Bulgarian DTT policy-making, has become an important part of the institutional framework. It is argued, however, that domestic capacities and actors (in the form of veto players) have diffused its impact and contributed to 'selective' response to the EU demands.

## **2.2 Approaches to policy analysis and the question of power**

### **2.2.1 Kingdon's agenda-setting model**

In his seminal work *Agendas, Alternatives, and Public Policies*, John Kingdon, defines policy-making as "a set of processes including at least "(1) the setting of the agenda, (2) the specification of alternatives from which a choice is to be made, (3) an authoritative choice among those specified alternatives, as in a legislative vote or a presidential decision, and (4) the implementation of the decision." (Kingdon, 2011: 2-3). Looking at the characteristics of agenda setting and policy making in the health

and transportation domains in the United States, the author provides an in-depth account of how agendas are set, why certain policy alternatives are selected from the “policy primeval soup” and why others are ignored and how policies are revised and changed when the time becomes ripe. Kingdon distinguishes between three separate independent streams (problems, policy alternatives, politics), in which policy issues “flow along” and can be potentially picked up and turned into policies (Van den Bulck, 2013: 29)<sup>3</sup>. Problems are defined as such when they catch officials’ attention with their magnitude and with changes in their relatively normal conditions (Kingdon, 2011: 197). Their recognition can happen either through formal operations such as monitoring and evaluation or informal procedures such as complaints made to the officials (p.198). Problems may rise to the agenda, but may also fade out, as the conditions behind them stop being as severe. After the recognition of the problem, various alternatives for policy choices are selected from a huge number of floating ideas. According to Kingdon (2011: 200), in the policy alternative specification stream, a key role is played by the “communities of specialists” (see, also Haas, 1992), whom he sees as “relatively hidden participants” of the policy selection process. Those specialist communities include consultants, academics, bureaucrats, interest group representatives. They may have “very diverse orientations and interests, but they all share one thing: their specialization and acquaintance with the issues in that particular policy area” (p. 200). In this stream, different ideas “bubble around” through various ways of communication, including bill proposals, hearings and other formal and informal meetings (p. 200). The author compares the process of generation of policy alternatives to a biological natural selection process. Alternatives are poured into a “policy primeval soup”, in which “many ideas float around, bumping into one another, encountering new ideas, and forming combinations and recombinations” (p. 200). Proposals are selected on the basis of various criteria, in which politicians’ support or opposition does not weight more than the logical and analytical strength and feasibility of the ideas (p. 201).

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<sup>3</sup> Communications policy researchers have started to increasingly utilise Kingdon’s policy process model in recent years. For example, Jääsaari (2013) has applied the multiple streams framework for the study of the dynamics of communication policy in the Internet age, while most recently Herzog and Karppinen (2014) have used the framework to analyse the changes of the funding models of public service broadcasting in Germany and Finland.

Interestingly, in the politics stream, political considerations such as public acceptance, national mood and elections are said to be “a more potent agenda setter” than interest groups, similarly to the alternative selection process (p. 199). When the three streams of problem identification, policy specification and politics join, or “couple”, the probability of an item to rise in the decision agenda becomes the greatest (p. 201-202). In addition, however, items can climb their way to the agenda also as a result of the appearance of the so-called “policy windows”, which provide opportunities for the “policy entrepreneurs” (interested parties as well as elected officials) who lurk around “to push their pet solutions or to push attention to their special problems” (p. 203; 204). Policy windows can occur both as a result of the (re)appearance of a problem with a particular policy or when there are changes in the political and politics stream, which might include election of a new government, swings in national mood, and lobbying (p. 203). Policy windows emerge both predictably and unpredictably, but they are open for only a very restricted period of time (p. 204). An example of a policy window of opportunity can be the renewal of an enabling legislation (p. 88). In this thesis, the policy windows concept has been utilised also in relation to Héritier’s (1997; 1999) understanding of decision-making by *subterfuge*. Héritier (1999: 10) differentiates between the “official windows of opportunity” as defined by Kingdon and the more “subtle”, “stealthy” and “indirect” forms and uses of those official windows in order to escape decision-making deadlocks. According to Héritier (1999: 1) the indirect and creative use of windows of opportunities allow decision makers to circumvent policy impasses; a process that the author describes as policy-making by subterfuge. Although Héritier has developed her concept within the context of EU level policy-making, I have adapted it to explain a domestic broadcasting policy deadlock that emerged prior to the start of the digitalisation. As seen in Chapter 5, the media regulator escaped the analogue licensing impasse, making use of the international agreements on DTT switchover. Arguably, this helped the regulator to exit a process that could have further undermined its decision-making capacities.

Although the agenda as such can be “quite volatile” (p. 83), drawing on Lindblom (1959), Kingdon argues that “policy changes very gradually, in small steps”, as policy makers do not usually start a policy from scratch, and often *muddle through*

previous examples to save effort and time (p. 79). This may result in the formation of path dependencies. Another characteristic of the policy-making process that Kingdon draws on is Cohen, March and Olsen's (1972) perception of organisations as "organized anarchies", in which "comprehensive, rational decision making" is often absent (Kingdon, 2011: 86). In the author's words:

The outcomes then are a function of the mix of garbage (problems, solutions, participants, and the participants' resources) in the can and how it is processed. Who is invited to or shows up for a meeting (i.e., who the participants are) affects the outcome dramatically. Which solutions are ready for airing and which problems are on people's minds are critical. The various streams are coupled in these choice contexts. When a given solution is proposed, it may be regarded by the participants as irrelevant to the problem and is thus discarded. Or even more likely, the participants have fixed on a course of action and cast about for a problem to which it is the solution, discarding problems that don't seem to fit. The solutions and problems that come to the fore might change from one meeting to the next, as given participants attend or fail to attend. (Kingdon, 2011: 86).

This long quotation illustrates how incidental, ambiguous, disorganised and rather irrational the policy-making process can be and that both continuation and break can sometimes remain unaccountable due to the combination of various factors, including processes and participants (Kingdon, 2011: 76-79). Rationality should not be expected when there are many actors participating and willing to influence the policy decision-making process. Indeed, as the empirical part of this thesis will show, reading through the verbatim reports of the parliamentary media committee or the meetings of the ministers in the executive's office in the course of the legislative process on DTT in Bulgaria, the decision-making process, including the number of participants, who spoke and who remained silent, whose arguments were backed and by whom, attendance and the number of eligible voters in the meetings, the (scarcity of) time devoted for discussions and urgency for having the decisions taken, fit well with the policy making process as conceptualised by Kingdon. The Kingdon's agenda setting model and his arguments on decision-making are very useful in showing how the process of policy-making operates internally, within and among the involved organisations. As seen in the empirical chapters of this thesis, I have used the terminology coined by Kingdon to describe the decision-making processes in the

case of broadcasting policy in the country. Of particular use has been the concept of policy windows. However, in contrast to the pluralistic vision of Kingdon (2011: 71-73), for whom policy ideas appear “from anywhere” and are accepted on the basis of the intellectual strength of their argumentation, this thesis looks for a more critical approach to explain policy origination and the process of decision-making (see also Page, 2006: 208<sup>4</sup>). I do this by incorporating the concept of power into the analysis of the policy-making process and the way it influences which decisions are taken and which are ignored. Before that, however, I focus more closely on the role of various stakeholders and actors in the policy process, seen through the application of the stakeholders’ analysis and the Sabatier and Jenkins-Smith’s (1993) ‘advocacy coalition framework’ by as discussed by Van den Bulck and Donders (2014a, 2014b, 2014c) and Van den Bulck (2012; 2013) in their studies of broadcasting policy-making.

### **2.2.2 Adapting Kingdon’s model: Focus on stakeholders and advocacy coalitions**

Drawing on works of political scientists, Van den Bulck and Donders (2014a, 2014b, 2014c) and Van den Bulck (2012; 2013), have offered tools for analysing media policy on the basis of stakeholders and advocacy coalitions. As pointed out by the authors, media policy researchers have “implicitly” applied the stakeholder analysis as part of their task to identify relevant stakeholders and their arguments in the policy-making process (Van den Bulck and Donders, 2014a: 19). The so-called stakeholder analysis then looks at decision-making that involves various actors and stakeholders’ views and interests on certain policy issues and the decisions that come out as a result of debating and negotiating those issues (Van den Bulck, 2012: 219; Van den Bulck and Donders, 2014a: 20). The analysis includes identifying, first, the general structural characteristics of the decision-making in specific national domains; second, the relevant stakeholders (e.g. politicians, regulatory institutions, interest groups, media and telecommunications companies, citizens and other civil society representatives); third, the ideas and preferences around the policy issue and its

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<sup>4</sup> It should be noted that the US born agenda-setting model of Kingdon was developed in order to explain how agendas emerge in a highly fragmented and less hierarchical political system (Page, 2006: 208).



outcomes that the various stakeholders support; fourth, the relevant policy fora in which the debates are carried out (Van den Bulck, 2013: 19-20; see also Van den Bulck, 2012: 219-220 and Van den Bulck and Donders, 2014a: 20). The authors have illustrated the application of the stakeholder analysis using the example of the public service broadcasting policy-making at the EU level. They have stressed the multilevel governance characteristics of the decision-making process in the EU and the involvement of a wide spectrum of public and private institutions, organisations and interest groups based in Brussels and in member states, which have expressed different logics and preferences for the outcomes of the EU's PSB policy. The expansion of PSB in various market domains with the digitalisation of media has united private broadcasters and online newspaper publishers against public organisations' involvement in areas that were traditionally perceived as commercial. The outcomes included the renewal of the 2003 Broadcasting Communication, which demanded a more tightly defined PSB and the introduction of *ex ante* tests for new services with potentially significant market impact (Van den Bulck and Donders, 2014a: 22-23). As rightly pointed out by the authors, however, along with its usefulness to identify key policy actors and issues, the stakeholder analysis fails to acknowledge, among others, the existence of non-official and informal venues and actors for decision-making (Van den Bulck and Donders, 2014a: 23). In addition, they concede that

there is a need for a better conceptual understanding of the dynamics of the policy process as a means to identify who gets something on the policy agenda, how different stakeholders relate to one another and to key policy-makers, and how the decision-making process works formally and informally. Identification of stakeholders and policy actors in itself cannot account for their individual or combined visibility, impact and power, nor for the policy processes in which they take part. (Van den Bulck and Donders, 2014a: 24).

To overcome these drawbacks, the authors have drawn on John (2003) to suggest that attention should be shifted from actors and stakeholders to the actual relationships between them, which form the so-called policy "process" (Van den Bulck and Donders, 2014a: 24). The authors propose the use of Sabatier and Jenkins-Smith's (1993) "advocacy coalition framework" (developed also within a US

context) for a more in-depth analysis of the “belief systems” of the different coalitions of actors and stakeholders organized in different subsystems around certain policy issues. Within the framework, policy decisions are made on the basis of competing coalitions of actors that relate to each other and interact through shared beliefs and ideas about what policies should look like (Van den Bulck and Donders, 2014a: 25). Coalitions fight out until one comes out as a dominant (Van den Bulck and Donders, 2014a: 26). Those “belief systems” are presented in the form of a “hierarchical, tripartite structure”, including a “deep core”, a “policy core” and “secondary aspects” (Sabatier, 1998: 103; see, also Sabatier and Weible, 2007: 194-196). The deep core includes broad normative and ideological beliefs that hold across domains, which in EU media policy may be translated into liberal and dirigiste approaches to EU media policy, arguing in favour of, respectively, free market principles in media provision and the need for government intervention to ensure diversity (Freeman, 2006: 374; Van den Bulck and Donders, 2014a: 25). The policy core includes more specific normative commitments within the policy domain at stake or across the various advocacy subsystems within that domain (Sabatier, 1998: 103; Freeman, 2006: 374). In relation to media policy, Van den Bulck and Donders (2014a: 25-26) give as an example the opposing views of liberals and dirigistes about the level of government involvement in the delivery of public service. Finally, the “secondary aspects” include narrower beliefs concerning the policy core, e.g. preference for the application of competition law over sector-specific rules on ownership (Van den Bulck and Donders, 2014a: 26). Flexibility increases when moving from the top to the bottom of this hierarchy; thus, the most rigid beliefs are present within the deep core and the most adaptable can be the secondary aspects of the advocacy coalitions’ beliefs (Sabatier, 1998: 104). Yet, what is said to hold coalitions together is the policy core (Freeman, 2006: 374). An important contribution of Sabatier and Jenkins-Smith’s (1993) advocacy coalition framework is its attempt to explain policy change, an aspect of the policy process particularly relevant to this thesis. Change can occur as a result of influences from “dynamic exogenous factors” as well as “shocks” in the system or as a result of implementation evaluation and subsequent effectiveness problems that result in “policy-oriented learning” (Sabatier, 1998: 105; Freeman, 2006: 374; Van den Bulck and Donders, 2014a: 26). In Chapters 5, 6 and 7, references to various exogenous

factors of change will be made to explain the sharp shifts in broadcasting policy directions in Bulgaria. Factors have included the country's EU accession aspirations, the adoption of DTT switchover deadline on an international level, and shifts in television ownership structures. In this thesis, however, outcomes of a policy change as a result of a learning experience have not been presented. Although, as seen in Chapter 7, discussions have begun, no concrete results of the revision of the problematic DTT outcomes were available at the time of writing up of the conclusions of this work.

### **2.2.3 Decisions, non-decisions and power**

Both the stakeholder analysis and the advocacy coalition framework, however, fail to provide a fully-fledged tool for policy analysis. It can be argued that their pluralistic nature<sup>5</sup>, like that of the aforementioned agenda setting model of Kingdon, assumes that relationships and interactions (conflicts and co-operations) between various subsystems of the policy coalitions are overt and visible. In addition, as pointed out by Van den Bulck and Donders (2014a: 31), the advocacy coalition framework does not explain why seemingly similar or identical coalitions produce different outcomes in different member states. The authors thus suggest that the occurrence of discrepancies in the policy outcomes should be analysed taking into consideration country specific path dependencies (a point I shall return to in the next section below). Most importantly, however, both conceptual tools for policy analysis (stakeholder analysis and the advocacy coalitions framework) remain silent as regards the role of *power* in the relations between actors in the policy process<sup>6</sup>. Arguably, they do not explain why certain policy preferences become dominant over others, how this domination is facilitated, or what are the real reasons behind adopting one policy model over another. To give an example, already in the case of

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<sup>5</sup> Influential policy analysis tools with a pluralistic approach have been developed in Britain as well (Freedman, 2006: 909-910). See, for example, the so-called "policy network analysis" of R.A.W Rhodes, recently re-elaborated in Rhodes (2006).

<sup>6</sup> The policy process includes both actors and their relations and interactions (Van den Bulck and Donders 2014c).

some of the exogenous<sup>7</sup> factors mentioned above (like the aim to become a full EU member) as regards broadcasting policy in Bulgaria, this thesis is suspicious about their real and direct role and thus attempts to explore what is beyond it. The potential answers to the above questions demand additional analytical tools to explain the policy-making process beyond what are directly visible and observable acts of behaviour and rule making (Freedman, 2014: 64) within official and non-official decision-making fora (Freedman, 2008: 11-13). This fora, although quite plural and dispersed, does not guarantee equal participation (Freedman, 2006: 913).

Drawing on political scientists who have challenged the pluralist accounts of power (Lukes, 1974/2005, Crenson, 1971, Bachrach and Baratz, 1962), Freedman (2006; 2008; 2010; 2014) suggests that (media) policy analysis should pay attention not only to decision-making (how decisions were made, who participated and who influenced them), but also to ‘non-decision making’<sup>8</sup> and policy ‘inactions’ or ‘negative actions’. In his own words,

For all the consultations, reports, seminars, working parties, blogs, speeches and even legislation that populate the policy environment – in other words, for all the *noise* that is generated – what needs to be made visible are the questions that are not asked, the alternatives that are not considered and the agendas that are not posed. It is the silences that media policy activists need to highlight. (Freedman, 2014: 76, emphasis in original).

Therefore, an approach that, in addition to policy decisions, considers policy silences provides for a more comprehensive analysis that can demonstrate whose interests have been enabled to reach the policy agenda and become formalised and whose stakes have been constrained and marginalised (Freedman, 2014).

The form of power that Freedman has explored in relation to media policy-making processes is mostly what Lukes has called (1974) a “three-dimensional” or “radical view” of power. It is a view that takes into consideration not only the power of actors

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<sup>7</sup> Not to mention the various degrees of the learning spectrum (from deep to surface), as seen later on in this chapter.

<sup>8</sup> See Page (2006: 220-222) for “policies without agendas”.

and individuals to bring policy issues and decisions to the agenda, but also their power to cause “nondecision-making,” that is:

a means by which demands for change in the existing allocation of benefits and privileges in the community can be suffocated before they are even voiced; or kept covert; or killed before they gain access to the relevant decision-making arena; or, failing all these things, maimed or destroyed in the decision-implementing stage of the policy process (Bachrach and Baratz, 1970: 44 cited in Lukes, 1974: 18-19).

Therefore, it has been suggested that nondecision-making is a form of decision-making, where potential policy issues are prevented from even being raised (Bachrach and Baratz, 1962: 952 in Freedman, 2014: 66). More importantly, policy issues might be prevented from being raised to the agenda, not only by action, but also ‘inaction’ (Crenson, 1971 in Lukes, 1974: 43; Freedman, 2014: 68), in which the shadows of the power of certain actors and their anticipated interests can act on their behalf. Finally, according to Lukes, in order for power to influence policy-making, there might not necessarily be an “observable conflict” (Lukes, 1974: 22). Thus, Lukes disagrees with what he calls “two-dimensional view of power” of Bachrach and Baratz, in which conflict and “grievances” must exist in order that the role of power can be observed (Lukes, 1974: 23). In contrast, Luke’s three-dimensional view of power argues that the most “insidious” influence of power is when it manages to prevent the conflict from appearing in the first place and then prevent grievances from emerging by shaping the preferences of the interested parties so that they either believe that there is no other way for things to be done or accepting them as their own (Lukes, 1974: 23-24). Thus, in line with Gramsci’s view on false consciousness, Lukes has argued that “real interests” might never be realised or never come to the surface, as those on whom the power is directed “may not express or even be conscious of their interests” (Lukes, 1974: 25). All these arguments are utilised, to a greater or lesser extent, by Freedman (2014) who looks at how nondecision-making and policy inactions, or in his words ‘policy silences’, are manifested in media pluralism and net neutrality policy debates in Britain and the USA. The analysis shows that, instead of genuine public interest, these debates revolve around consumer choice and market competition, a discourse that on a micro level benefits strategic corporate interests and on a broader level reinforces neo-

liberal values. In this way, alternative values are marginalised (p. 80). Silences, however, can also “occur in spaces that are undoubtedly noisy” (p. 82). For example, influential telecommunications groups have effectively narrowed such an extensively debated policy issue as net neutrality down to predominantly “traffic management” aspects.

In this thesis, policy inactions are demonstrated in successive Bulgarian governments’ postponement of finding a solution for clearing the broadcasting market from non-eligible licensees, which later established path dependencies that reached the digitalisation era and determined certain DTT policy choices. In addition, as discussed in Chapter 7, the silence of the Bulgarian state as regards the concerns raised about the ownership of the multiplexes and their inaction to tackle the established monopolisation of the transmission system contributed to the failure of the DTT model in the country. Admittedly, this thesis does not apply fully the uses of power as strictly as defined by Lukes (1974). It falls more into the two-dimensional view of power rather than focusing on “potent” non “observable” conflicts. Still, this research explores how institutionally structured conditions determine the distribution of power in policy-making (see, Freedman, 2014: 73). As stated by Page (2006: 222) sometimes policies can take the form of non-decisions when they are adopted through institutionally induced restricted debate and deliberation. For instance, Page has suggested that the institutionalisation of the so-called “club regulation” (Moran, 2003 in Page, 2006: 222), which created a substantial self-regulatory practice with a light touch regulatory intervention in Victorian Britain, could be an example of nondecision-making, because it prevented other forms of regulation to develop.

This last point establishes a link with the institutionalism literature, which I adopt below to study how institutions matter in distributing opportunities and constraints to actors and stakeholders in the policy-making process on DTT broadcasting in Bulgaria.

### 2.3 New Institutionalism: the question of structure – agency interplay

The conceptual framework of this research is based on the so-called *new institutionalist* approach, increasingly used for the study of broadcasting policy-making, including digital television (see Galperin, 2004a, 2004b; D’Arma, 2007; Sümer, 2007; Broughton-Micova, 2013). Proponents of this approach look at the role of *institutions* and how they matter in defining the outcomes of the policy-making process (Peters, 2012: 185). It is essential to clarify what is meant by the use of the term ‘institutions’ here. As Lowndes (2002: 103) has pointed out, the new institutionalism literature<sup>9</sup>, although it agrees that institutions are “the rules of the game” that the actors involved are set to play, it is still rather vague on what exactly constitutes institutions. Institutions are said to enable or constrain actors’ behaviour through formal and informal rules, practices, ideas and narratives (Lowndes, 2002; Lowndes and Roberts, 2013; see also John, 2012). Formal political, administrative, judicial and regulatory organisations, such as ministries, agencies, courts, and regulators are considered actors that are part of the institutional structure. However, it is the way they act and interact with each other and with other stakeholders and individuals that constitutes institutions in this thesis. Thus, the so-called institutional structure comprises the conditions of the environment and the interactions “between” “within”, “under”, “over” and “around” those organisations (Fox and Miller, 1995: 92 cited in Lowndes, 2002: 98) and the actors involved in the policy process. In sum, drawing on Lowndes and Roberts (2013), the institutions as understood in this research, are the formal rules (laws, regulations), practices (informal conventions/ways of doing things) and their justification through various narratives (discourses, ideas and preferences) that shape (enable/constrain) the behaviour of actors and individuals (formal/informal, overt/covert) acting within a specific structure that includes the use and reactions of the actors to the established rules and practices. What is important to note here is that institutions are “Janus-faced”, as they shape actors’ behaviour, while at the same time they are created and then shaped by those actors (Lowndes and Roberts, 2013: 77). Similarly, my

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<sup>9</sup> Different strands have been identified within the new institutionalist literature, of which the main are historical, rational choice and sociological institutionalism (See, for example, Schmidt, 2006; Hall and Taylor, 1996; Immergut, 1998; Peters, 1999; 2012).

understanding of the structure is that it comprises rules and practices that are used in a particular way by actors and individuals. The way they are used is both determined and determines the conditions of the structural environment. Because of the role of actors in it, the institutional structure is seen as fluid, changeable or as noted in Lowndes and Roberts (2013) a “work in progress”.

The types of questions that the institutionalist perspective is interested in, include:

What are the formal ‘rules of the game’ within a particular political arena? What are the dominant practices that are not actually written down? Are there gaps between the formal rules and the way things ‘really work’? Are there frequently rehearsed ‘stories’ that explain why people act one way rather than another? What do actors think will happen if they do not follow rules or observe dominant practices? How do actors circumvent, or seek to adapt, rules and practices? Do different actors relate to rules differently? Are there alternative rules and practices ‘bubbling under’? Are new stories emerging about how things *could* work in the future? How do actors react to those who want to change the rules? (Lowndes and Roberts, 2013: 9-10, emphasis in original).

Although not mentioned, these questions imply the role of power that is granted to actors, its distribution and use. According to the founders of the new institutionalist approach, March and Olsen (1989; 2004; 2006), actors behave in accordance with the institutional environment in which they operate. The authors have coined the expression “logic of appropriateness” to illustrate their argument. In their view, actors are “bounded” in their rationality (March and Olsen, 1984; see also Jones, 1999: 229) by cognitive and normative elements, “encapsulated in a role, an identity, a membership in a political community or group, and the ethos, practices and expectations of its institutions” (March and Olsen, 2004: 3). The reader, however, should be aware that “appropriateness” could be a misleading term. An action could be appropriate for certain actors only within the conditions of a particular institutional structure and what might be “reasonable” and “natural” within those circumstances does not necessarily mean right or “morally acceptable” (March and Olsen, 2004: 4). Linking this to the concept of power, it can be then expected that the institutional characteristics of every structure will tell us how power is distributed among actors, judging by the ‘appropriate’ behaviour they demonstrate (a point also



raised above). The idea is present in the so-called “structure-relational” approach of Jessop (2001: 1223), according to whom a given structure may empower some actions and actors (individual and/or collective) over others, while actors “take account of this differential privileging through ‘strategic-context analysis’ when choosing a course of action.” Thus, the exercise of power becomes “context-shaped” and “indirect”, “mediated by, and instantiated in, structures” (Hay, 1997: 51). That is why for the purposes of this research, the characteristics of the domestic institutional structure of policy-making have to be acknowledged in order to understand the behaviour of actors and how it, in turn, is determined (empowered or disempowered) by the conditions of their environment. I will return to this point after discussing how exactly actors’ powers can be institutionally determined and distributed.

According to Lowndes and Roberts (2013: 90-104)<sup>10</sup>, power is distributed through formal rules, informal practices and narratives (see also John, 2012: 29). Formal rules such as laws and regulations represent an indirect source of power, where the rules “redefine the parameters within which [affected actors] will continue to act” (Hay, 1997: 51). In addition, legislative rules and regulations can potentially “empower one set of actors, while draining power away from another.” (p. 92). Unlike formal rules, informal practices are “conveyed through demonstration rather than written rules” (p. 93). They can demonstrate how actors respond to formal rules and constraints and shape the use of them (p. 94). Practices can persist over time and “may eventually be elevated to the status of rules” (p. 94). Examples here can include informal institutional practices such as “patronage, corruption and clientelism” (p. 6), the extent of which can be determined by national political and cultural characteristics (p. 94). For example, Lowndes and Roberts have used a case study of Ecuador to show “how political actors, who are heavily constrained by formal rules, can access covert practices – ‘ghost coalitions’ – to achieve their policy goals, while still appearing to conform to the dominant institutional configuration.” (p. 98). Finally, narratives and discourse are used to justify actions in terms of both formal rules and informal practices. Yet, it should be noted that informal actions are particularly aligned with facilitating power through narratives and discourse. The

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<sup>10</sup> The paragraph relies on Lowndes and Roberts (2013) and, unless otherwise stated, it should be understood that the quotations belong to those two authors.

three types of power distribution (formal rules, informal practices and narratives) are present in Chapters 5, 6 and 7 of this thesis.

Returning back to the relevance of structure for shaping strategic actions of collective actors and individuals, this thesis acknowledges the use of the ‘path-dependence’ concept to explain the formation of particular structural environments. According to it, past policies influence the formation of future ones and in this way, once created the institutional structure becomes difficult to change (Peters, 2012: 71; Peters et al., 2005). Path-dependence, a concept found in the so-called historical institutionalism, has been applied in media and communications studies as well. According to Humphreys (2012: 159-166), “historical *disjunctures*” and their legacies are capable of explaining certain differences between media systems that often form in a “*sui-generis*” manner. Thus, in his study of the Western European media policies, Humphreys (1996) refers to the particular countries’ political systems in order to explain the differences in their media policy approaches. He concluded that there was “a marked congruence between political systems and their respective media systems.” Humphreys (1996) attempts to explain differentiations between Western European countries to common challenges in the media using an analytical distinction between the degrees of ‘majoritarianism’ or ‘consensus’ in the political and social systems of the countries at stake. Although often under attack<sup>11</sup>, Hallin and Mancini’s (2004) three models<sup>12</sup> of Western media systems also use the concept of path-dependence as the basis of their categorisations. Chapter 3 makes use of the produced path-dependence evidence in Western European countries to establish a link with the policy-making style and choices for the introduction of DTT broadcasting. Path-dependence has been also been used to demonstrate the relevance of the established analogue broadcasting structure for DTT policy outcomes. For example, Galperin (2004a, 2004b) has used the approach to demonstrate the various degrees of continuity of the pre-existing *analogue* system in the establishment of the

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<sup>11</sup> See, for example, critique of Hallin and Mancini’s (2004) three media system categories expressed by Humphreys (2012).

<sup>12</sup> Mediterranean/Polarized Pluralist Model (France, Greece, Italy, Portugal, Spain); North/Central European or Democratic Corporatist Model (Austria, Belgium, Denmark, Finland, Germany, Netherlands, Norway, Sweden, Switzerland); North Atlantic/Liberal Model (Britain, United States, Canada and Ireland).

*digital* broadcasting policies in Britain and the United States. Drawing on him, the process of DTT policy-making in Bulgaria is examined with a reference to past decisions and established arrangements of the analogue era as well as the general institutional structure that has emerged after the break of the communist regime in the country.

### **2.3.1 Path dependence and the CEE**

According to Hausner, et al. (1995: 4), the post-communist countries of CEE entered into a state of “systemic vacuum” after the collapse of the socialist regime, which, however, did not mean an “institutional vacuum.”

On the contrary, post-socialist trajectories [were] heavily dependent on a dense and complex institutional legacy such that the (often invisible) remnants of previous economic and political orders still shape[d] expectations and patterns of conduct. This [was] particularly significant in relation to all those social patterns and networks which generated the flexibility necessary to compensate for the rigidities of centralized planning and nomenklatura governments and which, in a context of uncertainty, if not chaos, provide[d] important reference points and resources to enable life to go on. This is why the transformation process cannot but be ‘path dependent’. (Hausner, et al., 1995: 4).

The focus on path-dependence, however, should not be understood as a disregard of the role of strategic actions of the various actors and stakeholders involved in the policy-making processes. The strategic behaviour targeted at maximization of self-interests and aggregation of commercial or other kind of profit is the central topic in the so-called rational choice institutionalism (Schmidt, 2006: 102; Peters, 2012: 49). Strategic behaviour is important to recognise, because it has been argued by institutionalist researchers that institutions might be sticky, though not static (Lowndes, 2002: 99; John, 2012: 32). They do change. In a key text, North (1990) has explored path-dependence and institutional change and revealed not only the importance of history, but also the role of the rational incentives and the ideas they are manifested with. Institutional change, although incremental, has been facilitated by “agents of change” or otherwise called “individual entrepreneur[s] *responding* to

the incentives embodied in the institutional framework (North, 1990: 83, emphasis added). The stress on response here is to underline that strategic action, although “real”, it is “constrained” within the “context of path dependency” (Hausner et al. 1995: 4). The extent of constraint is determined by the institutional structure where, in “the absence of institutions that promote complementary behaviour”, “individual actors’ choice can only lead to sub-optimal solutions” (Schmidt, 2006: 102).

As noted in Chapter 4, in the case of Bulgaria, path dependency was observed in terms of the preservation of the key role of top political elites of the pre-1989 system, who moved to become major actors in the economic life of the country in the post-1989 period. Large business conglomerates were established with the support and participation of high-ranked officials of the communist party (Kostadinova, 2012: 99-100). The accumulated power of such monopolistic economic groups managed to undermine state structures and capacities with the utilisation of both formal and informal “veto points”, in order to preserve their positions as beneficiaries of strategic public resources (Ganev, 2001). According to Ganev (2001: 19), “powerful actors in the former Soviet world [did] not need a “strong” state that can extract – and thus make available for redistribution – resources held by particular social groups.” In line with the institutionalist approach, the structure and the agency, operating within it, form a vicious circle of opportunities and constraints that reinforce each other<sup>13</sup>. Thus, the already weak state structures of the former communist regime (Kostadinova, 2012: 129) had allowed the creation of certain “winner groups” (see, Hellman, 1998)<sup>14</sup>, which enabled by the structural weakness further intensified their “state-breaking” capacities and “perpetuate[d] the chronic

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<sup>13</sup> As pointed out above, institutions are seen as Janus-faced. They have a “dual nature” and the relationship between institutions and actors is “reciprocal and cyclical” (Hausner et al., 1995: 47).

<sup>14</sup> Hellman (1998: 218-219) has shown that *partial* economic reforms, in which part of the economy functioned in accordance with past unreformed rules (which within the boundaries of this analytical framework can also constitute non-decision) have contributed to the establishment of an adequate structure of opportunities for certain actors to “earn monopoly rents”. The so-called “early winners” (see, Ganev, 2001: 4 and Kostadinova, 2012: 97), who benefitted from the initiation of liberalisation and opening of the markets, later sought to “block specific advances in the reform process that threaten to eliminate the special advantages and market distortions upon which their own early reform gains were based” (Hellman, 1998: 204).

malfunctioning of the instruments of governance” (Ganev, 2001: 21). More concretely, Kostadinova (2012) has shown how Bulgarian political parties’ constant need for funding sources has preserved throughout the years the cyclical interrelationship between corrupt political and economic networks, or otherwise called “friendly circles”, whereby “political elites in power award particular businesses with public contracts or favourable legislation, [and] the companies, on their part, finance parties beyond what is envisaged by the law” (p. 116; p. 96). As explained by the author, the informal interdependencies persisted with time as business groups managed to adapt to the changing institutional structure of the post-communist transition. In this respect increased marketisation and settling of competition rules forced business groups to deploy “more distinct forms of cooperation”, including in their composition banking and media interests (Kostadinova, 2012: 117). With the progression of the transition and the move from political duopoly with two opposing major political formations to a more diverse political environment (presented in Chapter 4), the relationships between political and economic actors have also changed (Kostadinova, 2012: 118). The loyalty towards a single party has given way to targeting whoever comes into power (Kostadinova, 2012: 118).

Similarly, in Vachudova (2001; 2005: 5), the institutionalisation of post-communist state capture has been illustrated with reliance on both historical and actor-driven institutionalist approaches. The author has argued that the presence or absence of opposition to communism has determined the extent of state capture in post-communist countries (Vachudova, 2001: 18). Vachudova has demonstrated that in CEE countries, such as Hungary, Poland, and the Czech Republic, where the opposition to the communist regime was stronger and where former communist parties were devoted more genuinely to reform, had created higher “political competition” (2005: 3), which in return had lowered the level of state capture. This has been contrasted to countries of the CEE region, including Bulgaria, Romania and Slovakia, where mostly un-reformed communist parties took over the state rule (Vachudova, 2001: 19). In her own words, because “the communists were never forced from power, they naturally had few difficulties in capitalizing on social and

economic assets retained from the *ancient regime*, most importantly control of the state-run television.” (Vachudova, 2001: 20).

Political conditions after the break of communism have also influenced the development of the broadcasting sectors, seen as promising economic domains. The arguably unfinished political and social transition (Sparks, 1998; Jakubowicz, 2007a) has contributed to a broadcasting transformation of an “imitative” nature (Splichal 2000, Splichal, 2001; Harcourt, 2012; Zielonka and Mancini, 2011) with cosmetic adoption of Western models. Splichal (2000; 2001) calls this a process of “imitative transformation” in which CEE countries have been assimilating institutions, behaviour patterns and values, characteristic of different stages of Western societies’ development. More recently, Harcourt (2012) has looked at the impact of external forces such as the EU on CEE countries’ “institutional isomorphism” (whereby institutions begin to resemble each other under the pressure of similar conditions)<sup>15</sup> and has concluded that the supranational pressure has not brought genuine change, because mostly CEE “states have adopted European policy models – *on paper* – in order to attract resources and interact with policy makers at the European level” (p. 138, emphasis added). In this respect, rather than normative, the “institutional change and regulatory adoption had been both coercive and mimetic” (Harcourt, 2012: 138). Thus, instead of resembling arguably more democratic media models, post-communist countries in Europe seem to have taken a path towards “Italianization” of their media systems (Splichal, 1994; 2000; 2001), which, in line with Hallin and Mancini’s (2004) Mediterranean media model, is characterised with high level of state dirigisme and state paternalism, political clientelism, weak regulatory institutions, weak public service broadcasting and high degree of politicisation of media regulation (Jakubowicz, 2007b: 304). Although, Hallin and Mancini (2013) admit that fitting CEE media systems into one of their three models might be problematic the Mediterranean model, “more in its Iberian or Greek than its Italian form” (p. 19), has been perhaps the closest to illustrate the media transformations in CEE countries. The post-communist governments of those countries, however, did not only imitate the Western practices, but also those of the past, a process described by Splichal (2000; 2001) as “re-nationalisation”. The political transformations turned

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<sup>15</sup> See Di Maggio and Powell (1991).

media into a “battleground”, in which “the new governments did not hesitate to use regulations and strategies of the former regimes to retain control over national broadcasting”, both direct and indirect (Splichal, 2000: 9). Chapter 4 demonstrates the battleground that emerged in the process of adoption of the first broadcasting legislation in post-communist Bulgaria and the strategies applied by political parties to secure control over the public service broadcasting organisations through domination over national regulatory bodies.

## **2.4 The European Union’s impact on national policy-making**

This section uses the literature on Europeanisation, and most specifically as regards the CEE countries, to establish a framework for analysis of the EU’s influence on DTT policy development in Bulgaria. The term Europeanisation is broadly defined as the EU impact on member states (Bache and Jordan, 2008: 17), and in particular on their polities, policies and politics (Schimmelfenning and Sedelmeier, 2005: 5). Europeanisation research includes studies of both “top-down” “downloading” of policies and structures from the EU to the domestic level, and “bottom-up” “uploading” of policies and preferences from the national to the EU domain (Börzel 2002: 193 in Cini 2007: 406). In both processes the degree of “bargaining power” of the member state (Schimmelfenning, 2001) is of key importance. The gradual enlargement of the EU towards the post-communist CEE countries since 2004 has been a top-down process with “asymmetric dependence”, in which the candidate countries aspiring to join the EU club were obliged to meet pre-accession conditions compiled in the 80,000-page *acquis communautaire* of EU rules and regulations that had to be transposed to national legislations and institutional structures (Grabbe, 2006). Thus, the EU’s “conditionality” or, as Schimmelfenning and Sedelmeier (2005: 11) define it, “reinforcement by reward”, has been a key Europeanisation factor in the pre-accession stage factor (Grabbe, 2006, 2001, 2003; Schimmelfennig and Sedelmeier, 2004). Europeanisation at that stage has been manifested by numerous mechanisms, including monitoring and benchmarking, provision of legislative and institutional models and templates; provision of financial aid; advice and twinning (Grabbe, 2001; Grabbe, 2006). Monitoring, as one of the key examples of conditionality enforcement, has been facilitated through the so-called Accession

Partnerships<sup>16</sup> and Regular Reports published by the European Commission, evaluating the level of progress made by each candidate country on their way towards accession (Grabbe, 2006: 83; see also, Schimmelfennig and Sedelmeier, 2005: 15).

This study of DTT policy in Bulgaria is only partially interested in the assessment of the influence of EU conditionality on Bulgaria in its pre-accession period (1999-2006). It, nevertheless, finds it relevant in explaining change of political behaviour in relation to media policy in the years preceding the DTT debate in the then candidate country. As seen in Chapter 5, in 2005, the Bulgarian government took very seriously the criticism of the EC's preceding Regular Reports as regards the adoption of a media strategy that was expected to 'unblock' the nationwide broadcasting licensing in the beginning of 2000s. The media strategy required by the legislature was submitted to the Parliament, where it had been pending for more than three years. The approaching report of the EC for 2006 (the last before accession) was the main driving force for the Bulgarian parliament to push for the adoption of the strategy. The power of monitoring was facilitated with the provision of European media experts, who urged the Bulgarian parliamentarians to 'promise' the adoption of the document in due time. The Parliament voted in favour of the strategy, disregarding issues that were raised about the document not being up-to-date and lacking policy visions on DTT. In this case, the EU's conditionality impact lowered the "conflictual" level of media policy decision-making in the country by uniting political efforts to complete membership requirements. According to Radaelli (2003: 36), the EU can indeed affect the domestic style of policy-making "by making it more or less conflictual, corporatist or pluralist, or more or less regulative." Reference to pre-accession conditionality is also made in Chapter 4, a background chapter, where the characteristics of the post-communist transition of Bulgaria are illustrated.

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<sup>16</sup> They set the key priority areas candidate countries have to make progress and the pre-accession assistance (European Commission, 2012a).



DTT policies in Bulgaria were developed essentially after the country's accession to the EU in 2007, when the reward (a full membership) had already been awarded.<sup>17</sup> Nevertheless, this research sees the EU's DTT policies (although not clear-cut as seen below) as a top-down influence, requiring analogue switch-off to be completed by 2012<sup>18</sup> in conformity with EU rules. For this reason, I have found the literature on pre-accession Europeanisation of CEE useful to explain any impact of the EU on DTT policy-making in Bulgaria.

I draw on Schimmelfennig and Sedelmeier (2005), who had come to three (one main and two complementary) models to explain rule adoption in CEE countries, based on either "EU-driven" demands or "domestically-driven" needs. In relation to the former, this thesis refers to the role of externally driven incentives in the "differential empowerment" of certain domestic actors in rule-adopting states (Schimmelfennig and Sedelmeier, 2005: 11). According to the authors, national actors might "have independent incentives to adopt EU rules, which might stem from the utility of EU rules in solving certain policy problems to the advantage of these domestic actors or, more generally, in increasing their influence" (Schimmelfennig and Sedelmeier, 2005: 11). Thus, the EU rules can be *used* to change "domestic opportunity structures in favour of these domestic actors and [strengthen] their bargaining power vis-à-vis their opponents" (Schimmelfennig and Sedelmeier, 2005: 11-12). As will be discussed in Chapters 5, 6 and 7, various national actors, ranging from official policy-making institutions to representatives of the broadcasting industry in the country, referred to the EU and its rules at various stages of the DTT process, in an effort to either amend the course of intended action or justify certain policies that benefit particular domestic actors<sup>19</sup>.

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<sup>17</sup>After joining the EU in 2007 a form of *post-accession* conditionality has been applied in Bulgaria and Romania, where a special measure named Cooperation and Verification Mechanism (CVM) was introduced to monitor countries' progress, yet only in judicial reform and the fight against corruption (Gateva, 2013).

<sup>18</sup> According to the ITU, by 2015 at the latest.

<sup>19</sup> Drawing on March and Olsen (1989), Schimmelfennig and Sedelmeier's explanation of external incentives model of rule adoption has been based on the rationalist strand of new institutionalism and the so-called "logic of consequences", which explains the strategic, self-maximization behaviour of certain actors (Schimmelfennig and Sedelmeier, 2005: 9).

In addition to the external incentives model, Schimmelfennig and Sedelmeier (2005) suggest an alternative to the solely rationally driven interests of actors in the policy-making process. Drawing on Checkel (2001), Schimmelfennig and Sedelmeier (2005: 20) argue that a “social learning model” of rule adoption can explain actors’ attempts to internalise the EU rules as part of their needs, preferences and beliefs for improved policy if the established one has failed or if there are no appropriate rules in the rule-adopting state to address the policy issues at stake.<sup>20</sup> Similarly, the “lesson-drawing model” focuses on the needs of actors to adopt external rules, because of “domestic dissatisfaction with the status quo” and the already established policy design (Schimmelfennig and Sedelmeier, 2005: 22). The lesson-drawing model can explain both strategic actions of the policy stakeholders, for example, attempts to escape sanctions or as in the case of the social learning model, attempts to change policy paradigms and objectives because of changes in the belief systems that have occurred as a result of a policy failure (Schimmelfennig and Sedelmeier, 2005: 22). In the Bulgarian case, as examined in Chapter 7, the failure of DTT policy was openly admitted. The moment became “ripe” and a “window of opportunity” opened for its revision due to two factors. First, the changes that occurred in constellations of actors that had previously acted together in utilising their political and economic interests, including the media and telecommunications sectors as well as the DTT. Second, the decision of the Court of Justice of the European Union (CJEU) in spring 2015 that upheld what previously the EC had concluded, that the domestic rules on DTT licensing were in breach of EU competition rules. At the time of writing, financial sanctions have not been applied to the Bulgarian state, yet the government is now awaited to take action to repair the ‘damage’ that resulted in the monopolisation of the DTT transmission market (see Chapter 7). As a result, discussions in the current Parliament have revealed that the Bulgarian policy makers have arrived to a point, which can be defined as a lesson drawing. There was clear domestic dissatisfaction with the status quo. All stakeholders agreed that the policy design of the established DTT system in the country had failed and a new model has to be developed. The executive (Ministry of Transport, IT and Communications

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<sup>20</sup> Again drawing on March and Olsen (1989), Schimmelfennig and Sedelmeier (2005: 9) refer this time to the ‘logic of appropriateness’, noted above, according to which actors behave in accordance with internationalised beliefs and values that suit appropriately the conditions of established structure.

MTITC) announced that, in an immediate attempt to respond to the decision of the EU court, the institution had started “an active dialogue” with the EC and a visit to Brussels was scheduled to discuss how exactly to meet the demands of the EU (Parliamentary Standing Committee on Culture and Media, 18/06/2015). However, although yet to be seen, the statement of the Deputy Minister of MTITC showed that the concern of the institution was to escape financial sanctions if proper actions were not taken. Thus, the actions undertaken to respond to EU rules seem less as a result of a deep learning process and a genuine shift in beliefs and ideas for a better policy and more a crude mechanism to avoid financial repercussions (Schimmelfennig and Sedelmeier, 2005: 18-25). As pointed out by Schimmelfennig and Sedelmeier (2005: 25), the rule adoption in this case might be only formal and discursive in nature, which, in return, can result in additional problems and policy costs (see Jacoby, 2001). As seen further in this thesis, governments in Bulgaria demonstrated such behaviour with the adoption of the so-called media strategy upon EU pressure, which only *de jure* unblocked the analogue licensing process (Chapter 5). Or, with the adoption of a few legislative amendments in response to the EC’s Reasoned Opinion as a result of which a new multiplex operator was licensed, yet never operationalised (Chapter 6 and 7). No complex policy redress was carried out in response to the initial EC warning that the adopted policies were anti-competitive and could jeopardise the establishment of a successful DTT system in the country. Thus the costs of the Bulgarian DTT model subsequently grew, as seen in Chapter 6 and 7.

#### **2.4.1 Factors affecting EU’s impact**

In this section I draw the attention of the reader to factors that affect the EU’s impact on domestic policies and policy-making, most specifically in CEE states and in relation to DTT transition. To start with, both Grabbe (2006) and Schimmelfennig and Sedelmeier (2005) stress the importance of having the EU rules and demands determined clearly. As aptly put by Grabbe (2006: 206)

The EU has its greatest influence where it has a detailed policy to be transferred, it gives consistent advice, its actors speak with one voice, and it sets clear and certain requirements. It has its least impact where a policy area

lacks these elements, and tends towards *diffuseness* and *uncertainty*. (Emphasis added).

As elaborated in the next chapter, the EU does not have a clear-cut and precise policy for DTT. The EU's DTT 'policy' does not consist of strictly binding and 'downloadable' rules. Rather it provides only 'communications' that have no mandatory power on member states. Broadcasting, as a cultural domain, has traditionally been dealt with under the direct competences of the national regulators, as initially the EU did not have any powers as regards the cultural aspects of broadcasting entrusted by the founding community treaties (Michalis, 1999; Levy, 1999b; Harcourt, 2005; Harrison and Woods, 2007). The economic (transmission) side of (digital) broadcasting is the one that falls more directly under the competences of the EU. Here the power of the EU is based on the rules of the supranational electronic communications regulatory framework that focuses on principles of general competition law. The underlying competition principles of those directives have provided the European Commission with powers to act (Michalis, 1999: 158). On the basis of this, the Commission can initiate infringement procedures against countries that have not implemented the EU legislation effectively. When improper implementation persists, the Commission can bring the case before the CJEU, which then starts a litigation procedure (Börzel and Buzogány, 2010: 713; see, also European Commission, Infringement procedure, 2015). Thus, the European Commission and CJEU's involvement in the Bulgarian DTT policy case (as well as in the cases of a number of other EU countries as seen in Chapter 3) was based on infringement of the directives for regulating electronic communications. It has to be noted, however, as Michalis (1999: 152) rightly puts it "[d]irectives are binding as to the end that has to be achieved, but are flexible in that member states retain some choice as to the 'form and methods'" of application. Therefore, national policy makers have enough discretion for interpretation on *how* to achieve the demanded ends. This gives possibilities for domestic structures and their actors to shape the ends of the policies and, to a greater extent, those that are not guided by precise and strictly defined rules. In addition, as also highlighted by Michalis (1999: 152), the European Commission's resources are weak in monitoring compliance with EU legislation and the infringement procedure is "cumbersome and

time-consuming”. EU authorities often rely on whistle-blowers, media and interested parties to provide information for non-compliance (Börzel and Buzogány, 2010: 713). This creates possibilities for “domestic mobilisation” to play an important role if affected parties decide to bring cases before the attention of the EU institutions to pressure for proper implementation and compliance with EU rules (Börzel and Buzogány, 2010: 713). The Bulgarian experience demonstrates such instances of effective use of EU institutions. Drawing on Grabbe (2006), it can be argued that the lack of detailed policy and efficient monitoring capacity of the EC would “diffuse” the direct EU impact on domestic policies. In addition, it could be argued that this would provide opportunities and constraints that could be utilised by certain actors under member state specific circumstances.

Thus, we once again come to acknowledge the role of *domestic* factors that can determine the extent of EU impact on member state policies and their making. As regards CEE countries, Grabbe (2006: 206) argues that “strong political will” and “institutional capacity” are decisive for achieving EU rules implementation. In addition, drawing on Tsebelis (2002), Schimmelfennig and Sedelmeier (2005: 16) have claimed that the preferences of “veto players” other than the government and the “adoption costs” of EU demands also determine the strength of the EU impact. According to Börzel and Buzogány (2010: 712), the effectiveness of compliance with EU rules is determined by the extent of costs they impose on member states. This in turn depends on the degree the European policy fits the national regulatory structure: the lower the fit the higher the adaptation costs and hence the lower the willingness of domestic actors to comply (Börzel and Buzogány, 2010: 712). Chapters 6 and 7 show that the EU impact on rule adoption has been ‘selective’ and diffused by costs, veto players and (lack of) political will and capacities to revoke multiplex licences following EU allegations of anti-competitive and non-transparent licensing rules.

## **2.5 Conclusions**

The aim of this chapter has been to establish a conceptual framework for the study of DTT policy-making in Bulgaria. The chapter was divided into three main sections in

order to highlight the disorganised and ambiguous process of policy-making, which includes policy problems and their solutions, alternative considerations and their implementation, and the role of politics. Those components of the policy process come together with the participation of various policy actors that have not only their own interests and agenda preferences, but also hold different beliefs and ideas. This chapter has further argued that policy formation is facilitated by actors' interactions on the basis of their policy interests and ideas, yet it is also determined by their power resources. Instances of the use and application of power are looked at through more critical approaches, which acknowledge policy *inaction* as important as policy action, and non-decisions as crucial as decisions that shape outcomes. The notion of power has been approached through the conceptual tools of an institutionalist perspective, which argues that institutional structures moderate actor behaviour and resources. The extent of the capacity of the institutions to effectively moderate power resources for the benefit of the public good is determined by the characteristics of those institutions, which, though relatively stable, are not static. In this respect, the concept of path-dependence is useful to explain policy-making on the basis of historical characteristics of the political structure in post-communist Bulgaria and those found in the sector of broadcasting. In order to effectively evaluate the role of the gradually established institutional context in the country, this chapter has also highlighted the role of strategic choices of collective actors and individuals that have been structured to behave 'accordingly'. Similar concepts are found in the literature on the EU impact on rule adoption in post-communist CEE countries. The Europeanisation mechanisms analysed for the study of pre-accession conditionality are relevant for the analysis of the top-down intervention of the EU in the transition from analogue to digital television in Bulgaria.

On the basis of this conceptual framework the remainder of the thesis argues that weak state capacities have created a structure of clientelistic relationships between political and business actors, which has allowed the capturing of the decision-making process on DTT and the overriding of restrictive formal rules through informal practices. The influence of sectoral factors related to the broadcasting market, such as size and strength of the terrestrial platform vis-à-vis other platforms (cable, satellite, IPTV), have reinforced those structural characteristics rendering them more

decisive in shaping the outcomes of the policy process. In the same way, the impact of the EU has been diffused by the structural capacities that have enabled a structure of informal clientelistic relationships to flourish.

The next chapter now turns to review the literature on the introduction of DTT in Western and Eastern European EU member states and highlights the most dominant characteristics and influencing factors that have defined their transition incentives and shaped their policy.

## **CHAPTER 3: Transition to DTT in the EU: objectives, national characteristics, and factors**

### **3.1 Introduction**

This chapter looks at the digital switchover policies and decision-making in EU member states, both Western and Eastern European. It brings out key characteristics of the transition processes in those countries and discusses how they have produced either more or less efficient digital switchover. The chapter draws on both Humphreys' (1996) and Galperin's (2004a) suggestion that media policy approaches in different countries are often guided by historical path dependencies and characteristics of their political conditions. Accordingly, this chapter demonstrates the relevance of sectoral (related to the market characteristics of the broadcasting sector) and structural factors (referring to broader political and regulatory characteristics within which the broadcasting sector operates) that have characterised the DTT transitions in various EU member states. Yet, it argues that structural conditions in which the broadcasting sectors of the particular countries operate, determine the extent of influence of the sectoral broadcasting factors. The chapter looks also at the role of the EU and its rule adoption mechanisms in the case of deviations from the transition objectives and approaches set on supranational level.

The first two sections of the chapter introduce the digitalisation objectives pursued on a broader supranational level and elaborate on the EU mechanisms for intervention on DTT decisions in member states. The next two sections look at examples of DTT transitions in Western European countries and how the European Commission intervened to amend some of their policy choices. The last section of the chapter is devoted to the review of CEE countries' DTT transition characteristics and how they relate to the case of Bulgaria.



### 3.2 Transition to digital television: EU objectives

The transition to digital television in Europe was part of the broader context of creating an ‘information society’ with the utilisation of then emerging digital technologies and the possibilities they created for convergence between the broadcasting, ICT and telecommunications sectors (Näränen, 2005: 40, Lengyel, 2009: 167; see also, Marsden and Ariño, 2005; Raycheva, 2013; Levy, 1999b; Digi.TV, 2011). Ex-Vice President Al Gore was the initiator of the rhetoric in the USA (Freedman, 2008). In his speech, on 11 January 1994 at the University of California, Al Gore introduced the vision of converged National Information Infrastructure, enabled by revolutionary opportunities of the “information superhighways” and utilised through “private investment and fair competition” (Al Gore’s Speech, 1994). In the same year, in Europe, the idea was introduced by the so-called Bangemann Report, entitled Europe and the global information society<sup>21</sup>, suggesting that “[a]n information society is a means to achieve so many of the Union’s objectives. We have to get it right, and get it right now” (Bangemann Report, 1994: 10). On the basis of the recommendations of the Bangemann Report, the Commission published the Communication on Europe’s way to the Information Society: An Action Plan (McQuail and Siune, 1998: 200), which acknowledged the importance of the “digital revolution” in driving the “knowledge based economy” in Europe and promoted the technical digitalisation of networks and services as a way to create jobs and economic prosperity for European citizens (European Commission, 1994). The Action Plan stressed the need for urgent actions in embracing the digital technology in order to enhance the European internal market competitiveness on a global scale, in particular vis-à-vis the United States and Japan. The digitalisation of broadcasting became part of the race. In relation to this, the European Commission in 2002 communicated another Action plan, named eEurope 2005: An information society for all<sup>22</sup>, proposing actions to accelerate the process of

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<sup>21</sup> It was prepared under the auspices of the European Commission’s DG Telecommunications by the High-Level Group on Information Society, consisting of a number of prominent ICT industry members, and led by Commissioner Martin Bangemann.

<sup>22</sup> The EU Lisbon summit in 2000 established the eEurope initiatives that set action plans for making the EU the world’s most dynamic knowledge-based economy, and

switchover in order to release further spectrum for Internet broadband infrastructure and future wireless services (European Commission, 2002). The idea was to create a European Information Society Space for open and competitive internal market for media, which would be based on high speed, rich content, interoperability of networks and services and security of platforms. And because the new high-speed wireless applications demanded more radio spectrum, the switch-off of analogue terrestrial broadcasting was seen as a possibility to guarantee the needed resource (European Commission, 2005a: 5). Therefore, one of the key objectives of the DTT switchover for the EU was the release of more radio spectrum, the so-called “digital dividend”, to become available within the 470-862 MHz band, and thus contribute to the European GDP. According to the European Commission’s estimations,

If analogue TV broadcasting is switched to digital transmission (same image resolution, size, same number of channels), three to six times less radio spectrum will be needed. This means that some 300 to 375 MHz of the current amount allocated to terrestrial broadcasting could be freed and become newly available. (European Commission, 2005b: 4).

In order to accelerate the release of the digital dividend and the utilisation of the potential benefits of it, the European Commission asked for transparency of any digitalisation actions undertaken by the member states and the publication of their potential digital switchover plans by 2003 (European Commission, 2002: 18). Following this, the Commission recommended that member states agree on a common negotiating position in the ITU’s Regional Radiocommunication Conference in Geneva 2006, which had to set a new Agreement and Frequency Plan for digital broadcasting for the countries in Europe, the Middle East, Africa (European Commission, 2005b: 8; Starks, 2013: 76). The Commission favoured a short transition period and insisted on choosing 2015 (instead of 2030) as the ultimate switch-off date, after which the analogue signals would not be protected from cross-border interference. Furthermore, although on the international level the final transition date was set to be 17<sup>th</sup> June 2015, the EU brought forward the ITU

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focused on the importance of the Internet for accelerating the creation of the European information society.

deadline and set the beginning of 2012 as the internal deadline for completion of the digital switchover process by its member states (European Commission, 2005b: 3).

The European Commission's next step has been to decide on how the released spectrum should be utilised within its member states. In 2005, the options for the utilization of the released spectrum were three. It could be used for: 1) improving broadcasting services, for example, more programmes, better HDTV or other additional viewing improvements; 2) converged/hybrid services between traditional broadcasting and mobile communications; 3) "new uses", notably mobile broadband communications (European Commission, 2005c: 5). The availability of options implied that different policy paths could be picked by the different member states. The Commission, however, stressed the importance for a coordinated action on an EU level "in order to avoid fragmentation and the emergence of "legacy" situations which would prevent the later establishment of an EU harmonised dividend" (European Commission, 2005c: 7). As a result, in 2010 the European Commission adopted a Decision for harmonising the technical rules on the allocation of radio frequencies in the 800 MHz<sup>23</sup> band (European Commission, 2010a, IP/10/540), which initially did not require member states to allocate the band for "services other than broadcasting". Soon after that, however, the Commission asked member states to "step up a gear by issuing quickly licences to operators" to use the harmonised bands and "open up the 800 MHz band to wireless broadband by 2013" (European Commission, 2010b). Currently, at stake is the repurposing of the 700 MHz band (i.e. frequencies between 694-790), while the opening of the band to wireless broadband has been seen as a real possibility (Starks, 2013: 93). Most recently, the High Level Group on the future of the UHF spectrum, comprising of European broadcasters, network operators, mobile companies, associations and chaired by former European Commissioner for Trade, Pascal Lamy (European Commission, 2014), could not find a consensus on the use of the 700 MHz band (Lamy Report, 2014). Lamy's personal compromise recommendation has been to follow what he has called a "20-25-30 model", meaning 1) release of the 700 MHz band for the use of wireless broadband services by 2020; 2) guarantee frequencies *below* the 700

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<sup>23</sup> The so-called 800-MHz band is the 'upper digital dividend' occupying frequencies between 790-862 MHz.

MHz band for the use of terrestrial broadcasters by 2030; 3) conduct a stocktaking and reassess the market developments and usage of the spectrum by 2025 (Lamy Report, 2014: 8). The Lamy Report has revealed the European broadcasters' opposition to moving out from the 700 MHz spectrum band by 2020 as too soon (Lamy's Report, 2014: 7). However, developments in European pace-setting countries have already triggered policy initiations on the future of the terrestrial broadcasting, demonstrated in the 2013 consultation on the European Commission's Green Paper on Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values. The Paper asked: "How relevant are differences between individual platforms delivering content (e.g. terrestrial and satellite broadcasting, wired broadband including cable, mobile broadband) in terms of consumer experience and of public interest obligations?" (European Commission, 2013b: 10). If it is agreed that the difference is not much relevant, questions like whether this means the end of the terrestrial platform and the implications for broadcasting as a universal public service together with the consequences for countries that have just completed digital terrestrial transmission remain unresolved.

It can be concluded that, although it was neither the starting point nor the key focus of the EU, the transition to digital terrestrial broadcasting was approached and affected by the EU policy objectives in other areas, namely the information society on the basis of broadband services. Indeed, it can be argued that these other policy objectives have turned out to be the main driving force behind DTT transition. In this respect, the EU has played a role in accelerating the digital transition process in order to increase internal market opportunities for mobile telecommunications services by establishing internal deadlines, monitoring member states' transition plans and decisions to harmonise the use of the released digital dividend. The following section introduces the key regulatory principles the EU has asked member states to adhere to in the provision of DTT.

### **3.3 DTT rule adoption mechanisms of the EU**

One of the characteristics of the EU's DTT 'policy' has been the lack of a distinctive transition policy and no binding EU regulation on how member states should perform and realise the digital switchover process (see, Näränen, 2005: 37). It has been argued that the hands-off approach of the EU was influenced by the failure of its 1980s policy attempts to develop technical standards for the analogue satellite system (Levy, 1999b: 71-73; Galperin, 2004a: 135-138; Suarez Cantel, 2011). This failure turned out "technically over-ambitious and commercially disastrous" for European broadcasters and receiver manufacturers that were supposed to benefit from the adopted standardisation measures (Starks, 2013: 76). To avoid similar outcomes, the EU has decided that the digitalisation should be based on an industry consensus (Näränen, 2005: 41), consumer demand and market leadership with the EU assuming an arms-length coordinating role (European Commission, 2003a). Thus, in its 2003 Communication on the transition from analogue to digital broadcasting, the European Commission declared that the EU contributions should not be expected to be more than what arguably falls within the so-called Open Method Coordination (OMC) of the EU (see, European Commission, 2003a). The OMC refers to policy domains that are not subject to the EU's primary and secondary legislation (or the EU 'hard laws') and fall within member states' legislative and regulatory competencies. According to Bulmer and Radaelli (2005), the method relies instead on 'soft law' measures, such as guidelines and timetables, monitoring, benchmarking, sharing of best practices, peer pressure or naming and shaming.

Having said that, however, the EU can assume and has exercised a more coercive role for itself on the basis of competition policies, which allow the use of more formal intervention mechanisms, such as initiating infringement procedures and referring the member states to EU Courts. The aim has been to establish a regulatory level playing field for all broadcast transmission platforms. Member states were allowed to promote specific digital television technology on the basis of "well-defined general interests" criteria, in order to achieve for example fast and efficient switchover (Starks, 2013a: 77), provided that policy interventions were "transparent,

justified, proportionate and timely to minimise the risks for market distortion” (European Commission, 2003a: 4). As demonstrated by Harcourt (2005) and Levy (1999b), the EU competition policy has been the most influential and successful tool for intervening into national broadcasting policies. As also demonstrated in this study, the EU has referred to the competition principles of the EU Regulatory Framework for Electronic Communications (2003) and state aid rules to amend DTT policies adopted on the domestic level. The state aid rules have required member states to utilise public money efficiently and allowed public intervention only in cases when, first, there were clear public interest obligations, e.g. subsidies to low income and disadvantaged population as well as innovative services and increased choice for consumers; second, market failures in relation to the pace of take-up and provision of universal service, yet this should be done in a proportionate and competitive manner (Wheeler, 2012: 9); third, the subsidy should be platform neutral and should not distort competition among platforms (European Commission, 2003a; 2005b). The European Commission must be notified in advance for any intended financial measure designed by the member state and in order its application to be deemed legal it must be approved in advance at the supranational level (see also, Lengyel, 2009: 174). On the other hand, the EU Regulatory Framework for Electronic Communications has stipulated that the provision of electronic networks and services should be based on the principles of non-discrimination, objectivity, proportionality and transparency. Below I look into a number of cases of EU countries where those rules have been applied, pointing out differences with Bulgaria.

### **3.4 Varying national incentives and path dependencies in the DTT transitions of EU member states**

This section focuses on examples of the DTT transition processes of the older EU member states. It acknowledges that the digitalisation of broadcasting has been a “political project” in general (Freedman, 2008; Galperin, 2004a: 230) and stresses two points. First, the recurrence of two types of motivations that have driven the introduction of DTT in those countries, including externally-oriented incentives for

socio-economic gains and increase of competitiveness vis-à-vis other countries, and internally-shaped by public and private institutions and actors that characterise the domestic broadcasting structures. As observed here, these two types of transition motivations are not independent from each other. Second, and more importantly, both types of incentives are guided by national path dependencies and shaped by the characteristics of their political systems and conditions. This section draws on Humphreys (1996; see also Gibbons and Humphreys, 2012), who has examined the media policy approaches in a number of European countries and has concluded that there has been “a marked congruence between political systems and their respective media systems.” Humphreys (1996) has argued that the differences between Western European countries’ responses to common media policy challenges can be explained with the help of an analytical distinction between “majoritarian” or “consensual” political system and the policy-making characteristics of the country concerned. Without trying to fit any of the countries into strictly defined categorisations in the style attempted by Hallin and Mancini (2004), the section nevertheless makes use of some of the characteristics those authors have distinguished between their three types of Western media systems. In terms of digital broadcasting in countries such as France, Germany and the UK, Levy (1999b: 100) has come to similar conclusions arguing that “unique political and market structures” have determined policy solutions to a common technology. Looking at the introduction of digital television in the UK and the USA, Galperin (2004a: 285) has also claimed that the actions of each nation have been driven by their national concerns and political legacies. This chapter supports these arguments whilst the thesis validates them in the case of Bulgaria.

#### **3.4.1 EU member states’ incentives to analogue switch-off: politically driven**

To start with Britain, the country’s incentives have been driven by the global developments in information technology and desire to increase its economic competitiveness (Freedman, 2008: 184). In this respect the country’s digitalisation motivations included interest in the economic benefits of the release of a significant amount of radio spectrum as a result of analogue switch-off and the intentions to auction it for additional revenues (Freedman, 2008: 175; Galperin, 2004a; Levy,

1999b: 106-107). Moreover, launching DTT ahead of other nations was endorsed as an opportunity to give national companies and equipment manufacturers a first-mover advantage and increase scope for operation on global markets (Galperin, 2004a: 165-166; Freedman, 2008: 175). Internally, the presence of a competitive multi-channel satellite platform (BSkyB) has played a significant role in the British enthusiasm for the introduction of DTT (Goodwin, 2005: 177; Smith, 2011). The idea was to challenge BSkyB's dominance in the pay TV market (Galperin, 2004a). Taking into consideration that Britain was a country with a high percentage of terrestrial transmission, it was feared that if BSkyB were to introduce a digital satellite service first, it would effectively take over the television market and make terrestrial competitors unviable (Galperin, 2004a: 166). Most crucially, such a scenario could weaken the position of BBC in the UK's broadcasting economy and with it the strong public service values that have traditionally characterised it (Freedman, 2008: 184). As also noted by García Leiva and Starks (2009: 792), the UK policy-makers aimed at "preserv[ing] the role of terrestrial television as a universal and affordable service" and as a mostly "free-to-view alternative to the predominantly pay-TV services of other platforms." With a weakened PSB and a dominant satellite pay-TV operator, the role of the government would be diminished while the power of the Murdoch media empire (controlling BSkyB) would grow substantially. Conversely, DTT was key for the future of PSB and the BBC and with that a strong regulatory role for the government whilst it would help control the media power of BSkyB.

The threat of the growing dominance of lighter regulated private cable and satellite platforms and the strong public service broadcasting ethos were behind the rationales for the early introduction of DTT broadcasting in the two Scandinavian countries, Denmark and Sweden. In Denmark, although cable and satellite were the dominant distribution platforms, the "strong political support for public service TV in the analogue era set the tone for the introduction of DTT" (Nordahl Svensen, 2010: 240; see also Tadoyani, 2005: 254). The aim of the Danish policy makers was to stimulate the competition against dominant private platforms with smaller content packages, for the provision of which the public service broadcaster DR was envisaged to be "kept strong by having more channels and an early start on DTT" (Nordahl Svensen,



2010: 239-240). Similarly in Sweden, the political discourse highlighted the importance of digital terrestrial television for offering more content availability and better technical quality of vision and sound (Nord 2011: 59-60). However, it has been also argued that the reason for the rapid development of transition policies was the fact that the growing penetration of cable and satellite television in the country would make it “impossible to decide to switch off the analogue net later if most households used these platforms” (Engblom and Wormbs, 2007: 227 in Nord, 2011: 60). Therefore, the Swedish state wished to accelerate the switchover in order to preserve the public service ethos in the country’s broadcasting tradition (Nord, 2011: 6; see also Brown, 2005: 216). In addition, D’Arma (2010: 11) has pointed out that with the introduction of DTT, the Swedish state intended to bring back under national regulatory control the so-called “regulation refugees”, which included the satellite channels that were broadcasting to Swedish audiences from abroad in order to escape the stricter domestic regulations.

Similarly to Britain, the Southern European countries, Spain and Italy, demonstrated strong technologically driven and international competition oriented incentives for early digital switchover. Hence, in Spain, a driving force for the early analogue switch-off intentions was similar to the first-mover considerations that the UK had. Fernández-Alonso and Díaz-González (2010: 290) reveal that

According to the Government of Spain, having an earlier analogue switch off date [April 2010] than other European Union countries meant that Spanish companies would be able to install DTT infrastructures in Germany, France, the United Kingdom, Finland, Norway, etc. In fact, the government claimed that Spanish companies in the DTT business sector had positioned themselves strategically in order to service future markets, such as Latin America, Asia and Africa.

Yet, the then conservative government (1996-2004) of Spain had also other more domestically relevant political reasons for launching initially a predominantly pay-TV terrestrial service. According to Suárez Candell (2011: 311), the government “wanted to use the DTT to counteract the growth and leading position of Canal Satélite Digital, a pay-TV satellite operator managed by Sogecable (Prisa), a media

conglomerate close to the [rival] Socialist Party.” Thus, it could be argued that, in contrast to the political support for the introduction of DTT in Britain, Denmark and Sweden, in Spain it was the perceived favouritism of a private system that could potentially serve political interests against another dominant politically associated system that acted as an impetus.

This was more clearly demonstrated in the case of Italy, where “[i]n line with the dominant discourse in Europe, since the late 1990s all governments supported the introduction of DTT”, because “no Italian government could afford to miss out on the opportunity to present itself as technologically innovative and advanced” (Padovani, 2010: 39-40). In this respect, the Italian state was particularly interested in the opportunities of the digital technology for interactivity and convergence and the provision of online governmental services to citizens (Padovani, 2010: 40). There were, however, deeper political reasons behind the support for the digital switchover in Italy, demonstrated by both left and right wing governments in power between the 1990s and 2000s (Padovani, 2010; D’Arma, 2010: 11). These reasons refer to the structure of the television market and associated media power. Similarly to all other countries mentioned so far, Italy’s unique broadcasting structures had shaped the motivations of its governments for the DTT switchover. For decades, the broadcasting market had been shared between the duopoly RAI (public broadcaster) - Mediaset (partly controlled by the holding company Fininvest, owned by the family of ex-Prime Minister Silvio Berlusconi) (Brevini, 2013; Padovani, 2010: 38). For the centre-left government in power between 1996 and 2001, the introduction of digital television in Italy was seen as an opportunity to restructure the terrestrial sector and introduce more competition (García Leiva, Starks, Tambini, 2006: 40, see also D’Arma, 2010: 11 and Padovani, 2010: 40). In this respect, a law was passed to introduce lower limits for the ownership of analogue terrestrial channels, forcing both RAI and Mediaset to release the spectrum occupied by one of the three channels each of the broadcasters held (Padovani, 2010: 41). After the change of political power in 2001, the new centre-right government led by Prime Minister Silvio Berlusconi embraced the DTT transition:

as a means to bypass the enforcement of the 1997 media ownership rules forcing Mediaset to migrate one of its three analogue terrestrial channels to satellite. Once the position of Rete4 was legalised through the promulgation of the Gasparri Law<sup>24</sup> in May 2004, DTT came to be seen by the centre-right government as serving another strategic goal. Now DTT was seen as the technology through which national free-to-air terrestrial broadcasters (Mediaset in particular) could mount a challenge to Rupert Murdoch's dominance of the Italian pay-TV market. (D'Arma, 2010: 14).

Overall, the section so far has demonstrated that the ideas and motivations about technological advancement and international competition through the adoption of the digital technology have been developed along with domestic broadcasting structures and interests. Both type of incentives have been political in character, yet in some countries political preferences have become more politicised than in others, such as in Spain and Italy, where the undertaken approach has involved favouritism and partisan relationships.

Finally, in Greece, Papathanassopoulos (2011: 207) has argued that the main reason to start developing the digital terrestrial system has been the push from external forces, i.e. the agreement on the digital frequencies plan in the ITU's Regional Radiocommunication Conference (RRC) in Geneva in 2006, which set the latest deadline for switching off analogue broadcasting in Europe by 2015. The author has suggested that the size of the market and the financial resources of the states have shaped the pace and patterns in pursuing new technological developments. Along with that, it has been argued that "smaller states in Europe [have been] also dependent on the European Union and the larger states in relation to the development of a digital television strategy" (Murphy, 2010: 160). Others, however, present a contrasting view. Puppis (2009) agrees that small states demonstrate higher levels of policy dependence, however Puppis and d'Haenens (2009: 2) have argued that the "explanatory power of size alone is restricted." For Hallin (2009: 101) the state size should be approached as only one of the variables affecting media systems. This means that size is expected to matter, but it will matter differently in every single

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<sup>24</sup> The law overturned a Court ruling that could have forced Mediaset to return the Rete4 channel (García Leiva, Starks, Tambini, 2006: 40; D'Arma, 2010: 13; Padovani, 2010: 41).

small state. In terms of CEE countries, for example, Milosavljević and Broughton Micova (2013: 263-264) have suggested that the countries' size measured in population and the geographic size as such should not be considered a "hindrance". Drawing on García Leiva and Starks (2009), the authors highlight the relevance of the extent of "maturity" of the broadcasting markets of CEE countries in contrast to similar size countries in Western Europe. Ignoring the size, however, looking at the DTT transition in South East Europe, Milosavljević and Broughton-Micova (2013: 271) come to the conclusion that the digitalisation process has been somehow forcefully applied in these countries as an obligation under international agreements and that they have digitalised their broadcasting because they "had to". Further in the chapter I devote a section on the digitalisation processes of CEE countries where I highlight also additional factors that have affected the development of DTT policies and their implementation.

To summarise, in analogy with Freedman's (2008) suggestion of DTT as a "political project", this section has shown that, whatever the incentives of the governments, the introduction of DTT in EU member states has been politically driven. Still, however, it can be observed that differences between countries exist. For example, countries such as Britain, Denmark and Sweden have focused on preserving the public service aspect of terrestrial television, aiming to retain stronger regulatory powers over broadcasting services through the terrestrial system, as cable and satellite platforms have restricted such powers. In contrast, the available literature suggests that other countries, such as Spain and Italy, have approached the introduction of DTT motivated by individual and political party benefits as opposed to more general public interest ideas. The section that follows attempts to explain how political systems and the conditions of their institutional structures have shaped the style of decision-making on DTT and the way different governments approached it.

As regards more externally oriented incentives, such as increased competitiveness and first mover advantage, those have been expressed by larger states with a large broadcasting market size such as Spain, Britain and Italy as opposed to Denmark, Sweden, Greece and some of the CEE countries. Yet, apart from allowing countries to aim at more ambitious socio-economic gains, the size of the states does not

automatically define the way policies are made, the powers of and interactions between stakeholders and the ideas on the basis of which decisions are made or not. Understanding this has helped to approach the DTT decision-making in Bulgaria, which is a small country with a restricted broadcasting market.

### **3.4.2 The role of political systems and path dependencies in DTT transitions**

Together with countries like the Netherlands, Sweden and Finland, Germany has been one of the pace setters of the European transition to digital terrestrial television, which was completed in the whole country in 2008 (García Leiva and Starks, 2009; Iosifidis, 2007). As pointed out by Humphreys (1996: 186), Germany has for long been a country where “the new media were adopted and diffused very rapidly and extensively.” Due to early technological developments embraced by the country from the 1970s onwards (Kleinsteuber, 2011: 88-89), more than 90 per cent of the households were receiving television signals via cable and satellite at the time the digitalisation of terrestrial television started and there were more than 30 cable and satellite channels available on free-to-air basis (Iosifidis, 2007a: 16; Iosifidis, 2006: 260). In addition, however, the German transition has been characterised with multi-actor cooperation (García Leiva, Starks and Tambini, 2006: 40), arguably drawing on its pragmatism and a “democratic corporatist” approach (Humphreys, 1996; Hallin and Mancini, 2004). According to Kleinsteuber (2011: 87) digital television has not really been a subject of national-level policy making, rather it was an industry-state cooperation that involved regional regulatory authorities and the main public and private broadcasters. The close cooperation between public and private actors was most clearly expressed in the efficient Berlin-Brandenburg switchover process. The Media Authority for Berlin-Brandenburg (MABB) concluded a ‘Switchover Agreement’ with the main public and commercial broadcasting actors, ARD, ZDF, RTL and ProSievenSat1 (Pro7) in 2002 to facilitate the “smooth digitalization of broadcasting”, “by establishing binding agreements from all parties and due to a comprehensive public communications campaign” (Wheeler, 2012: 13).

Similarly, in Sweden “fluid collaboration mechanisms” were in place, which helped the DTT switchover process to be completed more effectively (Suárez Candel, 2011: 315). Comparing the digitalisation of terrestrial broadcasting in Sweden and Spain, Suárez Candel (2011: 304) highlighted that “the number of institutions taking part in the DTT project, as well as the distribution of competences among them, was higher than in Spain”, a characteristic which the author attributes to the democratic corporatist political profile of the Scandinavian country. In addition, in Sweden, the state’s role had been quite central and centralized. The state-owned company, Teracom, controlled the digital terrestrial network, while its subsidiary, Boxer, was the only multiplex operator licensed by the state (Nord, 2011: 48; 50). Nevertheless, the policy development and implementation process was “open and transparent” (Nord, 2011: 60):

The true digital gatekeepers [were] public players, such as the government and state-owned companies. Media companies, both public service and private, [had] tried to influence digitization, but with very limited success. Generally speaking, there [was] little space for vested interests, except for state company interests. (Nord, 2011: 49).

In line with this, according to Suárez Candel (2011: 305; 316), in Sweden, efficient accountability mechanisms as regards the licensing process of the digital multiplex operators and broadcasters were in place to guarantee pluralism as well as transparency of the transition. In this respect, Suárez Candel (2011: 316) has concluded that the functioning of an independent regulator in carrying out the licensing contests is of huge importance in managing to “avoid political clientelism” in Sweden, in contrast to Spain as well as Bulgaria, which have demonstrated weaker institutional capacity and powers.

Unlike in Germany and Sweden, the British cooperation has been more industry coordinated than state coordinated, which can be explained by the strong position of the BBC and the historically weaker state intervention in UK broadcasting policy (Humphreys, 1996). Britain started the digitalisation process with a fault start, as the digital terrestrial pay-TV platform, ITV Digital, owned by Carlton Communications and Granada Media Group, collapsed in 2002 (Iosifidis, 2006: 252). After the

collapse of the pay-TV platform, the initial free-market and industry-led UK approach to digital television (Goodwin, 2005: 177) was replaced by a more public policy oriented vision, introducing the concept of digital terrestrial television on a free-to-air basis. The Government used the help of the BBC to launch the Freeview platform in 2002, in cooperation with the main commercial players including BSkyB. The cooperation between BBC and BSkyB proved crucial for ensuring the attractiveness and therefore the success of the platform. The BBC was “appointed” as a key facilitator of the transition process and was ensured a generous license fee that covered its public responsibilities and leadership activities. The Corporation had to take a leading role in the industry-based company, Digital UK, which, operationally, led the process (García Leiva and Starks, 2009: 792). While the BBC was mandated to implement digital switchover as set out in the DCMS Green Paper (2005), the commercial public broadcasters (ITV, Channel 4, Five and the Public Teletext) were “required to fulfil the digital switchover obligations contained within their Digital Replacement Licences, issued by the Ofcom at the end of 2004” (Iosifidis, 2006: 262).

The transition in France represented another example of the relevance of the political environments and the “extent of ‘majoritarianism’ or ‘consensus’ in countries’ political profiles” (Humphreys, 1996: 299). The French transition to digital television has shown a critical resemblance with its past policies of strong state intervention characteristic of the Gaullist era (Kuhn, 2011; Humphreys, 1996: 146). According to Humphreys (1996: 11), the media systems under a majoritarian political influence were more likely to become “captured” by dominant political powers. With the increase of the number, importance and influence of the private broadcasting sector, the symbiosis between the political and the media had undertaken a cooperative dimension under a “politicised étatiste tradition” (Humphreys, 1996: 149) and political parallelism (Hallin and Mancini, 2004). In this respect, the state had accommodated the self-interested concerns of the main commercial actors (Kuhn, 2011: 270). In France, there was a strong opposition demonstrated by the commercial broadcasters which protracted the debates about the regulatory framework that had to be adopted (Iosifidis, 2007a: 16; see also Kuhn, 2011: 272; Starks, 2013: 80) and as a result the digital terrestrial platform was introduced much later than in the other

major Western countries. The availability of both digital and analogue subscription platforms since the 1990s, had established a highly competitive broadcasting market. This made the incumbent broadcasters, notably TF1, M6 and Canal +, anxious about the introduction of additional competition among content providers with the introduction of the DTT platform that could potentially affect the advertising shares in the sector. In order to proceed with the digitalisation of the terrestrial platform the then Jospin government (1997-2002) had to find a way to reconcile the opposition of the incumbents with the idea of moving to a digital terrestrial platform. Because, as Kuhn (2011: 272) has noted, taking into consideration that the terrestrial transmission was the dominant system for television broadcasting, the government calculated that it was “too risky in electoral terms” to leave viewers to move to alternative pay-TV platforms. As a result, at the expense of plurality of content, the government introduced a law, which “explicitly” protected the interests of existing major content providers, by ensuring them direct access to the multiplexes and the right to establish and operate additional channels on the digital terrestrial platform (Kuhn, 2011: 273).

Unlike France and the UK, Spain became “one of the first large Western European countries with a predominantly terrestrial television model to switch off analogue broadcasts” in April 2010, having a number of problems that had to be fixed (Fernández-Alonso and Díaz-González, 2010: 289-290). The DTT transition in the country has been argued to have served media groups ideologically closer to the governments at the time of the decision making process. Suárez Candel (2011: 306) has attributed these outcomes to the polarised, majoritarian and interventionist political system of the country, where “parallelism and clientelism between media groups and political parties is an evident and strong phenomenon”. Like Britain, Spain had initially introduced a DTT platform, Quiero TV, solely on a pay-TV basis that turned out highly unviable due to the strong competition posed by two competing pay-TV satellite platforms that were already considering to merge as the market was not able to sustain both (Fernández-Alonso and Díaz-González, 2010: 292). More importantly, however, it was the lack of participation of an extended number of stakeholders and the absence of proper coordination and cooperation between them that led to the failure of the of the first phase of the digitalisation



process in Spain (Fernández-Alonso and Díaz-González, 2010: 293; Suárez Candel, 2011: 306). The second phase of the digitalisation (2004-2010), this time free-to-air, coincided with a new government in Spain that “needed the digital migration to be successful” (Suárez Candel, 2011: 308). In relation to this, an association of predominantly commercial broadcasters along with the participation of public institutions was created to, among others, plan the digital switchover, carry out the information campaign and test the transition on pilot projects (Suárez Candel, 2011: 307). In effect, however, due to the strong positions of the commercial players in the association, their objectives, although not always in favour of the public interest, were met (Suárez Candel, 2011: 308).

In the other Iberian country, Portugal, the transition to DTT was coordinated by a restricted number of actors. This included predominantly the state and former state-owned telecommunications company, Portugal Telecom (PT), in which the state had preserved “golden shares” after its privatisation (Denicoli and Sousa, 2012). The licensing requirements guaranteed PT to win the two tenders for free-to-air and pay-TV multiplexes (six altogether), outbidding the Swedish candidate for the pay-TV market, AirPlus TV. Following the strike of the economic crisis, however, PT requested to return the pay-TV multiplexes “claiming that the market had changed since the tender was launched” and that there was no viable opportunity for business any more (Denicoli and Sousa, 2012: 42). Notwithstanding the opposition of the media content regulator, the Media Regulatory Entity, the telecommunications regulator Anacom decided to withdraw the granted frequencies to the PT, arguing that there was no harm done to the public interest as the telecom company was already providing pay-TV services to customers on other platforms. PT had maintained its pay-TV system offering about 130 channels on cable, satellite and IPTV platforms, having reached about 30 per cent of the subscription market in 2010. Yet, within the EU, in 2011, the country reportedly had the smallest amount of channels available on the terrestrial platform, within the EU (Denicoli and Sousa, 2012: 44). The authors have attempted to explain the relationship between the state and the former state-owned telecommunications company as a symbiosis which roots have been deeply embedded in the “political and economic legacies” of the country (Denicoli and Sousa, 2012: 46). In this context, they have argued that the more

recent communications policies were shaped by the legacies of the totalitarian regime of Antonio Salazar from the early 1930s to the mid-1970s and later the accession of the country into the EU. The democratisation process during the EU accession negotiations in the 1980s coincided with a strong EU enthusiasm in liberalising telecommunications industries and building a competitive single European market. The centrality of the state, however, continued by establishing a private national champion and preserving golden shares in it; a policy orientation the EU moved over by late 1970s (Michalis, 2007: 91).

Together with France, Spain, Italy and Portugal, Hallin and Mancini (2004) have fitted Greece into the Polarised Pluralist media system, characterised with high level of political parallelism and state involvement in the policy process. The case of Greece, however, has considerably differed from the rest of the representatives of the Southern European EU member states. In contrast to those countries, a key characteristic of the Greek transition has been the almost voluntary withdrawal of the state from the organisation of the switchover process. Initially the state had attempted to use the public broadcaster “as a driver” and a “pioneer in introducing DTT to the Greek audience” (Papathanassopoulos, 2011: 201; 207). Indeed, a free-to-air DTT service led by the Greek public service broadcaster ERT was launched already in mid-2000s, establishing several new channels (Prisma+, Cine+, Sport+) (Iosifidis, 2007a: 17; Papathanassopoulos, 2011: 207). According to Papathanassopoulos (2011: 207-209), the Greek government had also increased the ERT’s licence fee in order to help the public service broadcaster meet the digitalisation costs. In 2010, ERT managed to launch a second multiplex. However, the lack of attractive content and the low popularity of the broadcaster impeded it to convince people to move to digital. Subsequently, the political and economic crises in the country forced the government to look for private companies to carry out the switchover process (Papathanassopoulos, 2014: 24). Thus, opposite to Spain and Britain, Greece moved from a public to a private phase of ensuring the DTT switchover, characterised with “no policy” and “inaction” of the state (Papathanassopoulos, 2014). As a result, the private consortium, Digea, formed by influential commercial broadcasters and in a mere cooperation with the then still

existing ERT<sup>25</sup> took over the leadership from the public institutions (Papathanassopoulos, 2011: 211). After the closure of ERT, Digea became the sole player in the DTT provision in Greece, both in terms of transmission and content (Iosifidis and Boucas, 2015: 23). Interestingly, although the laws had prohibited the two services to be carried out by the same entity (Iosifidis and Boucas, 2015: 22), the state had not apparently taken any action to question the legality of Digea's operations. Most importantly, however, the Greek government allowed Digea to promulgate self-serving interests in the design of formal rules and regulations as regards the DTT service (Iosifidis and Boucas, 2015: 22). These included decreasing the coverage percentage and carving the multiplex licensing rules in such a way that competitors were obstructed from participation in the tenders. This resulted in licensing the whole available spectrum to Digea at the starting price of the auctions (Iosifidis and Boucas, 2015: 22-23). In addition to the missed opportunity to obtain higher revenues from the licensing of the spectrum for the operation of the digital multiplexes, the country missed the opportunity to reorganise and regulate the broadcasting sector, in which private channels operated on temporary licences (Iosifidis and Boucas, 2015: 23; 4). Papathanassopoulos (2014: 28) has concluded that the DTT era in Greece will most likely “resemble the analogue TV era since no channel will have an official license to broadcast.” Thus, in line with Galperin (2004a: 285), it is safe to argue that the digitalisation process in Greece has not “dismantled”, but “reinforced” the specific domestic legacies of its broadcasting sector.

In sum, the review of the key characteristics of the DTT transitions of Western European EU member states has demonstrated that the countries' political systems and their capacities have been decisive in the formation of policy approaches to switchover and have defined their outcomes. In addition, path dependencies, both in terms of historical backgrounds and broadcasting market structures, have played a role in shaping policy perspectives. In this respect, the already well-developed cable and satellite transmission system in Germany has allowed a speedier and less problematic DTT introduction in the country. This, however, has been coupled with

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<sup>25</sup> ERT was closed on 12<sup>th</sup> June 2013 as part of the austerity measures introduced by the country at the verge of a deep financial crisis.

the country's consensus-oriented and democratic corporatist tradition in politics and policy-making. This tradition has enabled strong coordination and cooperation between key stakeholders and actors in the policy process in Germany as well as in Sweden. The state's intervention in the observed countries has varied, for instance stronger in Sweden and less central in Britain. It can be argued, however, that it is not the centrality or the weakness of the intervention of the state in the decision-making process that has been decisive. The evidence on DTT policy-making in Sweden as opposed to other countries characterised with traditionally centralised governmental intervention (France, Spain, Portugal) suggests that what matters more is the *capacity* of the state and its regulatory institutions to carry out an effective public policy. In this respect, stronger state intervention, yet weaker institutional capacity provided different outcomes in countries such as France, Spain and Portugal. In addition to the lack of strong cooperation between key actors in those countries, the conditions of the institutional structures there enabled the capture of the decision-making process by dominant private actors bound in clientelistic relationships with the governments in power. In contrast, as observed in the case of Sweden, centralised state, yet equally strong regulatory capacities guaranteed transparent licensing procedures. In the case of Greece an additional factor - the government-debt crisis - has obviously contributed to seeking the help of the private sector to carry out the DTT switchover, perceived in the country as an international obligation. Yet, weak institutional structures allowed a monopolistic private formation to take over the decision-making process and to shape policies in its own favour.

As seen further in the chapter, the DTT transition processes in CEE countries, including Bulgaria, have resembled more closely those carried out in Southern European countries. Before looking at their cases, however, the following section reviews examples of EU intervention in the member states' DTT policies.

### **3.5 Examples of EU's intervention in member states' DTT policies**

As mentioned earlier, the EU has relied on platform neutrality and competition rules for a more coercive intervention in domestic DTT policies. In Germany, following

the complaints of the cable operators, the European Commission decided that the subsidies of EUR 4 million given to commercial broadcasters (RTL and ProSiebenSat1) to cover transmission costs for the operating of digital terrestrial network for at least five years were illegal, as they “unfairly facilitated the use of public subsidies” for private advantage (Wheeler, 2012: 13; European Commission, 2005d, IP/05/1394). In addition, the Commission argued that the aid indirectly favoured one type of network (terrestrial) over another. Moreover, this gave an indirect advantage to the terrestrial network operator T-Systems, by giving subsidies to broadcasters to develop their multiplexes on the network and thus guarantee its income for at least five years (European Commission, 2005d, IP/05/1394). As a result of the evaluation of the subsidy planned to help DTT switchover in Germany, notably in the Berlin-Brandenburg area, the Commission listed the following conditions when state aid could be accepted compatible with the EU rules: 1) funding for areas with not sufficient TV coverage; 2) compensation for PSBs mandated to broadcast via all transmission platforms in order to ensure universal coverage; 3) subsidies for low income consumers to purchase platform neutral and open access set-top-boxes for reception of digital signals; 4) compensation for broadcasters required to switch off analogue broadcasting before their analogue licenses expire (European Commission, 2005d, IP/05/1394). These criteria were used for the analysis of other subsidisation measures undertaken by the EU member states to support their DTT transitions.

Spain became one of the member states, in which the European Commission intervened numerous times. The country carried out a number of subsidy measures that were addressed to different stakeholders, including network operators (e.g. European Commission, 2010c; European Commission, 2013c), broadcasters (e.g. European Commission, 2012b) and citizens (e.g. European Commission, 2007a, European Commission, 2011a; European Commission, 2012c). In the cases in which citizens were direct beneficiaries from the subsidies, the Commission did not raise objections and allowed the country to proceed with the implementation of the scheme. For instance, as regards subsidies for decoders for people with visual disabilities, the Commission agreed that the measure had a “social character” and taking into consideration the platform neutral approach concluded that the support

was compatible with the EU state aid rules (European Commission, 2011a: 8). Also, there were no objections raised to the measure undertaken for subsidising acquisition of digital decoders and for the adaptation of antennas in the province of Soria, the first one that was planned to complete the switchover without a parallel analogue (simulcast) period (European Commission, 2007a). The measure was seen as an opportunity to test the transition from analogue to digital broadcasting in a smaller scope and thus collect best practices for the nation-wide switch-off (European Commission, 2007a: 2). As this would help early digital switchover which was an EU objective, the Commission decided that the measure did not distort competition, and the limited distortion could be “compensated by its positive effects, namely an increased efficiency in reaching the objective of common interest” (European Commission, 2007a: 7). Similarly, the European Commission approved the subsidy provided to citizens of the remote rural areas of the Autonomous Community of Cantabria to acquire the needed technical adaptation of television installations in order to be able to access television services after the analogue switch-off took place. The Commission agreed that the measure was proportionate and necessary to avoid risks of digital exclusion in a situation of a market failure, where private players would not be incentivised to invest in those sparsely populated areas to guarantee a universal coverage (European Commission, 2012c). It was also platform neutral, as it did not benefit any broadcasting platform over another.

The European authorities, however, declared a negative decision over a support measure carried out by the Spanish regional governments in the years 2008-2009, without previously notifying the European Commission about their intentions. Subsidies were provided for digitalising parts of the existing terrestrial platform and financing the extension of the latter in areas not covered by the service. The affected measure covered approximately 2.5 per cent of the population, which accounted to roughly a million people. It was a complaint by the SES Astra satellite operator in 2009 that initiated the European Commission investigation over the measure. It concluded that the direct beneficiaries of the funding, amounting to EUR 260 million, were “exclusively” the terrestrial platform operators (European Commission, 19/06/2013). According to the Commission, the provision of the funding only for the digitalisation of the terrestrial platform was not justified and other platforms, e.g.

satellite, should have been given the opportunity to compete in tenders for deploying digital television in those remote areas. The European authorities were seeking a well-supported proof for the most cost-effective mechanism that could be provided by any type of network operator. As a result, the Commission concluded that there was a non-neutral treatment of available platforms on the market that could provide digital television, and ordered the recovery of the benefited sum by the terrestrial platform operators (European Commission, 2013c).

In Italy also the government introduced several set-top-box subsidisation measures for the reception industry, which were rather controversial and were picked on by the European Commission. Those measures turned into “a form of corporate war between Sky Italia vs. Mediaset” (Wheeler, 2012: 15). The Italian government at the time, led by Silvio Berlusconi, argued that due to the fact that the country relied heavily on terrestrial transmission, “a subsidized programme for DTT switchover was necessary” (Wheeler, 2012: 15). The first subsidisation attempt took place from 2004 to 2005. State subsidy of initially EUR 150, which dropped to EUR 70 in 2005, was provided to buyers or renters of set-top-boxes and pay-TV services<sup>26</sup> for digital terrestrial and cable reception, but not for satellite (Matteucci, 2009: 33; Brevini, 2013: 14; CJEU, 2011). The government did not notify the European Commission, as required by EU rules, and the Commission initiated a formal investigation, following a complaint by Sky Italia and another commercial operator, Centro Europa 7 that had backed Murdoch’s company against Berlusconi. The Commission argued that the measure gave a “selective advantage” in favour of the terrestrial and the cable pay-TV operators (European Commission, 2007b: 12) as well as indirectly aided (terrestrial and cable) free-to-air broadcasters which wanted to enter the pay-TV market (European Commission, 2005e, IP/05/1657). This constituted a breach of the EU principle of technological neutrality between different platforms, as suggested by the Commission’s 2003 and 2005 Communications on digital switchover and the European Electronic Communications Framework. As a result, in January 2007, the Commission decided that the subsidy was not compatible with EU

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<sup>26</sup> Initially the introduction of digital terrestrial television was undertaken on a free-to-air basis, but “led by Mediaset, the broadcasters decided to challenge Sky Italia’s satellite premium services and began offering pay-TV events (football especially) through pre-pay rechargeable cards” (Starks, 2013: 83).

state aid measures and ruled for reimbursement of the aid by the broadcasters that had benefitted the most from it, predominantly Mediaset<sup>27</sup>.

In terms of CEE countries, the EU has been critical but accommodating towards them as far as state aid provisions have been addressed to finance socially and economically disadvantaged citizens to acquire reception equipment for digital television (Wheeler, 2012). In relation to this, the Commission allowed a number of CEE countries to provide various subsidies to vulnerable and low-income citizens for purchasing reception technology. This type of state aid measure has been widely applied in the CEE region, including Hungary, Lithuania, Slovakia, Croatia and as it is seen further, in Bulgaria.

Apart from the state aid cases, the European Commission intervened in cases of restricted competition in licensing. In 2011 the Commission objected to the French provision of licences for additional, so called “compensatory channels” to the three incumbents, Canal+, TF1 and M6, without any competitive tendering procedure (European Commission, 2011b, IP/11/1115). The Commission thought that this would “penalise rival broadcasters and deprive French viewers of more attractive programming” (European Commission, 2011b, IP/11/1115). It ruled that the three cases did not qualify for an exception from a competitive procedure applied in the cases of channels serving “general interest”, for example public service broadcasting. Thus, the non-competitive tender was found to breach the principle of fair, non-discriminatory, transparent and proportionate licencing and jeopardized efficient use of the released spectrum for additional services. In 2012, the French authorities had to re-assign the spectrum concerned on the basis of an open procedure and provide entry opportunity for new channels.

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<sup>27</sup> Italy introduced two more subsidization measures in 2006, which the EU authorities did not find as breach of EU state aid rules, yet Matteucci (2009) argued that they were equally controversial. This time, however, the Italian government notified the European Commission about the intended subsidies. Although there were complaints against it by the satellite market players, the Commission allowed the subsidies to be implemented as they were offered on platform neutral basis to set-top-boxes and television sets with integrated digital tuners (European Commission, 2007c; European Commission, 2007d). In addition, the Commission argued that the allocated budget of EUR 40 million was too low to distort the efficient functioning of the EU market.



Another case that had similarity to that in Bulgaria was the case of Italy. In July 2006, upon a complaint by Italian consumers' association Altroconsumo, the European Commission started an infringement procedure against Italy alleging the member state of a failure to comply with the EU competition rules by "introduc[ing] unjustified restrictions to the provision of broadcasting transmission services and attribut[ing] unjustified advantages to existing analogue operators" (European Commission, 2006b, IP/06/1019). Referring to the directives of the Electronic Communications Framework, the European Commission requested the removal of the Italian laws that "attribute[d] special rights to existing analogue operators", whereas the framework "require[d] the abolition of such special rights"<sup>28</sup> (European Commission, 2006b, IP/06/1019). The Italian government had to remove the clause that required media operators to obtain an individual licence for the use of digital frequencies. In addition, Italy took measures to re-evaluate its digital dividend policy and as a result required three of the multiplex licences granted to the three incumbent operators – RAI, Mediaset and Telecom Italia - to be returned (Brevini, 2013: 11). Italy decided to allocate five multiplexes for use within the framework of digital dividend – three of the multiplexes would be allocated to new operators and the remaining two to the incumbents. After overcoming an internal spectrum assignment

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<sup>28</sup> Directive 2002/77/EC on competition in the markets for electronic communications networks and services (Competition Directive) stipulated that:

"Member States shall not grant or maintain in force exclusive or special rights for the establishment and/or the provision of electronic communications networks, or for the provision of publicly available electronic communications services" (Directive 2002/77/EC, Art. 2(1)).

In addition,

"Member States shall take all measures necessary to ensure that any undertaking is entitled to provide electronic communications services or to establish, extend or provide electronic communications networks." (Directive 2002/77/EC, Art. 2(2))."

In case, Member states decide to limit and prevent the right of foreign undertakings for establishment or provision of networks and services on the basis of certain public policy considerations, the reasons for this should be provided. Moreover, "[a]ny aggrieved party should have the possibility to challenge such a decision before a body that is independent of the parties involved and ultimately before a court or a tribunal" (Directive 2002/77/EC, Art. 2(5)).

crisis<sup>29</sup>, Italy designed a new draft regulation for the tenders (Brevini, 2013: 11). Thus, both France and Italy changed their policies after the intervention of the EU and the Commission suspended the infringement process. Unlike Bulgaria as seen in Chapter 6, the two countries managed to escape referral to the Court of Justice of the European Union.

### **3.6 Digital switchover in CEE: sectoral factors and structural conditions**

If we turn now to the CEE region of the EU, we can see that there have been essential similarities with the DTT transitions in Western countries. Generally, political preferences are the defining factors here too. However, the politicisation of the switchover process, as mostly observed in the so-called Polarised Pluralist media systems of the Southern European countries (Spain, Portugal, Greece and to a considerable extent France), has been further reinforced in the CEE countries due to less mature broadcasting markets (Milosavljević and Broughton Micova, 2013), poorer socio-economic conditions, and most importantly much weaker institutional capacities. Thus, in contrast to that of Western EU countries, the DTT transitions in the member states of the CEE region have demonstrated higher level of relationships between media and political elites. Drawing on the approach undertaken by García Leiva and Starks (2009), this section highlights some of the sectoral factors for the success or failure of the DTT transitions in CEE countries, yet on the background of more politically determined structural characteristics and capacities.

Jakubowicz (2007c) has suggested that one way to see the digitalisation process in CEE is as a “premature” process, in which neither official policy-makers, nor the actual market is ripe enough to carry out an efficient transformation to the broadcasting sectors in the country. As seen also in the case of Bulgaria in Chapter 4, regulatory issues that were dealt with in those countries were rarely issues of

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<sup>29</sup> Because of the initial intentions of the Government to assign the digital multiplexes on a free-of-charge *beauty contest* principle, which “would have allowed RAI and Mediaset to obtain again the two multiplexes they had been forced to give up” (Brevini, 2013: 11). Following concerns by the interested parties, the beauty contest was annulled and it was decided that the frequencies would be allocated through a new tender procedure.

technology and market sustainability, rather aspects of political control and influence. On the basis of this, the suggestion that the transition from analogue to digital television has been easier and less troublesome and the “political risk much reduced” in smaller countries with higher levels of cable and satellite reception, than countries where terrestrial transmission was dominant (García Leiva and Starks, 2009: 790-791), seems to be not completely relevant in CEE. It could to some extent explain the delayed transition of countries such as Romania, Hungary and Poland as their size is considerably bigger than most of the countries within the CEE scope. In contrast to their size, the terrestrial viewership in those countries was very small. On the opposite, in Croatia, one of the small countries of South East Europe, the percentage of terrestrial viewership was very high, yet, the country managed to complete digital switchover much before the rest of the region and even before some of the Western European countries. Bulgaria, for example, is a relatively small country with a small percentage of terrestrial reception by households, but the transition process took painfully long. It can be argued here that the differentiation between the extents of cable/satellite/IPTV versus terrestrial access as well as the size of the country do not automatically define the speed and success of the transition in CEE, although they do play a role. Therefore, there have been other factors that have played an important role in the process of introduction of digital terrestrial television in the CEE countries. Similarly to Western EU member states, a key factor has been the degree of cooperation, coordination and consensus among, on the one hand, the various industry stakeholders, and on the other, and more importantly, between them and the political actors. The cases of Slovenia and Croatia have demonstrated this clearly. Arguably, the lack of great political and industry contestation over the introduction of digital terrestrial television in these countries has contributed to a speedier transition, completed in late 2010 in both countries.

In the case of Croatia, the policy-making on DTT has taken place in parallel with the EU’s pre-accession process. The country was given an EU candidate status in 2004 (Bilić and Švob-Đokić, 2012: 57) and according to Andrijašević and Car (2013: 284) the digitalisation of terrestrial broadcasting entered the national political agenda after the 2005 Communication of the European Commission for accelerating the switchover process. Therefore, “[p]erhaps the most crucial factor was Croatia’s

political determination to burnish its credentials for joining the European Union by demonstrating that it could beat the European Commission's recommended 2012 analogue switch-off deadline" (Starks, 2013: 87; see also Andrijašević and Car, 2013: 284; Krstić, 2014: 245). The political consensus formed in order to complete the requirements of the EU on the way towards accession, has ensured an on-time completion of the digital switch-off process in Croatia (Andrijašević and Car, 2013: 284). In addition, along with the EU's motivations for efficient spectrum use, Croatia was the single EU member state in the region that, by mid 2013 (Digi.TV, 2013: 51), managed to benefit from the auctioning of the released spectrum as a result of the analogue broadcasting switch-off (Milosavljević and Broughton Micova, 2013: 267). According to Andrijašević and Car (2013: 294), before joining the EU in 2013, the country acquired 40 million euros from the auctioning of the digital dividend to the mobile sector. Apart from political consensus for completing the digital switchover as soon as possible, the country's transition success was related to other organisational and practical provisions. This included a very good coverage (over 98 per cent coverage of the main multiplex) and affordability of the receiving equipment as well as a widespread information campaign and subsidies for all those who received terrestrial television and were paying the licence fee (Andrijašević and Car, 2013; Starks, 2013: 87). The vouchers worth 10 euros (covering up to 50 per cent of the price of available set-top-boxes in the country) were given to all terrestrial householders, but they could choose the type of the platform they would like to by the receiver for in line with the EU platform neutrality principles (Starks, 2013: 88; Milosavljević and Broughton Micova, 2013: 267). Although the citizens were given the chance to switch to another digital broadcasting platform, this did not shook the strong starting position of the terrestrial system in the country, that accounted for about 60 per cent of the households (Andrijašević and Car, 2013: 282). Arguably, this also helped maintain the interest of broadcasters to obtain a licence for new channels, even though advertising in television was in decline following the digital switchover and concerns were raised about the sustainability of the restricted domestic television market (Milosavljević and Broughton Micova, 2013: 267).

Together with Croatia, Slovenia was one of the CEE countries currently a member of the EU that completed the analogue to digital transition before the EU-set deadline.

The country switched-off its analogue transition three months after Croatia, in December 2010 (Krstić, 2014: 245). Like Croatia, the lack of political disparities as regards the transition process contributed to an early switch-off, which could be regarded as a successful one, at least in technical terms. The process focused less on politics and political aspects of the digitalisation and was more technology and market-driven (Milosavljević and Kerševan Smokvina, 2012: 75, see also Krstić, 2014: 245). Unlike in Croatia, there was no overwhelming interest by broadcasters in the provision of their content on the national DTT platform and only the capacity of the first national multiplex operated by the public service broadcaster RTV SLO could be filled (Milosavljević and Broughton Micova, 2013: 265). The owner of the second multiplex, a Norwegian company, Norkring, struggled with attracting content providers, although the government had provided subsidies to television broadcasters to co-finance their costs during the time of simulcasting (Milosavljević and Kerševan Smokvina, 2012: 93). Unable to sustain its business initiative, Norkring left the Slovenian DTT market, and RTV SLO became the only applicant for their multiplex (Milosavljević and Broughton Micova, 2013). On the local level, also there was only one application for each of the seven multiplexes, of which only six were utilised. (Milosavljević and Broughton Micova, 2013: 266). This lack of interest in obtaining multiplexes and the creation of new television channels could be arguably explained with the low viewership percentage of terrestrial television vis-à-vis platforms such as cable and IPTV<sup>30</sup> (Milosavljević and Broughton Micova, 2013: 266).

The rest of the other CEE countries researched here completed their DTT transitions much later than Croatia and Slovenia. Once again the most common characteristic of the DTT decision-making process in these CEE countries, such as Hungary, Poland, Slovakia and Romania, was the lack of political and market consensus, commitment and cooperation. In Romania, the EU member state that switched off its analogue terrestrial licensing last among the CEE countries, the process of digital transition was “stalled due to commercial and political interests” (Mungiu-Pippidi and Ghinea, 2012: 170; see also, Bajomi-Lázár, 2011: 10), which delayed the adoption of a

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<sup>30</sup> IPTV subscription in the country came to as high as 40 per cent in 2011, a percentage equal to that of cable access (Milosavljević and Kerševan Smokvina, 2012: 6).

digitalisation strategy until 2009 (Preoteasa et al., 2010: 52). The strategy stipulated a final switch-off date – 1<sup>st</sup> January 2012 – corresponding with the EU deadline, which however was postponed to 17<sup>th</sup> June 2015 - the deadline the ITU's Regional Radiocommunications Conference (RRC) set in 2006 for switching off analogue terrestrial broadcasting in Europe. The justification of the Romanian government resembled the one provided by the Bulgarian officials – that the 2012 deadline was an internal one and that the most important and obligatory deadline was the one set on a global level (Preoteasa et al., 2010: 52-53). In fact, already in 2010 the government announced tender procedures for the licensing of two multiplexes with nation-wide coverage. One of the applicants was the Austrian public service broadcaster's subsidiary, Österreichische Rundfunksender (ORS), which applied for multiplexes in Bulgaria and Slovakia too. The communications regulator ANCOM, however, postponed the tender, because the government either “want[ed] to leave this complicated process for the next government to deal with, or it [...] yielded to pressure from the analogue cable operators that [saw] the digital terrestrial platforms as a new source of competition” (Preoteasa et al., 2010: 52). Cable operators had strong positions in the country, as almost 70 per cent of the population received television signals through cable, and more than 20 per cent by satellite, while the terrestrial transmission was lower than 10 per cent (Mungiu-Pippidi and Ghinea, 2012: 167). The then EU Commissioner on Digital Agenda, Neelie Kroes, was called to help “unfreeze” the licensing process (Cojocariu, 2011), but concrete action came as late as 2014, when the Romanian authorities carried out an auction and licensed three multiplexes to the state-owned National Broadcasting Company – RADIOCOM (Cojocariu, 2014; ANCOM, 2014).

Unlike Romania, Slovakia met the 2012 deadline set by the European Commission. However, similarly to Romania, the decision-making process in Slovakia was highly contested and took more than three years to be finalised (Barmosova, 2010: 361). The dominant commercial channels as well as the public service broadcaster agreed to take part in the digital switchover on the condition that they would be provided with spectrum capacities to launch extra channels (Barmosova, 2010: 361). Most interestingly, like in Romania, the Austrian company ORS, which had bid for digital multiplex licences in Slovakia too, did not manage to enter the national digital

transmission market. The selection criteria were apparently intentionally challenged before the national court by one of the bidders, which, although not disqualified from taking part in the bid, claimed that the criteria were too restrictive for many other applicants (Kovač, 2008 in Barmosova, 2010: 363). The tender was cancelled and the head of the licensing telecommunications regulator was removed from office for “refus[ing] to set the conditions” for a tender, which would have allegedly favoured an investment company, thought to be related with the former Slovak Telecommunications Company, Towercom (Štětka, 2012a: 11). The latter subsequently obtained all of the four multiplexes allocated for digital terrestrial broadcasting (Štětka, 2012a: 10-11). The sacked head of the telecommunications regulatory authority claimed that the winner was known in advance and that it was an arranged tender (Barmosova, 2010: 364). The then EU Commissioner for Information Society and Media, Viviane Reding, expressed her concerns over the independence of the telecommunications regulator of Slovakia (Barmosova, 2010; Štětka, 2012a: 11), which demonstrated a very weak institutional capacity to resist yielding to private pressure. The lack of transparency in the licensing of the digital multiplexes in Slovakia presented key similarities with that in Bulgaria. Interestingly, the two players – ORS and Towercom – were the same and the outcome for both was also similar. The formal rules designed by the Bulgarian legislature disqualified the Austrian company from taking part in the licensing competitions, and like in Slovakia and Romania, ORS did not manage to obtain the right to operate a multiplex in Bulgaria. As the empirical chapter will explain, the process in Bulgaria dragged on for years whilst concerns about the independence of the relevant regulatory authorities and weak institutional capacities strengthened the already close ties between the government and dominant private (media) interests and meant that the digitalisation of television failed to empower the public service broadcaster and serve the general public interest.

Although the five available multiplexes all went to a *single* national player<sup>31</sup> (Antenna Hungária AH), Hungary, unlike Bulgaria and Slovakia, managed to ensure

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<sup>31</sup> The decision was justified with reference to the “increasing competition between platforms” and the “small and constantly shrinking size of the terrestrial segment”. The conditions of the Hungarian broadcasting sector enabled the decision makers to

a transparent and competitive licensing procedure, and the successful candidate was not related with any political parties (Tóth, 2012: 60). This seemingly successful licensing procedure, however, was achieved through a worrisome participation of the Hungarian Parliament, in which a special Parliamentary committee controlled the call for tenders and carried out the selection. The role of the national telecommunications regulator, NHH, was downgraded to technical and administrative issues (Rozgonyi and Lengyel, 2010: 182). Similarly, the media regulator, ORTT, was completely isolated from the decision-making and implementation process of the digital switchover, following criticism that it had been captured by the two incumbent broadcasters and extended their licences without demanding their cooperation over switchover (Rozgonyi and Lengyel, 2010: 183). The direct involvement of the legislature in the licensing of multiplexes demonstrated the lack of trust in the institutional capacities of the regulatory bodies to manage a process, which was expected to be of the latter's competency. Paradoxically, it seems that circumventing the weak institutional capacities of the regulatory bodies ensured a more transparent licensing procedure in Hungary.

Yet, similarly to other CEE countries, in Hungary, coordination and cooperation between key stakeholders, including officials, broadcasters and consumers was "rarely experienced" (Rozgonyi and Lengyel, 2010: 174). Commercial broadcasters were "interested in maintaining the status quo" (p. 175), while consumer demand was low, as only a bit over 20 per cent of the population received the television signals terrestrially (p. 176). On the political domain, the lack of political consensus had postponed the starting of the tenders for the selection digital multiplex licensees (Tóth, 2012: 61). Consensus was reached when in 2007 the political parties agreed over the must-carry obligations of the would-be multiplex operator. The established conditions provided for a preferential treatment of two channels broadcasting news content, which were given direct access to the digital multiplex. Those channels were related to the two dominant political parties on each side of the political spectrum (Rozgonyi and Lengyel, 2010: 181; Tóth, 2012: 61). As seen in Chapters 5 and 6, in

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opt for a concentrated single digital multiplex that could compete with the other platforms (Rozgonyi and Lengyel, 2010: 180-181). The proposed justification resembled the argument provided in the Bulgarian case for granting initially five multiplexes to two operators.



Bulgaria the must-carry regulations were also used to provide the broadcasters associated with the ruling political party direct access to the multiplexes.

As regards the outcomes of the DTT transitions, it seems that the transition from analogue to digital television did not enhance the positions of the terrestrial platform, and on the contrary narrowed the access to free-to-air television in most of the cases. In other words, the public interest was adversely affected as viewers were effectively pushed to pay-for platforms. For example, in Poland, in 2011, the cable, satellite and terrestrial transmission operators each controlled a third of the population share (Bajomi-Lázár, Örnebring and Štětka, 2011: 13). However, the delayed launch of digital terrestrial television “gave other platforms primarily satellite TV, an opportunity to grow under much less competition, especially in the rural areas where satellite had to face practically no competitors” and resulted in increasing the number of satellite subscribers to 50 per cent, while the penetration of the digital terrestrial platform was reported a bit over 10 per cent in the end of July 2013, when the country switched off its analogue transmissions (IHS, 22/07/2013). In Slovakia,

The proportion of television households that rely on the terrestrial platform fell from one-half to one-quarter during the transition period, between 2008 and 2012. Dynamic growth and competition in satellite made it a more attractive platform both in terms of cost and content. By 2012, the two terrestrial multiplexes offered only six free-to-air channels, all of them available on other platforms. (Kollar and Czwickowicz, 2013: 6).

In Hungary too, the free-to-air offer has been restricted to seven standard definition and three high definition channels as well as three radio stations (DigiTag, n.d.)<sup>32</sup>. In terms of PSB, in contrast to some of the Western EU member states (e.g. the UK), PSBs in the CEE, including Bulgaria, were not empowered to play a leading role in the process of DTT policy-making, a process which as a result ended up weakening them. Kollar and Czwickowicz (2013: 6) have argued that the main loser of the DTT switchover in Slovakia has been the PSB. The broadcaster was “unable to meet the competitive challenge posed by rival commercial broadcasters on both terrestrial and

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<sup>32</sup> It seems that the country has started to offer also paid DTT services, where the choice has been increased (MinDig TV, n.d.).

pay-TV platforms” and “missed opportunities to broaden the reach of public service media in the digital age.” (Kollar and Czwitkowitz, 2013: 6). Similarly, in Hungary, the public television was left to cope on its own with the pressure for new channels, establishing two HD channels “solely upon their own initiative” (Rozgonyi and Lengyel, 2010: 187).

### **3.7 Conclusions**

This chapter has looked at the DTT transitions of some main Western and Eastern European EU member states. It has first drawn attention to the objectives, principles and rule adoption mechanisms that the EU as a top-down decision-making organisation has set for the DTT policy-making in its member states. Within this context, the chapter then has looked at the different motivations and characteristics of DTT policy approaches and decision-making in older EU countries of Western Europe. The analysis has demonstrated that the DTT transition policies in those countries have been in line with their national socio-political profiles, which have included path dependencies in relation to political and broadcasting market structures. In general, the digitalisation of the terrestrial broadcasting has been approached as political, rather than purely technological issue. Factors such as country size and market size have been highlighted as important for reinforcing more ambitious internationally oriented incentives for economic gains, increase in technological competitiveness and first mover advantage. In addition, more domestically relevant broadcasting sector characteristics such as extent of terrestrial viewership and strength of public service broadcasting have motivated countries to plan earlier DTT switchover in order to preserve the public character of broadcasting and, most importantly, to retain control over the broadcasting market. Nevertheless, differences have been observed in relation to digitalisation incentives, which have demonstrated more public oriented interests in some countries and more business or political party oriented interests in others. Explanations of those differences as well as the general approaches to DTT policy-making in Western EU member states have been attempted through the utilisation of some common characteristics of their political systems. In this respect, it has been observed that strong cooperation and

coordination between government, private sector and public service broadcasters have been a key factor for more efficient and less troublesome transitions. Rather than the centrality of state intervention as such, the observed cases have revealed that institutional capacities that ensure transparent and non-discriminatory transition policies and restrict clientelistic relationships, have been more decisive in shaping the policy-making process and its outcomes.

Similarly to Western EU member states, CEE countries have had different paces and varying degrees of DTT switchover efficiency. Although it is difficult to generalise, it can be argued that, overall, the political character of the DTT transition as observed in the case of Western European countries, has become much more politicised in CEE countries. Similarly to Western European countries proper coordination between key actors has been an important factor in facilitating an efficient transition, as demonstrated in Croatia and Slovenia. The case of Croatia has shown that coordination can be both externally driven (by the EU's pre-accession conditionality) and domestically driven (by broadcasters willing to obtain licenses and take part in the DTT system). The case of Croatia has also shown that the share of terrestrial viewership in the country has been important for driving broadcasters' interest in moving to DTT. Yet, as demonstrated in Chapter 7, the lack of broadcasters' interest in DTT in Bulgaria, although seemingly directly related to the small percentage of terrestrial viewership, has been arguably shaped to a greater extent by more structural factors. Those have included inefficient legislative rules, lack of transparency, insufficient regulatory powers and clientelism. The evidence provided in this chapter has suggested that these structural factors apply to the processes of DTT introduction in other CEE countries too. Once again apart from Croatia, almost all CEE countries have demonstrated very weak regulatory capacities, yielding to pressure from private sector representatives and being sidelined; prolonged and contested decision-making processes due to resistance of industry players to break the analogue status quo and inability of the states' institutions to assert their capacities. An interesting similarity with Bulgaria has been the ORS case in both Romania and Slovakia, where the Austrian company has not been allowed to enter the market. In short, this chapter has maintained that the structural conditions, including broader political and institutional characteristics, in

which the broadcasting sectors of the particular countries operate, shape the outcomes and extent of influence of the sectoral broadcasting factors.

EU intervention has been minimal and specific yet instrumental. It has relied on the Commission's strong competition rules in the case of subsidy provision to both citizens and broadcasters and in the case of licensing of DTT multiplexes. EU intervention has had a direct impact on the structure of the terrestrial television market, demanding more competition in licensing that could potentially increase diversity of players and ultimately content. As discussed, France and Italy have reacted to the European Commission's requests for revision of the undertaken licensing procedures and have corrected the way they had allocated spectrum for DTT broadcasting. In contrast, as seen in Chapter 6, the Bulgarian authorities have resisted the revision of the licensing procedures challenged by the Commission as non-transparent, non-proportional and non-competitive. As examined in Chapter 6 and 7, the resistance in Bulgaria has been manifested by non-decisions and inactions of the state to tackle the widely assumed concentration of ownership in the transmission of DTT. The following chapters now turn to examine in detail the role and interplay of such structural and sectoral factors in the case of Bulgaria.

## **CHAPTER 4: Development of post-communist politics and media structures in Bulgaria**

### **4.1 Introduction**

The aim of this chapter is to introduce the formation of post-communist socio-political structure, in which the Bulgarian media system developed. It sets out the broader country and analogue media context in order to understand the framework within which the digitalisation process was discussed and took place. The chapter consists of two parts. The first part provides a concise review of the formation of the post-communist political scene in Bulgaria. The second focuses on the broadcasting policy and policy-making characteristics of the country after the end of the official communist rule. By giving an account of the development of the immediate post-communist political environment, its evolution, challenges and current situation, the first part of the chapter serves as a background for the second. Such background is deemed necessary, as media policy-making and its outcomes are seen in this thesis as part of the general socio-political and institutional structure of the country. In line with the institutionalist approach of this thesis, the chapter demonstrates how the continuity of previously privileged political and media actors and weak institutions have allowed the formation of a socio-political structure, characterised with a persistent state capture and extraction of state's resources. This structure has further reinforced the clientelistic and rent seeking behaviour of private actors that have been allowed to prosper with the support of their political patrons in exchange of mutual benefits. Clientelistic relationships have been reflected in broadcasting policy-making from the beginning of the democratic transition to the beginning of the digital transition (i.e.1989-mid-2000s). The chapter shows how, in parallel with the struggle for political domination and state resources between the former communists and the opposition, the Bulgarian political elite struggled over the adoption of the first broadcasting legislation. While in the beginning at stake was the dominance over the public service broadcaster (BNT), with the approaching of the first nation-wide private television licensing, the focus of decision-making shifted to accommodate private broadcasters' advertising interests. Thus, the clientelistic

relationships between political and private media elites were arguably reinforced through the new advertising policies. The licensing of the two commercial channels, bTV and Nova TV, included controversies related to the direct involvement of the government in the selection of the winners and non-transparent ownership structures. Neither of the broadcasters were licensed with the decisive participation of the content regulator, whose institutional capacities were further dismantled with the blocking of the local terrestrial (re-)licensing by the Parliament. Overall, the chapter introduces the reader to the parallels, analogies and path-dependencies I draw on in the following chapters to explain the decision-making on DTT.

#### **4.2 The end of the communist regime and the political environment in Bulgaria after 1989: state capture and the rise of clientelism and rent-seeking**

Researchers of the Bulgarian political system distinguish between two phases of political development after the end of the official communist regime in 1989 (Karasimeonov and Lyubenov, 2013; Krastev, 1997; Gurov and Zankina, 2013; Smilov, 2008). The first phase spread over the decade following the collapse of the communist regime up until the beginning of the 2000s, more precisely between 1989 and 2001. This phase was characterised with a bipolar political division and struggle over institutional resources between former communists and the opposition – the pro-reform parties united in the Union of Democratic Forces (UDF) (Karasimeonov and Lyubenov, 2013: 409; see also Bajomi-Lázár, 2014: 76). The second phase started to develop from 2001 onwards and has been characterised with the formation of a more diverse multi-party political environment and growing populism (Karasimeonov and Lyubenov, 2013: 413; Smilova et al., 2010: 69-71). A common feature of the two phases of post-communist development of the country's political structure has been the capture of the state's key capacities and resources and their channeling into private beneficiaries, which in the first few years of the transition were the top level representatives of the former political regime. This established a political structure of clientelism and rent seeking, with a strong interdependence between public and private actors at stake. The progress of the democratic transition,

which culminated with the accession of the country to the EU in 2007 reversed after the accession. In the last few years it has even resembled the early stages of the transition, e.g. government resignations, political and (temporary) banking sector instabilities.

#### **4.2.1 1989-2001: a period of ideological bipolarity and struggle for power, yet economic and institutional inefficiency**

In Bulgaria, the transition from communism to liberal democracy started on 10<sup>th</sup> November 1989, when the country's long-serving communist leader, Todor Zhivkov, was overthrown from power. Unlike other CEE countries, the change did not come as a result of a Solidarity-type social and political movement, but as a result of an internal coup within the Bulgarian Communist Party (BCP), led by *perestroika*-oriented members of the Politburo (Dimitrov, 2006: 159; Dimitrov, 2001: 35). Also, unlike countries, such as Poland, Hungary, Czech Republic, Slovakia, but similarly to Romania, it was the former communist party that won an absolute majority in the first democratic elections<sup>33</sup> in Bulgaria (Vachudova, 2005: 42; Dimitrov, 2001: 44). The party, renamed into Bulgarian Socialist Party (BSP), continued to occupy a major role in the country's party system throughout the transition until current days (Karasimeonov and Lyubenov, 2013: 410; Bajomi-Lázár, 2014: 76). As pointed out by Djankov (2014: 136), the party came to power again in 1994, 2005 and 2013, making BSP the only successor of a communist party in Eastern Europe to win that many elections. Although the opposition, UDF, managed to mobilise public support in anti-communist rallies and exert pressure to annul the constitutional stipulation granting the communist party a leading role in Bulgarian political and social life, to organise Round Table discussions and to elect a president from its own party (Dimitrov, 2001), it was an internally fragile political formation (Karasimeonov and Lyubenov, 2013: 410), which lacked essential political experience (Vachudova, 2005: 42). The party consisted of historically and ideologically diverse groups and factions, some less genuine than others, that were united against the common idea of

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<sup>33</sup> Also known as founding elections, in which the main task was the creation of a new constitution (Karasimeonov and Lyubenov, 2013).

complete “decommunisation” of the national political and social life (Karasimeonov and Lyubenov, 2013; Dimitrov, 2001: 37-43). The non-consensual, ideologically driven struggle for dominance over the distribution of state resources between the former communists and the opposition resulted in several consecutive swaps of government power in the period between 1989-1997, before having their mandates completed (Karasimeonov and Lyubenov, 2013; Dimitrov, 2001; Crampton, 2005). In less than a year after the first elections, in 1991 new elections brought to power the UDF party, supported by the Movement for Rights and Freedoms (MRF), a political formation, relying predominantly on the electorate of the ethnic Turkish minority population in the country (Karasimeonov and Lyubenov, 2013; Dimitrov, 2006: 162). Since its creation the MRF has become a very “skillful political player” (Karasimeonov and Lyubenov, 2013: 411) and a “kingmaker” in Bulgarian politics (MacDowall, 2014), showing a considerable degree of flexibility in adjusting its political stance to both sides of the political spectrum. The third general election within just four years took place in 1994, shifting once again the power from UDF back to BSP.

By 1994, however, the continuing “unresolved struggle for power” between the two major political parties had “resulted in a stalemate stalling the reform process” in the country (Karasimeonov and Lyubenov, 2013: 411). Bulgaria was reportedly lagging considerably behind the political and economic reforms of the other CEE countries that later joined the EU in its first Eastern enlargement (Bajomi-Lázár, 2014: 77). As Crampton (2005: 229) pointed out five years after the fall of the communist leader Todor Zhivkov no effective reconstruction of the economy and privatisation was carried out. While countries such as Poland and Hungary focused on economic reform, for the first years of the transition in Bulgaria the political elite concentrated on adopting a new Constitution and the design of democratic institutions (Dimitrov, 2001: 46). Neither of the parties fully committed themselves to carrying out a profound reconstruction of the national economy and no genuine institutional development was achieved. Dimitrov (2001: 46-47) has argued that “[d]iscourses about the construction of democracy were always easier to indulge in” and apparently less risky for maintaining electoral support than implementing painful economic reforms. The BSP was in favour of gradual reformation of the economy



and against the so-called “shock therapy” style liberalisation attempted in other CEE countries (Vachudova, 2005: 42); whereas, the UDF government embarked on ideologically driven initiatives, such as purging former communists from key positions and depriving the party from its properties (Dimitrov, 2001: 50). In addition, instead of building democratic institutions, introducing deep economic reforms and expanding privatisation as done by some other CEE countries, such as Poland and Hungary, the UDF gave priority to the restitution of the land to private owners and the abolition of the collective farms, confiscated by the communists after the Second World War (Vachudova, 2005: 43; Dimitrov, 2001: 52). This “backward-looking justice” (Kolarova, 1996 in Vachudova, 2005: 43) was a poorly designed endeavour, which led to unforeseen complications; it was a costly and time-consuming process that created difficulties and legal uncertainties in proving individual claims and resulted in the fall of agricultural production (Dimitrov, 2001: 52; Crampton, 2005).

Yet, there was another aspect of the clumsiness demonstrated in pursuing economic reforms in the initial years of the post-communist transition. According to the accounts of authors such as Barnes (2007), Ganev (2001; 2007), Kostadinova (2012), Vachudova (2005), the state was under the capture of a restricted number of dominant public-private players that benefitted from partial reforms and from halting the privatisation of loss making state enterprises, which served as channels for siphoning state resources. As explained,

In most state enterprises, control was effectively in the hands of the managers and the employees. The managers were thus able to link up with private entrepreneurs to set up firms at the entry and the exit of the enterprise to buy at exaggerated prices and sell at reduced prices, in return for a share of the profit. (Dimitrov, 2001: 74).

The scheme was much more complicated and multi-dimensional.

When the government attempted to discipline the enterprises by imposing credit restrictions the enterprises escaped control by failing to pay for their supplies or by taking loans from the banks. The banks knew that there was little or no prospect of these loans being repaid. The state enterprises and the

banks were in effect beyond the control of the state. It was widely believed they were under the control of the conglomerates or, in popular parlance, ‘the mafia’. (Crampton, 2005: 232).

Path dependence was an important feature here. The managers of those enterprises “were perceived as a natural constituency of the BSP” (Dimitrov, 2001: 83). So were the leaders of the conglomerates, who accumulated their economic power through changes in financial regulations in the last decade of the communist regime, facilitated by those reform-oriented party elites that later overthrew the system (Barnes, 2007: 76; Kostadinova, 2012: 100, see also Ganey, 2001). For example, one of the most influential conglomerates that operated in the first half of 1990s was created with the participation of a high-ranked official in the Ministry of Foreign Trade of the former communist state (Kostadinova, 2012: 99-100). With political support and participation, those conglomerates were “mulcting” the state enterprises and obstructed effective economic reform and privatisation of the state enterprises they were making their money from (Crampton, 2005: 233). Thus, as already pointed out in Chapter 2, the so-called “early winners” of the initial liberalisation reforms of the state blocked further economic restructuring to prevent the loss of established privileged positions that were not working on purely market principles.

According to Barnes (2007: 77), the height of the state capture took place between 1990 and 1994. Yet, the consequences of that became more apparent during the rule of the socialist government of Zhan Videnov that took over the power from UDF from 1994 to 1997. The BSP’s Videnov failed to tackle one of the most peculiar problems of the Bulgarian transitional economy – that of inefficient state enterprises and the slow progress of their privatisation (Dimitrov, 2001: 83). The reason for this failure was attributed to another “circle of friends” (or the so-called cronies), that surrounded the then Prime Minister and helped him to win the 1994 elections. In this way a rival conglomerate was elevated (Kostadinova, 2012: 103; Barnes, 2007: 83; see also Ganey, 2007). The members of this conglomerate were also related to the previous regime, yet they were representatives of a younger generation that the Prime Minister Videnov belonged to. Although Videnov, theoretically in line with other CEE countries, introduced some banking sector reforms and launched the so-called voucher privatisation (whereby state enterprises were offered for vouchers to

citizens), in practice the policies produced different outcomes than those in other CEE countries (Barnes, 2007: 83-84). The policies were perceived as direct attacks against the activities of the rival conglomerate and its members in the BSP, rather than effective efforts to address the country's financial issues (Barnes, 2007: 83). As a result of inefficiencies to consolidate the banking system (Barnes, 2007: 84), banks that used to lend money to the loss-making state enterprises were unable to sustain themselves and started to bankrupt; in mid-1996 one third of the banks in the country, both state and private, had bankrupted (Dimitrov, 2001: 84). The country was led into the worst financial and economic crisis of its post-communist history (Dimitrov, 2006: 163). The ultimate losers were the masses. They were left literally without bread, following the draining of the domestic wheat reserves in the winter of 1996-1997, reportedly exported by the conglomerate's constellation of firms (Kostadinova, 2012: 103). The devaluation of the Bulgarian currency (Dimitrov, 2001: 85) further added to the impoverishment of the Bulgarian society, which, along with Romania and Poland, already in 1989 had been one of the poorest economies in the CEE (Vachudova, 2005: 49). The Prime Minister, Videnov, who had previously ruled out potential International Monetary Fund (IMF) intervention, was ready to accept help, yet he was not ready to carry the painful process himself and resigned in the end of 1996 (Dimitrov, 2001: 85). The protests of citizens against hyperinflation and declining living standards brought pre-term elections in spring 1997, which resulted in shifting the power to the right, namely the UDF and its coalition partners (Karasimeonov and Lyubenov, 2013: 412).

The 1997 parliamentary elections marked the beginning of a period of stabilisation of the political system in Bulgaria. The government, led by Prime Minister Ivan Kostov, became the first to complete its mandate, from 1997 to 2001. With the IMF's intervention, the country was placed under a currency board (the Bulgarian currency was pegged to the Deutsche Mark and later the Euro) and the UDF government initiated the first major liberal market reforms, including privatisation or closing of the loss-making state enterprises (Crampton, 2005: 237). The country had already become a member of the Council of Europe in 1992. Yet, Kostov embraced a deeper Western integration policy aimed at joining organisations such as the NATO and the EU (Karasimeonov and Lyubenov, 2013: 412; Bajomi-Lázár, 2014:

77) and in this way abort the country from the shadow of Russia. In this respect, a major achievement of the government was the promise given in the 1999 Helsinki meeting of the EU for being included in the list of countries for opening accession negotiations, which started in 2000 (Crampton, 2005: 236). The EU pressed for further pro-market reforms and most importantly for intensifying the fight against economic crime and corruption in the country (Crampton, 2005: 238). Kostov had initially declared that there would be no tolerance towards corruption and, in fact, he attempted to expel several Russian businessmen allegedly involved in illegal activities in Bulgaria (Crampton, 2005: 245). Similarly to Videnov, however, Kostov had allegedly aligned himself with friends circled around another powerful group (Kostadinova, 2012: 104; Barnes, 2007: 90). Unlike Videnov's friends, those of Kostov were not related to the former regime and unlike the previous groups they had accumulated their wealth benefitting from liberalisation and privatisation without obstructing those processes (Kostadinova, 2012: 106). Nevertheless, corruption remained a "dominant feature of Bulgarian politics" and Kostov could not keep his government clear of corruption allegations, which involved officials such as the government's spokesman and its chief EU negotiator, previously in charge of privatisation, dubbed "Mr. 10 per cent" (Crampton, 2005: 245-246). In fact, in terms of privatisation, it has been argued that Kostov's policies were more "opaque" than those of the previous government (Barnes, 2007: 87). Abandoning the BSP's voucher privatisation of state enterprises, the UDF government of Kostov introduced the system of management-employee buyouts (MEBOs), which gave priority to "enterprise insiders" to purchase the shares (Barnes, 2007: 89-90). This "insider privatisation" (Vachudova, 2005: 48) allowed the government's cronies to benefit, which enabled the conglomerate to acquire its own bank and a number of other lucrative deals in sectors such as construction and tourism (Kostadinova, 2012: 105). It has to be noted, however, that the rule of the UDF government began to introduce a shift from captive practices of a single private group towards rent seeking on a more competitive basis (Kostadinova, 2012: 106). This change has become more apparent in the second phase of the post-communist transition in the country, starting from 2001 onwards (Barnes, 2007: 90; Ganev, 2006: 80), shown below.

Overall, the first decade of the transition from communism to liberal democracy and capitalism, was characterised with strong ideological bipolarity and struggle for power positions between the former communists of BSP and the opposition UDF. Despite their ideological differences, however, both parties and their governments shared a fundamental commonality – state capture that has allowed for extortion, clientelism and high levels of corruption. The outcomes of the transition in the country led to a development that has been named as “crony capitalism” (Peev, 2002). Genuine institutional and economic reforms were “vetoed” by dominant private players that had secured political support (Ganev, 2001). Voters changed political affiliations quickly, hoping for a real change. A positive characteristic of the period was the escape from severe political and ethnic bloodsheds in the country and the choice of a western ally, i.e. the EU (although business links with Russia has always remained close). The EU’s top-down power, exercised through the accession conditionality, however, did not result in long-term and genuine change in political behaviour, as discussed in the following section.

#### **4.2.2 2001-2014: rise of populism, EU accession, more corruption and back to political instability**

The four-year mandate of the Kostov government (1997-2001), although stabilised the political and economic turbulence in the country, left issues such as economic crime and corruption unresolved. This gave a good ground for shaping the political discourse of the first major populist formation<sup>34</sup> in the country to be established. The 2001 elections introduced a big surprise to the left-right parties that had occupied the political duopoly for the first decade of the transition process. The Bulgarian Tsar Simeon Saxe-Coburg-Gotha (Simeon II), expelled on an exile by the communists, returned to the homeland and, just few weeks before the elections, formed the National Movement Simeon the Second (NMSS). The Tsar promised to sort out the country in just eight hundred days, pledging to eliminate corruption, end political

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<sup>34</sup> The populist political party of George Ganchev, the Bulgaria Business Bloc (BBB) was active throughout 1990s, but it did not have any substantial consequences for the Bulgarian political system and was dissolved after the 2001 elections (see, Smilov, 2008: 15).

partisanship and introduce effective economic reforms that would produce a real market economy in line with the EU standards (Crampton, 2005: 247). His call for “social justice”, “honesty and ethics in politics” as well as his charismatic, European appeal helped the noble with credibility and trust and attracted the majority of the Bulgarian voters, receiving absolute majority short of one seat only (Karasimeonov and Lyubenov, 2013: 413; see Kostadinova, 2012: 107). As pointed out by Crampton (2005: 249), Simeon’s “greatest electoral asset was that he was absolutely free from any suspicion of personal corruption” and unlike the political elites of the first decade of the transition he was not associated with the previous regime. However, similarly to the UDF in its first years, most of the young technocrats Simeon relied on had little experience in domestic politics (Smilov, 2008: 16). The coalition partner of NMSS became the party of the predominantly Turkish electorate – MRF. As a Prime Minister, Simeon, demonstrated desire to establish more consensus-based politics and policy-making in the country and invited members of the BSP to take place in his cabinet (Crampton, 2005: 249). While the Tsar himself did not have a suspicious past, the people that surrounded him had. According to Kostadinova (2012: 107-108) just a few months after the 2001 elections, a group of influential businessmen (linked to the former secret services and the communist nomenklatura), including among others a controversial banker, the president of the mosy powerful conglomerate, and representatives of newspaper and radio companies, formed a non-profit organisation called Bulgarian Business Club “Renaissance”, which tried to institutionalise its influence by proposing the creation of a consultative body (Council for Economic Growth) to advise the Prime Minister. The aim this time was to obtain key positions in the privatisation of big state enterprises such as the Bulgarian Telecommunications Company (BTC) and Bulgartabak, the state-owned tobacco company (Kostadinova, 2012: 108). After a very contested procedure BTC was privatised in 2004, however, the minor coalition partner MRF blocked the sale of Bulgartabak for years ahead (Kostadinova, 2012: 112; Ganev, 2006: 85). The purchase of the company by a reliable buyer Deutsche Bank was allegedly “torpedoed” by MRF in order “to direct resources exclusively toward his cronies” (Ganev, 2006: 85). Bulgartabak has been of particular importance for MRF, as its main electorate, the Turkish population in the countryside, has relied on incomes from the production of tobacco and the channeling of state subsidies towards the

tobacco producers was one way of guaranteeing votes for the party (Kostadinova, 2012: 112).

Bulgaria, together with Romania, deviated from the pace of the rest of the CEE countries' progress towards the first EU eastward enlargement in 2004. The EU's major concerns related to the lack of an adequately functioning market economy, persistent organised crime and corruption as well as an unreformed judicial system (Crampton, 2005: 250-256). The political prosperity of NMSS<sup>35</sup> did not last long. According to Smilov (2008: 17) the Bulgarian institutional framework soon "disciplined" the new populist formation of Simeon and it turned into a party with little difference than the parties whose actions it criticised. Already half way through the promised improvement within eight hundred days, the public became disenchanted with the rule of Simeon (Smilov, 2008: 17). Having won over 42 per cent of the votes in 2001, the so-called "party of the Tsar" lost half of those votes in the following election in 2005, while in 2009 it could not pass the four per cent threshold to enter the Parliament (Gurov and Zankina, 2013: 5).

At the general elections in 2005, the incumbent BSP won against the NMSS and, although lacking absolute majority, became the dominant party in a tri-partite coalition, together with the NMSS and MRF (Karasimeonov and Lyubenov, 2013). During the rule of the so-called "triple coalition" (2005-2009), led by prime minister Sergey Stanishev, the major part of the policy-making process on the transition to DTT in Bulgaria took place. Half way through their mandate, in 2007, Bulgaria officially became a member of the EU. Unlike the CEE countries of the previous Eastern enlargement, Bulgaria and Romania were placed under additional supervision within the specifically-tailored Cooperation and Verification Mechanism (CVM), set by the European Commission (EC) to follow the progress of the two countries in tackling corruption, organised crime and judicial reform. It has been argued that the introduced mechanism has served as a form of "post-accession conditionality", yet with rather limited effect (Gateva, 2013). While Transparency International's Corruption Perception Index reported positive results in pre-accession

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<sup>35</sup> In 2007, the party was renamed to National Movement for Stability and Progress (NMSP). In this thesis both acronyms are used, depending on the period discussed.

stage countries such as Turkey, Macedonia, Serbia and Albania, for the same period (2007-2010) the indications of Bulgaria showed deterioration of corruption (Ganev, 2013: 28). It has been argued that after the accession, the “EU’s sticks and carrots ceased to matter” (Ganev, 2013: 32), as the major incentive for progress – the accession reward – was already accomplished (Gateva, 2013: 421, see, also Dimitrova, 2010: 141). More precisely,

Before 2007, EU recommendations were considered a call to action: the behavior of Bulgarian politicians did include a lot of play acting, foot dragging, and Potemkinesque deceitfulness, but it also led to efforts to improve the functionality of administrative structures. After 2007, the EU’s recommendations were simply ignored. (Ganev, 2013: 37).

Arguably, however, the EU still had leverage over the Bulgarian governments through the provision (and suspension) of EU funds. In 2008 the European Commission decided to suspend funding to Bulgaria (and Romania) exceeding EUR 500 million, due to suspected frauds, conflicts of interests and irregularities in the allocation and control of the EU funds (Gateva, 2013: 435). Alleged cases involved high ranked officials of the state’s public administration, including, among others, the chairman of the Fund for road infrastructure and the chairman of the Electronic Communications Networks Directorate, (Ganev, 2013: 31; Metanov, 12/03/2010), which was part of the former State Agency for Information Technology and Communications (SAITC), in charge also for the preparation of the initial digitalisation plans in Bulgaria during the mandate of the triple coalition. It has been claimed that firms controlled by the brothers of the chairmen were allocated with public procurement contracts worth millions to develop the country’s transportation and telecommunications infrastructure<sup>36</sup>. Due to the suspension, the country lost EUR 220 million, as the Bulgarian state could not contract by the set deadline the pre-accession funds it was eligible for (Gateva, 2013: 435; Ganev, 2013: 32). The country had reversed to “cronyism” after a period of constraint and demonstration of

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<sup>36</sup> After 6 years, in April 2015, the Sofia City Court cleared the former chairman of road infrastructure fund of his charges, concluding that the contracts were not signed by him personally, but other chairs of the fund’s directorates and that the payments were not done with EU money, but that of the budget of the organisation (Mitov, 30/04/2015; Grigorov, 01/05/2015).



progress before the accession (Ganev, 2013: 31) whilst similar to other countries in the region (e.g. the Czech Republic, Poland and Slovakia) economic, political and administrative reforms backsliding following accession to the EU and the concomitant weakening of EU pressure (Dimitrova, 2010: 137; Dimitrova, 2002: 186). Yet, rather than “looting state assets”, the EU had provided an opportunity for “leeching EU funding” (Ganev, 2006: 80). The leader of MRF, the minor coalition partner in the governments of Simeon and Stanishev, Ahmet Dogan, was notoriously outspoken about his power to allocate funds to friendly circles. During the election campaign in 2009, Dogan insisted that his electorate understood that an ordinary deputy did not have a decisive power, and that they had to be strategically “positioned” vis-à-vis “ministers and other informal contacts”, in order to be able to solve real problems. Effectively what he wanted his voters to understand was that their support was needed to increase the party’s presence in the Parliament, which would create more opportunities for positioning its members in strategic executive posts, which in turn would allow them to direct funding opportunities for developmental projects to certain regions and beneficiaries (see, Mediapool, 25/06/2009; Angarev, 25/06/2009). In a similar manner he explained how his party’s 2005 election campaign was funded through “circle of firms”, which provided him with the needed money, and in return he secured them with government contacts (Slavi’s Show interview with Ahmet Dogan, 23/06/2005 in Ganev, 2006: 84).

At the time of the rule of the triple coalition, a new charismatic figure with a populist anti-corruption appeal appeared on the Bulgarian political stage and a new centre-right formation called Citizens for European Development of Bulgaria (CEDB) was established in 2006. Its leader was the then popular mayor of the capital Sofia - Boyko Borissov (Gurov and Zankina, 2013: 5). Borissov owned a private security firm in the early 1990s, times when firms of this kind took part in organised crime, racketeering and extortion (Stein, 2007 in Gurov and Zankina, 2013: 9). He guarded the communist leader, Todor Zhivkov, during the time of his trial after the collapse of the regime. He also ensured the security of Simeon during his visit to Bulgaria in 1996, who then elected him a general secretary of the Ministry of Interior in the NMSS-MRF coalition government (Gurov and Zankina, 2013: 8). As in the case of Simeon, the “deepening economic crisis and constant criticisms from the EU on

Bulgaria's failure to address issues of organised crime and corruption" helped Borissov to formulate the discourse of his 2009 election campaign (Gurov and Zankina, 2013: 9). Borissov "portrayed himself as a man of the people fighting against the corrupt elite" (Karasimeonov and Lyubenov, 2013: 415) and stressed his previous experience in dealing with similar problems in the Ministry of Interior (Gurov and Zankina, 2013: 9). At the 2009 elections, his pledge attracted 40 per cent of the votes and was only five seats short of forming an absolute majority in the Parliament. The needed support was provided by the Blue Coalition<sup>37</sup> and the nationalist Attack and conservative Order, Law and Justice, while Boyko Borissov became Prime Minister. Also like Simeon, Borissov established good rapport with the mass media and used them to frequently appear before voters, announcing dismissals of high-ranking officials appointed by him, and later disclosed as corrupt or incompetent, attending opening ceremonies for the construction of new highways and public buildings (Gurov and Zankina, 2013: 9-10; see, also Smilova, et al., 2010: 71). Unlike the aristocratic Simeon, however, as Gurov and Zankina (2013: 10) explain, Borissov's charisma was built on his "common man" and "Balkan-style machismo" appearance, displayed through his "disdain for institutional limitations". He often behaved as the "good cop", disregarding the refusals of his ministers for funding certain institutions or projects, thus demonstrating centralisation and personalisation of power and undermining institutional structures. Similar behaviour was also apparent in media policy-related cases, whereby Borissov gave the public service television extra funding to purchase the rights for broadcasting the Bulgarian football championship (Gurov and Zankina, 2013: 10) and settled a private sector dispute, after the incumbent national broadcaster, bTV, withdrew its content from being distributed by a large cable operator (Kapital, 23/01/2013).

The fate of the Borissov government brought memories of the pre-1997 political instability in Bulgaria. Towards the end of the CEDB's mandate, in early 2013, citizens furious about increased electricity prices, low living standards and persistent corruption involving high-ranking officials, attacked the government with nation-

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<sup>37</sup> It included the UDF and Democrats for a Strong Bulgaria (DSB), a right-wing party that was formed out of UDF and was led by the former Prime Minister, Ivan Kostov.

wide protests. Bulgaria has been the poorest country of the EU member states<sup>38</sup>. Yet, although the macro-economical indications such as public debt and budget deficit have been low, during the financial crisis the Borissov government introduced “austerity measures, the logic of which was almost entirely predicated on demonstrating to Brussels what a good ‘European pupil’ Bulgaria now was” (O’Brennan, 25/06/2013). The initially peaceful protests evolved in more violent clashes with police forces in the capital Sofia. Within few weeks after the start of the protests, six cases of self-immolation by unemployed and impoverished citizens occurred in various parts of the country (Spiegel Online International, 22/03/2013). In the third largest city in Bulgaria, Varna, a 36-year old man set himself on fire in front of the municipality, in protest of a business conglomerate allegedly close to the mayor of the city and the Prime Minister Borissov (Spiegel Online International, 22/03/2013; Bechev, 14/03/2013). Commentators have related the act of the Bulgarian, Plamen Goranov, to that of the Czech activist, Jan Palach, who lost his life in protest of the Warsaw Pact and the invasion of Czechoslovakia by the Red Army in 1969 (Spiegel Online International, 22/03/2013; Bechev, 14/03/2013). In the early transition period, unlike neighbouring post-communist countries, most notably Romania, the country had escaped deadly clashes between authorities and protesting citizens because, as already mentioned, the Bulgarian regime changed as a result of an internal coup rather than the uprising of people. True to his “man of the people” and honor-emphasising discourse (Gurov and Zankina, 2013), Borissov resigned, announcing that “power was given to him by the people, and now he is giving it back to them” (BBC, 20/02/2013). Similarly to the pre-1997 period in Bulgaria, a caretaker government was appointed in March and new elections were held in May 2013. CEDB still managed to come first in the elections, but received a narrow majority, which did not provide the party possibility to form a government with coalition partners, as most of CEDB’s previous right-wing and nationalist allies had already withdrawn their support.

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<sup>38</sup> Eurostat indicators show that the annual net earnings for 2014 have been the lowest for the whole EU, coming to only EUR 7,797 for two-earner average worker households (Eurostat, 2014).

Once again the power shifted to the left and a government was formed with a coalition between BSP and MRF, and Prime Minister became Plamen Oresharski (BSP). Ganev (2014: 36) pointed out that, although Oresharski had declared that the new government would include “a team of top experts”, the nominations included a number of names with controversial behaviour in the past (Ganev, 2014: 35-36). The public remained apathetic towards the appointment of the new government, a demonstration of being used to similar consequences throughout the transition and consolidation of democracy in the country. However, a different reaction came from Bulgarians following the announcement, after just a 15-minute debate in the Parliament, that the MRF’s controversial MP, Delyan Peevski, was appointed to head the country’s most powerful law enforcement institution with responsibilities to deal with organised crime, the State Agency for National Security (SANS) (Ganev, 2014: 36). Peevski is the son of the former head of the Bulgarian State Lottery, Irena Krasteva, who has owned the New Bulgarian Media Group (NBMG). Through a rapid expansion starting from 2007, the group had acquired a number of daily (Telegraf, Monitor, Express, also local – Borba and Maritsa) and weekly (Weekend, Politika) newspapers, the tabloids (Shock, Kontra), news sites (blitz.com and vsekiden.com), the major publishing house IPK Rodina and the largest distribution network for print media in the country.<sup>39</sup> In addition, Krasteva was initially claimed to be the owner behind cable television stations such as BBT and TV7 as well (Smilova et al., 2011: 25; Štětka, 2011: 9; Novinite, 18/06/2010).<sup>40</sup> Although not directly owning the media group, Peevski has been reportedly involved in the running of the media and deciding on their editorial policy (Novinite, 18/06/2010; Štětka, 2011: 17). His media had been used as a tool to “extract services from politicians in exchange for positive coverage” (Ganev, 2014: 37). Although aligned with MRF, the media group had demonstrated ability to strategically switch from negative to positive coverage overnight, as was the case after the rivals of the MRF –

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<sup>39</sup> In the beginning of April 2014, Irena Krasteva announced that her newspaper business was sold to an Irish company, Media Maker Limited, owned by Patrick Halpenny, former CEO of CommuniCorp, which has invested in radio broadcasting in Bulgaria. Halpenny’s company, however, was reportedly created two days before the deal with Krasteva, which was accepted with suspicion in Bulgaria, alleging the change of ownership as “fictitious” (Mediapool, 11/04/2014).

<sup>40</sup> Later, the media became associated with the banker Tsvetan Vassilev (introduced below) (Antonova and Georgiev, 2013: 60).

BSP informal alliance, GERB won the elections in 2009. However, the media – political power link was most apparent from Peevski's own revelations about having been asked by the Minister of Interior Affairs of the CEDB government (2009-2013), Tsvetan Tsvetanov, to provide political shelter through his media to criminal groups that had allegedly subsidised the party's political campaign (Krachunov, 10/02/2014; Mediapool, 11/04/2014). In addition, the television channel TV7 applied discrediting tactics towards various political figures (Spirova, 2015: 163). Thus, arguably the existing strong clientelistic relationships between politicians and economic interests started to take a new form by focusing increasingly on media and the use of media for mutually beneficial interests. The media has become central in this political-economic game (see, Smilova, et al., 2010; Smilova, et al., 2011).

The media expansion of the NBMG was attributed to the financial support provided through credits from once the fourth largest bank in Bulgaria, the Corporate Commercial Bank (CCB), which managed the money of large number of state enterprises (Ganev, 2014: 37; Smilova et al., 2011: 25; Štětka, 2011: 8; Hope, 22/06/2014). The majority owner of CCB and close to the socialists, Tsvetan Vassilev,

provided funding to Peevski to enable him to build up his media empire. In return, Peevski used [CCB] for all his business transactions, placing large amounts of money on deposit there. Peevski's business expansion, funded by Vassilev, was so successful that he now controls about 85% of Bulgarian media. (Coppola, 16/07/2014).

As seen in the following chapters, Vassilev's name appeared in relation to critical outcomes of the Bulgarian DTT transition.

Although Oresharski apologised and withdrew his nomination, the protests continued, demanding the resignation of the whole government (BBC, 19/06/2013). After a year of protests, the resignation of the Oresharski government, however, did not come as a result of the persistence of the people to get the coalition to resign. It was rather the crack in the political marriage between the BSP and MRF that occurred after the humiliating defeat of BSP in the European Parliament (EP)

elections in May 2014. True to its nature, MRF turned back to its long-term partner BSP and leaned towards CEDB (Coppola, 16/07/2014). Yet, a stronger blow to the socialist-led government came from the split of the alliance between the two oligarchs, the MP Delyan Peevski and the banker Tsvetan Vassilev. Peevski moved his deposits from CCB to First Investment Bank (Fibank) and used his dominance in media “to spread reports that CCB was unsound, triggering a bank run and forcing the Bulgarian National Bank to place it in conservatorship” (Coppola, 16/07/2014; see also Hope and Troev, 23/06/2014). Vassilev spread similar rumours about Fibank, resulting in a jittery run on the bank and withdrawal of EUR 391 million in a day (Coppola, 16/07/2014; EurActive, 30/06/2014). To ensure enough liquidity, the Bulgarian authorities requested the European Commission to approve a EUR 1.614 billion credit line to support the banking system in the country (EurActive, 30/06/2014). Oresharski’s government resigned in August 2014 and new general elections were scheduled for the autumn of 2014. As a result, political power was once again transferred to Boyko Borisov’s CEDB, which formed a government supported by a right-wing alliance, including the incumbent UDF, DSB and the newly-created centre-left party, ABC, of the former President, Georgi Parvanov.

In summary, the second, consolidation phase of the Bulgarian political system started with the rise of populist politics, beginning with the arrival of Tsar Simeon II and his promise for bringing new ethics to political action and behaviour (see also, MSI, 2001: 77). The period included one of the biggest successes of the post-communist transition, the accession to the EU. After the joining of the EU, however, a considerable degree of progress backsliding occurred, most notably in relation to administrative capacity and high-level corruption in the form of cronyism, benefitting close circles. Significantly, however, political stability reversed and resembled uprisings in the first years of the transition, being driven by citizens’ disillusionment with any incumbent political formation in the country. The appointment of the controversial MRF’s MP Peevski to the post of head of the national security agency of the country was a test for the limits of political perverseness as well as voters’ apathy towards domestic political behaviour. Public uprising, however, was not enough for BSP-MRF leaders to resign. The withdrawal came as a result of the break of what they have fed and tolerated for years - the

building and extension of oligarchic circles that had extensively entered into the broadcasting and telecommunications sectors in the country as well as other strategic domains. As it is seen in Chapter 7, the end of alliance between those circles affected also the future and instability of the digital terrestrial development in the country. The section below looks at the media developments in the post-communist period and presents the background of the pre-digitalisation media system in Bulgaria.

### **4.3 Struggles over broadcasting legislation and the unregulated appearance of the first private television stations**

The transition from communism to liberal economy required the passing of new laws to allow for the liberalisation of the media sectors of the post-communist countries. In some CEE countries, such as the then Czechoslovakia, Romania and Latvia, the broadcasting laws were passed already in the first two years of the 1990s (Jakubowicz, 2007a: 300). In Hungary, the “political sensitivity of broadcasting” created a war-like environment, in which politicians and private entrepreneurs struggled over the new broadcasting legislation, delaying its adoption until 1995 (Sparks, 1998: 135-142). For Sparks (1998), the slow process of passing new broadcasting legislation was “something of a puzzle, since the new governments all professed themselves horrified by the practices of their communist predecessors, and determined to establish radically new information regimes as quickly as possible.” (p. 136). Yet, according to the author, the “jockeying for positions” in broadcasting “was a structural consequence of the more general uncertainty about power relations in post-communist countries” for the distribution of state resources (p. 137-138) and as a result secure long-term influence over broadcasting (p. 142). In Bulgaria, as observed above, the political struggle between former communists and the opposition in the first decade of the transition provided the relevant structural environment, which delayed the adoption of the first broadcasting legislation. Moreover, it has been argued that it was not only the struggle over political dominance as such that protracted the adoption of broadcasting legislation in the country. It was in fact the reluctance of politicians “to commit to firm media legislation, since it would mean irreversible loss of the control they still exercise[d]

over the national broadcast space” and most particularly over the Bulgarian National Television (BNT) (Iordanova, 1995: 20; see also, Bajomi-Lázár, 2014: 82). The delays and the created legislative loopholes as a result of political and ideological motivations in the design of laws led to private media players taking the upper hand. In this sense, ‘non-decisions’ had real consequences. More precisely, as demonstrated in this section, the lack of proper legislation until the end of the 1990s resulted in the emergence of unregulated (pirate) broadcasters that established their permanent presence in the country’s media structure and influenced decisively market and regulatory developments later.

Although eventful, the adoption of the Constitution in 1991 provided the legal basis for the liberalisation of the press in Bulgaria (Smilova, et al., 2010: 52). However, it was even later than Hungary when the socialist government of Zhan Videnov adopted the first Law on Radio and Television in July 1996 (Schneider, 1996; Bajomi-Lázár, 2014: 83). Yet, that law was never put into effect. Initially, it was vetoed by the President of the county and although still adopted unchanged, it was the decision of the Bulgarian Constitutional Court towards the end of 1996, that blocked the effectiveness of the broadcasting legislation (Schneider, 1996; Tscholakov, 1997; Bajomi-Lázár, 2014: 83). The Court was involved upon the reaction of the then opposition – Union of Democratic Forces (UDF), whose members questioned its constitutionality in a number of articles (Bajomi-Lázár, 2014: 83). The focus was on the statute, composition and powers of the so-called National Council on Radio and Television (NCRT), which was envisaged to take over the responsibilities of the parliamentary committee on media, granted with temporary powers to regulate (public) broadcasting in the country (Tscholakov, 1997; Smilova, et al. 2011: 10). Arguably, for UDF at stake was that its politicians would lose power to the regulator, but to the BSP the issue was its domination in it. Taking into consideration that the opposition could not rely to the support of the majority of voters (Iordanova, 1995: 22), UDF found alarming the established framework for the composition of the NCRT, whereby seven of its members were to be selected by the National Assembly *proportionally* to the political groups represented in the Parliament, two - by the President and other two - by the Prime Minister. The Court declared the NCRT’s composition framework to be anti-



constitutional, reasoning that the adopted criterion was “political in its character” and it favoured the majority in the parliament or the parties that were in coalition to “institutionalise their dominance in NCRT, and through that, in the management of the BNT and BNR.” It refrained from giving instructions on how the regulator should be composed, but insisted that the principle of “political neutrality” must be observed (Constitutional Court, 1996).

When Ivan Kostov came to power in 1997, the broadcasting law was amended under the UDF administration. The law was again challenged before the Constitutional Court, this time by the members of BSP that had moved to opposition, following the resignation of Zhan Videnov.<sup>41</sup> The case was dropped because a completely new broadcasting law was adopted in 1998 (Constitutional Court, 1998). Thus, the Bulgarian Law on Radio and Television was born eight years after the start of the democratic transition in the country. The process of passing the new law was reportedly highly contested and confrontational (Ognyanova and Petrova, 1998). The socialist opposition was strongly against it and did not participate in the voting and the law was adopted only with the votes of the parliamentary majority provided by the UDF (Ognyanova and Petrova, 1998). However, it was noted that the

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<sup>41</sup> Again the contested clauses included the composition and appointment of the NCRT (Scheuer, 1998). The opposition argued that the adopted changes, which this time envisaged that the NCRT members were to be seven (four appointed by the Parliament and three by the President), provided an “absolute majority” (not even a “proportional majority” as in the case of the 1996 law) of the dominant party in the parliament. With their reasoning the opposition illustrated very clearly that the NCRT was seen as an institution representing the political parties in the broadcasting sector, rather than its regulation. According to BSP,

“In [the Parliament] there are representatives of political formations, which have different views about structure and the government of the society and the state. These views and ideas become generally available to the people through the means of information, of whom BNT and BNR are the most influential today. It is unacceptable that they are to be governed practically solely by a political power having the majority in the Parliament.” (Constitutional Court, 1997).

Furthermore, the BSP reasoned that the President was not a completely “depoliticised” actor and did often belong to one or another party. Therefore, it was argued that in the case when both the parliamentary majority and the President of the country belonged to the same political formation, the NCRT would be under the complete domination of that party (Constitutional Court, 1997). Indeed, at that time the President of the country was Petar Stoyanov, who was nominated by the ruling UDF.

appointment procedure of the media regulator had faded from being the most controversial issue of the legislative process in Bulgaria. Another controversy was formed around the prohibition of advertising on the public service television during the prime time hours between seven and ten o'clock in the evening (Ognyanova and Petrova, 1998). Thus, arguably, as the time to license the first private terrestrial television channel on a national scale neared, the focus of the broadcasting legislation changed from concentrating primarily on reserving positions in the public media to acknowledging the potential role of private actors. As regards public broadcasting, the law envisaged the creation of a Radio Television Fund as of 2003 (Ognyanova and Petrova, 1998). The idea of the Fund was introduced in order to gradually release public broadcasters from state funding (Ognyanova and Petrova, 1998). However, as it is seen later in the thesis, the Fund was never implemented. The President vetoed the law and it was re-voted in the Parliament, but it has been argued that no effective amendments were carried out as a result (Petrova, 1999a). The socialist opposition insisted on the unconstitutionality of a number of articles adopted in the Law on Radio and Television and filed for a consecutive time its case before the Constitutional Court. One of the disputed issues was once again the way of constituting the media regulator, NCRT. The undertaken amendments had stipulated that the board members of NCRT would be nine in total, five elected by the Parliament and four by the President. Plus, a "rotation" principle was introduced for renewing the board members every two years. The Constitutional Court this time upheld the adopted law (Petrova, 1999b). It reasoned that as both the Parliament and the President were elected directly by the citizens, their decisions represented the whole nation. In addition, the Court considered the introduced principle of rotation enough to guarantee the independence of the regulatory body as also practiced in other western countries (Constitutional Court, 1999). In effect, however, "the formula provided similar results as the previous arrangements: dominance of one party in the appointment process", as apparent from the case of UDF and the then President Stoyanov (Smilova, et. al., 2010: 56). As a result, it has been claimed that the broadcasting regulator in the country could never recover from accusations about political and private sector influence, which in the public eye often "de-legitimised" its status and actions (Smilova, et al., 2010: 57).

Along with the adoption of the Law on Radio and Television, in 1998 another legislative piece – the Law on Telecommunications – was also passed, establishing the legal framework for regulating broadcasting in the country. Like the broadcasting law, the Law on Telecommunications was highly disputed in the part related to the formation of another regulatory body, the State Committee on Telecommunications (SCT), in charge of licensing frequencies for the broadcasting activity. In the established framework, NCRT's responsibilities were restricted to granting programming licences (Smilova, et al., 2010: 57) and was envisaged to participate in the broader licensing process through recommendations to the SCT (Georgiev, 1998), the final decision laying with the Council of Ministers, which also appointed the SCT (Smilova, et al., 2010: 57-59; see also Nikoltchev, 2000). As explained by Ivantcheva (2000), on the basis of the Law on Telecommunications, the SCT had to first propose to the Council of Ministers the announcement of a tender for a broadcasting licence, while the Prime Minister was responsible for appointing the members of a State Evaluation Committee (including governmental and NCRT members), which had to evaluate and decide on the winner of the tender. The Council of Ministers had to then approve this, so that the SCT could issue the licence. In effect, without the licence for the use of allocated frequencies, NCRT's programming licence did not have a real value. According to Ivantcheva (2000), this division was rather confusing for both the general public and the regulators themselves, but it served well the government officials who could decide, "whose voice [would] be heard nationwide and whose voice [would] be silenced." The appointment and functions granted to the SCT were also challenged before the Constitutional Court; yet, based on the constitutionally granted ownership of the state over the national radio frequency spectrum, the Court upheld the adopted licensing model (Smilova, et al., 2010: 57; Constitutional Court, 1999).

The long absence of primary legislation, however, resulted in the chaotic emergence of broadcasting and telecommunications activities in the country. Analogically to non-decision-making, the extended process of non-adoption of primary legislation, however, benefitted new private broadcasting entrepreneurs that began to emerge on the basis of vague legislative and regulatory rules. The first private local enterprises providing radio and television services were created on the basis of a secondary

legislation that was introduced in the early 1990s. These included the 1992 Ordinance No: 1 of the Committee on Postal Services and Telecommunications Services (CPST)<sup>42</sup> on technical norms and rules for authorisation and registration of local terrestrial radio and television broadcasting stations and the 1993 Ordinance No: 2 of the same committee, regulating the establishment of cable systems for radio and television broadcasting. Both regulatory pieces, however, had provided very vague information on the requirements and had no details on the criteria for obtaining licences for broadcasting. The creation of *some sort* of secondary legislation did not provide a sound legal basis for the establishment of broadcasting activities. Referring to data obtained from the CPST, Dimitrova (2001: 49) revealed that in the years between 1992-1997, a total of 400 cable operators had emerged in the country, while only 94 of them had licences for their activity. In addition, the first local terrestrial television channels started to emerge in larger cities of the country in 1994-1995 (Dimitrova, 2001: 49). In a lawless environment licenses were given selectively (Iordanova, 1995: 21). Nova TV was the first private local TV station to start broadcasting in Sofia in 1994 (Bakardjieva, 1995: 76) with reportedly unclear ownership structure related to a Serbian businessman convicted for illegal cross-border deals and unpaid taxes (Ivantcheva, 2000; Popova, 2004: 103). According to Bakardjieva (1995: 76), as of August 1994, 29 companies had obtained permissions to start local radio and television services. The chaotic situation was further complicated with the adoption of the 1995 Law on Concessions, which included the broadcast frequencies and telecommunications networks within the state's prerogatives to decide on their use (Tscholakov, 1996). The adoption of the law led to the revocation of the powers of the CPST to license<sup>43</sup> and the process had to stop; yet no concession procedures were initiated in return (Centre for the Study of Democracy, n.d.). This intensified the emergence of unauthorised private broadcasting enterprises, as those who had applied for a licence from the CPST started their service without waiting for the official procedures (Centre for the Study

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<sup>42</sup> A state body, equivalent to a ministry (Bakardjieva, 1995), granted with the responsibility to develop the Bulgarian telecommunications sector policy (Council of Ministers' Decree No: 114 of 19<sup>th</sup> June 1991 in Dimitrova, 2001: 48).

<sup>43</sup> Although, according to the publication, the CPST did not strictly take into consideration the decrees for the revocation of their powers to act in licensing, which suggests that they might have continued to license afterwards as well.

of Democracy, n.d.). According to Dimitrova (2001: 49), there were two peaks in the rush for establishment of private broadcasting enterprises in the country, i.e. in 1992-1993, when the first liberalisation measures were introduced, and in 1996-1997, shortly before the adoption of the two primary legislations in 1998. While the first period represented the self-development of the market, in the second, dominant were the “lobbyist behaviour of certain groups, which had to make use of the loopholes in the legislative acts within a short time, in order to occupy certain territory, guaranteeing them significant advantage in the future distribution of the broadcasting market” (Dimitrova, 2001: 49). The early settlements of cable and local terrestrial channels played a crucial role establishing their path dependencies in the development of the media landscape and regulatory policy in the country. The extensive cabling of the country, which according to Dimitrova (2001: 54) increased from 3 per cent in 1994 to averagely about 40 per cent (higher in bigger cities than in smaller towns and villages) of the Bulgarian households already in 1998, became one of the factors that contributed to the slow take up and lack of interest to the development of digital terrestrial television later. Moreover, however, most of the local terrestrial channels remained without proper authorisations for broadcasting (i.e. as pirates) and, as seen later, had to be ‘tolerated’ on the basis of temporary licences. On the background of the political environment addressed in the first part of the chapter, this arguably intensified the interrelation between the political and the media elite and ‘improved’ the already favourable conditions for clientelism and rent seeking. The created situation has resembled the neighbouring Greece, where although having different genesis (Papathanassopoulos, 1990), private television broadcasters have been operated on temporary licences for decades (Papathanassopoulos, 2014; Iosifidis and Boucas, 2015), leading to an environment, “where private and political interests are intrinsically intertwined and where the media function as the means through which these interests are played out” (Kyriakidou, 2015).

#### **4.4 The licensing of the first nation-wide broadcasters: politicisation and lack of administrative capacity**

As demonstrated above, the struggle for establishing the electronic media legislation in Bulgaria delayed the licensing process for commercial broadcasting with over a decade after the change of the regime in the country. Yet, it is important to remember that this has not been a case unique for Bulgaria. Sparks (1998: 143-147) has revealed that, in terms of broadcasting, CEE countries did not respond to the move to liberal market economy with “immediate privatisation”. Instead, those countries have developed the so-called “political privatisation” (Splichal, 2000), in which licensing of private broadcasting was turned into an extremely politicised process, far from purely commercial terms (Sparks, 1998: 146). The selection of one or another licensee involved political struggles, as close “political links between aspiring capitalists and different political parties” had emerged (Sparks, 1998: 146; 147). In Sparks’ (1998) own words, “[t]hose in power were keen to ensure that their friends were rewarded. Those in opposition were keen to prevent more control over the symbolic landscape accruing to the governing party” (p. 147). As a result, “once the licences were awarded, and the logic of commercial broadcasting began to operate, the new broadcasters themselves became important political actors” and “to improve their own position, to weaken their rivals, or to allow themselves to expand, they were forced to enter into political battles” (Sparks, 1998: 172, see also Lašas, 2013: 14). The foreign Western investors interested in entering the emerging media markets of CEE countries have demonstrated an ability to adapt to the local way of doing things (Štětka, 2012b: 19). Looking at the establishment of the Central and European Media Enterprises (CME) business in the 1990s, Sparks (1999: 34) has demonstrated that one of the key features in the CME’s strategies in CEE countries was the creation of partnerships with strategic local players “with good political connections who were going to win the initial broadcasting licences”. Obviously, such actions were later followed by strategies to keep and improve the established relatively competitive positions (Sparks, 1999: 35-36; Sparks, 2012: 59).

In Bulgaria, on the basis of the legal framework established in 1998, the first licensing procedure for a private nation-wide terrestrial television was initiated in

July 1999 (Ivantcheva, 2000). That “did not go by without its fair amount of scandal and speculations of external financial pressures and political manipulations in the selection process” (Ibrosheva and Raycheva-Stover, 2007: 227). Major foreign companies of the rank of News Corporation, Scandinavian Broadcasting Systems (SBS), Modern Times Group (MTG) and Central European Media Enterprises (CME) demonstrated interest in acquiring nationwide private terrestrial television license in Bulgaria. The NCRT shortlisted three applicants – Balkan News Corporation (BNC), TV2 Ltd. (with Scandinavian Broadcasting Systems’ (SBS) participation) and Media Broadcasting Services (a consortium of Modern Times Group (MTG), Zodiak VN and a company with Iranian capital, LogicInvest), from which the State Evaluation Committee selected as a winner the Balkan News Corporation. Thus, the Balkan News Corporation with its television channel bTV became the winner of both the programme and the telecommunications selection and was approved by the Prime Minister for acquiring the first private national terrestrial broadcasting license in the country in 2000 (Popova, 2004: 101). It should be noted here that the other two shortlisted candidates, TV2 and Media Broadcasting Services, still received a programming licence by the NCRT (Nikoltchev, 2000), but remained without own transmission network. It was a ten-year licence that resulted in confusions and the discrediting of the successor of NCRT at the verge of digital switchover a decade later.

Apart from the closely involved governmental role in the selection procedure and the reported pre-licensing communication exchange between the then UDF Prime Minister, Ivan Kostov, and representatives from the Balkan News Corporation, what arguably emerged as a bigger problem around the case of bTV, and generally in the Bulgaria media domain, was the lack of clarity and transparency on the real owners of the company at the start of the licensing procedure (Popova, 2004: 102; Bajomi-Lázár, 2014: 85). It became clear only towards the end of the procedure that the owner of bTV was Rupert Murdoch’s News Corporation (Popova, 2004; Ibrosheva and Raicheva-Stover, 2007: 227). In addition, for many years a mystery surrounded the linkage between Krasimir Gergov, the founder of one of the first advertising agencies in Bulgaria, Kres, and the ownership of bTV. The so-called “Gergov clause”, added to the 1998 Law Radio and Television, was reportedly included to

ban the advertiser from participation in the competition for the first commercial nation-wide terrestrial television channel (Smilova, et al., 2011: 23). On paper, Gergov was the consultant of the bTV's executive director, Albert Parson. Yet, the advertising mogul was alleged of having his own share in the company (Popova, 2004; Ibroscheva and Raicheva-Stover, 2007: 228). In 2010, finally Gergov himself revealed that he had owned shares in bTV for all those years, but that he circumvented the formal rules hiding it behind offshore companies (Smilova, et al., 2011: 23)<sup>44</sup>.

Six months after the licensing of bTV was completed, a tender for the licensing of the second national terrestrial television was initiated (Popova, 2004: 103). The selection committee appointed by the Prime Minister, Ivan Kostov, chose the first private regional television in the country - Nova TV to be the winner of the telecommunications licence, while NCRT had before that shortlisted the Media Broadcasting Services as the front runner. Previously, Nova TV had to drop out of the tender for the first private nation-wide channel because of its unclear ownership structure and the assassination of the person registered as its CEO (Popova, 2004: 103). This time, however, the Nova TV was awarded the nation-wide licence by the UDF government of Ivan Kostov, with whom the broadcaster was allegedly "loosely linked" (Bajomi-Lázár, 2014: 85). The applicants that lost the competition, including Bulgaria Broadcasting Services, Triada Communications, Media Broadcasting Services and National Satellite Television Channel - Bulgaria appealed against the decision of the Council of Ministers (No: 757, 16<sup>th</sup> November 2000) that gave the final approval for granting the licence to Nova TV. Initially, the three-member panel of the Supreme Administrative Court (SAC) refused the appeal for revocation of the granted licence, yet the Media Broadcasting Services brought the case in front of the five-member panel of the Court. The decision was taken a month after the general

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<sup>44</sup> The ban was lifted under very controversial circumstances during the amendments of the Law on Radio and Television under the CEDB government in 2010, being

““smuggled in” at the last possible moment.[...] It was passed both in the Standing committee and in the Plenary session without being read (neither verbatim nor in summary), nor was it discussed or even noticed by anyone either in the committee or in the plenary hall.” (Smilova, et al., 2011: 23).



elections of June 2001, in which Kostov lost to the party of the former Tsar Simeon II. This time the Court cancelled the licence to Nova TV, on the basis of non-transparent selection criteria, introduction of amendments to the criteria after the deadline of the application period and lack of clarity on the weight of each criterion (SAC, 2001). The decision was allegedly linked to, on the one hand, the departure of Kostov (Smilova, et al., 2010: 58) and, on the other hand, “[i]ndividuals associated with bTV, Nova TV’s rival” (Ivan Garelov, personal communication with Bajomi-Lázár, 2014: 85). Perhaps in relation to the latter, Yaneva (2002) has referred to the

participation of dummy legal entities backed by Krassimir Gergov in [the tender] for [the] second national television broadcasting license. These entities never win but they usually question the tender’s procedures in order to delay (if not impede) the launching of a second private national television broadcaster to rival bTV.

As in the case of TV2 and Media Broadcasting Services, Nova TV also obtained only a programming licence from NCRT in 2001. This as a result contributed to the circumvention of the role of NCRT’s successor – the newly created Council for Electronic Media (CEM), when finally in 2003 Nova TV was licensed as the second nation-wide private television after receiving independently from CEM the telecommunications licence it required (European Commission, 2003b: 90). This in fact went against the adopted legislative amendment by the then newly elected NMSS-MRF government of Tsar Simeon II (2001-2005), which along with changing the names of the regulatory bodies, established the so-called ‘joint’ licensing system that required terrestrial broadcasters to obtain a programme from CEM and a frequency licence from the successor of the SCT, the Communications Regulation Commission (CRC). CEM was granted a leading role in charge of organising the licensing competitions. This privilege, however, was not utilised in the case of Nova’s licensing<sup>45</sup> and thus, CEM’s role was effectively circumvented.

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<sup>45</sup> Neither was it given opportunity for application in the (local) terrestrial television licensing in the analogue and subsequently the digitalisation periods.

#### **4.5 Cementing the broadcasting status quo and the EU's pre-accession leverage**

The above section has focused on the licensing of the first nation-wide terrestrial channels in the country. However, the adoption of the 1998 regulatory framework was expected to introduce “clear and enforceable rules for mandatory licensing of *all* radio and TV operators” (Smilova, et al., 2011: 15, emphasis added), which included the *local* terrestrial broadcasters that had emerged unregulated in the period before 1998. Neither the UDF government nor the NMSS-MRF coalition led by the Tsar Simeon II (2001-2005) managed to sort out the licensing chaos in the country. On the contrary, Simeon’s government further deepened those problems, which resulted in irreversible side effects later on. The NMSS-MRF coalition government suspended the terrestrial licensing procedures soon after coming to power in 2001 (Ognyanova, 2007). With an amendment introduced to the Law on Radio and Television in 2002, the Parliament required that a long-term Strategy for the development of the radio and television sector should be developed by the two regulators – the Council for Electronic Media (CEM) that was responsible for radio and television content and the Communications Regulation Commission (CRC), in charge of telecommunications (Smilova, et al., 2011: 15). It was stipulated that the strategy would have to be officially adopted by the parliament after being prepared by the regulators<sup>46</sup> (State Gazette, 2002). A three-month deadline was given for the preparation of the strategy<sup>47</sup> (State Gazette, 2002). Nikolova (2007) reported that the regulators were ready with the proposal within the stipulated time. However, it took the Parliament more than three years to adopt the strategy. Most importantly, (local) terrestrial licensing was blocked until the strategy was adopted. The general perception was that there were some political motivations behind the postponement of the adoption of the strategy that was blocking licensing (Smilova, et al., 2011: 16). The legislature had lost trust in the independence of the content regulator, CEM, as its “members were alleged to have formed associations with various economic interests” (Kavrakova, 2005: 365-366; Smilova, et al., 2011: 16; Popova, 2002). In

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<sup>46</sup> Paragraph 6 of the Transitional and Concluding Provisions of the Law on Radio and Television amendments promulgated on 9<sup>th</sup> August 2002.

<sup>47</sup> Paragraph 5 (1) of the Transitional and Concluding Provisions of the Law on Radio and Television amendments promulgated on 9<sup>th</sup> August 2002.

addition, however, the delay in the adoption of the strategy was allegedly serving the interests of the already established broadcasting players to strengthen their positions and monopolise the market by keeping additional licensing blocked (Smilova, et al., 2011: 16). Thus, once again the prolonged period of non-decision making resulted in critically benefitting one side of the broadcasting market – the terrestrial.

The second measure undertaken by the NMSS-MRF coalition as regards broadcasting licensing further strengthened the positions of the established media market players in the country, this time those of the *local* terrestrial broadcasters. Paragraph 9a was introduced to the Transitional and Concluding provisions of the amended Law on Radio and Television in 2003 to extend the right of three categories of operators to continue broadcasting on temporary licences until tenders were held in the respective towns and new licences were issued to the winners. The three categories of broadcasters included “(1) those who won competitions for licences, yet the decisions of the [content regulator] CEM were appealed (with decisions of the courts pending) and in the meantime the operators were to continue using their contested licences, (2) those with licences issued without going through a tender, and (3) those who declared to have broadcast programmes in the past without a licence” (Smilova, et al., 2011: 15). According to Smilova, et al. (2011: 15), “by the beginning of 2006 some 147 broadcasters continued to use temporary licences”. Thus, both the delay of the adoption of the strategy and the postponement of the broadcasting rights on temporary licences benefitted “the already licensed national TV operators, strengthening their dominant market position” as well as “the position of all those operators who continued to broadcast with temporary licences, without going through a competition procedure” (Smilova, et al., 2011: 16). As seen in Chapter 5, the strengthened positions of the *status quo* prevented CEM from completing the (local) analogue terrestrial licensing few years later.

In its 2003 Regular Report on Bulgaria’s progress towards accession, the European Commission expressed its concerns about the “delay of the Parliament in adopting the Strategy for the Development of Radio and Television” and insisted that the government should end the legal uncertainty in licensing and relicensing of local/regional broadcasters (European Commission, 2003b: 91). Similarly, in 2004,

the Commission noted that the amendments of the Radio and Television Act in 2003 to prolong the licences of the local terrestrial operators on a temporary basis was only an interim solution that did not provide the required legal certainty (European Commission, 2004: 106). The NMSS-MRF coalition finished its mandate without addressing the demands of the EC. In 2005, when the so-called triple coalition led by BSP came to power, the country's EU bid was in its last mile before the scheduled accession in 2007. Arguably, it did not want any obstacles on its way. The Parliament adopted the strategy just a few months after the new government came into power, following EU pressure through "soft law" mechanisms. In the beginning of September 2005 media experts of the European Commission, including among others the academic Karol Jakubowicz, visited the country for a "peer review" of audiovisual policies as part of an "enhanced monitoring process on Bulgaria's accession to the EU" (Antonova, 21/09/2005). The discussions in the parliament's plenary session on 28<sup>th</sup> September 2005 revealed that the non-adoption of the strategy, and thus the blocking of licensing, was put on the table very "strongly" by the European Commission's policy experts that visited the country (National Assembly, 2005). It was said that the Commission had interpreted the block on licensing as an act of restricting freedom of information in the country and keeping foreign operators wary of investing in the Bulgarian media sector. At that meeting, the leaders of the Standing Parliamentary Committee on Media and Civil Society undertook the responsibility to vote the adoption of the strategy by the end of September 2005. Although MPs acknowledged that the text was not any more up-to-date (i.e. Nova TV was established as the second nation-wide terrestrial television in the meantime; digitalisation was envisioned, but not covered), all the Members of Parliament being present in the plenary, including representatives from the opposition, voted in favour of the adoption of the strategy with few minor updates. Thus, unlike the usually conflictual legislation making process on media policy in Bulgaria, the EU pressure led to a consensual, if incomplete, decision as regards the adoption of the strategy. The reason sounded quite pragmatic. As revealed by MP Draganova' (NMSS) speech, it was hoped that the act would be "duly reflected in the 2005 Annual Report on Bulgaria's accession to the European Union" (National Assembly, 2005). The positive evaluation became indeed a reality, as a month later the report of the European Commission announced that:

The Bulgarian Parliament adopted the Strategy for Radio and Television in September 2005, which will allow the Council for Electronic Media to initiate new tenders for television and radio programming licenses (European Commission, 2005f: 56).

The external pressure of the EU, however, did not lead to an efficient solution. The adoption of the document came in response to domestic pressure for unobstructed EU accession. For the broadcasting sector, however, the adoption of the strategy was not an end to the problem of blocked licensing and relicensing of analogue broadcasters, but its new beginning. As seen in Chapter 5, the EC's expected transparent and effective implementation of licensing (European Commission, 2004: 106) was shaped by domestic players' powers and regulatory capacities.

#### **4.6 Outcomes for Public Service Broadcasting: loss of positions and financial weakening**

Similarly to other CEE countries, the post-communist state of Bulgaria experienced the great challenge to set up public service broadcasters *and* liberalise the broadcasting market at the same time. From being a monopoly in the television market, the Bulgarian National Television (BNT) lost its dominant position as soon as the first private nation-wide terrestrial channels were created. In the period before the licensing of the first nation-wide private channel, bTV, in 2000, the audience share of BNT's main Channel 1 was 81 per cent, while its second channel Epir 2 had 40 per cent of the audience share (Ibroscheva and Raicheva-Stover, 2007: 225). Within a year after the introduction of bTV, the new broadcaster managed to reverse these numbers into its advantage. The weekday market share of the BNT fell from 26.3 percent in 2001 to 16.8 percent in 2005, while bTV grew from 30.6 per cent to 40.4 percent in the same year (Ibroscheva and Raicheva-Stover, 2007: 231). The public service television was allowed to benefit from advertising revenues, yet as Sparks (1998: 154) had pointed out in relation to other countries from the CEE region, the extent of this was restricted to the interests of the private broadcasters that had emerged. In this respect, it could be argued that clientelistic relationships between political and private media elites were reinforced through various

advertising rules and policies. In Bulgaria, advertising in BNT was limited to fifteen minutes per day and only five minutes in the prime time. There were also ad hoc restrictions such as the one the UDF-MRF government of Ivan Kostov (1997-2001) adopted, banning political advertising on BNT during 2001 election campaign and “thus allowing bTV to become the major venue for political ads and presidential debates and the first stop for political candidates.” (Popova, 2004 in Ibrosheva and Raicheva-Stover, 2007: 233). Moreover, with the introduction of bTV, the attention of the advertising agents, such as the monopolist Kres of Krasimir Gergov, shifted from directing advertising in return for “advantageous” contracts (Popova, 2004: 99; see also Bajomi-Lázár, 2014: 82) towards the private channel. Then still unproven, there were “speculations that bTV’s top advertising revenues were a direct result of the close relationship between its owners and Gergov” (Ibrosheva and Raicheva-Stover, 2007: 233). In response, the advertising shares of BNT shifted accordingly. Between the period of 2001 and 2005 (time span that included the licensing of the second terrestrial Nova TV channel), BNT took the third place in advertising revenues after bTV and Nova TV (Ibrosheva and Raicheva-Stover, 2007: 233).

As a result, those and similar formal and informal institutional characteristics nailed BNT’s dependence on state subsidies, which remained the largest source of income for the public television. Arguably this dependence has exacerbated with the privatisation of the state-owned telecommunications company BTC, which led to substantial increase of transmission costs for BNT, an outcome Mungiu-Pippidi (2003: 53) has observed also as regards other CEE countries including Poland and Romania. The so-called Radio and Television Fund for financing the public broadcasters, that the broadcasting law envisaged to be established with fees collected directly from citizens, did not materialise. One of the obstacles was argued to be the discrepancy between fees and taxes in legal terms (Ognyanova, 2009: 39). The fees are provided in compensation for a service that is received, while the taxes are obligatory for all citizens even if they do not use the provided television services. Therefore, there has been a lack of political will to put in operation the Fund, as making fees obligatory has been considered economically unpopular among the population (Spasov, 2008: 11-12). As explained by Cholakov (2003):

in Bulgaria it is a public secret that public fees for radio and television in the respective laws have more emblematic meaning and are included in order to satisfy the needs of some very active European organizations insisting on such fees. In view of the standard of Bulgarian citizens and their mentality of payers, it should be clear for everyone that introducing the principle of full reliance of public media on funds compiled of license fees, will be equal to their immediate and unconditional bankruptcy.

Thus, the legislation of funding BNT directly by the public has become one of those formal rules that have been adopted in order to please the international community.

#### **4.7 Conclusions**

This chapter provided a concise background of the formation of post-communist socio-political structure, in which the Bulgarian media system developed. The first part of the chapter focused on two phases of the political system that scholars have distinguished analytically. They represent the move from state capture, characterised with a restricted number of dominant players supported by and coordinated with dominant political elites, towards more competitive forms of state capture that benefitted a greater number of rent seekers. Obviously in both cases state capture as such has been preserved, adjusting itself to the more diverse political environment from the beginning of the 2000s and to new financial sources after the EU accession. As observed, in this recent phase the capture of the state has also started to be manifested through utilising media for mutually beneficial political and media interests. The second part of the chapter demonstrated that this general political structure developed throughout the years of democratic transition and consolidation and was reflected in the broadcasting policy-making in the period before the digitalisation (from 1989 to mid-2000s). Key characteristics have included the centrality of the government, that in turn reflected to an unclear regulatory framework; delays and non-decisions in rule adoption and licensing that resulted in real consequences empowering specific private interests and cementing the status quo and clientelistic relations with politicians; politicisation of the licensing process and notable political silences over media ownership, which as demonstrated further in the thesis have strengthened clientelism and supported corruption; the gradual but

nonreversible weakening of PSB and the related undermining of the public interest. All these broader structural characteristics have continued their presence in the process of DTT decision-making, as the next chapters observe.



## **CHAPTER 5: Establishing the DTT legislative framework: path dependencies, state capacities, rules and practices**

### **5.1 Introduction**

This chapter consists of two parts. The timeframe covered is from the beginning of 2006 until mid-2009, when the mandate of the then ruling government of the coalition between BSP-NMSS/NMSP-MRF ended.

The first part of the chapter shows how the path dependencies created from the provision of temporary analogue licensees determined the outcomes of the licensing decision-making following the adoption of the broadcasting Strategy in September 2005 (discussed in the previous Chapter). More importantly, it demonstrates the first critical appearance of the DTT topic in the broadcasting policy agenda, empowering those who have argued against the analogue licensing to gain dominance over those in favour of it. It also shows how the prospect of DTT introduction has served the already weakened decision-making capacities of the media regulator CEM to escape the emerged deadlock on analogue terrestrial licensing.

The second part of the chapter looks at the amendment of the already existing primary legislation on broadcasting and telecommunications, the Law on Radio and Television (LRT) and the Law on Electronic Communications (ECA) as well as the creation of a brand new law exclusively for the digitalisation of the public service broadcasting organisations BNT and BNR – the Law on Public Broadcasting (LPB). The decision-making process on the legislative framework for DTT demonstrates the design of formal rules through informal practices and behaviour. The lack of clarity and transparency in the legislation process and the proposition of poorly justified rules has favoured not only some openly expressed interests of private domestic players, but also those of ‘ghost’ players who have remained in the shadow throughout the process. In line with the theoretical framework in Chapter 2, this chapter demonstrates that the weak institutional capacities and powers of the state have resulted in the design of a legislative framework that have later allowed certain

domestic players to establish their domination over the DTT transmission system in Bulgaria (seen in Chapter 6 and 7).

## **5.2 The (analogue) licensing: path dependencies and shortage of regulatory capacities**

After the adoption of the long-awaited broadcasting Strategy<sup>48</sup> in 2005, the analogue licensing process was *de jure* opened (Smilova, et al., 2011: 16) and CEM was now legally given the right to proceed with it. Yet, CEM never managed to complete the attempted licensing of analogue television broadcasting. The process entered into ‘a labyrinth’, as, Ivo Atanasov (BSP), the then chair of the parliamentary media committee called it (Parliamentary Standing Committee on Civil Society and Media, 24/11/2005). There was a sense of inertia demonstrated already at the start of the process. Initially, the legislature postponed the entry into force of the broadcasting strategy for several months – from the time of its adoption in autumn 2005 to 1<sup>st</sup> January 2006, ostensibly in order to allow the regulator CEM to plan its further actions and prepare for the start of analogue licensing after five years of interruption (Parliamentary Standing Committee on Civil Society and Media, 24/11/2005). It could be argued, however, that the slowed actions of the legislature towards analogue terrestrial licensing was intended to allow expressions of interests to be formulated and observe the reactions of the broadcasting sector in the country. Reactions were naturally expected. On the one hand, as already pointed out in the previous chapter, the delay of the adoption of the strategy and thus the licensing, had arguably benefited the already established terrestrial broadcasters by preventing extra competition. It could be expected that they would want to continue to enjoy that privilege. On the other hand, the appetites for licensing had been growing for many years as was demonstrated by the 80 plus requests that CEM received already in the first weeks of January 2006 requesting the start of analogue radio and television

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<sup>48</sup> It should be noted that, although called ‘strategy’, the adopted document was not an example of a comprehensive policy document and the reader should not perceive it as a type of a strategic document which provided well-designed and realistic measures for shaping the broadcasting industry in Bulgaria. Yet, I refer to this document as ‘strategy’ in accordance with its official title.

licensing (Smilova, et al., 2011: 16; Antonova, 07/01/2006; Antonova, 21/01/2006). As a result, two coalitions of opposing interests were organised.

As Smilova et al. (2011: 16) argued one was pro- and the other anti-status quo and were respectively against and in favour of analogue licensing. The first coalition concentrated around the Association of Bulgarian Radio and Television Operators (ABBRO), which represented the established private broadcasters in the country (such as bTV and Nova TV) as well as the broadcasters with temporary telecommunications licences under ‘paragraph 9a’, such as GTV, Top Television (CTN), 7 days TV (Antonova, 24/08/2007). The three channels were allegedly linked to the owner of a monopolistic advertising business, Krasimir Gergov (Smilova et al., 2011: 17; Antonova, 24/08/2007). On the opposite front, the coalition in favour of licensing was formed around the new Association of Bulgarian Television Operators (ABTO), which was established by cable and satellite television broadcasters that were willing to obtain licences for terrestrial broadcasting (Smilova, et al., 2011: 16; Predavatel, 08/05/2006). ABTO had united cable operators, such as BBT, TV7, MM Television, Diema, Evrokom to counter the pressure exerted by the terrestrial broadcasters on politicians to preserve their positions (Predavatel, 09/05/2006).

At a meeting with the members of the parliamentary media committee on 24 November 2005, requested by ABBRO, the established broadcasters pleaded that there was no sufficient clarity on how the licensing process was going to be carried out and argued that the issue with the so-called ‘paragraph 9a’ operators<sup>49</sup> should be sorted out first before giving any new licences for analogue terrestrial broadcasting. ABBRO presented their own proposals for amending the LRT, suggesting a special licensing procedure that would precede the new licensing bidding and allow the broadcasters with “clear dossiers”<sup>50</sup> to receive licences *without* going through a

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<sup>49</sup> More than half of the radio and television operators in the country were with that status (Antonova, 03/05/2005).

<sup>50</sup> According to the then chair of ABBRO, Konstantin Markov, these were the so-called ‘conscientious operators’. He explained that the operators that had applied for temporary licences had to first declare the starting date of their activities in order to show how long they have been present on the market. Some of them, however,

bidding procedure. In justification for this, ABBRO built their discourse on the principle of “fairness”. The argument that was put forward was that those operators had already been active for many years and that it would be unfair to put them in the same category with the new applicants without taking into consideration that they had long operated with a temporary licence. The chair of ABBRO argued that such changes in the law were necessary, taking into account the reality of the national broadcasting structure, and opposed the strategy straight away, stating that it “was adopted only to please the European Union” (Antonova, 03/05/2005) on the way towards the country’s accession to the Union. However, according to Smilova, et al. (2011: 16), these arguments and the call for amendments or for a new law (which would surely be a “long and controversial process”) were an attempt to hinder the new licensing process and in this way prevent change to the status quo. Drawing on the institutionalist framework for analysis, I argue here that past decisions to extend the duration of temporary licensing and create what has been termed a “temporary tolerance” (Ognyanova, 16/09/2007), whereby local analogue operators without (proper) licences were allowed to continue their operations on temporary ones, critically undermined the regulatory capacities of CEM to carry out analogue licensing. While this is the umbrella framework that explains the result of analogue licensing, more specific characteristics, such as formal rules (e.g. international agreements, refusals to grant frequencies, court cases) and informal mechanisms (involvement of the Prosecution) shaped the decision-making on analogue terrestrial television licensing, by constraining the pro-licensing camp and providing opportunities to pro-status quo players. Below I illustrate this with a review of the licensing process and its outcomes.

The rules of the so-called ‘joint licensing’, mentioned in Chapter 4, required CEM to enquire from CRC information on the availability of free frequencies in the geographical areas where applicants had demanded new licences. In accordance with the formal procedures, in April 2006 CRC announced that a total of 304 frequencies were available for both radio and television broadcasting (CEM Minutes,

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declared false dates in order to appear as having broadcast for longer than they had actually been. He proposed that only broadcasters that had been on the market for more than a decade should be given a ‘bonus’, i.e. a priority in the new licensing bids (Antonova, 03/05/2005).

29/06/2006). This enabled CEM to announce the start of terrestrial radio and television licensing. Although moving very slowly with preparations (market analysis, criteria for assessment, etc.), at the end of June 2006, CEM finally announced the start of licensing procedures for analogue terrestrial television licences (CEM Minutes, 29/06/2006; CEM Minutes, 06/07/2006). The powers of CEM to effectively complete the analogue terrestrial licensing process were, however, severely curbed.

Officially, circumstances and, as a result, the balance of interests changed under external factors, notably the ITU's Regional Radiocommunication Conference held in May-June 2006 in Geneva, where an agreement on the digital terrestrial frequency planning was established. Although not a full member of the EU, the Bulgarian state along with the EU member states signed a declaration "in which Bulgaria undertook to apply the provisions of Final Acts of the Regional Radiocommunication Conference, as they were adopted, in accordance with the obligations resulting from the Treaty of the European Community" (CRC Decision 1502, 11/07/2006). CRC used the ITU Geneva agreement as a justification to withdraw its decision on the availability of frequencies for analogue broadcasting only a few days after CEM had adopted the licensing criteria and had announced the start of the contest for analogue television licences in several large cities, including the capital Sofia (CEM Minutes 29/06/2006; CEM Minutes 06/07/2006). CRC stated that there was a risk of "serious deficiency of radiofrequency spectrum" (CRC Decision 1502, 11/07/2006), especially in bigger cities, during the so-called simulcast period when terrestrial broadcasters would be required to transmit both in analogue and digital. This would require the availability of additional frequencies, in order to guarantee smoother transition. CRC also referred to the 2005 EC Communication on accelerating the transition from analogue to digital broadcasting, which had set 2012 as the deadline for switching off analogue television signals and stated that in case switch-off was to proceed without a simulcasting period because not enough spectrum was available, that would be a "sudden" transition with "negative consequences" (CRC Decision 1502, 11/07/2006). On these grounds, CRC concluded that the use of the available frequencies would "seriously impede the introduction of digital terrestrial

broadcasting” in the country and decided to revoke its decision (CRC Decision 1502, 11/07/2006).

This resulted in an inter-institutional battle between the CRC and CEM, and the private market players associated with ABBRO and ABTO standing on one of the sides respectively. The former camp was strengthened by the new developments on an international arena. This presented a window of opportunity for the terrestrial operators to fight against new licensing. ABBRO backed the decision of CRC to revoke the decision on available frequencies, similarly resorting to a discourse that emphasised the importance of the responsibility of the state towards EU priorities in relation to the digitalisation of terrestrial broadcasting (Smilova et al., 2011: 17). In the meantime, both sides turned to the national judiciary. The representative of the terrestrial broadcasters ABBRO filed complaints before the Supreme Administrative Court (SAC), refusing to accept CEM’s licensing criteria and the regulator’s decisions to start licensing competitors (ABBRO Annual report, 2006). From the opposite block, the applicants for terrestrial spectrum brought an appeal before the Court against the CRC’s decision to withdraw the announced available spectrum (Smilova et al., 2011: 17; Ognyanova, 7/11/2007).

Initially, CEM was eager to demonstrate determination and unity to carry on with analogue licensing and communicate their firm position to the public (CEM Minutes 6/07/2006). It claimed that their actions were led by the stipulations of the law and the broadcasting strategy that obliged them to licence new radio and television channels (CEM Minutes, 06/07/2006, p. 10). However, the opposition against CEM’s decisions to begin the licensing process grew following the refusal of the CRC to participate in the joint commission for the assessment of applicants (CEM Minutes, 02/07/2007). The situation for CEM became unbearable following a letter from the Supreme Prosecutor’s Office, “*suggesting that* CEM should assess the legality” of the undertaken television licensing decisions for the three major cities of Sofia, Plovdiv and Varna, on the background of CRC’s withdrawal of frequencies (SAC Decision 8898, 28/09/2007, emphasis added). Moreover, the letter included a request for CEM to inform within three days’ time the Prosecutor’s Office about the regulator’s rethought decision, while the Prosecution would ensure that “measures”

would be taken to pronounce the previously announced licensing decisions “invalid” (CEM Declaration, 02/07/2007; CEM Minutes, 02/07/2007; SAC Decision 8898, 28/09/2007). Thus, the outcome for the licensing decisions of CEM was already foreseen by the Prosecution. As a result, referring vaguely to “change in circumstances” CEM announced in July 2007 (a year after the regulator took the decision to start licensing) that it was going to “[re-] consider [its] position regarding television licensing” (Antonova, 29/06/2007). The pressure on CEM, both through formal procedures, such as the court cases filed from the two opposing sides as well as the unusual involvement of the Prosecution on the basis of complaints made by interested parties (Antonova, 29/06/2007), broke the ambitious and relatively united CEM into two blocks, along with the opposing positions (pro- and against-licensing) groups. The capacity of the regulator to resist the pressure against licensing was arguably weakened to such an extent that it did not find any effective move other than a decision to “postpone” the completion of the initiated television licensing procedures in the three cities. The official position of CEM was announced in a Declaration, and not in a formal Decision, a compromise agreed, as the two sides could not reach consensus (CEM Minutes, 22/01/2008, p. 11).

The Declaration highlighted 1) the note of the deputy-prime prosecutor; 2) the ratification of the ITU’s Geneva 2006 agreement; 3) the situation of the anticipated national plan for digitalisation; 4) the undertaken *commitment* of the government as regards the EU’s digital switchover and the 2012 deadline (CEM Declaration, 02/07/2007). The position of the CEM effectively demonstrated the official “alignment of domestic media policy priorities” with corresponding EU and international priorities in electronic communications, under EU pressure (Ognyanova, 2009: 37). Yet, looking deeper in the decision of CEM it cannot be ignored that the alignment with the EU policies came as a result of a domestic struggle that resulted into a deadlock, from which the content regulator was desperately trying to find a way out. The EU digitalization policies and the commitment of the Bulgarian government to them arguably served as an escape for CEM. They enabled the regulator to establish a coherent narrative and provided a window of opportunity to justify their step back from what had become a troublesome policy stalemate. Moreover, the adopted decision presented in the form

of a ‘declaration’ served (intentionally or unintentionally) to shift the ‘epicentre of the earthquake’ to other institutions.

Upon CEM’s declaration, TV7, one of the cable broadcasters that had applied for terrestrial licences in all of the three cities where tenders had been initiated, appealed before the Supreme Administrative Court (SAC) against the ‘postponement’ of CEM’s decision making. Both on first and second instance the Court decided that the document of CEM was “null and void”, stating that the regulator was not “empowered to issue declarations and therefore was not able to effectively postpone [the] tender decision” (Nikolova, 2008a; SAC Decision 8898, 27/09/2007; SAC Decision 425, 11/01/2008). This brought the contentious issue CEM had been trying to throw away at various directions (CRC, the legislature, the executive, see, e.g. CEM Minutes 02/07/2007) back in its hands. Furthermore, the decision of the Court strengthened this time the position of the pro-licensing side, and provided an opportunity for the cable television operators to push for the completion of the tenders. A letter sent by TV7 to CEM was perceived by some of the members of the regulator as a “threat”. The letter warned CEM that impeding the execution of a court decision would be treated under the stipulations of the Criminal Code (CEM Minutes 22/01/2008). The then chair of the CEM, Maria Stefanova, urged members to take a final decision either to revoke or to complete the licensing procedure. This returned the regulator at the same point, at which it was six months earlier, when it had to decide between the two options, but took a compromise position and clothed it in a ‘declaration’ (CEM Minutes 22/01/2008). Although divided on the issue, CEM officially decided that it would “announce the successful bidders” in two weeks time (Nikolova, IRIS 2008-3:8/10, CEM Minutes 22/01/2008). In the meantime, however, the National Plan for the introduction of digital terrestrial television was adopted (as seen in the next chapter, it was amended a few times to adjust the switchover deadlines) (Council of Ministers Minutes 5, 31/01/2008). Following that, the fate of the analogue licensing was decided on 11<sup>th</sup> March 2008, when instead of announcing the successful bidders, CEM “terminated the tenders for local analogue TV broadcasting for the cities of Sofia (three tenders), Plovdiv (two tenders) and Varna (three tenders)” and on 13<sup>th</sup> March 2008 “repealed its decisions from 2006” on the



start of licensing procedures for the three cities (Nikolova, 2008b; CEM Minutes 11/03/2008; 13/03/2008; CEM Decision 26, 13/03/2008).

Once again the prioritisation of the digitalization process, due to the undertaken international commitments, provided the possibility for CEM to escape the licensing gridlock. The capability of the regulator to carry on with analogue licensing was exhausted. For the then chair, the termination of the analogue licensing was a “logical end” to the licensing “saga”, as the regulator

could not anymore resist all other institutions, which point[ed] that digitalisation is the state’s priority in media [policy]. This is what the experts in not only Bulgaria but also Europe say. ... This is one of the most serious motives for CEM to terminate tenders for analogue [television]. With this the Council will give a clear signal that CEM does not obstruct the course of digitalisation ... The logic points that this is the appropriate way for CEM to get out of the situation. (CEM Minutes 11/03/2008, p. 13).

The account demonstrates an example of what Heritier (1999: 89) has called a “policy-making by subterfuge”, where pre-existing “supranational/institutional” commitments can provide the needed flexibility to get out of the established deadlock. Although Heritier (1997; 1999) has developed the concept in terms of policy-making on the EU level, the Bulgarian case demonstrate that it can also be applied to the domestic level, albeit with a “local flavour”, to borrow an expression used by Smilova et al. (2011: 18).

The local flavour was clearly noticeable from the words of the member of CEM, Lilia Raycheva, who was one of those who insisted on completing the analogue licensing tender. Her words provided a contrasting account of the decision-making process and the role of the regulator played in it, attributing the failure to the incompetence of CEM.

The end of the tenders for analogue [frequencies] in such a manner does not have anything to do with the development of the digitalisation. These are two different things. If there is anybody who did not do its job properly is CEM. ... CEM has turned into a helpless, needless, incompetent and non-functional structure, which does not help the state. ... The Council for a long time

imitated performing an activity, which in fact does not [produce] any results at all. The sad conclusion for Bulgaria is that it is the single country in the EU (in fact in all Europe), in which there have been no tenders for analogue television – after more than 15 years battle for democracy, for freedom of speech, etc., this is exclusively CEM’s fault – it is not because of any other circumstances – it is not because of prosecutors, it does not have anything to do with CRC either. Each of the members is personally responsible and [the Council] as a whole. (CEM minutes 11/03/2008, p. 14).

To sum up, it was the legacy of ‘paragraph 9a’ that brought this impasse and resulted in the creation of opposing camps between terrestrial and cable operators, between regulators CRC and CEM and internally within CEM, the regulator formally granted with a ‘leading role’ in licensing of radio and television broadcasters. In relation to this, the legislature did not play any pro-active role throughout the process and was reluctant to take side by undertaking legislative amendments that would favour either one or the other group of operators. The proposed legislative amendment by ABBRO in 2006, for granting 9a operators a licence without going through bidding, did not go far in the Parliament. According to the then chair of the parliamentary media committee, Ivo Atanasov,

It is obvious that the iceberg and the ‘Titanic’ will collide and our committee does not want to be in the role of the captain, because we know that we cannot prevent the collision. However, we don’t want either to be in the role of the orchestra, to play until everything sings (Parliamentary Standing Committee on Civil Society and Media, 07/02/2008).

Thus, the position of the parliamentarians was rather vague in terms of taking concrete legislative actions. Yet, although the developments *seemed* to be left to the flow of events or perhaps to a higher decision-making level, the legislature’s inaction benefited the status quo supporters, a form of decision-making as discussed in Chapter 2. Also, a clear link can be established with the theoretical framework of the thesis, which refers to formal rules and informal practices and interactions (Lowndes and Roberts, 2013) that shape decision-making and produce opportunities for some and constraints for others. More concretely, the rules of the ‘joint licensing’ between CEM and CRC (as mentioned in Chapter 4) prevented the former from taking a leading role and constrained its ability to proceed with licensing by awaiting a

favourable statement for the technical availability of television broadcasting spectrum from CRC. Furthermore, the powers of CEM were restricted by official mechanisms such as court cases by affected parties – both pro and against the status quo - and by informal practices such as the warnings by the Prosecution to stop the licensing procedures. Also, the powers and decision-making capacity of CEM were diminished by its own members who split into two sides, as if aligning with one of the two opposing industry groups. This led to adoption of a compromise in the face of a ‘declaration’, a legally weak document as opposed to a formal ‘decision’. This declaration, which was arguably a formal decision presented informally, led to gaining time and gave opportunity for the pro-licensing players to claim continuation of the licensing. Finally, but most importantly, the powers of CEM to continue with the analogue licensing were undermined by the digitalisation of the broadcasting that was brought to the decision-making agenda by the opponents of licensing. Although disempowering CEM to complete the analogue licensing, the strength of the externally set DTT objectives and the inevitability of the transition served CEM to cancel the licensing and escape the created stalemate. Thus, arguably the “commitment” of the Bulgarian state to the adopted international agreements provided CEM with a more elegant way of getting out of the licensing situation, which the stronger actors (incumbent terrestrial broadcasters, the telecoms regulator CRC and the Prosecution), judging by how the analogue licensing process had developed below, would have hardly made it to happen.

### **5.2.1 The capture of CEM**

While CEM and CRC were involved in inter-institutional struggles in relation to analogue television licensing, some of those industry players, which were initially formed in two opposing blocks began switching sides and started reorganising the structure of the media market without regulatory intervention (Antonova, 23/06/2006; Antonova, 24/08/2007). I focus here on two cases that stood out and received much attention: the first, involved the temporary terrestrial licensee 7 days TV and the cable television BBT, which decided to exchange their allocated frequencies, and the second, involved the local/regional terrestrial channel TV2 that established itself as a nationwide broadcaster.

As mentioned above, the two television stations 7 days TV and BBT were initially on opposite sides. 7 days TV was a terrestrial local station (Predavatel, n.d.), owned by the company Max Channel, which had a temporary telecommunications licence and it was part of the group of ABBRO that opposed new analogue licensing. BBT was one of the cable TVs and the main actor in the establishment of ABTO – the organisation that fiercely supported the terrestrial licensing tenders. As observed by Antonova (24/08/2007), as soon as the advertising mogul, Krasimir Gergov, became consultant to BBT, the opportunities of the cable television changed. 7 days TV agreed to swap positions with BBT. Thus, BBT took the terrestrial frequencies of 7 days TV, while the latter started broadcasting via cable and satellite (Antonova, 24/08/2007). Asked if that exchange of frequencies was indeed legal and if yes what was the purpose of licensing, the then director of 7 days TV referred journalists to the regulator CEM: “let [CEM] explain to you what is the purpose of the licensing” (Todorov cited in Antonova, 24/08/2007). Although vague in his reply, the director quite clearly confirmed that “it [was] about business and political interests” (Todorov cited in Antonova, 24/08/2007). Obviously, the exchange had become possible due to a loophole in the Bulgarian Law on Radio and Television (Art. 106) that allowed the “transferring [of] TV analogue broadcast licences from one operator to another, which was used by cable TV operators to reach air broadcasting” (Smilova et al., 2011: 17). This was possible only if the channels had a programme licence given by CEM, “yet this requirement was often bypassed too” (Smilova et al., 2011: 17). In this way, those cable channels that could afford obtaining such deals with terrestrial operators, could move their programming from a cable to a terrestrial system thereby circumventing official licensing which required both programming and a telecommunications licence. According to CRC, the case of Max Channel (7 days TV) and BBT was just a normal commercial operation between two private enterprises, as the former owned a telecommunications (frequency) licence and had the right to broadcast a programming licensee, such as BBT (CRC cited in Antonova, 24/08/2007).

The second case involved the television channel TV2<sup>51</sup> (see, Smilova et al., 2011: 17), which was established as a nationwide channel through a similar practice as in the case of 7 days TV and BBT. TV2 had a ten-year programming licence issued by the predecessor of CEM, the NCRT, in 2000 (Antonova, 23/06/2006). As already mentioned, however, the law required analogue terrestrial broadcasters to have both a programming licence, issued by the content regulator CEM, and a frequency licence, issued by the telecommunications regulator CRC. In order to acquire a telecommunications licence, the TV2 used the 27 regional frequencies of the television channel CTN, a trademark for Tehnosteel, a company that had managed to obtain 27 regional temporary telecommunications licences the year before (Antonova, 14/09/2007). The combination of the programming licence of TV2 and the 27 regional frequencies of CTN once again circumvented the rules of ‘joint licensing’ through a competitive procedure. Thus, the channel received almost national coverage by obtaining access to 27 regional frequencies *without* going through a competitive process. This placed TV2 as the fourth national television channel, after the public broadcaster BNT, and the private broadcasters bTV and Nova TV, which had obtained both programme and frequency licences as a single legal entity, and not to two different ones as in the case of TV2 and CTN (Borisova, 19/05/2009). Moreover, the frequencies were part of the initiated licensing procedures by CEM, which were revoked officially due to lack of available spectrum, as seen above.

Once again names that have been referred to before were involved in this deal. Here the ‘consultant’ of the so-called ‘TV2 project’<sup>52</sup> (Antonova, 14/09/2007) was said to be again the advertiser, Krasimir Gergov (Antonova, 14/09/2007; Antonova, 16/11/2007). Moreover, Tehnosteel was linked to a controversial Bulgarian business conglomerate (Smilova et al., 2011: 17).

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<sup>51</sup> The channel popped up in the broadcasting area of Sofia in spring 2006 on the place of the frequency left unoccupied after Nova TV had received a licence for nationwide coverage (Ognyanova, 31/03/2006).

<sup>52</sup> In 2008, TV2 was sold to Central European Media Enterprises (CME), although the frequencies for 14 of the 27 cities it was broadcasting in were contested as they fell under the digital frequency plan for the first and second phase of digital switchover in Bulgaria (Antonova, 26/09/2008).

The response of the two regulatory bodies was confusing and created the impression that they were again each trying to avoid the controversial issue by alleging that responsibility for it laid with the other (see Antonova, 16/11/2007). Once more, CEM began lengthy discussions on what action to take. Any concrete measures by CEM were delayed and tensions within the regulator were raised due to lack of response, while the contract between TV2 and Tehnosteel was becoming a *fait accompli* (CEM Minutes 20/11/2007). CEM described as “hasty” TV2’s initiative to start analogue broadcasting on a national scale, including the cities of Sofia, Varna and Plovdiv, for which tenders for analogue licences were supposed to be completed by CEM, as seen above. In addition, CEM announced that it would invite CRC and TV2 “to a meeting to clarify the possibilities for broadcasting of the programme in compliance with the existing legislation” (CEM Minutes 20/11/2007). Instead, however, CEM adopted a “declaration” announcing that the holder of the temporary telecommunications licences, Tehnosteel, was licensed for broadcasting the channel CTN, and not TV2. Also, while TV2 had a programming licence, that was not for nationwide broadcasting which required the coverage of 85% of the population of the country. In the end, CEM declared that it was the responsibility of the CRC to supervise the compliance with the law of the activities of its temporary licensee – Tehnosteel - and thus forwarded the final decision to CRC. Once again the position of CEM was dressed up as a “declaration”. As noted by Ognyanova (23/11/2007) this demonstrated that CEM “did not want to engage with an act called *decision*” (emphasis added), because it arguably lacked both a clearly defined legal and regulatory basis to step on and an institutional strength to face a dominant market player. In this respect, a declaration was a form of non-decision, which vaguely yet effectively decided in favour of TV2.

To conclude, the section has illustrated that while it was not possible for *new* applicants to obtain licences for analogue terrestrial broadcasting, it was still possible for *existing* operators to circumvent the official rules on licensing and operate in the terrestrial broadcasting market, and in doing so capture the functions of the official regulatory bodies assigned with that role. The winners of the first round of the “big licensing game”, as the process was described by Smilova et al. (2011), were the privileged players that had already established their dominance in the sector. Thus,

the created path dependence continued on the back of a weak institutional and legal context, which as seen below has enabled a critical closeness between political and business interests to emerge in DTT. “Ironically”, the stickiness of the past media policies of the NMSS-MRF government (2001-2005) hurt mostly the business interests of the players, who were part of the mandate of the previous government, which granted the temporary licences to the local terrestrial operators (Ognyanova, 16/09/2007). That implication was directed towards the cable operator TV7 that was established by the then banker Lyubomir Pavlov, husband of MP Dilyana Grozdanova from the party established by Tsar Simeon II, NMSS (Ognyanova, 2015a). However, the incremental yet dynamic process of policy-making presented opportunities for the channel to make up for it later. “Windows of opportunities” were created for TV7 through abrupt turns in policy orientations, arguably caused by changes in its ownership structures and circle of friends in the following years (Ognyanova, 2015a; Ognyanova, 07/05/2015). The upcoming legislative process on DTT (seen in the next section) provided the “policy window” for TV7 to obtain not only a terrestrial license, but also acquire a must-carry status on the DTT multiplex. This demonstrated the role of owners (though not always direct and visible) as “agents of change”, supporting North’s (1990) point on the role of individual entrepreneurs and their incentives. Along with the institutionalist perspective, this would have not become possible without the enabling weak institutional structure and clientelistic relationships that had bound the media sector in the country.

### **5.3 Formal rules and informal practices in the legislative process on DTT**

The previous sections provided a detailed examination of broadcast licensing policy in Bulgaria in the period shortly before the start of the legislative amendments for the digitalisation of terrestrial broadcasting and which took place towards the end of the mandate of the triple coalition (mention time/ years). This section aims to explore the establishment of the regulatory framework for implementing the transition from analogue to DTT in Bulgaria. The process included the amendment of two laws (Law on Radio and Television, RTL, and Law on Electronic Communications, LEC) and the creation of a brand new one on digitalising the public service broadcasting (Law on Public Broadcasting, LPB). In line with the conceptual framework of this

research, this section illustrates the decision-making process in which formal rules are designed to provide opportunities and constraints to various actors taking part in the transition to digital broadcasting in the country. The following pages also look at the informal practices and influencing powers that have shaped outcomes. It has been argued that private gains have been guaranteed with every stage of the legislation process, while public service broadcasting has been sidelined from the centre of the game. The section mainly relies on verbatim reports of the meetings of the parliamentary committees on media and telecommunications which were in charge of voting the proposed draft laws on first and second ‘reading’<sup>53</sup> and the preparation of reports for the plenary. In addition, it uses material collected from the online press coverage of the decision-making process as well as expert commentaries.

### **5.3.1 Amendment of the Law on Radio and Television (LRT): policy issues, demands, gains and ‘ghosts’**

The Prime Minister of the triple coalition government, Sergey Stanishev (BSP), signed the adoption of the Bill on Radio and Television on 2<sup>nd</sup> September 2008 (Council of Ministers, Decision 564, 02/09/2008). Initially there were two different versions of the draft bill – one prepared by the Ministry of Culture and the other by the content regulator CEM. Later the two versions were merged into a single one taking into consideration, according to a statement of the Ministry of Culture, the requirements of the EU legislation and the necessary conditions for the introduction of the digitalization of the terrestrial broadcasting in the country (Ministry of Culture, 20/03/2008). The version of the bill officially adopted by the Prime Minister in September 2008 (Bill No: 802-01-68, 3/09/2008), however, “surprised” the key

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<sup>53</sup> A bill that is submitted to the Parliament goes through two readings (discussion and voting) in the allocated parliamentary standing committees and two in the plenary sessions. The first committee reading involves more general discussion of the motives and ideas behind the proposals. Following this the bill is sent for its first reading in a plenary session where the bill is discussed in its entirety. After being voted, if adopted it is sent back to the standing committees for a second reading, where the originally submitted and the additional proposals introduced between the two readings are voted on a one by one basis. Finally, the adopted proposals are sent for a second discussion and voting in a plenary session of the Parliament. If adopted the bill is sent to the President to sign a decree for its promulgation (National Assembly of Republic of the Bulgaria, n.d).



actors in the legislative process, including the content regulator CEM and the associations representing the terrestrial and the cable segments, ABBRO and ABTO respectively. CEM stated that the submitted bill was not coordinated and consulted with them and that it was not the draft bill they had expressed their opinion on after the two early versions were merged (CEM Declaration 16/09/2008 adopted at CEM meeting 16/09/2008). Similar claims were made by the private sector representatives that participated in the working session on the merging of those two versions previously (ABTO, 16/10/2008<sup>54</sup>). In a letter addressed to the chairs of the media and telecommunications committees in the Parliament, ABTO expressed serious concerns about the content of the bill, which was described as having “totally opposite ethos and concept” from the one they had previously seen and which they claimed had “disappeared” after being sent to the Council of Ministers (ABTO, 16/10/2008) for adoption and submission to the Parliament for voting.

The allegations of CEM and ABTO demonstrated two of the key characteristics of the amendment of the radio and television law, and in general of the decision-making process – lack of transparency and centralisation of control by the executive. In addition, however, the claims of the industry representatives about the amended content of the proposed bill meant that the direct beneficiaries were not clear. As it is seen below, potential beneficiaries started to emerge vis-à-vis the proposals made in the other two legislative acts that formed the DTT’s legal framework, the Law on Electronic Communications (LEC) and the Law on Public Broadcasting (LPB).

There were several key issues around which the debates were formed and which revealed the main concerns of the stakeholders that participated in the parliamentary committee discussions. The first one focused on the role of CEM in the digital licensing process. Apparently the stakeholders that had been fighting against each other during the analogue licensing had now common interests, so that they were much united in their positions this time. The proposal that was introduced for a first reading (held on 17<sup>th</sup> September and 1<sup>st</sup> October 2008) in the media committee

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<sup>54</sup> Letter sent to the chair of the National Assembly, the chair of the Parliamentary Standing Committee on Civil Society and Media, and the chair of the Parliamentary Standing Committee on Transport and Communications. The letter was obtained from the archive of the National Assembly in December 2013.

suggested substituting ‘licensing’ with issuing a ‘certificate for registration’ for those broadcasters which wanted space on the multiplexes for transmitting their channels through the digital terrestrial system, although still subject to agreement between the television operator/broadcaster and the operator of the multiplex. The bill also proposed that CEM determined the ‘type and profile’ of television content (i.e. by genre – film, music, etc. or by character – generalist, thematic) that would be compulsory for digital terrestrial television channels (Proposal for new art. 116e). However, those channels could not be more than two for each multiplex, including the channels of public service broadcaster BNT. CEM<sup>55</sup> relied on a public interest discourse to argue that the proposals were weakening the control of the regulator as regards programming, claiming that the technical and telecommunications aspects and the agreement conditions between the private entities (broadcasters and multiplex operators) took precedence over the importance of content (CEM Declaration, 16/09/2008). The regulator insisted that only licensing through a competitive procedure could guarantee media pluralism in the selection of channels to be placed in the digital multiplex (CEM Declaration, 16/09/2008). In the background of all this, there was the aspect that the telecommunications regulator CRC was given full competence for the licensing process of the multiplex operators, without the participation of CEM. Indeed the DTT debate and discourse were highly technocratic, made stronger by the EU rules, emphasising (as in other countries observed in Chapter 3) technical and telecoms issues, rather than the public interest. However, as further shown in this thesis, CEM and other policy actors often resorted

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<sup>55</sup> It is interesting to note the discrepancies between the formal opinion of CEM and the personal opinion of its Acting Chair, Maria Stefanova. The Chair presented the position of CEM in the parliamentary media committee on 17<sup>th</sup> September 2008. It is a bit of confusing to read her expression that “personally” she “did not find anything wrong” with giving CEM only registration competence instead of licensing through a competitive process (as in the analogue case). Contrasting this personal view, the position of the other members of CEM had been made clear with a declaration (signed by the Acting Chair) just a day before the meeting with the parliamentarians. Here I am using the official position of the CEM expressed in a declaration (16<sup>th</sup> September 2008) and the official position on the bill (21<sup>st</sup> October 2008), where CEM had expressed considerable concern over the role envisaged for it as a mere “registrator” of the channels that wanted to be transmitted on the multiplexes. I ignore here the personal position of the acting Chair, although I find it awkward that this difference of opinion was voiced at a scene where the various stakeholders were fighting to get as much as they could.

to the public interest discourse arguably using it as what Napoli and Karppinen (2013) describe a “buzzword” without “the specific, concrete meaning necessary for [it] to serve as meaningful and effective tools for designing, implementing, and analyzing policies.”<sup>56</sup> Arguably, in this particular case CEM was led by self-institutional incentives for more power.

The statement of the motives of the bill had justified the substitution of formal licensing with registration as part of the attempt to harmonise the Bulgarian legislation with the European requirements aimed at the liberalisation of the electronic communications markets, including the provision of radio and television broadcasting (Bill No: 802-01-68, 03/09/2008). Arguably, registration meant to be an attempt to apply the EU Authorisation Directive and its call for as light a market entry procedure as possible to the case of DTT regulation. Moreover, DTT registration would be in line with the simplified process of ‘registration’ of programming granted to cable TV operators as opposed to the ‘licensing’ requirement for the terrestrial ones. According to the EU Authorisation Directive, member states should adopt the ‘least onerous’ authorisation system – the so-called “general authorisation” – for establishing electronic communications and services. Indeed as regards the use of radio frequencies, the directive says that “where possible” member states should “not make the use of radio frequencies subject to [individual licensing] but shall include the conditions for use of such radio frequencies in the general authorisation” (Directive 2002/20/EC, Art. 5(1)). However, as regards broadcasting, the Directive allowed exceptions, as broadcasting in the EU has been treated as a “service of general interest” (public service), thus there is no strict prohibition of individual licences provided that these are “granted through open, transparent and non-discriminatory procedures” (Directive 2002/20/EC, Art. 5(2)). This was what the content regulator CEM argued in their written position on the bill supporting individual licences against mere registration (CEM Position, 21/10/2008).

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<sup>56</sup> See also Napoli (2001) for the malleability of the guiding principles of policy making such as public interest.

For the second reading of the bill the government brought back the CEM's 'licensing' competencies, replacing the initially proposed 'registration' of the radio and television operators that wanted to be broadcast on the multiplexes (Parliamentary Standing Committee on Civil Society and Media, 10/12/2008). The proposed procedure resembled very much the 'joint licensing' process of the analogue age. It appeared that CEM received what they wanted (licensing powers), yet this turned to be only a cosmetic change. There was no restriction on the number of licences that could be awarded, which in practice could not guarantee a greatly increased decision making role for CEM, as practically anybody interested could receive a licence (Parliamentary Standing Committee on Civil Society and Media, 10/12/2008). In the end, the so-called licensing of digital channels, became a "simple registration" procedure, to use Draganova's expression, which did not help the regulator to bind the licensed broadcasters to stay on the multiplexes, as seen in Chapter 7.

The inability of CEM to stop broadcasters leave the multiplexes, was related to the second key policy issue that emerged out of the proposals for amending the LRT. This was in relation to the so-called "must-carry" status granted to some broadcasters. The must-carry obligations stipulated in the bill introduced the first policy of controversy in the legislation making process on digital television. The multiplex operators were obliged to *carry* the broadcasters that met the following conditions: 1) had a licence for nationwide broadcasting, obtained through competitive process<sup>57</sup>; 2) transmit their channels through the analogue terrestrial system; 3) cover no less than fifty percent of the population of the country. The rules covered the incumbent terrestrial broadcasters, the PSB BNT and the commercial nation-wide channels, bTV and Nova TV. Yet, the rules were also allegedly designed to grant TV2 the opportunity to obtain straightforward access to a place on a digital multiplex (Ognyanova, 09/12/2008). As shown in the first section of this chapter, TV2 had already managed to obtain the right to broadcast in 27 regional cities and

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<sup>57</sup> Later the part "obtained through a competitive process" was dropped as the incumbent terrestrial broadcasters in the country were not licensed through a competitive procedure (Ognyanova, 24/03/2009).

established itself as a broadcaster with a coverage of just over 50 percent of the population (Georgiev and Atanasova, 29/08/2008). According to ABTO,

Nova television and bTV [private channels] have gone through heavy licensing procedures, and have invested enormous amounts of financial and time resources to reach 80-90 percent coverage of the population. And on the background of their media existence an operator pops up that is required to cover not less than 50 percent of the population. Apart from this, this new operator functions on the basis of a temporary licence, i.e. it does not hold a broadcast licence for nationwide coverage issued on the basis of competitive process. Finally, notwithstanding the quality of its programming and its public value, the question that arises is: should a programme with such a profile be broadcast digitally and be put under equal terms with BNT? (ABTO, 16/10/2008).

MPs from opposition parties such as the centre-right Democrats for Strong Bulgaria (DSB) and the far-right Bulgarian National Union (BNS) and Coalition Ataka (CA) claimed that the bill had been drafted in favour of “a single person”, referring to the advertising mogul Krasimir Gergov, officially known as the consultant of TV2. They pleaded to block the bill on its first voting in the plenary but they did not have enough MPs to do so (Parliamentary Plenary Session 28/10/2008).

The objections against the must-carry rules did not lead to any changes of the proposals for the second reading of the bill (Parliamentary Standing Committee on Civil Society and Media, 10/12/2008; 11/12/2008; 16/12/2008; 17/12/2008; 15/01/2009; 21/01/2009; 22/01/2009). Demands of the two private incumbents, bTV and Nova TV, whose international managers - News Corp and MTG respectively - had asked for extra capacity on the multiplexes to be granted to the additional channels of the two broadcasting operators, were ignored. In percentages, they demanded that the incumbents (including the state funded broadcaster BNT) should acquire exactly half of the multiplex capacity with the remaining half to be distributed to other broadcasters, including new entrants (News Corp/MTG, 9/12/2008<sup>58</sup>). The demand was justified with what ABBRO argued to be a “fair”

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<sup>58</sup> News Corp/MTG jointly signed letter addressed to the Prime Minister of the country only. The letter was accessed from the archive of the National Assembly in December 2013.

compensation for having to return back the licences for the analogue frequencies broadcasters owned beyond 2012, when the switch-off of the analogue television was planned to happen (ABBRO, 10/12/2008<sup>59</sup>). The Prime Minister did not respond to the demands of the incumbents with additional changes to the initially proposed must-carry rules. Yet, as observed in the last part of this chapter, the private companies managed to obtain what they wanted within a brand new law, which was supposedly designed to regulate the operation of the public service media.

The private incumbents, however, had bigger concerns about what became the next most contested policy issue in the radio and television bill. It involved the (lack of) separation of the so-called programming and telecommunications functions of the multiplex operators that were going to be licensed by CRC. bTV and Nova TV, united under ABRRO, demanded a separation of those two functions of the multiplex operation. The term ‘multiplex operator’ refers to the operator who receives a licence for the use of spectrum for delivering the broadcasting content through telecommunications networks to the end users/consumers. Thus, this function is closer to the role of a telecommunications operator and represents the telecommunications side of the multiplex operation. The word “programmer” (compare use of term in Galperin, 2004a: 174) is used here to define those who bundle the content coming from various providers, which is then transmitted by the operator of the network. In the proposed bill, those two roles (multiplex operator and programmer) were merged<sup>60</sup>. The incumbents, backed by CEM, were not happy about that. They demanded that a separation was included (CEM Position 21/10/2008; Parliamentary Standing Committee on Civil Society and Media, 01/10/2008; CEM Minutes, 15/09/2008; Parliamentary Standing Committee on Civil Society and Media, 10/12/2008). Because the bill restricted broadcasting operators to own a multiplex, the separation between programmers and multiplex operators was arguably going to give opportunity to the terrestrial broadcasters to apply for the

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<sup>59</sup> ABBRO’s position was sent to the President, Prime Minister, chair of the National Assembly, the heads of the political parties of the ruling coalition (BSP-MRF-NDSV) and the chairs of the parliamentary media and the communications committees. The letter was accessed from the archive of the National Assembly in December 2013.

<sup>60</sup> Unless otherwise stated, I use the term multiplex operator to refer to both roles in their merged form.

former function and thus not become powerless and completely isolated from the operation of the multiplexes. CEM was concerned also about being left without a say over the digital multiplexes, as their selection was going to be carried out by CRC. Moreover, the bill was seen as prioritising telecommunications/transmission issues over content issues since in the absence of a separation between the two entities, it was the owner of the multiplex who was going to receive the licence for the frequencies for the telecommunications side of the multiplex operations and, significantly, would be entitled to perform the programming part, i.e. the bundling of channels and other media content.

During the second reading of the radio and television bill, the terrestrial broadcasting incumbents (bTV and Nova TV) sought the support of the representatives of the opposition parties (Parliamentary Standing Committee on Civil Society and Media, 10/12/2008). The position of the ruling coalition demonstrated some clear support for the potential multiplex operators for three reasons (more visible within the amendment process of LEC). First, because the operator of the multiplex was not going to be the owner of the network infrastructure itself (this issue was dealt within the bill on electronic communications discussed below), the ruling coalition thought there was no investment incentive left for the potential applicants for multiplexes since somebody else was going to decide what to transmit in the network. In Vesela Draganova's (NMSP) analogy, "[w]e cannot say to somebody who has bought a house what to do with it" (Parliamentary Standing Committee on Civil Society and Media, 10/12/2008). Second, the incumbents were already granted the so-called must-carry status, which, according to Draganova, provided protection against being potentially left out by the multiplex operator. Third, on the background of the concentration of ownership in the two main players News Corp and MTG, that apart from the bTV and Nova TV respectively, owned a bunch of other television channels (Antonova and Lazarov, 12/12/2008; Antonova, 12/03/2009), the ban on broadcasters from accessing bundling functions was aimed at blocking a potential monopoly that the incumbent broadcasters might establish in the selection of the channels for the bundle.

I agree that bTV and Nova are good and can be put on the multiplex, but I don't think that the other programmes they own are that good to be put on the multiplex and become national. ... This is neither in the public nor in the state interest. We want to have it done maximally quick, maximally transparent. (Parliamentary Standing Committee on Civil Society and Media, 10/12/2008, Vesela Draganova).

The bTV and Nova TV deployed various possible means to make both the executive and the legislature change their position as regards the separation between the operation of the multiplex and the programmer/content providers and as regards extra capacity on the multiplexes on a must-carry basis. In addition to the visit of the broadcasters' foreign managers to the country and their meeting with the Prime Minister Sergey Stanishev, (Borisova, 04/12/2008; Antonova and Lazarov, 12/12/2008) and to securing the support of the opposition DSB party to request a presidential veto and refer the law to the Constitutional Court (Borisova, 19/02/2009), the incumbents warned that they would complain to the European Commission (ABBRO, 16/12/2008<sup>61</sup>; Borisova, 05/02/2009). Demands for the separation of the transmission-content functions of the multiplex operator were not met (Parliamentary Plenary Session, 06/02/2009), but the incumbents were adequately compensated later, as discussed in the last part of the chapter.

Finally, unlike some of the Western European countries discussed in Chapter 3 (most notably Britain), the Bulgarian public service broadcaster, BNT, was not given an opportunity to become a vocal and active player in the legislative process. Apart from its must-carry status, in its first reading the bill did not envisage any other privilege for BNT. There was no separate multiplex allocated to the public service broadcasting institution. Instead, the BNT was given capacity for a second national channel in case they wanted to develop extra programming in the process of integration in the multichannel digital era. BNT accepted the proposal as a reasonable "compromise", justifying it with a reference to the executive's narrative

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<sup>61</sup> ABBRO letter sent to the President, Prime Minister, chair of the National Assembly, the heads of the political parties of the ruling coalition (BSP-MRF-NDSV) and the chairs of the parliamentary media and the communications committees. The letter was accessed from the archive of the National Assembly in December 2013.



about the delayed switchover (Parliamentary Standing Committee on Civil Society and Media, 17/09/2008) and the risks for not meeting the deadline of the EU. The public broadcaster did not demand more spectrum, although its director reminded the MPs that the “European practice” had been to allocate a separate multiplex for use by the public service broadcasters already at the beginning of the transition (Parliamentary Standing Committee on Civil Society and Media, 17/09/2008).

For its second reading, the bill came with an unexpected gain for the public service broadcasters. At least it seemed so on the surface. BNT, together with the public service radio, BNR, received the right to have a separate multiplex for the channels of the public service media, already in the first stage<sup>62</sup> of the digital switchover process (Parliamentary Standing Committee on Civil Society and Media, 10/12/2008). Surprisingly, this happened seemingly without any pressure from the side of the public service broadcasters. There was not much clarity about how this change of circumstances was negotiated and whose the proposal was<sup>63</sup>. None of the coalition partners were against a public or - as the BSP’s MP and chair of the media committee called it - a “state multiplex”, (Parliamentary Standing Committee on Civil Society and Media, 17/09/2008), implying more governmental control over the separate multiplex for PSB. It was decided that a new law dealing with the digitalisation of the public service media would be written by the end of the mandate of the triple coalition, that is by mid-2009. The requirement was later stipulated in the Transitional and Concluding Provisions of LEC, discussed below.

To conclude, the section outlined the key policy issues that gathered most attention in the process of adoption of the Law on Radio and Television, LRT. On the one hand, although seemingly receiving what they had demanded, it is not possible to consider CEM and BNT as winners. Although BNT was promised a separate multiplex, its legislation still had to be developed, which did not guarantee a leading

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<sup>62</sup> The transition was planned to be completed in two stages, from June 2008 to December 2012 and from July 2010 to June 2015. The analogue switch-off was to take place in the first stage, by December 2012 (Nikolova, IRIS 2008-4:10/13; DVB-T Plan, 2008).

<sup>63</sup> The report for the second voting of the bill said that the proposal came from the media committee, not specifying who exactly was its depositor (Parliamentary Standing Committee on Civil Society and Media reports 28/01/2009).

role for the public broadcaster as seen below. Private incumbents' (bTV and Nova TV) demands for introducing a role for them in the operation of the multiplexes were ignored, but they were powerful enough to redeem their privileges later. Some 'ghost-like' (informal) influences were felt with the introduction of must-carry rules that were suspiciously framed to encompass players beyond the formally licensed nationwide broadcasters. The next section examines more such influences.

### **5.3.2 Amendment of the Law on Electronic Communications (LEC): establishing the basis for political and economic interdependencies in the Bulgarian DTT structure**

The ghost-like influences noted in the previous section not only continued but exacerbated their presence and power to shape policy-making during the amendment of LEC. The key policy issue in relation to the digitalisation of the terrestrial system in the legislative proposals for amending the LEC concentrated around the digital multiplexes, their licensing, and the opportunities and constraints for potential applicants. Initially, the proposals that covered the licensing of the multiplex operators were included within the bill amending the Law on Radio and Television (LRT), which the executive submitted to the Parliament shortly after the bill on electronic communications (Bill No: 802-01-66, 12/08/2008)<sup>64</sup>. On the first reading of the LRT bill in the parliamentary telecommunications committee, the chair Yordan Mirchev, requested the respective amendments to be transferred to the bill on electronic communications, criticising the depositors of inserting amendments to one bill through another as "something unheard and unseen in the practice of the National Assembly" (Parliamentary Standing Committee on Transport and Communications, 25/09/2008). This informal practice led to a second one, when at the time of the first voting of the bill in the plenary, the chair of the National Assembly was forced to allow the proposals to be voted within the bill on electronic communications, although according to the chair that was outside the scope of the formal legislative procedure (Parliamentary Plenary Session, 16/10/2008). As seen

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<sup>64</sup> Therefore, the two bills (LRT and LEC) were amended in parallel.

below, at the second committee reading (this time within the bill on electronic communications) these proposals were further ‘enhanced’ in line with parallel developments that occurred in the media and communications environment of the country.

Unlike the decision-making process on LRT, which demonstrated slightly more ‘pluralistic’ participation of industry actors, the main actors in the process of amending LEC were the politicians, which, however, acted to promote specific ‘ghost’ industry interests. Among them, MRF and BSP were clearly dominating the process, while the minor coalition partner NMSP took the role of an opposition, questioning and rejecting certain proposals of the executive that were supported by the members of the other two coalition parties<sup>65</sup>. The verbatim reports of the meetings of the parliamentary telecommunications committee, demonstrated the presence of dubious behaviour behind the back of the third coalition partner. During a few consecutive meetings at the second round of the legislation process in the parliamentary communications committee, the chair Yordan Mirchev (NMSP) revealed that certain proposals for further amendments (in addition to those at the first reading) came almost “anonymously” (Parliamentary Standing Committee on transport and communications verbatim report 04/12/2008; Parliamentary Standing Committee on transport and communications verbatim report 15/01/2009). Suspicions were raised in the public domain that linked the proposed amendments to the political and economic interests of BSP and MRF (Yordanova, 01/04/2009). It must be noted, however, that although there were suspicions for adjusting rules to

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<sup>65</sup> Those were proposals that dealt with the length of the mandate of the telecommunications regulator and the competencies of its chair. BSP and MRF argued that the motives of the bill on electronic communications had promoted the proposed amendments as part of a process for increasing the *independence* of the telecommunications regulator in compliance with the EU requirements as the country had been warned by the European Commission to guarantee the independence of the telecom regulator. However, NMSP together with the opposition parties refused to accept a 6-year mandate for the chair and an increase of his/her competencies to decide unilaterally on budget and staff policy. They argued that there were no clear motives for these changes and insisted that the act was undertaken to preserve the then chair (also current one) in power until the end of the switchover process and ensure that the interests of BSP and MRF (therefore their business circle of friends) were protected. In the end, the proposals were adopted.

sideline certain players, it was not immediately clear whom they favoured. As seen in Chapters 6 and 7, the beneficiaries became clearer much later.

One thing that was visible already, as also demonstrated in the previous section, was that legislative amendments continued to show support for the recipient(s) of the licences for digital multiplexes, whoever they would be. A single owner was proposed to own three out of the planned six multiplexes (Bill No: 802-01-68, Proposal 35 creating paragraph 5a, 5b in the Transitional and Concluding Provisions of the Law on Electronic Communications). The member of the media committee from the minor coalition partner NMSP, Vesela Draganova, questioned the decision of the executive to give three multiplexes to one applicant, arguing that this would create a monopolistic environment for digital multiplexing. Draganova's refusal to back the proposal of the executive, introduced the first major discrepancy in the policy ideas, preferences and objectives between the coalition partners. In response, the chair of the media committee, Ivo Atanasov (BSP) justified the undertaken decision with reference to the tight deadlines of the EU as regards the digital switchover. According to him, some compromises should be made in order to meet the deadlines of the EU; otherwise, he claimed, the EC would impose "penalties" to the Bulgarian state (Parliamentary Standing Committee on Civil Society and Media, 17/09/2008). Insisting that time was not a real reason for having a single player in the multiplexing market, Draganova received a second justification why that option had been adopted as the most appropriate by the government. A legal expert involved in drafting the proposals<sup>66</sup>, revealed that the idea behind giving one licensee three multiplexes was to create business incentives and increase opportunities for investment in the digital multiplexing operations by potential candidates: building three networks altogether required less financial cost than building them separately. Furthermore, the characteristics of the country's broadcasting structure were used to defend the decision. It was argued that due to the strong positions of the cable and satellite broadcasting platforms, it would be too risky for the multiplex operators to be left with a single multiplex, as the return on their investment could not be viable (Parliamentary Standing Committee on Civil Society and Media, 17/09/2008). Conversely, hardly any thoughts were given about investment in content, clearly

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<sup>66</sup> Later she became legal adviser to one of the multiplex operators.

prioritising telecoms and transmission aspects of the DTT. The amendment was adopted as proposed by the executive.

In the meantime, the previously state owned telecommunications incumbent BTC had agreed to sell its broadcasting transmission infrastructure unit Nurts that provided universal coverage of the country, to the Austrian company Oesterreichische Rundfunksender (ORS) (Antonova and Lazarov, 12/12/2008). ORS had built the infrastructure for broadcasting digital television in Austria, while its majority owner was the Austrian public service broadcaster, ORF (Georgiev and Antonova, 13/03/2009). The press initially linked the proposals of the executive (for the first reading of the bill) with the initiated actions for selling Nurts to ORS. According to reports, a big investment in Nurts would not be logical if it was not part and parcel with running the multiplexes, which would guarantee return on investment by charging the television companies for being on the multiplex (Antonova and Lazarov, 12/12/2008). The reports might have shown ORS as the obvious beneficiary of the legislative proposals then, however, the conditions were soon altered.

In tandem, the two deputy chairs of the parliamentary committee on communications, from MRF and BSP, proposed new amendments that proved the above “logic”. First, the radio and television operators (as also already introduced in the bill on radio and television) were restricted from applying for multiplex ownership; second, the applicant for a multiplex operator could not own also its own transmission system (Parliamentary Standing Committee on Transport and Communications, 29/01/2009). The proposals were justified as anti-trust ones, preventing any potential monopoly in the digital transmission chain. ORS, however, saw the amendments rather as a measure to prevent them from participating in the bid for digital multiplexes (Antonova, 27/03/2009). The company insisted that the amendments were against the principles of the EU legislation and informed the then EU Commissioner on Information Society and Media, Viviane Reding, about the measures undertaken in the country (Georgiev and Antonova, 06/04/2009; Yordanova, 13/03/2009). On the national arena, ORS, requested from the then President, Georgi Purvanov (previously member of BSP), to veto the adoption of

LEC (Antonova, 27/03/2009). The President remained silent, but the company found supporters among the opposition parties (Plenary session 11/02/2009) that united their forces to refer the amendment of both the LRT and LEC to the Constitutional Court (Yordanova, 01/04/2009; Constitutional Court, 16/04/2009).

Suspensions for “clear[ing] the way for a new player” among the television operators were raised as the MRF and BSP proposed a second controversial amendment (Antonova, 13/02/2009; Borisova and Borisova, 19/02/2009), granting the right to CRC (and not to the content regulator CEM) to issue (temporary<sup>67</sup>) analogue terrestrial licenses *without* a competitive process to operators that already held a programming ‘registration’ from CEM (Parliamentary Standing Committee on Transport and Communications verbatim report 15/01/2009). The amendment would be immediately implemented since it required licences to the television operators to be issued before the licensing of multiplexes was completed. The frequencies that were to be given did not include the frequencies occupied by the already existing temporary licensees under ‘paragraph 9a’. Therefore, the amendment did not require broadcasters, such as TV2, to worry about losing their frequencies. Most importantly, however, the rule created opportunities for those cable operators that had been fiercely fighting for a right to obtain access to terrestrial broadcasting just a year ago. Moreover, together with the must-carry rules stipulated in the LRT, the amendment guaranteed an obligatory transmission of the terrestrial broadcasters that reached 50 percent coverage of the population in the country. Therefore, the cable applicants that would receive enough frequencies to reach the 50 percent threshold would also be able to benefit from a must-carry place on the multiplex<sup>68</sup>. There was

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<sup>67</sup> The licensees were required to return their frequencies whenever they were needed at any of the transition stages of the digital switchover within a month’s notice from the authorities. This became one of the most disputed amendments, leaving the subjects on a loose legal ground in the medium and long term (Parliamentary Standing Committee on Transport and Communications verbatim report 15/01/2009).

<sup>68</sup> A polishing touch to this opportunity was given with the bill on digital public broadcasting (as seen below), where the executive ‘revised’ the must-carry stipulations and removed the amendment passed with the LRT requiring the must-carry broadcasters to have a programming licence issued through a competitive process. As noted above, none of the terrestrial broadcasters in Bulgaria were issued on the basis of a licensing competitive process (Ognyanova, 24/03/2009).

hardly any reasonable explanation why analogue terrestrial licensing was allowed a year after the same process lead by CEM was terminated, officially because of the need to reserve spectrum for the digital switchover in time with the EU deadline. This time, echoing similar EU enthusiasm, the amendment was justified on the grounds of spectrum efficiency and utilisation (Parliamentary Standing Committee on Transport and Communications, 15/01/2009).

Logically, the question would be what brought the wind of change, given that a year ago the same cable and satellite operators were stopped from obtaining terrestrial licences in a battle that continued more than two years. Media reports as well as the account of the political parties in opposition suggested that the changes were made to benefit certain media players, notably TV7, a cable channel that wanted to obtain a licence for terrestrial broadcasting, as shown in the first part of the chapter (Borisova and Borisova, 19/02/2009; Antonova, 13/02/2009; Dnevnik, 19/02/2009; Smilova, et al., 2011: 20). Initially owned by the former banker Lyubomir Pavlov, TV7 had entered into the sphere of influence of the mother of the MRF's MP Delyan Peevski, Irena Krasteva and the banker Tsvetan Vassilev (Smilova, et al., 2011: 20; Ognyanova, 2015a; Georgiev and Antonova, 05/05/2010), both close to MRF and BPS. Indeed as it is seen in the next chapter, one of the major beneficiaries of the analogue terrestrial licensing turned to be TV7. Thus, close clientelistic links between specific business and political elites shaped key DTT rules in their mutual favour.

### **5.3.3 Adoption of the Law on Public Broadcasting (LPB) – last chance for all**

The adoption of the Bill on Public Broadcasting (Bill No: 902-01-22, 06/04/2009) completed the framework of legislative initiatives for the transition from analogue to digital broadcasting that took place under the rule of the triple coalition (2005-2009). As already pointed out, a separate law for the digitalisation of national PSB organisations was not initially envisaged. If PSB stood for public interest, the public interest came as an after-thought. A proposal for its creation appeared between the first and the second readings of the broadcasting bill, voted between September 2008 and February 2009. It was the most contested and the most non-transparent of the all

three bills adopted within the legislation decision-making process on DTT. There was no public consultation on the bill and none of the key stakeholders, including the regulator CEM and most strikingly BNT itself, had been involved in the drafting process (Ognyanova, 11/04/2009; Borisova, 03/04/2009; Ognyanova, 27/03/2009). It was not known who was involved in drafting the bill. Legal experts that had participated in the drafting of the previous two bills refused being involved with that one (Borisova, 14/04/2009). According to words of the Prime Minister Sergey Stanishev the bill was prepared as a result of demands made by MPs to the President to have a separate multiplex for the public service channels (Council of Ministers, 02/04/2009). This echoed indeed what the chair of the parliamentary media committee, Ivo Atanasov, has been openly supporting. Yet, as seen below from the discussions and voting of the proposals in the committee, it did not look like Atanasov was the mastermind of the public service bill. At the same time the conversations in the Council revealed that ministers were not adequately informed about the content of the bill. On the day of its adoption, the then minister in charge of the state administration from NMSP claimed that he only saw the bill earlier that day and requested to postpone its voting for a week. In his words, the issue was very important and could not be adopted “blindly, without knowing what it was about at all” (Council of Ministers, 02/04/2009). However, although they argued that the process had to be speeded up to catch up with the delayed digital transition that the EU was expecting the state to deliver, their narrative of BSP and MRF’s members in the Council, including the Prime Minister himself, revealed that the aim was to adopt the law before the end of the mandate of the government. This behavior has been interpreted as an attempt to reserve resources and positions in digital broadcasting beyond the mandate of the ruling government (Antonova, 17/04/2009)<sup>69</sup>. Perhaps, for this reason, the bill was submitted to the Parliament accompanied with a letter signed by the then Prime Minister, Sergei Stanishev (BSP), introducing it to the deputies (Parliamentary Standing Committee on Civil Society and Media and Parliamentary

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<sup>69</sup> This view was reinforced with the introduction of proposals, which increased the number of the board members of the telecom regulator, CRC, from five to nine and their mandate from five to six years. The measure was reportedly undertaken in relation to other strategic regulatory institutions as well, including the Commission for Protection of Competition (CPC) and the Supervisory Board of the Privatisation Agency (Dnevnik, 21/05/2009).



Standing Committee on Transport and Communications 14/04/2009). The high profile of the bill was felt throughout the whole legislative process. Therefore, even though it was difficult at times for some members of the parliamentary committees to figure out what was the idea behind its proposals, they were adopted “blindly” without having a clear idea (or at least claiming so) about the motivations behind (Parliamentary Standing Committee on Civil Society and Media, 14/04/2009; 28/04/2009; 29/04/2009).

The political parties in opposition raised severe objections against most of the proposals of the bill. However, they could not manage to gain support in the plenary sessions to block its adoption<sup>70</sup>. As also observed in the case of the decision-making on LEC, an opposition to certain proposals was formed by members of the minor coalition partner, NMSP, who distanced their policy ideas from those of BSP and MRF. Although not completely united, the opposition of the members of NMSP revealed discrepancies of the policy preferences for the digitalisation of the public broadcasting in the country (Parliamentary Standing Committee on Civil Society and Media and Parliamentary Standing Committee on Transport and Communications, 28/04/2009).

The major clash between the political elite, as the dominant decision-making actors, involved the proposals of the bill that envisaged the creation of two companies for the provision of digital broadcasting. The first one was going to be a state enterprise, called National Company Digital Public Broadcasting (thereafter National Company) - an equivalent of a multiplex operator. The second company, a public-private enterprise, was going to build the transmission infrastructure to enable the dissemination of the channels, a system parallel to the previously state-owned infrastructure network of BTC. The idea of having the broadcasting activity separated from the transmission of the digital signals was already established in the

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<sup>70</sup> In fact, the opposition had been missing in important stages of the bill, both in the joint media and telecommunications committees’ sessions as well as in the plenary. So, some of the proposals that were submitted by the opposition members between the two readings were voted out, as they were not there to defend their ideas (Parliamentary Standing Committee on Civil Society and Media and Parliamentary Standing Committee on Transport and Communications, 28/04/2009; 29/04/2009).

Law on Electronic Communications, so its adoption here was argued by the core defenders of the bill - the representatives of MRF and BSP – to be a continuation of the philosophy of splitting the chain of functions for the provision of digital television and thus, preventing monopoly conditions (Parliamentary Standing Committee on Civil Society and Media, 14/04/2009). Again, in continuation of the adopted logic in the previous two laws, the so-called national company was not allowed to be a broadcasting operator or to be linked to companies that produced and provided content (Bill on Public Broadcasting No: 902-01-22, 2009: 2).

The members of the parliamentary media committee – Vesela Draganova and Andrey Batashov – from NDSV, proposed to change the name of the National Company into a National Agency. This was not an insignificant act of renaming an institution. The idea of the proposal was to create an entity that was “exclusively state owned”. A state agency was argued to be closer to what the NMSP members saw to be the legal (in this respect also ideological) basis of the proposed institution. According to Draganova, the change would create a more transparent system that would reflect the public character of the organisation. In justification for their proposal, Draganova reminded that the EU had already given its approval on a similar case in the country. An analogy was drawn with the former Republican Road Infrastructure Fund, whose management was involved in extensive corruption scandals over the handling of the EU funds, which led to EU pressure on the state to transform the Fund into National Road Infrastructure Agency, with a special status under the Council of Ministers and the direct supervision of the Prime Minister (Parliamentary Standing Committee on Civil Society and Media and Parliamentary Standing Committee on Transport and Communications, 28/04/2009). As demonstrated in Chapter 4, in the first decade after the change of the communist regime in the country, corruption schemes often involved the siphoning of the state enterprises’ resources to private players. The debate over the name of the institution showed that similar outcomes could be expected for the National Company, as members of the opposition parties called for stopping the bill from “siphoning money off the public budget” (Parliamentary Plenary Session, 21/04/2009). The rest of the coalition partners, however, interpreted that the intentions of the executive were to create a “business figure” in the operation of the National Company and thus blocked

Draganova's proposal. Unable to argue against the already passed on first reading bill, Draganova withdrew the proposal, claiming that this was the clue that showed "who wanted to do what" by adopting that law (Parliamentary Standing Committee on Civil Society and Media and Parliamentary Standing Committee on Transport and Communications, 28/04/2009).

The second clash of the coalition partners appeared as regards the proposal of the executive to create a second company with at least 50 percent state participation that was required to build a new transmission infrastructure for the channels of the public service broadcaster. At the second reading, Draganova and Batashov, proposed this company and the above-explained National Company to be merged and become a single organisation without any private participation in them. Again, the justification was to escape insertion of private interests in the digitalisation of the public service broadcasting. Referring to the case of the disputed management of the EU road infrastructure projects in Bulgaria, Draganova appealed not to do the same mistake again and avoid that "one day [EU officials] come and say that we have not done [things] properly" (Parliamentary Standing Committee on Civil Society and Media and Parliamentary Standing Committee on Transport and Communications, 28/04/2009). Experts present at the meeting admitted that, technically, such separation was artificial. Unlike the analogue broadcasting system, the provision of digital channels required constant synchronisation between the operations of the multiplexes and the transmission system. An example was given from the German telecommunications company Deutsche Telekom that managed both parts of the chain. Therefore, the decision was going to be political, and not technical. BSP and MRF members revealed that the idea of the government was to create an opportunity for an extra business activity that would serve not only the National Company operating the public multiplex, but also provide other telecommunications services. Ultimately, the aim was to bring the state back in the telecommunications sector where private capital could be used for maintaining this structure (Parliamentary Standing Committee on Civil Society and Media and Parliamentary Standing Committee on Transport and Communications, 28/04/2009). Again, the committees did not support the proposal of Draganova and Batashov and the bill remained the way it was proposed by the executive.

One of the most contested parts of the proposed digital public broadcasting bill was the Transitional and Concluding Provisions section, which introduced further amendments to the recently amended LRT and LEC. The proposal aimed at extending the number of the operators that had to be obligatorily transmitted on the digital multiplexes under a must-carry status. On top of what was already adopted in the LRT<sup>71</sup>, the executive extended the must-carry rules, so that the proposed texts made even the chair of the parliamentary media committee, Ivo Atanasov (BSP) to ask “after all, how many channels would benefit from this text?”. In response, his colleague Vesela Draganova (NMSP) clarified: “All those that have a licence” (Parliamentary Standing Committee on Civil Society and Media and Parliamentary Standing Committee on Transport and Communications, 29/04/2009).

Most essentially, the updated must-carry rules gave what bTV and NOVA could not receive what they had demanded from the Prime Minister previously. That is, together with BNT, to be allocated 50 percent of the multiplex capacity in order to compensate for having to return their licences which expired after the planned switch-off date (News Corp and MTG, 9/12/2008; Ognyanova, 12/04/2009). Their dissatisfaction with the policy choices within the previously adopted two laws had reached the EC, notably the then European Commissioner Reding for Information Society and Media at a meeting with the representatives of the foreign owners of the two operators (Borisova, 08/03/2009). Following that, the Prime Minister allowed additional channels of the private incumbent operators or the channels of affiliated operators, to receive a place in the multiplexes on a must-carry basis. Thus, bTV and Nova TV received the right to broadcast on a must-carry principle three extra channels each<sup>72</sup>. According to the executive this presented a win-win situation, which ensured “balance between the interests of the television operators, whose analogue licences would be suspended before they expire and the obligations of the

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<sup>71</sup> According to the initially adopted must-carry rules, the operators that received obligatorily place in the multiplexes were the Bulgarian public service broadcaster BNT, the two private incumbents, bTV and NOVA, and the disputed TV2.

<sup>72</sup> As the switchover was envisaged to take place in two phases, each of the broadcasters were allowed to have three more channels for the second phase transmitted by the multiplex operator on a must-carry principle.

state to guarantee the transition from analogue to digital broadcasting” by supposedly increasing take-up (Bill No: 902-01-22, 06/04/2009).

Apart from the demands of the incumbent private broadcasters, however, the executive benefitted also those operators that were to be given (temporary) licences for analogue broadcasting by the telecommunications regulator CRC under the provisions of the recently adopted LEC (discussed above). According to the must-carry proposal of the executive the operators that were to be given telecommunications licences for analogue broadcasting providing access to 50 percent of the population of the country would have the right to receive a place on the multiplex. As seen in the next chapter, this included channels such as TV7, which was transformed from a cable broadcaster that was initially refused terrestrial licence to a licensee with a must-carry status.

The discussion on the second reading of the bill revealed that the Bulgarian policy makers were aware that the domestic must-carry rules went *beyond* the EU’s regulations. The EU’s Universal Services Directive stipulated that member states have the right to apply measures to oblige a company providing electronic communications to carry channels that are of considerable public interest. According to a legal expert, in the Bulgarian case the issue was “a bit shifted” and a different “logic” was followed. Her explanation revealed that the original EU must-carry stipulations had been adjusted to the national circumstances, as the incumbent terrestrial broadcasters requested extra compensations and the temporary licensees maintained that they had already established themselves on the market and the audience should not be deprived from their programmes (Parliamentary Standing Committee on Civil Society and Media and Parliamentary Standing Committee on Transport and Communications, 29/04/2009). However, although seemingly beyond the EU rules, the expert could not provide a concrete answer to the question of the politicians asking if Bulgaria was in breach of the EU legislation. What could be deducted from the response of the expert was that the lack of a precise EU model for DTT allowed policy choices to be chosen on country specific and political grounds. This was also demonstrated with the previous laws and the adopted separation between content providers – multiplex operators – infrastructure owners

(Parliamentary Standing Committee on Civil Society and Media and Parliamentary Standing Committee on Transport and Communications, 29/04/2009).

In the meantime, however, the preferences of a key stakeholder, the incumbent broadcaster Nova TV, changed. As a member of ABBRO, the broadcaster had been acting in tandem with its competitor bTV in their demands for extra multiplex capacity. Nova TV, however, became concerned with the proposals of the public broadcasting bill, which allowed channels associated with bTV and Nova TV to receive a must-carry status. Nova TV of the Swedish media company MTG was worried that “bigger companies”, which effectively meant News Corp, would start acquiring smaller television channels and, taking advantage of the widened scope of must-carry rules, guarantee their place on the multiplex. Nova TV was backed by Vesela Draganova and Andrey Batashov (NMSP), introducing a proposal for limiting the number of channels a television operator could have on the multiplex on a must-carry basis (Parliamentary Standing Committee on Civil Society and Media and Parliamentary Standing Committee on Transport and Communications, 29/04/2009). Interestingly, the head of ABBRO did not oppose the proposal of Draganova and Batashov, while there were no representatives of the other private players, notably bTV to argue against it. The chairman of the media committee, Ivo Atanasov (BSP) could not hide his confusion and asked ABBRO and Nova TV if they weren't

afraid that after half an hour trying to convince us to support this [proposal], tomorrow you will say – why did you do that? (Parliamentary Standing Committee on Civil Society and Media and Parliamentary Standing Committee on Transport and Communications, 29/04/2009).

That day, the proposal was voted in favour.

However, on the day of the second voting of the bill in the Plenary (Parliamentary Plenary Session, 12/05/2009) the BSP's member of the telecommunications committee, Radoslav Ilievski, echoing a letter sent from bTV and BBT on the same day, made a counter-proposal to drop the decision of the committee members to restrict the number of must-carry channels per broadcaster. The justification of bTV

and BBT was that the proposal of Draganov and Batashov was restricting competition in the private sector, while the public service television BNT was given a whole multiplex which could be filled with up to 8 channels (a statement not questioning the capacity of BNT and the advertising market in the country to sustain that number of channels). As a result, bTV and BBT won, arguably with the help of some voting irregularities, as the chair of the National Assembly had to plead a few times MPs to vote with their own cards only (Parliamentary Plenary Session, 12/05/2009), meaning that MPs voted on behalf of absent fellow MPs. Another informal institutionalised practice in the behaviour of the Bulgarian political elite (see, Petkova, 22/03/2007; Petkova, 17/09/2009; Dnevnik, 07/06/2013).

To sum up, this section has focused on the adoption of the Law on Public Broadcasting (LPB), which was the last legislative act passed by the triple coalition (2005-2009) in relation to the DTT transition. It arguably provided a last opportunity for the Stanishev government, dominated by BSP and MRF, to establish its ideas and preferences over the digital future of (public) broadcasting in the country. Unlike its title however, the core focus of the law was on issues that were more related to private interests and ‘business’ making (Borisova, 03/04/2009; Ognyanova, 27/03/2009). The behaviour of the political actors within the decision-making process on the LPB led observers to conclude that it was “a law by a circle of ruling elite for a circle of businessmen” (Ognyanova, 24/04/2009). The extended must-carry rules provided the demanded extra capacity to the incumbent operators, while the executive managed to establish a unique model for the digitalisation of the national public broadcasting. This model was designed to preserve the role of the state in media and telecommunications. It envisaged that a state enterprise would take the role of a private multiplex operator and establish a network infrastructure parallel to the privatised Bulgarian Telecommunication Company (BTC). The fact that those entities were planned to include a business activity, however, arguably presented a risk for corruptive practices to appear in the interaction between political/administrative and business elites. As seen in Chapter 4, past characteristics of the process of privatisation of the state enterprises after the break of the communist regime, as well as numerous instances afterwards, had demonstrated that such a risk was not illusionary.

## 5.4 Conclusions

This chapter drew on the analytical framework outlined in Chapter 2. The first part of the chapter demonstrated the role of path dependencies created with the provision of temporary analogue licensing in the period after the break of the communist regime. The adoption of the broadcasting ‘strategy’ and thus the *de jure* unlocking of the licensing process led to the formation of two opposing coalitions of actors, pro- and anti- licensing. The media regulator CEM was deadlocked between its formal obligations to carry out analogue licensing and the strong opposition to it by influential terrestrial players and temporary licensees. In the midst of the struggle over analogue licensing the adoption of international agreements on DTT changed the balance of power between the pro- and anti-licensing coalitions. The latter utilised the international digitalisation agenda to strengthen their narrative against the completion of analogue licensing procedures. In addition, the emergence of the digitalisation on the agenda helped the weakened capacities of CEM to escape the licensing deadlock. The behaviour of *some* broadcasters and the individuals behind them (advertisers) revealed their relative power in the process of decision-making. Using loopholes in the broadcasting legislation, private actors circumvented official licensing rules and found their way to the terrestrial system undermining the legitimacy of CEM. This demonstrated a characteristic of the general policy-making structure that enabled differential treatment of broadcasters in the market, due to weak regulatory capacities, unclear legislation and strong private actors.

The second part of this chapter highlighted a few other characteristics to this policy-making structure. As the legislative process on DTT demonstrated, non-transparency and centrality of the executive characterised the decision-making in all the three cases of law adoption. This allowed powers of openly visible as well as some ‘ghost’ private actors to influence the outcomes of the legislative process. These players managed to shape the design of must-carry rules that covered channels beyond the public, BNT, and private incumbent broadcasters, bTV and Nova TV. The rules encompassed channels (e.g. TV2) that, as shown in the previous section, had acquired frequencies to extent their coverage in a highly disputable manner. The must-carry rules were extended gradually with the amendment of each law and, most



interestingly, included also the cable channels (e.g. TV7) that would be first given analogue licences. The change of the ownership structure behind TV7 and the closeness of this structure to the political elite were argued to have shaped the legislative amendments. With the latest adopted Law on Public Broadcasting (LPB), the executive yielded to the pressure of the private broadcasters, bTV and Nova TV, to have their extra channels (either owned or operated by them) transmitted on an obligatory basis by the multiplex operators.

Apart from meeting the demands of established private broadcasters, the amended laws demonstrated an attempt to ‘clear the way of a new player’, by constraining the right of the foreign company, ORS, from competing for digital multiplexes. As shown later on the thesis, the established regulatory framework formed the basis for political and economic interdependencies that were reflected in the implementation and outcomes of the DTT introduction in the country.

The future of PSB, on the other hand, was set in unclear formal rules that proposed the establishment of a cumbersome and unrealistic system for the transmission of the PSB channels. As seen in the next chapter, the Borisov government that took over the power after the 2009 elections abandoned the LPB on the grounds that it would result in unjustifiably high costs. Arguably, the clash of ideas between the coalition partners BSP-MRF and NMSP over the PSB legislation revealed that efficiency was not the aim. Rather, the idea was to introduce a scheme that would preserve the state’s role in the DTT system, yet also allow a ‘business’ figure to participate in it. As seen in Chapter 4, similar structures had resulted in “siphoning” state resources for private benefit, which was what worried the coalition partner NMSP and the opposition.

The next chapter focuses on the role and the *use* of the EU in the implementation of the adopted rules on DTT. It demonstrates the continuation of the chaotic, rushed through and ad hoc policy-making that finally results in failure of the whole DTT system.

## **CHAPTER 6: Implementation inefficiencies and the impact of the EU**

### **6.1 Introduction**

This chapter looks at the implementation of the legislative and regulatory framework for the transition to digital television established by the triple coalition (BSP-NMSS/NMSP-MRF, 2005-2009), further amended by the Citizens for European Development of Bulgaria (CEDB) government (2009-2013). It demonstrates the continuity of the chaotic, rushed through and ad hoc implementation process following the adoption of the legislative framework. The chapter examines the EU top-down influence and argues that in every key policy moment, the EU authorities have played a role. EU's intervention, however, has been refracted through the domestic factors and actors. In addition, the shadow of the EU has been *used* to intensify the urgency for adopting decisions and taking actions, without being fully convinced of their applicability. As a result, the presence of the EU factor contributed to diminished public debate, transparency, and accountability which in turn created inefficiencies and delays in the implementation of the DTT policies in Bulgaria. Yet, the EU has not always provided for policy change. The chapter shows that Bulgarian policy makers remained mostly unresponsive to EU calls for the complete revision of the multiplex licensing through more transparent and competitive rules and practices. This enabled the consolidation of the DTT transmission under unclear ownership structures, which in turn contributed to the failure of the DTT system in the country.

The chapter has two parts. The first part focuses on the controversial allocation of the analogue television licences at the start of the digital transition and the EU disputed licensing of digital terrestrial multiplexes. The second part follows the final planning stage of the digital switchover - the adoption of a new digitalisation plan (DVB-T Plan) in 2012 and its update in 2013. This part includes two examples concerning the implementation of the DVB-T Plan, the execution of the information campaign as regards the analogue switch-off and the provision of decoding devices to the less

affluent and socially disadvantaged households. Both cases have been characterised with inefficiencies, delays and failures to meet the targets, leading to the postponement of the final switch-off date few days before that was due to happen. Overall, the second part illustrates the total lack of consensus, cooperation and trust among domestic private players in the switchover phase. The Bulgarian policy-makers have relied on ad hoc measures arguably to ‘save the day’ and thus please the EU as opposed to serve the public interest.

## **6.2 Completion of the long-overdue analogue licensing: negative outcomes for the public interest**

In line with the established legislative framework, discussed in Chapter 5, the implementation stage of the digitalisation process in Bulgaria did not begin with the licensing of the multiplex operators as a natural requirement of the technological process. Paradoxically, it started with the licensing of additional (local) analogue terrestrial TVs. With this, the long overdue process of analogue terrestrial licensing, previously terminated on the grounds of lack of available spectrum, was finally completed, under controversial circumstances. As already mentioned in the previous chapter, the last minute amendment to the Law on Electronic Communications (LEC) in 2009<sup>73</sup> gave the right to CRC to license any available frequencies for terrestrial broadcasting to cable and satellite operators that had a programming ‘registration’, issued by the content regulator CEM (not a licence based on the standard licensing procedure), for an unidentified period of time, until the frequencies were needed back for any of the switchover stages. Furthermore, the Law on Public Broadcasting (LPB), which was adopted a few months after the LEC, revised the must-carry rules, further extending their scope to cover the would-be new licensees and giving them the opportunity to benefit from a secured place on the digital multiplexes. The gradual introduction of those amendments with every consecutive stage of the legislative process lead commentators, including some

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<sup>73</sup> Promulgated on 6<sup>th</sup> March 2009 (State Gazette, 2009, Issue 17). Note that the licensing of the analogue terrestrial broadcasters began before the executive (notably the Prime Minister, as seen in Chapter 4) submitted the bill on public service broadcasting to the Parliament in the beginning of April 2009.

official policy-makers, to believe that the laws were designed to adjust the transition to digital broadcasting along the interests of players allegedly closer to the two of then coalition partners – BSP and MRF. The then member of CEM, Rayna Nikolova, admitted that the policy-making process of digitalisation was based on private actors' lobbying pressure that managed to insert their interests into the legislation (Nikolova, 09/04/2009), arguably based on clientelistic relationships between political and business elites. As a result, the announcement of the winners of the analogue frequencies, based on criteria adopted by the CRC, were not surprising<sup>74</sup> (Ognyanova, 13/06/2009; Kapital, 05/06/2009; Antonova, 05/06/2009). TV7 and TV2 received more than 80 per cent of the 101 analogue frequencies (Ognyanova, 13/06/2009; Kapital, 05/06/2009) that were announced as available in 58 cities, including the capital, Sofia. The biggest winner appeared to be TV7, as the frequencies it received (58) were enough to guarantee at least 50 per cent coverage of the population of the country and thus secure a place on the multiplex, as provided by the legislative amendments (Antonova, 05/06/2009).

The criteria for the selection of candidates were adopted by CRC after a 30-day stakeholder consultation procedure in March-April 2009 (CRC Decision 192, 10/03/2009). The proposed criteria (CRC Draft Rules, 2009), although slightly amended at the end of the consultation, echoed rules that gave priority to already well-established broadcasters. Initially some of CRC's criteria required candidates to 1) prove access to their programme by 70 per cent of the population of the city/town they apply for frequencies, for the last three years; 2) own a content production studio and technical equipment; 3) broadcast generalist content. The submissions by parties, including candidates such as Vest TV, Re-TV<sup>75</sup> as well as CEM and TV7, slightly toned down the discriminatory tone of the criteria. The requirement of reaching 70 per cent of the population in each locality the applicant was applying for frequencies was dropped; production studios and the needed technical equipment could either be owned or rented, while also candidates broadcasting thematic

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<sup>74</sup> Including the then member of CEM, Rayna Nikolova, who expressed her position in the daily Kapital, implying that the criteria of CRC allowed "certain" players to receive (temporary) analogue terrestrial licences (Nikolova, 09/04/2009, inverted commas used in original).

<sup>75</sup> Vest TV and Re-TV were newly created channels in 2008.

channels were allowed to compete for frequencies. These amendments, however, did not completely change the philosophy of the analogue terrestrial licensing on the verge of the digitalisation. Priority was still given to generalist channels, which had better technical capacity and facilities and, essentially, had higher advertising income and thus financial viability. And in case the eligible candidates were only thematic channels, licences were to be given to those thematic channels that had, again, better advertising income and technical capacity (CRC Rules, 2009<sup>76</sup>). Thus, it was commented that apart from creating more favourable application conditions for well-established broadcasters that were able to show better financial and technical indications, those criteria did not touch the programming aspect of broadcasting (Nikolova, 09/04/2009; CRC Public Consultation - Vest TV submission, 2009). The public interest aspects of content provision were once again overlooked. CRC disregarded critics responding that eligible applicants had been already given a programming registration by CEM (CRC Public Consultation - Responses, 2009). However, as noted before, the granting of programming registrations was considered to be a more simplified and less demanding procedure for cable and satellite broadcasting, in comparison with the actual licensing process required for terrestrial broadcasting. Thus, in effect, the created rules gave opportunity to cable broadcasters with a programming registration, such as TV7, to receive a terrestrial licence, even though their programmes were not licenced for terrestrial broadcasting. This technically benefitted them with expansion and greater reach and as a result also must-carry status, while the additional competition on the terrestrial platform arguably worked at the expense of existing terrestrial players, notably the PSBs, and the public interest in general.

Similar to the previous licensing attempt led by CEM two years ago, the one attributed to CRC by the latest amendments of the laws as an ad hoc option, became highly controversial. The controversies came out on the basis of the requirement that in order to be eligible to apply for analogue frequencies, candidates had to receive an affirmative statement from CEM, which as part of the CRC's criteria required the applicant to have a valid programming registration. In this respect, the eligibility of

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<sup>76</sup> Adopted with CRC Decision 362 on 14/04/2009 and promulgated in State Gazette Issue 30 on 21/04/2009.

TV2, a channel with a history of dubious formation as shown in Chapter 5, was disputed. Initially, on 18<sup>th</sup> May 2009, CEM could not reach consensus on the status of TV2 and did not manage to obtain the needed simple majority votes (five) for deciding whether TV2 complied with CRC requirements (CEM Minutes, 18/05/2009). It had a *licence* that allowed for terrestrial as well as cable and satellite broadcasting, while the rules explicitly stated that only *registered* television operators (cable and satellite) could apply for temporary analogue terrestrial frequencies. This caused turmoil in CEM that the regulator had to be resolved as quickly as possible (CEM Minutes 19/05/2009). A day later, CEM members gathered for an emergency meeting to take a decision which, according to the words of CRC chairman - either positive or negative - had to be done *immediately* in order not to obstruct the whole licensing procedure (CEM Minutes 19/05/2009). Similarly to the decision making process on the legislative framework for DTT, one of the key characteristics of the implementation stage was the urgency to implement key decisions before the end of the mandate of the triple coalition, which had less than two months to go. The deadlines both for applicants and the content regulator CEM to give its position on the eligibility of candidates were set tight. CEM, in its submission to the consultation procedure for the adoption of the CRC's criteria for the evaluation of candidates for the analogue frequencies, had requested an extension of the deadline for applicants (CRC Public Consultation – CEM submission, 2009). The proposal was refused with the most common explanation used in the DTT policy-making process in Bulgaria: the urgency to meet the EU switch-off deadline by the end of 2012. In addition, once the formal legislative acts were established, the telecommunications regulator was enabled to justify its actions with the obligations given by legislature, which has required CRC to complete analogue licensing before the licensing of multiplex operators (CRC Public Consultation - Responses, 2009). Therefore, CEM members had to quickly make their minds up whether to let TV2 to apply for more (terrestrial) frequencies or not. As TV2 had a licence for terrestrial, cable and satellite broadcasting, the interpretation that the six attending members of CEM adopted was that the TV2 licence *de facto* included the registration given only to cable and satellite operators and the broadcaster was allowed to participate in the licensing selection (CEM minutes 19/05/2009). As also seen in the previous chapter, once again CEM was forced to take an action that was based on legal uncertainty and

vague interpretation, yet inability to block TV2 from participation in licensing competitions.

Controversies were raised on the domestic arena not only in terms of the assessment criteria but also their subsequent implementation and the outcomes, which led unsuccessful candidates to complain before the EC. Thus, as a result of the unclear legislative and institutional context at the domestic level, the decision making over the analogue licensing ended up being extended to Brussels and the EC became the regulator of a last resort. The problem occurred as the frequencies (channel 43) announced as available for the capital Sofia were withdrawn on the day CRC had to announce the results of the selection procedure (26<sup>th</sup> May 2009) (Metanov, 14/03/2009; European Commission, 2011c; Parliamentary Standing Committee on Transport, IT and Communications, 30/06/2011). This was reported to have hurt the interests of particularly one of the candidates for the frequencies– TV Europe, as the channel could not receive the spectrum they had applied for the area of the capital Sofia (Nikolova, 2013; Metanov, 14/03/2009). Although it never mentioned TV Europe’s name, the EC’s letter of formal notice announced that it was concerned with the non-transparency of handling the initially available channel slot in Sofia and, as a result, the unfair treatment of a candidate, who might have applied for a calculated number of frequencies, so that it could potentially cover the required 50 per cent of the population and subsequently benefit from the must-carry provisions (European Commission, 2011c: 14).

The controversy behind the case of TV Europe included inevitably the aspect that the television was co-owned by Emil Stoyanov<sup>77</sup>, who was elected an MEP from CEDB and came to power following the general elections in July 2009. The regulator was alleged to favour TV7 and give them the other free slot in the region of Sofia (Metanov, 14/03/2009; Parliamentary Standing Committee on Transport, IT and Communications, 30/06/2011). CRC refused any allegations for a “plot” and claims for non-transparency of the licensing procedure carried out as regards TV Europe.

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<sup>77</sup> Emil Stoyanov is at the same time brother of the former President of Bulgaria, Petar Stoyanov (1997-2002), elected as a candidate of the UDF, the anti-communist party established immediately after the change of the regime in the country.

According to the explanation of CRC, the frequency was withdrawn from the procedure (without the candidates being notified), due to the last minute request of the public broadcaster BNT that the frequency be preserved for the creation of a regional TV channel in the area of Sofia. CRC referred to public interest arguments to justify the withdrawal of the slot and allocating it to the public service broadcaster. In addition, CRC justified their decision as one in compliance with the EU Framework Directive, which stipulated that member states “may contribute within their competencies to ensuring the implementation of policies aimed at the promotion of cultural and linguistic diversity, as well as media pluralism” (Directive 2002/21/EC, Art. 8 (1) implicit in CRC’s argumentation, Parliamentary Standing Committee on Transport, IT and Communications, 30/06/2011). TV Europe’s legal challenge of the decision of CRC to grant the other available slot for Sofia to TV7 failed, as the SAC concluded that the decision of CRC, based on the rules designed by the regulator (and most specifically the indicators for advertising income) were in compliance with the law (SAC Decision 13019, 11/04/2009).

The follow up from Brussels as well as the delays in the utilisation of the spectrum allocated to BNT, forced the CEDB government to undertake amendments to LEC (at the end of 2011), requiring CRC to allocate the frequency to the candidate who would have received it, had the slot not been withdrawn (Nikolova, 2013). As a result, CRC gave the frequency to TV Europe (CRC Decision 143, 26/01/2012) while CEM had to withdraw the programming licence for BNT’s regional channel in Sofia, pointing out in its decision the initiated EU infringement procedure and the necessity to act upon it (CEM Decision 1, 04/01/2012). This was the consecutive example of ad hoc decision-making that responded on external EU pressure. This was also the only concrete pro-public interest intervention, annulled by the EC on narrow competition grounds, undermining member state subsidiarity competence as per the Authorisation Directive. Yet, I suggest that the outcomes of the EU impact have been shaped rather by the ‘fitness’ of the Bulgarian institutions to manage a transparent and fair competition procedure. Thus, the poor (last minute) institutional coordination between BNT and CRC resulted in non-transparent and unfair treatment of other applicants, which involved the EC and in turn produced negative outcomes for PSB and the public interest. This relates to the argument proposed by Grabbe



(2006) and Schimmelfennig and Sedelmeier (2005) in Chapter 2, according to whom domestic factors determine the extent of EU impact on member state policies. In conclusion of the section, it can be argued that the analogue licensing awaited since the early 2000s to increase plurality of the provision of broadcasting services, resulted in benefitting some broadcasters with dominant political-economic links and further diminished the public interest.

### **6.3 Digital multiplex licensing: non-transparent and anti-competitive**

As soon as the legislative framework on digital transition was adopted in spring 2009, the telecommunications regulator, announced its intentions for starting the competitive process for the licensing of the multiplexes for the provision of DTT services (CRC Decision 238, 20/03/2009). On 8<sup>th</sup> April 2009 CRC adopted two decisions (No: 358 and No: 360) which announced the start of two competitive processes for the licensing of five multiplex operators in total: the initial licensing of two operators following by the licensing of three more in a subsequent second round.<sup>78</sup> The list of criteria was not lengthy. It was reminded that the radio and television operators and owners of radio and television transmission systems in Bulgaria could not apply for multiplexes. The prospective operator's financial stability had to be guaranteed with at least BGN 5 million (approx. £ 2 million) turnover for the previous (2008) year (CRC Announcement 14/04/2009; see also, CRC Decision 358, 08/04/2009 and CRC Decision 360, 08/04/2009). Six companies applied for multiplexes for the first phase and six companies for the second phase of digital transition. The winner of the first round was the Slovakian Towercom (CRC Announcement 05/06/2009). A few weeks later the Estonian Hannu Pro received the remaining three multiplexes following the conclusion of the second stage (CRC Announcement 22/06/2009).

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<sup>78</sup> It should be noted that the number of planned multiplexes was six, three for each round of the switchover. Yet, with the introduction of the LPB, discussed in Chapter 5, one of the six multiplexes was to be allocated for the channels of the public service broadcaster and therefore only five multiplexes were announced for commercial licensing.

In the meantime, however, a day before the announcement of the winner of the first stage multiplex operator, the Constitutional Court published its decision as regards the constitutionality of some of the amendments introduced to LEC and the LRT in relation to the digitalisation of terrestrial broadcasting (Constitutional Court, 04/06/2009), initiated by a group of opposition MPs of the triple coalition government. The Court concluded that the stipulation introduced in LEC, which banned owners of a telecommunications transmission system to apply for multiplex licences (Art. 48, para. 5) and the stipulation that allowed ‘one’ company to receive licences for two multiplexes within ‘one’ competitive procedure for the first phase of the transition (§ 5a, para. 1) were anti-constitutional, and as such they were against the right of free establishment, the protection of fair competition of the investment and economic activity of both Bulgarian and foreign nationals in the country (Constitution of the Republic of Bulgaria, 2007<sup>79</sup>, Art. 19, para. 1, 2 and 3). In addition, there were two dissenting opinions of the judges who had expressed positions that other stipulations adopted with the two bills were also anti-constitutional. The Constitutional Court’s decision, however, did not change the outcome of the process and it “did not have any direct consequences” on the already concluded competitions (EC Reasoned opinion, 2012: 6). It was said to be a “decision without a solution”, as the selection of the winner of the first two multiplexes came a few days before the decision of the Court was officially in force (Antonova, 12/06/2009).

Provoked by the discontent and complaints of domestic and foreign players that were affected by the outcome of the competition procedure, in July 2010 the European Commission initiated a pre-litigation procedure against Bulgaria under the leadership of CEDB. In accordance with the EU rules, the Commission requested information from the Bulgarian authorities on how they had applied the decision of the Constitutional Court as regards the non-constitutionality of some provisions of the LEC (EC Reasoned opinion, 22/03/2012: 2). The explanation of the Bulgarian authorities did not satisfy the Commission and the case moved to the second phase of the pre-litigation process, in which the EC expressed their concerns of potential breaches of the EU laws in a ‘letter of formal notice’ sent to the Bulgarian state a

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<sup>79</sup> Adopted in 1991, last amended in 2007.

year later. Yet another year later, the Commission concluded in its ‘reasoned opinion’ that the stipulation of the Law on Electronic Communications that allowed ‘one’ company to receive licences for two multiplexes within ‘one’ competitive procedure for the first phase of the transition and a second company to receive three multiplexes for the second phase of the digitalisation process (§ 5a (1) and (2)), had violated the EU Directive on competition in the markets for electronic communications networks and services, most specifically in relation to the stipulation that

Member States shall not grant or maintain in force exclusive or special rights for the establishment and/or the provision of electronic communications networks, or for the provision of publicly available electronic communications services. (Directive 2002/77/EC, Art. 2 (1)).

According to the Commission, the Bulgarian government introduced an unfair restriction to the number of companies that could receive licences for the operation of digital multiplexes in the country (EC Reasoned opinion, 2012: 2). As seen in Chapter 3, a similar procedure had started in two other EU countries, France and Italy, where, however, the infringement procedures were terminated upon satisfactory revision of the adopted policies.

In their response, the Bulgarian authorities sustained the argument they had put forward during the decision-making on the legislative framework, namely that the undertaken measures were required to ensure a successful transition within a shorter period of time (EC Reasoned Opinion, 2012: 8). The policy-makers in Bulgaria reasoned that granting more resources to fewer owners, by restricting the number of licences issued, would result in greater diversity and benefit for the consumers. But the expectation was that the market would deliver diversity, as no precise requirements were established for the multiplex operators to do so. In fact, the response of the Bulgarian authorities showed that they had taken into consideration the decreasing viewership of the analogue terrestrial broadcasting, which had dropped from 32 per cent to 22 per cent between 2005 and 2010 (EC reasoned opinion, 2012: 8). Thus, they attempted to protect the multiplex operators from

extensive competition and accelerate the transition in this way (EC reasoned opinion, 2012: 8)<sup>80</sup>.

In contrast to the justification of the measure undertaken by the Bulgarian state, the EU authorities argued that the artificial restriction of competition for the multiplex operators would increase the prices the multiplex operator would charge the content providers/television operators, thus, result in fewer television operators willing to provide their content on the multiplexes. This would affect the diversity of content provided on the multiplex and, furthermore, it would jeopardize the digital switchover (EC Reasoned opinion, 2012: 11). Thus, for the Commission the measures of the Bulgarian authorities were non-proportional to the public interest aims that the Bulgarian authorities claimed to have followed. As seen in the next chapter, the prognosis of the Commission proved right.

In addition to the lack of diversity of multiplex owners, the Commission was concerned with the vertical separation of the three key components of the digital chain: content providers – multiplex operators – transmission system/infrastructure owners, disregarding the *geographical scope* of their activity (which meant that the rules were applied both for domestic players and those based outside the geographic boundaries of Bulgaria). The Commission's position was influenced by the case of the Austrian company ORS, which was disqualified from the competition for the digital multiplex licenses on the basis of legislation banning candidates to conduct, or be associated with, a content provision/broadcasting activity (EU Reasoned Opinion, 2012: 15), as was the ORS in Austria, a subsidiary of the national public service broadcaster ORF. The Bulgarian authorities had tried to argue that the measure was undertaken to prevent potential restriction on competitor broadcasters to have their channels on the multiplex. And, applying the restriction only in terms of Bulgarian broadcasters would have been discriminatory (EC reasoned opinion, 2012:

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<sup>80</sup> As shown in Chapter 3, Hungary undertook similar measure licensing the whole available spectrum to a single multiplex operator. The awkward circumvention of the weak regulatory powers of the national regulatory institutions ensured transparency and non-discrimination.

14). According to the Commission, potentially anti-competitive behaviour of a multiplex operator such as ORS would have not been relevant in Bulgaria, as the company was not related to any content provider in Bulgaria and it would have not been interested in blocking any television operator willing to have its content provided on the multiplex (EC Reasoned opinion, 2012: 15). It was reasoned that national authorities should have introduced less restrictive measures that could meet the aims of general interest and have a lesser anti-competitive effect, by restricting companies of geographically non-related markets to take part in the competitions (EC Reasoned opinion, 2012: 16). Upon increasing pressure, although the Bulgarian authorities had initially refused to accept EC's allegations of improper legislative rules and implementation, the CEDB government decided to make revisions in LEC. It required CRC to licence one additional multiplex (7<sup>th</sup>) and it lifted the ban on companies with radio and television activity *outside the jurisdiction of Bulgaria* to own multiplexes (EC Reasoned opinion, 2012: 14-15). Those changes were not initially envisaged within the bill amending electronic communications legislation initiated six months earlier and they appeared only in the second voting of the law in the Plenary (Bill No: 102-01-36, 07/06/2011). Surprisingly, none of the deputies during the voting procedure raised the issue that those amendments had not gone through the official legislative procedure and were voted without objections as a 'done deal' that had to be passed (Parliamentary Plenary Session, 14/12/2011; 20/12/2011). In this respect, the EU intervention resulted in even less debate and transparency.

The formal legislative amendments, however, did not satisfy the EC. Although initially, the Commission had reacted to the complaints placed by affected market players, such as the ORS, the persistence of the EU's involvement into the Bulgarian case arguably grew with the gradually changing domestic market structure arrangements. These changes, arguably, increased the doubts of the EC about the fairness and transparency of the legislative and regulatory process of the digital transition in the country. The concerns of the EC were provoked by the established legislative framework that, in addition to the introduced vertical separation between the content providers and multiplex operators, *initially* also separated the ownership of the multiplex operator from that of the transmission infrastructure, yet doubts

were raised that they had *gradually* merged through a non-transparent ownership structure, that included also a representative of the third component of the DTT, a content provider. Interestingly, as shown below, the decision of the Constitutional Court to declare in June 2009 the ban for owners of transmission infrastructure to apply for multiplex licences as anti-constitutional (in other words, a decision in favour of fair competition), within the Bulgarian broadcasting and institutional structure allowed for several attempts of strategic action that eventually lead to the merging of the different components of the DTT chain and concentration in the transmission of DTT.

After the BTC withdrew from selling its broadcasting transmission infrastructure unit, Nurts, to the Austrian company ORS in 2009, there was a period of standstill for the future of Nurts. The ruling of the Constitutional Court, however, created opportunities for new path for the development of the company. Towards the end of 2009, BTC had resumed intentions to sell Nurts and in April 2010, a Cyprus based offshore company, Mancelord, bought 50 per cent of the broadcasting transmission network and a year later another offshore company (Blusat Partners) based in Dubai bought the other half of Nurts (Mihaylova, 12/09/2014; CPC Decision 709, 22/06/2010; CPC Decision 467, 03/06/2015). In the meantime, the joint venture, Nurts Bulgaria, formed between Mancelord and BTC obtained the Towercom's licence for multiplexing services, which was renamed into Nurts Digital. Two years later the licensee of the other three multiplexes, Hannu Pro, with no publicity transferred the ownership of its digital multiplexes to a company called HD Media Services (Antonova, 06/07/2012) and the name of the digital multiplexing company changed into First Digital. It was reported that there was little known about HD Media Services (Antonova, 06/07/2012). However, the commentaries about the capital and ownership linkages in the DTT chain (multiplexing, transmission infrastructure and content provision) concentrated around the name of Tsvetan Vassilev, the majoritarian shareholder of CCB. First, reports highlighted that his brokerage company, Bromak officially represented Mancelord in Bulgaria (shareholder in Nurts and one of the multiplexes – Nurts Bulgaria) (Puncheva and Petrov, 23/08/2010). Second, Mancelord had become the owner of the broadcaster TV7 (as already mentioned linked with Vassilev as well) (Antonova, 06/07/2012;

Antonova, 09/03/2012). Third, in November 2012, Tsvetan Vassilev acquired 43 per cent of the shares in BTC<sup>81</sup> as a result of the restructuring of the heavily indebted company (Mihaylova, 12/09/2014; Arnaudov, 07/09/2014). And finally, fourth, speculations had been rising over an alleged merger of the ownership structure of the two officially independent licensees – Nurts Digital and First Digital (Kapital, 05/04/2014)<sup>82</sup>. The government, however, remained blind to those developments, as arguably it was unwilling and incapable to tackle them. The government's non-decision making and inaction, however, benefited specific interests (that as seen further in the thesis resulted in the failure of the DTT system).

In this respect, the initial idea of separating the ownership of the three main components of the digital television provision – content providers, multiplex operators, transmission infrastructure – in order to escape a potential monopoly, ended up being in one way or another linked to each other. The ruling of the Constitutional Court banning the separation between multiplex operators and transmission infrastructure created a window of opportunity for players to maximize their business positions in a manner that was not envisaged initially. Although not against unification between multiplexing and transmission infrastructure, the EC did not apparently want the created outcome. It became further unjustifiable that established European market players with transparent capital, such as ORS, were excluded through formal rules and benefitted offshore companies with domestic political-economic linkages. It did not come as a surprise when the then Minister of Communications in the CEDB government admitted that he did not know who were the owners of the digital multiplexes (Dnevnik, 26/01/2013).

The lack of transparency of ownership in the digital broadcasting system in the country and the non-satisfying actions of the Bulgarian authorities in response to the started infringement procedure, led the EC to refer the case to the CJEU in early 2013 (Novinite, 24/01/2013). The government, however, maintained its policy silence and tried to persuade the Court referring to the country's market structure and

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<sup>81</sup> 33 percent of the shares were acquired by the Russian VTB Bank (Arnaudov, 07/09/2014).

<sup>82</sup> The last chapter further reveals these interrelationships.

competition between platforms in reasoning their DTT policy model, yet without considering the specificities of the ownership structures.

As seen below, lack of coordination between actors, rivalries between platforms, and delays in the implementation of the undertaken actions led to inefficient completion of the switchover in the country.

#### **6.4 (Re-)planning of the DTT switchover: lack of cooperation between key players**

Similarly to countries such as Italy, Greece and Romania, the switchover timetables for the different transition stages turned out completely unrealistic in Bulgaria. The initially adopted digitalisation plan in 2008 was amended several times<sup>83</sup> to update the timetable of the originally planned two stages of the transition. Most clearly, reasons included the high degree of politicisation of the decision-making processes and, as a result of that, the involvement of both national and supranational institutions, which further derailed the transition. In addition, however, the latest major amendment to the switchover plan demonstrated that in Bulgaria there was a complete absence of unity and cooperation between key institutions and market players in order to carry out the transition in the most effective manner. It has been pointed out in Chapter 3 that in countries (e.g. Britain, Germany, Sweden) where there had been better cooperation between various stakeholders, the results of the transition were less painful and more successful.

The above mentioned amendments of the LEC undertaken under the rule of the CEDB government in 2011, introduced a requirement for the Ministry of Transport, Information Technology and Communications (MTITC) to update the national digitalisation plan (DVB-T Plan), which had to establish a clear transition schedule,

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<sup>83</sup> First, by the triple coalition on 19<sup>th</sup> March 2009 (Council of Ministers Minutes 11, 19/03/2009) and once again later that year by the CEDB government, which updated the timetable of the originally planned two stages of the transition without changing the final switch-off deadline set for December 2012 (Council of Ministers Minutes 51, 30/12/2009).



overriding the previously missed deadlines for each stage of the transition. With that amendment the executive introduced also a new state body that had to work in cooperation with the key stakeholders of the transition process including broadcasters, multiplex operators and representatives of other communication platforms. The issues that were to be dealt within that body were related to the preparation of the population for the switchover, including informing citizens and providing equipment subsidies for financially less affluent households. The CEDB government introduced also a final date for the switch-off – 1 September 2013 (Parliamentary Plenary Session, 20/12/2011).

During the process of adoption of the 2012 DVB-T plan, a new player appeared on the policy-making scene – the new representative of the cable operators – the Bulgarian Association of Cable Communication Operators (BACCO), established in 2010. BACCO became an additional actor in shaping the policy-making process at its final stages. The organisation strongly opposed the aim of the draft DVB-T Plan proposing to attract new viewers and thus “prevent the domination of the cable and satellite transmission of TV programmes” (DVB-T Plan - Draft, 2012). BACCO referring to EU competition principles in relation to platform neutrality and state aid, warned that, in case the Bulgarian authorities decided to go further with the proposal, they would refer the case to the EU institutions (MTITC, 2012). This might have convinced the executive, as the final version of the document changed its aim from “increasing terrestrial viewership” to “preserving the current platform viewership” and gave up the idea of establishing the digital terrestrial system as an alternative to cable and satellite platforms (DVB-T Plan, 2012).

Apart from the increasing role of the rival platforms in terms of coverage and take-up, however, the consultation process on the draft plan revealed another characteristic of the Bulgarian DTT transition. Some broadcasters demonstrated insecurities provoked by the adopted policy framework that, as reasoned by the EC above, did not guarantee enough competition in the transmission of the broadcasting content. However, whereas the cable and satellite operators were united in their demands under the umbrella of BACCO, the terrestrial broadcasters did not act in unity in their concerns and interests. It was apparent from the consultation

submissions of Nova TV that the incumbent broadcaster was highly concerned with potentially becoming dependent on the terms of agreement and technical provisions of the *single* multiplex operator that was obliged to carry the channels of the incumbents in the first phase of the switchover. Nova TV insisted that the new digital multiplex operator (promised by the CEDB government to EC to be license in order to increase competition in the DTT transmission) should be issued before the deadline the broadcasters had to sign their contract with the single available multiplex operator. In addition, the broadcaster was worried that competition was further restricted with the drop of the requirement to have regional multiplexes established in the country. With the amendment of LEC by CEDB that obliged the telecommunications operator to licence one more national multiplex, the opportunity for establishing regional multiplexes was taken away, as the available frequencies were to be given to the new licensee (MTITC, 2012; DVB-T Plan, 2012). Here again, at first glance this suggests that the EC's intervention resulted in lack of frequencies available for regional multiplexes, and in the logic of Nova TV – less competition in the digital transmission market. The outcome, however, was a result of the combination of supranational demands and domestic conditions that were arguably more decisive in shaping the outcomes.

MTITC revealed that there was possibility for neither another national multiplex nor any regional multiplexes to be put into operation unless the Ministry of Defence (MoD) released the spectrum they had occupied within the broadcasting bands. According to the draft plan, out of the available 49 channels within the IV and V UHF frequency bands, the Ministry of Defence were occupying 26 of them. This was a form of path-dependence, based on the communist regime's spectrum planning for military and civil aviation purposes. For the release of spectrum, however, funding was needed, the amount of which the Ministry of Finance and the Ministry of Defence could not agree on. It was revealed that the military requested BGN 265 million (approx. £100 million) to free the occupied spectrum needed mostly for the second stage of the digitalisation process, which included the release of spectrum for the EU digital dividend plans<sup>84</sup>. The Ministry of Finance, however, insisted that the

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<sup>84</sup> As regards the release of spectrum in relation to the demands of the EU for the allocation of the so-called 'digital dividend' within the supranational spectrum usage

military must find a way to release the frequencies within their own budget. Thus, the MTITC's draft plan did not include any concrete timetable for the release of the occupied bands, forwarding the case to the Ministry of Finance, whose deliberations with the defence ministry "were expected to take place in 2013" (DVB-T Plan - Draft, 2012).

On the day of the adoption of the plan by the Council of Ministers, the Prime Minister, Boyko Borissov, refused to sign the document before an agreement between the ministries was established (Council of Ministers Minutes 24, 20/06/2012). The discussion in the meeting revealed that the MTITC was highly concerned with the on-going infringement procedure that had arrived already to its final stage prior to litigation. It suggested the plan had to be adopted in due time in order to proceed with the transition, as the process was "closely followed" by the EC. The EU investigation pressured the minister to adopt the plan, although incomplete and partly inapplicable.

Boyko Borissov (PM): Now, OK, you will say to Brussels we have such plan, adopted by the Council of Ministers, yet it would not be implemented?

Deputy Minister of MTITC: Yes, that's right.

(Council of Ministers Minutes 24, 20/06/2012).

In his populist manner, stressing honour and loyalty to the European partners, Borissov declared that they "had never misled Brussels with such decisions", so he assigned his ministers to find a solution (Council of Ministers Minutes 24, 20/06/2012).

The solution presented was as vague as the stipulation in the draft plan. On 11<sup>th</sup> July 2012, the Prime Minister adopted the DVB-T Plan (Council of Ministers Minutes 27, 11/07/2012), which required financial resources to be planned by the Ministry of Finance within the annual budget of 2013, on the basis of what the Ministry of

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planning, the Bulgarian authorities have received derogation until 2015 in response national security considerations in the CEE countries.

Defence had to prepare schedule for the release of the occupied broadcasting bands (DVB-T Plan, 2012). No further concrete measures were stipulated.

#### **6.4.1 Informing citizens for the transition to digital terrestrial television: expensive and inefficient**

Similarly, to other countries studied in Chapter 3, the Bulgarian policy-makers also envisaged implementation of a campaign to inform the population about the upcoming transition from analogue to digital terrestrial television (DVB-T Plan - Draft, 2012). The information campaign was to include creation and popularisation of audio-visual clips, newspaper bulletins, and a website on DTT broadcasting. In addition, the draft plan envisaged the conduct of surveys to measure the extent of public awareness of the approaching switchover as well as the extent of their technical readiness to access digital broadcasting (DVB-T Plan - Draft, 2012). Arguably, anxious about the outcomes of the information campaign, BACCO was particularly against the idea of having audio-visual material introducing and highlighting the benefits of the DTT to the Bulgarian audience. According to BACCO and the providers of platform services alternative to the terrestrial one (e.g. BTC, Bulsatcom, TV-D), this presented an “unacceptable market advantage for the DVB-T technology over the rest” (MTITC, 2012). They once again referred to the EU to remind the executive that the use of state subsidy to promote one type of technology at the expense of others was against the platform neutrality rules that were of serious concern to the European authorities and became an issue in a number of other member states. BACCO requested simplification of the planned actions of the information campaign, especially those stressing the benefits of the digital terrestrial reception. It insisted that the campaign should make it clear that those who had been already receiving cable and satellite signals did not need to buy new equipment for digital reception (MTITC, 2012). The adopted plan made sure that the information campaign did not include advantages of the terrestrial platform vis-à-vis the others, but only between the digital and the analogue technology (DVB-T Plan, 2012).

The information campaign did not begin until December 2012 (Organ on digitalisation, 19/12/2012), less than a year before the final switch-off date (1 September 2013). As discussed earlier, like all other competitive procedures in relation to the digitalisation process, the public procurement for the selection of the company that was going to manage the information campaign was also disputed, this time before the national competition regulator, the Commission for Protection of Competition (CPC) (CPC Case 1094/2012). Unsuccessful applicants complained about very demanding and difficult to achieve criteria that constrained smaller companies to compete in the selection process (Antonova, 04/10/2012; Antonova, 11/09/2012). The organiser of the public procurement, MTITC, justified the selection criteria by arguing that “experienced participants” were needed in order to “guarantee an effective information campaign” (Antonova, 11/09/2012). In this respect, there were only three applications submitted for participation in the bid as the requirements demanded bidders to provide services that fall into different areas of expertise, including advertising, PR, market research (see, Antonova, 30/08/2012; Antonova, 10/09/2012). The bid was won by TCTV Union, a joint venture formed between the advertising companies Archer Ideas, Piero 97 and the social/market research company Sova 5. The other two applications, that of the consortium DVB-T Consult and the Max Inform Union, were disqualified for not fulfilling the procurement criteria and their bids were not looked at (Antonova, 04/10/2012; Dnevnik, 05/10/2012). The advertising Piero 97 was related to the influential advertiser, Krasimir Gergov, which led to speculations in the press that the criteria of the competition were “adjusted” to enable a group related to Gergov to win the bid (Antonova, 10/09/2012; Dnevnik, 05/10/2012).

In order to prevent the complaint of one of the unsuccessful bidders, Consortium DVB-T Consult, to block the process, the MTITC promptly filed a request demanding the CPC to allow a preliminary execution of the decision of the Ministry. The letter of the ministry sent to the regulator revealed that the executive was highly concerned about the delay in the switchover process, reflected in the number of amendments of the transition plans from 2008 onwards. A major cause of anxiety was the EC infringement procedure, which had arrived to its final stage before the referral of the country to the EU court. Any further delay that could jeopardise

meeting the switch-off deadline was argued to worsen the situation of the government. In this respect, the digitalisation was seen as an “inevitable” EU “engagement” “with no alternative”. Thus, as pointed out by Ognyanova (20/11/2012), the EU was put forward as a key “factor” that contributed to shape one more policy decision. CPC backed the position of the executive and allowed a preliminary execution of its appealed decision, justifying the exception as a measure to avoid further serious negative consequences for the Bulgarian state (CPC Ruling 1309, 08/11/2012).

The actual implementation of the information campaign, however, resulted in further controversies, turning out highly expensive and finally inefficient. Initially, within the annual budget of 2012, the CEDB government allocated BGN 17.5 million (£6.5 million) for the implementation of the information campaign as well as the provision of vouchers for decoders to economically less affluent households (discussed below), BGN 10 million and BGN 7.5 million respectively (approx. £3.7 million and £2.8 million respectively). As the public procurement for providing decoders was delayed, however, the money allocated for that were given for the financing of the information campaign, while it was decided that the subsidies for the decoders would be given within the budget of the following year (Antonova, 19/12/2012; Antonova, 19/08/2013). Thus, in spring 2013, the government (in resignation) allocated BGN 17.5 million (approx. £6.5 million) more for subsidising the provision of decoders, of which BGN 2.5 million (approx. £1 million) were once again foreseen for the information campaign (Antonova, 19/08/2013). In the end of August 2013, however, a month before the agreed switch-off date, at the meeting of the Body on digitalisation it was reported that people were still calling the MTITC to acquire information about the switchover process, although there was no help line established in the Ministry for that purpose<sup>85</sup> (Body on digitalisation, 23/08/2013). When it was realised that the provided audio-visual information was not producing effective results, the CRC chair blamed the content of the video clips broadcast on the major terrestrial television channels for being too “theoretical” and less helpful in practical terms (Kapital, 08/10/2013). As a result, in October 2013, after the

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<sup>85</sup> The calls of non-informed citizens were also observed during my interviews at the Ministry in May 2013.

postponement of the switch-off deadline at the last moment (seen below), the BSP-MRF technocrat government led by Prime Minister Plamen Oresharski that was elected, following the resignation of CEDB, allocated another BGN 1 million (approx. £400.000) for the advertising of the digitalisation, this time only in the press. Presumably, however, this must have reached fewer people and importantly not the lower socio-economic groups that have relied solely on DTT transmission. Overall, it was reported that the money spent on advertising the digital switchover process amounted to BGN 19 million (approx. £7 million) (Parliamentary Standing Committee on Transport, IT and Communications, 03/07/2013).

The Minister of Transport, IT and Communications, Danail Papazov (BSP), admitted the sum was ‘unjustified’. He revealed that along with the TCTV Union that received about BGN 10 million (approx. £3.7 million), the broadcasters that were allocated the highest amount of subsidies for showing the audio-visual clips were BTV Media group (BGN 2 962 000, approx. £1 200 000), Nova Broadcasting group (BGN 2 475 000, approx. £934 000) and TV 7 (BGN 2 000 000, approx. £750 000) (Parliamentary Standing Committee on Transport, IT and Communications, 03/07/2013). In contrast, the public television BNT received a bit over BGN 209 000 (£79 000), a relatively small amount when compared to the private operators (Antonova, 19/08/2013). Moreover, BNT had to prepare its own digitalisation announcements (audio-visual clips), funded by the annual budget allocated to the television (Body on digitalisation, 01/02/2013). The view held by private players was that BNT was already receiving state money to carry out a public service, which included also informing the population of the upcoming analogue switch-off. The information campaign, therefore, presented an opportunity for extracting state resources for private, rather than public interests.

To sum up, the information campaign was regarded as a grossly expensive, inefficient and unsuccessful attempt to prepare the Bulgarian population for the digital switchover. The way the information campaign was carried out demonstrated disregard of the practicalities of the switchover process and the importance of reaching the right target of viewers. Arguably, instead of focusing on the interests of those who needed the information most and providing help with more practical

information, the campaign benefited key private broadcasters and the advertising company that had won the public procurement. Funds were not available to the public service television and, as in the legislation making process, the broadcaster was left outside having a say or benefit from key resources. Although the information campaign did not come as an after-thought as did the idea of the separate multiplex for PSB, it demonstrated that the state was not clear of the aims and objectives of the DTT transition. As seen above, the executive (MTITC) was concerned with meeting the switch-off deadline and avoiding further complications of the transition that could affect the already unfavourable situation of the state as regards the EU's infringement procedure. This once again demonstrated a perception of the DTT as an EU-driven process that the state attempted to carry out 'in theory' (in analogy with the words of the CRC chair) rather than apply a hands-on approach to make it work and benefit the people who needed it. Arguably, the failure to do so indirectly benefited the other platforms, notably cable and satellite. As seen in Chapter 7, while the penetration of digital cable and satellite has continued to grow, the numbers of households using the terrestrial platform has dropped.

#### **6.4.2 Subsidizing set-top box decoders results in postponing the switch-off date**

The outcomes of the voucher provision policy to poor families were similar to that of the so-called information campaign, discussed above. The former was weakened by a number of implementation issues and like the information campaign did not lead to the intended results. Moreover it resulted into the postponement of the analogue switch-off date just a few days before the previously announced deadline. The affected interests of cable and satellite operators changed the course of the policy intentions of the MTITC.

The DVB-T Plan in 2012 envisaged measures for the provision of so-called set-top boxes allowing access to the digital terrestrial broadcasting on analogue TV sets to financially and socially disadvantaged families. It was decided that the eligible recipients of the subsidised decoders would be those households that were entitled to



heating subsidies for the 2012/2013 winter season, reported as amounting to around 211 000 (Body on digitalisation, 10/07/2013).

The draft plan of the MTITC proposed the provision of subsidies to recipients (one per household), whose TV set was not equipped to receive digital signal or those who did not have possibility to access television content through other means, such as cable and satellite services (MTITC, 2012). The proposal, however, did not restrict people who were already receiving cable or satellite television from obtaining set-top boxes for terrestrial reception, provided that they did not have a decoder granted by their cable/satellite provider (DVB-T Plan – Draft, 2012). The representative of the cable operators, BACCO, backed by a key satellite provider, Bulsatcom, objected the proposal to allow cable and satellite users to be eligible for the provision of terrestrial set-top boxes. Using the EU’s platform neutrality argument that did not allow discrimination between platforms, the cable and satellite operators demanded that people should be allowed to obtain the set-top box for the platform of their own choice. If not, by favouring a single platform over others, the measure would be incompatible with the EU state aid regulations. The demands<sup>86</sup> of the cable and satellite operators were supported with examples of other EU countries, such as Italy, whose subsidy provisions were found incompatible with the state aid regulations of the EC. The executive seemed to accept the demands of the cable and satellite operators, admitting that it was a compulsory condition for the EC to give approval for a state aid to digital broadcasting (MTITC, 2012). Yet, the final text of the DVB-T Plan still included the stipulation that cable and satellite subscribers were allowed to obtain a set-top box for accessing digital terrestrial signals if they did not already hold a device for reception of digital television provided by the cable and satellite operators (DVB-T Plan, 2012). A month later, however, in the opening of the public consultation on the provision of decoding equipment to poor households, the positions of MTITC and cable/satellite operators had come closer. Referring to “recommendations of the EU, based on experience and established practice in other member states” and “comments, expressed by cable operators during the public

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<sup>86</sup> In addition, their demands included that the terrestrial set-top boxes capable of providing interactive or pay per view services should not be subsidised (MTITC, 2012).

consultation of the [DVB-T] Plan as regards potential distortion of the market”, the executive declared that the Bulgarian government had decided to change the initially intended provision of the decoding devices directly from the state. Instead, the measure was going to be implemented through the provision of ‘vouchers’, on the basis of which recipients could purchase a device for accessing the type of the reception platform of their choice – terrestrial, cable or satellite (MTITC, 2012b).

Indeed the EC approved the measure, noting approvingly compliance with the platform neutrality principle in the scheme adopted by the Bulgarian government (European Commission, 2013c). As already mentioned in Chapter 3, the EC have been more accommodating towards the provision of state resources for DTT transition in CEE countries. In Bulgaria, problems occurred in the practical implementation. Once again, the implementation of the provision of the decoding devices was carried out under very tight deadlines. It was decided that the process should take place in two stages and the MTITC was in charge for organising public procurements for selecting the retailers that had to provide the digital decoders in exchange for the vouchers given by the state. The first stage included the regions of the country where the percentage of households with low income was higher (European Commission, 2013b), mostly northern parts of the country. The provision of vouchers for the poor households in the first stage was reported to be starting as late as 1<sup>st</sup> August 2013 (Body on digitalisation, 24/07/2013), only a month before the announced switch-off date (1<sup>st</sup> September 2013). It was practically impossible, however, to meet the deadline for the provision of vouchers of the second stage. It became clear that the earliest possible date for the start of the second stage was 10 days after the switch-off deadline (Body on digitalisation, 02/08/2013). This necessitated once again an amendment to the DVB-T Plan to be made in the end of August 2013, just a few days before switching off the analogue terrestrial signals. The update of the DVB-T Plan extended the simulcast period by 1 November 2013 and stipulated that the exact switch-off date should be decided within the Body on digitalisation, on the basis of the progress made with the provision of decoding devices (Council of Ministers Decision 494, 22/08/2013).

The postponement of the 1 September 2013 switch-off deadline in the last moment revealed the worries of the stakeholders within the Body on digitalisation, which had, interestingly, excluded the representatives of the cable operators, ABBRO. Nurts Digital, which took over the licence of Towercom to operate the multiplexes on the first phase of the digitalisation, started to complain about being left to carry the whole economic burden of the DTT transition on their shoulders. Because the so-called must-carry broadcasters<sup>87</sup> did not have to pay digital transmission fees during the period of the simulcasting (a policy undertaken to encourage the broadcasters to provide their content on the digital platforms, exempting them from double cost for both analogue and digital transmission), Nurts Digital was concerned that the extension of that period would result in the postponement of collecting the rewards of their investment (Body on digitalisation, 19/07/2013). While, incumbents did not need to worry much for the postponement of the deadline, certain other broadcasters were seen in danger. The (temporary) local analogue licences, some of them issued by CRC in line with the legislative stipulations of 2009 as seen in the beginning of this chapter, were to expire at the end of August 2013 (Body on digitalisation, 19/07/2013; 24/07/2013; 23/08/2013). It should be reminded that those licences granted their owners with the opportunity to obtain a must-carry status, receiving enough frequencies to cover at least 50 per cent of the population in the country. Not meeting the 1<sup>st</sup> September deadline could jeopardise their legal status and as a result their opportunity to transfer to the digital terrestrial platform. Arguably, after all the controversial actions undertaken to allow those broadcasters to obtain terrestrial licences, it was out of question that a further compromise should be done in order to preserve their opportunities. As a result, the updated DVB-T Plan formally granted the right to CRC to extend the validity of the analogue licences of those local television channels (DVB-T Plan, 2013). The demands of the multiplex operators to set a sooner date for switching off the analogue system were also met and the deadline was extended only for a month, till 30<sup>th</sup> September 2013.

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<sup>87</sup> And apart from them, there was no real interest by other TV channels to take place on the terrestrial multiplex. Seemingly, the must-carry broadcasters had also lost their enthusiasm about having their (additional) channels on the multiplex, within roughly three years after all the pressure they had applied to the executive and legislature to grant them with extra broadcasting capacity on the multiplex. This, however, is discussed in the next chapter.

Together with that, the revised plan further simplified the eligibility criteria for voucher beneficiaries, dropping the requirements that the eligible households did not already have decoding devices provided by a cable or satellite operator. Thus, accommodating the demands of the cable and satellite providers in the consultation procedure on the 2012 amendment of the DVB-T Plan, it was only required that the eligible persons were not able to access digital television (DVB-T Plan, 2013).

The provision of the vouchers for the second stage began only on 12<sup>th</sup> September 2013 (Body on digitalisation, 16/09/2013). The first ‘wave’ of voucher subsidies covered 120 000 people in principle, however, it was reported that only 80 000 of them were issued (Organ on digitalisation, 16/09/2013). About three months after the switch-off date, it was reported that the state had given out 169 505 decoders, while there were 46 201 unclaimed vouchers by eligible people who were subscribed to paid services (Organ on digitalisation, 06/12/2013). Leaving aside the numbers, the implementation process was characterised by lack of information as well as lack of control over the usage of the vouchers after being given out. It was reported that there were complaints submitted to the Ombudsman of the country by affected people, according to whom there was lack of sufficient information about the procedure of the voucher provision, e.g. where they could be obtained from and in which stores could be used (Mediapool, 03/09/2013; Granitska, 03/09/2013). More importantly, it was extensively reported that some of those who had received vouchers were trying to re-sell them illegally (Rejeva, 27/30/2013).

In sum, the section, and overall the second part of this chapter, demonstrated an ad hoc decision-making in the last stage of the DTT switchover process. The state managed to accommodate a number of private interests (cable and satellite, multiplex operators, temporary licensees, advertisers, private as opposed to PSB), which, however, did not cooperate among each other. Unlike, countries such as Germany, Sweden, Denmark, where the transition has been delivered through a significant level of industry cooperation and Britain, where “[b]efore committing to DTT, market actors wanted the government to present a full-fledged transition plan”

(Galperin, 2004a: 171), the Bulgarian government relied on ad hoc measures arguably to theoretically complete the switchover and please the EU.

## **6.5 Conclusions**

This chapter looked at the implementation of the Bulgarian DTT broadcasting policy. The first part of the chapter showed that on the eve of the digital switchover, the distribution of the analogue licences was still at stake, giving an opportunity to those who did not manage to acquire a licence between 2006-2008 to obtain one now. This time the analogue licence gave broadcasters also the opportunity to receive a must-carry status provided that the granted licence allowed for 50 per cent coverage of the population of the country. Clientelistic linkages between political and business elites (close to BSP and MRF) contributed to the design of formal rules that guaranteed the outcomes for broadcasters. This took place through a scheme that circumvented the so-called 'joint licensing' procedure that had entitled a leading role to the content regulator CEM in analogue terrestrial broadcasting. The licensing criteria designed by the telecoms regulator CRC did not touch the programming aspect of broadcasting, overlooking the public interest aspects of content provision. In addition, the criteria prioritised already well-established channels, creating barriers for new entrants on the market. The confusing joint licensing rules and the residues of temporary licences provided for interpretative decision-making that allowed the TV2 to apply for licences and as a result win the second most frequencies.

As regards the role of external factors and actors, the chapter demonstrated the use of the EU, and most notably the European Commission (EC), as a last resort due to the weak political and institutional structure. Yet, the EC could not compensate for public interest regulation. The shadow of the Commission was used to accelerate decision-making, which resulted in diminished public debate, transparency, and accountability. Also, the EU action focused on transmission/telecoms aspects and the perceived urgency and importance served to further sideline content and public interest issues in Bulgaria. The only pro-public interest action of the telecoms regulator CRC to reserve a frequency for the public broadcaster BNT initially

announced for private licensing was annulled by the EC on competition grounds. Having said that, however, in line with the Europeanisation literature, this chapter argued that the outcomes of EC's intervention were determined mostly by domestic institutional capacities. In this respect, it was argued that the EU impact was shaped by the 'fitness' of the Bulgarian institutions to manage a transparent and fair competition procedure. The poor (last minute) institutional coordination between BNT and CRC resulted in non-transparent and unfair treatment of other applicants, which in turn involved the EC that returned the disputed frequency to private channel TV Europe.

In addition, the EC's demands have received a 'selective' response by the official policy makers in Bulgaria. The involvement of the Commission in both the analogue and digital licensing did not produce similar results. As regards analogue licensing, the EC managed to put pressure on the government to return the analogue frequency to TV Europe. By contrast, while the Bulgarian government agreed to make legislative amendments to allow a new entrant on the multiplexing market, it disregarded the concerns of the Commission that licensing an extra multiplex operator was not enough to guarantee efficient competition. The Borissov government continued the path dependence on rules established during the preceding ruling coalition and refused to re-do what the Commission called anti-competitive and discriminatory licensing procedures. As shown in Chapter 2, the extent of EU 'adaptation costs' have been important in determining the effectiveness of the rule adoption. The Bulgarian policy-makers put forward that costs of cancelling multiplex licences would result in paying investment damages to the companies that had been granted the licences. However, it could be also claimed that certain 'players' had 'vetoed' any potential action of the state in order to maximise their gains. In this respect, the multiplexes that gradually changed their owners, consolidated under a non-transparent ownership structure, which had been reinforced by strong political-business partnerships. This was confirmed in the next chapter, which in addition had argued that the consolidation of the DTT transmission and the lack of competition in the multiplexing operations contributed to the failure of the DTT system in the country.

Finally, the chapter also looked at the final stages of the digital switchover process, the adoption of the new digitalisation plan (DVB-T Plan) in 2012 and its update in 2013. The decision-making on the Plan and the two examples of its implementation (information campaign and provision of vouchers) demonstrated that, although the operators of the cable and satellite platforms remained in silence throughout the legislative decision-making process, they played a role in its implementation and shaped its outcomes. These players' participation was enabled on the basis of the EU's platform neutrality rules, which were used to demand the toning down of the Plan's aims to expand the terrestrial viewership and prevent the total domination of the cable and satellite broadcasting; the removal of the benefits of DTT vis-à-vis other platforms in the information campaign; the provision of vouchers for decoding devices for the platform of the choice of the eligible household, dropping the requirement that those did not already have set-top-boxes provided by a cable or satellite operator. This part of the chapter, demonstrated the total lack of consensus, cooperation and trust among domestic private players in the switchover phase, while the government (through gradual ad hoc measures) attempted to accommodate the interests of all private players. The inefficiencies of the information campaign and voucher provision were at the expense of the public interest. In this respect, arguably the ultimate aim of the Bulgarian policy-makers became the completion of the switchover process in order to demonstrate to the EU that the process was technically (or theoretically) finished.

## **CHAPTER 7: Outcomes of the DTT transition in Bulgaria. The significance of institutional structures**

### **7.1 Introduction**

This chapter looks at the consequences of the transition to DTT for the Bulgarian broadcasting landscape. It argues that the digitalisation of the terrestrial broadcasting in the country has turned into a missed opportunity both for public service broadcasting to re-gain prominence among audiences, and for commercial broadcasters to enhance viewers' choice. The supposedly public interest aims of the transition to a more advanced broadcasting system, therefore, has not resulted in particular benefits to the general public. The chapter suggests that domestic sectoral factors, such as the high penetration of paid-for cable and satellite platforms, low monthly subscription fees for pay TV viewership and a terrestrial system dominated by socially disadvantaged and economically less profitable segments of the population, have played a significant role in defining outcomes of the transition. However, it has been argued that the sectoral factors and their potential influence on the outcomes of the DTT switchover have not been properly evaluated prior to the start of the decision-making process. As observed in previous chapters, the process has been driven by short-term priorities of incumbent private broadcasters, who have been powerful enough to influence decision-making in their benefit, but whose priorities have later shifted as a result of changed sectoral conditions. In addition, the clientelistic relationships between political and business elites that have allowed (through the legislative actions as observed in Chapter 5 and the inactions of the subsequent government in Chapter 6 certain actors to maximise their gains within the DTT transmission system), drove the system into a situation of complete uncertainty, leaving the state institutions incapable of resuming their power to control outcomes. This has come to a surface following a crack within a close circle of friends, which demonstrated that the reliance of the system on a mutually-beneficial political-business elite nexus was so crucial that once it started to break the result has been impasse and (further) weakness of the state.



## **7.2 BNT: role, funding and programming challenges in the process of DTT transition**

### **7.2.1 Marginal role**

As demonstrated in Chapter 4, after losing its monopoly position in 2000, the Bulgarian public service television BNT was progressively weakened. Contrary to the recommendations of the European Commission on the process of transition to the digital terrestrial television, which prescribed a leading role for the national public service broadcasters, the BNT occupied a marginal position within the policy-making and implementation phases of the switchover. As a consequence BNT remained a weak player in the DTT, both in terms of its financial capabilities and programming provision.

The BNT often had little to say as regards the development of the legislative and regulatory framework, proposed by the executive and formally adopted by the legislature. This reflected the lack of independence of the public broadcaster from political decisions (as also discussed in Chapter 4), most specifically as regards funding. As already discussed, in 2009, within a very restricted timeframe and with very limited participation of the public service broadcaster, the triple coalition adopted the brand new Law on Public Broadcasting (LPB) which required the creation of two companies – a state enterprise for the role of the multiplex operators and a private-public enterprise for building of a new infrastructure for the transmission of the digital channels of the BNT and BNR. The aims of the law were highly ambiguous in that it was not at all clear what were the real motives behind the proposed legislation, which dealt more with commercial (e.g. additional must-carry rules) rather than public service broadcasting issues. It was nevertheless adopted, albeit through extremely conflictual parliamentary debates and questionable voting procedures. However, similarly to the very first radio and television legislation adopted in 1996, the law for digitalising public broadcasting was never utilised. Soon after the general elections in the summer of 2009, the newly elected CEDB government revoked the LPB through an amendment introduced to the Law on Radio and Television (LRT) in late 2009 and the beginning of 2010. The motives of the

amending bill stated that the law on digitalising the public broadcasting system had both legislative and financial “shortcomings”, meaning that the building of a parallel carrier network for the transmission of the signals of the public service broadcaster was considered to be a highly costly endeavour. Therefore, it was announced “unthinkable” at a time of worldwide and domestic financial crisis (Bill 902-01-53, 03/12/2009). The centre-right government of CEDB declared that a new approach should be adopted, requiring minimum state investment. Thus, the executive proposed to introduce a bidding procedure, led by the telecom regulator CRC, to license the spectrum for the planned public multiplex to a private operator. The selected multiplex operator would be able to transmit a maximum of four television and four radio channels of BNT and BNR respectively. Once again, similarly to the adoption of the LPB, the amendment of the LRT as regards public broadcasting went through all stages of the legislative process without serious discussion. Contrary to it, however, the revocation of the law happened also without serious opposition (see, for example, Parliamentary Standing Committee on Culture, Civil Society and Media, 09/12/2009; Parliamentary Plenary Session, 18/12/2009; Parliamentary Plenary Session, 27/01/2010; Parliamentary Plenary Session, 28/01/2010). Most crucially, there were no objections raised by the head of the public service television against the new proposals within the amendment of the LRT. Seemingly, all sides were unanimous that this would be the most “cost effective” way of digitalising the public service broadcaster<sup>88</sup>. Arguably as a result of the protracted legislative process for its digitalisation, the BNT’s role in the transition process was further weakened. BNT fell behind its private counterparts in terms of clarity about the digital transmission of its channels, as the multiplex operator to perform this function for the public service broadcaster was selected a year after the selection for the private broadcasters was completed. While it was in the summer of 2009 when the telecom regulator completed the licensing procedures for the five multiplexes for the transmission of the private channels, the licensee of the public multiplex became known in 2010 (CRC Decision 791, 22/07/2010). The Latvian Hannu Pro (later First Digital) was

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<sup>88</sup> In addition, between first and second reading, the legal basis of digital radio broadcasting was also introduced into the amendment of the Law on Radio and Television. This did not create much discussion and it was accepted as an inevitable step to introduce a legal basis for the provision of digital radio broadcasting on the multiplexes to be established.

selected to operate the PSB transmissions, in addition to its already three multiplexes for commercial broadcasting. The created opportunities for the private operator with the licensing of the public multiplex exacerbated the concentration in the multiplexes in the hands of just two companies, who later ended up under the indirect ownership of the bankrupt banker, Tsvetan Vassilev.

### **7.2.2 Insufficient financing**

The weak positions of BNT have been primarily a consequence of the chronic lack of financial stability. By law, the broadcaster benefits from a dual funding system, including state subsidy and advertising. The latter accounts for less than 15 per cent of its budget. The Fund for Radio and Television, introduced in the media legislation in 1998, was expected to guarantee increased political and financial independence, by collecting television taxes from households through their electricity bill. Yet, as it was pointed out in Chapter 4, the operation of the Fund was never put into practice. More than a decade later, it was openly admitted what had been known for many years, that there had never been a genuine “political will” for the implementation of the Fund (Standing Parliamentary Committee on Culture and Media, 07/11/2013). It remained a dead project in the legislation, and its implementation was postponed every year at the time of the adoption of the state budget for the following year. As a result, the funding of the national public service television depended on budget allocations by the ruling governments, decided on an yearly basis. This has partly explained why BNT has not been active in policy deliberations. The fluctuations in the yearly subsidisation of the public service media, including the media regulator CEM, have demonstrated the unstable financial base of BNT since the beginning of the discussions for the transition to digital broadcasting (see table 7.1 below). As seen from the numbers, the increase has not been stable and predictable. This made planning impossible. In terms of advertising income, BNT’s revenues have been insignificant in comparison with the revenues of the private incumbent broadcasters, bTV and Nova TV. For example, it has been cited that BNT’s six-month advertising income have equaled the income of bTV’ weekly income (Standing Parliamentary Committee on Culture and Media, 07/11/2013).

In comparison with other CEE countries, the budgets (public funding) of the PSB in other CEE countries, such as Romania, Slovakia, Slovenia, Croatia, Czech Republic and Poland, have been between two and eleven times higher than in Bulgaria (Standing Parliamentary Committee on Culture and Media, 07/11/2013).

**Table 7.1 State subsidies (approximate values) to BNT between 2007-2014 (in £ millions)**

2007	2008	2009	2010	2011	2012	2013	2014
22	24	28	22	22	25	25.5	23.6

Source: Based on yearly amendments to the Law on State Budget, available at the Bulgarian Law Portal (lex.bg)

Justifications for the amendment of the state subsidy have been various. At the discussions for the BNT's funding for 2007, the representative of the Ministry of Finance pointed to the EU as a factor for the decision of the proposed budget allocations. As Bulgaria became a member of the EU in 2007, the member state was eligible for EU funding from structural funds that could be spent only on certain policy areas which, however, did not include broadcasting. Thus, the Ministry of Finance argued that the state budget was oriented towards the priority areas of the EU, which had the chance to be developed with the help of the EU money, while television as a member state competence could rely only on national budget subsidies (Parliamentary Standing Committee on Civil Society and Media, 09/11/2006). Without much leverage power and any expectations to introduce amendments to the proposed amount, the then Director General of BNT, Ulyana Prumova, complained about the insufficiency of the allocated budget to cover the full amount of the TV's production output and the services of the intended new satellite channel for the Bulgarian diaspora abroad. In addition, she also used the EU to argue that it was high time that the Bulgarian politicians decided on the role of public service broadcasting within the society and thus, its adequate funding. In relation to this, Prumova, referred to her embarrassment when having to accept the remarks from EU officials of the calibre of Viviane Reding, the then Commissioner of Information Society and Media, questioning the 'public' character of a broadcaster that had been funded by

state subsidies (Parliamentary Standing Committee on Civil Society and Media, 09/11/2006).

For 2008, the BNT requested BGN 12 million (approx. £ 4.3 million) additional state subsidy for the start of the television modernization process (Parliamentary Standing Committee on Civil Society and Media, 08/11/2007; Parliamentary Standing Committee on Civil Society and Media, 15/11/2007), including the technical equipment and the digitalisation of BNT archives in preparation for digital switchover. None of the participants of the parliamentary media committee meeting, including the representatives from the Ministry of Culture and the regulator CEM, showed confidently their support for the requested amount, perhaps knowing already that it was not feasible. As a result, a marginal increase of the budget for 2008 was provided instead, and extra BGN 16 million (approx. £5.8 million) for the digitalisation needs of BNT was promised for the next year, 2009. The promise was kept and, as seen from Table 7.1, of the seven-year period between 2007-2014, BNT's budget reached a peak in 2009. The then chair of the parliamentary media committee, Ivo Atanasov (BSP), proudly highlighted that even though the country was in recession as part of the global financial crisis, there was an increase in the budget of the BNT (Parliamentary Standing Committee on Civil Society and Media, 12/11/2008). In fact, however, the 2009 general elections were approaching in half a year time and it could not be excluded that the real reason for the generous sum was the upcoming voting for parliamentary representatives. A strong rival (CEDB) had occurred, but the triple coalition had demonstrated that they were eager to seal their domination over public broadcasting, through the 'state' multiplex, as they called it (emphasising a closer control over it by the state). As expected, CEDB eventually took over the political power. The budget for 2010 was drastically decreased to the amount of the budget of three years ago (in 2007). The decrease accounted to just over BGN 16 million (Parliamentary Standing Committee on Culture, Civil Society and Media, 04/11/2009), which equaled the extra sum granted by the triple coalition a year ago. The justification for the change was simple: it was the state of recession in which the country had entered.

The decrease of the state subsidy for BNT affected mostly the long-suffering area of BNT's function – the transmission side. During the discussions for the 2011 budget, the new BNT Director General, Vyara Ankova, revealed that the debt of the television towards the incumbent carrier, the BTC, was estimated to come to BGN 18 million (£6.5 million) by the end of the year (2010) (Parliamentary Standing Committee on Culture, Civil Society and Media, 27/10/2010). According to her words, 70 percent of the expenses for one-hour production were spent for the transmission service. The transmission has been BNT's biggest burden since the privatisation of the Bulgarian Telecommunications Company (BTC). In order to compensate for the loss of a considerable amount of the state subsidy for BNT, yet sticking to the idea of minimum state intervention, a few of the CEDB parliamentarians in the media committee, undertook one of the toughest endeavours for media policy-makers in Bulgaria to tackle – unblocking the prime time advertising time restrictions for BNT. It was a measure undertaken to allow the BNT to make its own money since the state could not give more public funds for financing the broadcaster (Bill No: 154-01-55, 08/06/2011). The law had allowed BNT to offer a total of 15 minutes advertising time per day, yet it was restricted to a maximum of five minutes during the prime time from 7 pm. to 10 pm. In the words of BNT's Director General, Vyara Ankova:

The problem with the [...] limiting effect of this law towards the Bulgarian National Television is clear. [...] it was created with the aim to allow the private TVs to develop, and to be honest, with an absolute right, because the Bulgarian National Television held a monopoly position for many years and for me there was a need for a similar constriction of the law [...]. (Parliamentary Standing Committee on Culture, Civil Society and Media, 15/06/2011).

According to her, however, this has turned into a restrictive factor over the budget of the public broadcaster. The proposal of the CEDB parliamentarians to lift up the ban was embraced by both the opposition and the ruling party, ignoring the protest of the private incumbents, bTV and Nova TV, that such a movement would shake the bases of television market especially at the time of shrinking advertising revenues for the private players due to the global recession (bTV's Representative, Parliamentary

Standing Committee on Culture, Civil Society and Media, 15/06/2011). Furthermore, Nova TV's legal adviser warned that the broadcaster would use any available measures, including legal, to fight against the undertaken action of the parliament as regards the advertising time changes of the public service television, arguing that that was "unfair competition". The legal adviser also mentioned the term "state aid", implying that the amendment of the law could also be in clash with the EU state aid principles. The line of argumentation of Nova TV's representative revealed the idea of the private players as regards the place of public service television in the country: "The Bulgarian National Television has to be a public television that should deal with certain type of programming and should be financed by the state" (Parliamentary Standing Committee on Culture, Civil Society and Media, 15/06/2011).

Although the media regulator, CEM, refrained from showing a direct support for the unblocking of prime time advertising on public television, the chair of CEM reminded that the digitalisation was coming and thus consideration of ways for the subsidisation of new content that would be expected from the television to produce in the digital environment. The parliamentarians were determined to pass the amendment, as they had also seen it as a chance to compensate for the reduction of the public television's budget. As the words of the then opposition MP and former Minister of Culture in the Stanishev government, Stefan Danailov, revealed in reality it was the missing sum of about BGN 17 million that they were trying to find (Parliamentary Standing Committee on Culture, Civil Society and Media, 15/06/2011).

The first round of voting in the plenary on 30<sup>th</sup> June 2011 went similar to that at the media committee (Parliamentary Plenary Session, 30/06/2011). There was no strong opposition for the amendment and it was adopted. This was the end of the initiative, though. The second reading of the amendment never happened, as arguably the private broadcasters blocked its way, and the 5-minute advertising limit in BNT's prime time remained intact.

On 1<sup>st</sup> October 2013, the day after the analogue broadcasting was switched off in the country, CEM members approved a proposal put forward by BNT for an increase in the television's state subsidy for developing its digital channels. Once approved by the media regulator, however, the proposal had to go to the Ministry of Finance, which was in charge of drafting the annual budget bill and that was later voted by the Parliament. Contrary to the requested increase in the budget of the public service television, which as it became clear from the parliamentary media committee meeting amounted to BGN 18 million, BNT's budget for 2014 was cut by BGN 5 million for 2013, decreasing it to BGN 65 million (Standing Parliamentary Committee on Media, 7/11/2013). Both the management of the television and the chair of the media regulator CEM, Georgi Lozanov, protested against the budget cut. According to Lozanov, this was unacceptable as the TV was already under-subsidised. He argued that any further restrictions of the TV's finances were against the logic of the transition to the digital broadcasting, which demanded the public broadcaster to offer additional programming content in order to increase its competitiveness in the digital environment (Standing Parliamentary Committee on Culture and Media, 7/11/2013). In line with the words of Lozanov, BNT's management also referred to the EU as both an opportunity and a responsibility for the Bulgarian state to introduce clarity to the role of public media in the digital era and decide on adequate funding for carrying out their service. BNT reminded that it was the state's "engagement" towards EU to move from analogue to digital broadcasting, implying that the state should take its responsibility for the successful transition of the public service television, once it has aligned itself with the EU switchover demands (Standing Parliamentary Committee on Media, 7/11/2013).

There were cuts in the subsidization of the work of the media regulator, CEM, as well. The cut in the regulator's budget has been argued to affect the state of the media regulation in the country. In the words of Lozanov:

In fact, the [media] regulation starts to become a formality, just to have CEM and *some sort of an institution*, but it cannot have a real activity and practice (Parliamentary Standing Committee on Culture and Media, 7/11/2013, emphasis added).



The parliamentary media committee did not pass the proposed budget bill for 2014. However, the chair of the then media committee, Stefan Danailov, commented that their refusal might not change anything, as it had happened in other instances in the past (Parliamentary Standing Committee on Culture and Media, 7/11/2013). Indeed, the plenary passed the proposed budget bill without providing an increase for the budgets of the public service television and the media regulator (Parliamentary Plenary Session, 03/12/2013).

Contrary to the expectations for less expensive transmission costs in comparison to the analogue service, the move from analogue to digital system did not relieve the burden of the BNT's budget expenses that were paid for the telecommunications transmission services. The transmission costs continued to be one of the largest expenses for BNT. Yet, they did not even include the transmission of regional digital broadcasting, which was abandoned as a result of the delays and legal complications of the transition process and justified with the involvement of EC. As already pointed out in Chapter 6, the decision of the Bulgarian executive to introduce one more, a seventh national multiplex, after the initiation of the EC's infringement procedure was claimed to be the reason for the lack of free spectrum. Solution for the provision of regional programming was found with the creation of BNT 2 in 2011, which included in its programming schedule regional/local news editions (CEM Minutes, 06/03/2014). Seemingly, the EC's involvement into the Bulgarian digitalisation process had its indirect effect on the diversity of content provision of both public and private broadcasting. This, however, had never constrained BNT from referring to the recommendations of the EU audiovisual regulation as regards public broadcasting, in order to demand adequate *European* treatment of the television, as a member of the EU since 2007 (Standing Parliamentary Committee on Culture and Media, 7/11/2013).

In February 2014, in preparation for the winter games in Sochi, BNT added another channel to its portfolio, obtaining a programming licence from CEM for a mixed entertainment and sports channel on an HD format, BNT HD. Although the public service television had not fully developed its programming scheme in a long-term perspective, the members of the media regulator agreed anyway to grant the BNT

with the requested licence following what was established as a formal procedure (CEM Minutes, 04/02/2014). Currently, BNT provides content within four channels, BNT 1 (generalist), BNT 2 (combining the former four regional channels), BNT HD (sports/entertainment) and BNT World, which is a satellite channel targeting Bulgarian diaspora abroad.

The problem of adequately financing original content as well as covering the high transmission expenses, however, continues to remain unsolved for the public service broadcaster. In March 2014, the head of the television reported that the 5-minute limit for advertising in the prime time of BNT was still one of the key challenges of the mixed subsidisation model of PSB in the country, as outside its prime time the television could not attract enough advertising (CEM Minutes, 06/03/2014). Presumably the audience share of BNT has played a role in this. In 2014, BNT had about 6 per cent, while bTV and Nova TV had 31.3 and 29.1 per cent of the audience share, respectively (MEDIARESEARCH Bulgaria, 2014: 9).

In September 2014, after the resignation of the Oresharski government<sup>89</sup>, the caretaker government agreed to release BGN 5 million (approx. £2 million) to cover its debt of carriage costs to the multiplex operator First Digital (Antonova, 08/09/2014). According to the press, the extra 5 million was in fact the money cut from the Oresharski government for BNT's 2014 budget (BGN 65 million, approx. £25 million), as compared to 2013, when the television was allocated BGN 70 million (approx. £26 million) state funding. Therefore, the caretaker government was giving back the money cut for 2014 (Antonova, 08/09/2014). Interestingly, the addition to the state subsidy of the broadcaster happened once again when election time was approaching - just a month before the scheduled general elections in October 2014. The caretaker Minister of Finance proposed giving some extra BGN 105 000 (approx. £40 000) for CEM as well (Council of Ministers Minutes 38, 17/09/2014). The words of the minister, however, revealed greater concern for the

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<sup>89</sup> As discussed in Chapter 4, after the resignation of the CEDB's Borissov government in spring 2013, the following early elections resulted in the return to power of the old coalition partners, BSP and MRF, united under the technocratic government of Prime Minister, Plamen Oresharski.

performance of the BNT in the upcoming elections, rather than the actual debt of the television as regards digital transmission. To quote,

The television was in an extremely difficult situation; we gave them one additional requirement – to create a correspondent point in the Western Balkans, in particular in the Republic of Macedonia. CEM has to carry out its [monitoring] functions on the eve of the elections. This is of huge importance. (Council of Ministers Minutes 38, 17/09/2014).

Overall, BNT was not allowed to play a leading role in the Bulgarian transition to digital television as suggested by the EU policy proposals and the experience of some other European countries, where the transition has been concluded in a more effective manner. The state in Bulgaria was never interested in a partnership with the public television in delivering the switchover process, as it happened, for example, in the UK. Rather, BNT was often left without much say in the policy-making process, and its positions were taken into consideration only when there was a key political interest for realisation. As illustrated in Chapter 5, this was demonstrated with the passing of the LPB, a legislative initiative to bring back the state into the broadcasting and telecommunications sectors through the creation of a completely new transmission system of the BNT's digital channels. A law, which also legislated how much and what should be given to the private players, speculatively linked to the then ruling coalition, rather than the future of the public service television in the digital reality. When the government changed, it revoked the law on public television, which resulted in a period of uncertainty over who would be carrying out the multiplexing service for the channels of the national public broadcaster. Besides, there were the financial aspects of the broadcaster – the uncertainty and chronic lack of funding. The financial difficulties of the broadcaster were revealed mostly in relation to the coverage of the transmission fees paid to the BTC in the analogue era, and later to the multiplex operator. The expectations for lower charges in the digital age were not realised, as there was no utilisation of the capacity of the multiplex in terms of additional channels, which could potentially bring down the expenses paid for transmission for the full capacity of the provided multiplex for BNT. Some form of additional funding corresponded with election times, while legislative attempts to

unblock advertising restrictions on the most attractive prime time hours of the television failed.

### **7.3 The Bulgarian DTT model starts backsliding: lack of interest in content provision**

Just six months after the switch-off of terrestrial analogue broadcasting in September 2013, the introduced broadcasting model in the country began to fail. Already prior to the switch-off date, there were tensions in the relationship between the broadcasters and the multiplex operators. The legal adviser of Nurts Digital warned on 13<sup>th</sup> September 2013 (2 weeks before the updated switch-off date) that the operator was not able to collect payments for its service from the broadcasters and was asking the state, through the Body on digitalisation, to intervene in order to resolve the issue (Body on digitalisation, 13/09/2014). The lack of enthusiasm in the broadcasters to provide their content for distribution on the digital platforms and, thus, become present on the digital terrestrial system was clearly noticeable.

Six months after the switch-off of analogue signals, in March 2014, bTV filed a request for withdrawing two of its catch-up channels - bTV Lady+1 and Ring+1, from the Nurts Digital's multiplex, leaving there only their main bTV channel. The two channels had a must-carry status, given to the associated channels of the incumbent broadcasting operators, in accordance with the legislative amendments introduced by the triple coalition. This was unpleasant news for the media regulator, CEM. The regulator (although not with the awareness of all its members) initially postponed putting the issue on its agenda (CEM Minutes, 20/05/2014), arguably trying to gain time and avoid panic and expressions of irony in the public sphere for the clearly failing digital terrestrial system in the country. The request of bTV was introduced to the CEM's agenda on 25 March 2014; however, the voting of the decision was postponed for the following meeting of the board members of CEM, as the regulator wanted to hear first the arguments of bTV (CEM Minutes, 25/03/2014). The meeting on 1<sup>st</sup> April 2014 included not only the bTV management, but also representatives from the multiplex operator Nurts Digital and the association of

Bulgarian commercial broadcasters, ABBRO, where BTV was a member (CEM Minutes, 01/04/2014).

CEM attempted to use a public responsibility discourse to establish some sort of pressure on bTV to withdraw its request for the suspension of the two licences. The digitalisation was portrayed as a social project, and not only a technological transition, in which the broadcasters were expected to partner with the public authorities in order to deliver a successful transformation of the broadcasting system in the country (CEM Minutes, 25/03/2014). CEM's chair, Georgi Lozanov, argued that the digitalisation of terrestrial broadcasting in Bulgaria was so far only technologically completed; yet, its "socialisation" was still to happen (CEM Minutes, 25/03/2014). The fact that there were 31 channels (already available on cable and satellite platforms) licensed for digital terrestrial broadcasting, of which only 11 were providing their content on the digital terrestrial platforms was highly worrying for the content regulator, CEM. This happening on the background of five multiplexes (each multiplex could carry up to 10 channels) available for commercial broadcasters, plus one multiplex for the public service broadcaster. Therefore, if the licences of the two bTV channels were suspended, the total number of television channels available on those multiplexes, including the public service television, was to be only nine. Moreover, a bigger concern for CEM was the potential 'domino effect' the withdrawal of the two channels could create in the provision of broadcasting content on the digital terrestrial platform, by encouraging other incumbent broadcasters to withdraw their supplementary channels as well. Once suspension was granted by CEM for the first two licences, it would be difficult to stop the rest, in case they decided to withdraw following the example of bTV.

Furthermore, CEM was worried that the burden of the responsibility for sorting out the provision of content on the digitalised terrestrial system might fall upon them, although CEM had simply followed the established legislative and regulatory framework that anyway had granted them with a much restricted role compared to the telecom regulator CRC. The decision-making now was hanging on CEM's shoulders, while CRC could participate by giving a formal statement only (CEM Minutes, 07/04/2014). CEM was put in a position between two types of players – the

broadcasters and the multiplex operators (CEM Minutes, 07/04/2014), and any decision in any direction would affect one side or the other. The regulator expressed their discontent with the fact that after all, the content regulator was left with the mess and was situated in a position to try and find a solution that would hopefully not show CEM as the only responsible for the state of DTT in Bulgaria. It therefore tried to create a broader public and inter-institutional debate about the issue. The case was referred to the Body on digitalisation, where all relevant stakeholders participated. Apart from the Body on digitalisation, which was part of the executive (the Ministry of Transport, IT and Communications), CEM was hoping to create pressure for the intervention of the legislature and the introduction of legislative changes to help with the solution of the case. With a note of criticism towards the legislature, Lozanov openly admitted that the established framework had been problematic already from the beginning (CEM Minutes, 07/04/2014). The other members of CEM used other arguments to express that criticism. The opinions expressed by the members of the regulatory body revealed that they were aware of the shortcomings of the Bulgarian model, but arguably they had to carry on playing the game vis-à-vis the rest of the stakeholders and observe the consequences.

The CEO of bTV gave a relatively short reasoning for bTV's decision to request the withdrawal of the two channels. According to him, it was the change of "circumstances" that took place between 2009-2014 that led to that outcome. The advertising market had shrunk by 40 percent in the past five years and the two thematic channels could not attract enough advertising to sustain their programming. bTV did not want to pay the terrestrial multiplex operator for broadcasting content with minimal opportunity for monetisation, having in mind that cable and satellite platforms were instead paying bTV for its content. Therefore, bTV's management was not particularly touched by the public responsibility arguments expressed by CEM, pressuring the broadcaster to keep the two channels on the multiplex platform. In the words of the bTV representative,

... I think in terms of the law. Does bTV have a right to do this? Does the regulator have a right to judge or not? All other nuances – public interests, etc., we recognise them, but they are not part of this the current [conversation]. (CEM Minutes, 15/04/2014).

Thus, when CEM members were eagerly waiting to hear whether the incumbent broadcaster had any other strategic intentions to take part in the digital terrestrial platform, e.g. introducing any other channels instead, bTV made it clear that they did not have any vision for further participation. The broadcaster attempted to argue that it had two more licences (for Novella and BTV Action (formerly TV2)) that could potentially be used in the so-called second phase of the digitalisation, the supposedly consolidation stage, which, however, could not be envisaged clearly. Yet, the broadcaster said that they did not know what would happen in the future, besides their present willingness to suspend the licences of the two channels (CEM Minutes, 01/04/2014).

CEM postponed taking a decision for several sessions, informing that the body needs extra time to “gather information” (CEM Minutes, 15/04/2014), which was an attempt to broaden the venue of the discussions and create the possibility for either the executive or the legislature to intervene. This, however, could not continue longer. There were deadlines stipulated in the media legislation for CEM taking similar decisions, and bTV was impatient to receive the suspension. The broadcaster filed a complaint with the SAC against CEM’s delayed decision-making on their case (CEM Minutes, 08/05/2014; Mladenova, 25/04/2014). bTV had also already warned the media regulator that they would bring the case before the EC, if the decision was not made in due time (CEM Meeting, 15/04/2014).

The worries of the broadcaster for the extended decision taking process of CEM were in fact groundless. Although CEM managed to extend the process in time and involve the Body on digitalisation in it, the media regulator knew from the beginning that it did not have any other alternative except to give bTV what they wanted. CEM had no other option but to grant the broadcaster with the requested suspension of the licences, as the law had stipulated that upon the request of the content providers, the media regulator should suspend their programming licences. Thus, Lozanov admitted that the discussion they were trying to have with the management of bTV was a purely “symbolic” (CEM Minutes, 01/04/2014). CEM attempted to shake the ground and create some sort of public discussion and use its pressure to force bTV to rethink

its decision. However, there was no other institutional development on the horizon that could strengthen CEM's position. The Body on digitalisation was supposed to gather the positions from the participating parties, including the communications ministry, the other broadcasters, the multiplex operators and the telecoms regulator, in order to take a common decision (Body on digitalisation, 15/04/2014). However, nothing came as a result of that exercise. The positions were collected, but there was no information on any further action of the Body. According to the explanation of the member of CEM, Ivo Atanasov<sup>90</sup>, the Body held two sessions to discuss the case of bTV, but later it was forgotten (CEM Minutes, 16/09/2014), as in the meantime the Oresharski government was forced to resign and the country entered into a period of political instability.

The demands addressed towards the Body on digitalisation were beyond its powers to decide (Antonova, 23/05/2014). In fact the so-called body served only as a platform for stakeholders to meet, exchange information and report on key issues. The requested amendments needed higher decision-making authority. The multiplex operator Nurts Digital demanded the must-carry rules to be suspended, so that the multiplex operator would not be *obliged* to broadcast channels of content providers or to reserve capacity for them, and be able to offer it to pay TV channels and get money from them. In addition, the company demanded the state to look for ways of funding digital broadcasting, proposing options such as 1) allocating EU money from structural funds; 2) creating a special fund, financed by the state budget as well as household fees, which could be used for financing the television channels in order to be able to pay the multiplex operators for their service; 3) tax relief for the television channels, that used the services of Nurts Digital; 4) broadcasters to be given opportunity to buy shares of Nurts Digital (Antonova, 23/05/2014). These were reported to be the proposals of the multiplex operator that had a licence for providing service to private broadcasters only. Most importantly, however, the operator in charge of the transmission of the channels of the public service television BNT - First Digital, suggested that the state should buy back the multiplex network and

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<sup>90</sup> Ivo Atanasov was formerly an MP from BSP, who chaired the parliamentary media committee during the rule of the triple coalition. In 2013 he was elected as a board member of CEM.



grant it to BNT instead (Antonova, 23/05/2014 and 16/05/2014). Those were issues the Body on digitalisation could not possibly address on their own.

CEM had realised that even if the state initiated legislative changes, this could not happen immediately as the situation required, that is before CEM had withdrawn the bTV licences (CEM Minutes, 24/04/2014). Therefore, CEM could not any more resist the pressure from bTV to finally announce their decision, which could be nothing but granting the suspension. Indeed, on 20<sup>th</sup> May 2014, although none of its members were formally favourable to the outcome, CEM voted in favour of the suspension following the established rules which restrained their ability to decide otherwise. As the chair of the regulator expressed, the decision was not a “good step” as regards the future of the digitalisation, but they had to take it in order to at least be in line with the law (CEM Minutes, 20/05/2014).

A few months later, in September 2014, the fears of CEM for a potential domino effect became real. Although the second incumbent broadcaster Nova TV had declared at the meetings of the Body on digitalisation that they did not intend to withdraw channels from the digital terrestrial platform, their determination to stay on the platform did not persist. About a year after the analogue terrestrial television was switched-off, the second incumbent broadcasting operator Nova TV requested the suspension of the licence issued to its thematic Diema Family channel that was available together with the main Nova TV channel on the digital multiplex. As with bTV, and even more now, the suspension discussion between CEM and Nova TV’s representatives at the premises of the regulator was only a formality. “[A]dministratively, there was no obstacle” for the licence to be suspended, as it was already shown with the bTV Lady +1 and Ring +1 cases (CEM Minutes, 16/09/2014). Nova TV gave the same purely commercial reasons for the request for withdrawal from the Nurts Digital multiplex as bTV did, namely the downfall of the advertising market and the inability of the channel to attract enough advertising in order to maintain its activity. In addition, the channel was already delivered through the cable and satellite platforms, which covered the same amount of population. Thus, according to Nova TV’s management the terrestrial platform did not bring the broadcaster additional number of viewers to justify their presence on the platform.

For the broadcaster, there was no business logic to pay for the transmission of the channel that had very low rating and did not attract advertisers, when instead the delivery of the channel on the pay platforms brought financial benefits (CEM Minutes, 16/09/2014). Within a short time, on 25<sup>th</sup> September 2014, the licence of NOVA's Diema Family+1 was suspended with the unanimous decision of CEM (CEM Minutes, 25/09/2014).

According to the most recent reports, from all licensed broadcasters (31 in total), only 5 (besides the public channels) have actually made available their programmes on the free DTT platform (CPC Decision 279, 24/03/2015). It has been admitted by key institutional actors that the DTT transition in Bulgaria has not met one of the universal public interest aims of the analogue switch-off, that is the provision of additional and more diversified content to audiences (although often understood as plurality of media outlets as opposed to content diversity). The number of families using the terrestrial platform has continued to drop and come to below 20 percent (CPC Decision 279, 24/03/2015; CPC Decision 467, 03/062015). According to a Eurobarometer report released in January 2014, the DTT is accessed in 17 percent of the households in the country. The preservation of the number of the terrestrial viewers, as aimed by the 2012 DVB-T Plan, seems difficult to accomplish with the continuing penetration growth in alternative platforms, such as cable, satellite and IPTV and the problems encountered by the DTT platform (see, Eurobarometer Report, 2014; CPC Decision 467, 03/062015). Below I summarise the major sectoral factors that have had influenced the failure of the DTT take-up in the country and provide the structural explanations behind.

#### **7.4 Sectoral factors and structural explanations**

To begin with, in Bulgaria the process of digitalisation was not market-led. It was not the domestic broadcasting players that initiated the digitalisation of analogue terrestrial television as a more technologically advanced system. This has meant, as recognised by some CEM board members, that the DTT transition in the country has not followed a natural process of market development and market decisions (CEM

Minutes, 16/09/2014). As seen also in Chapter 5, incumbent broadcasters together with the then temporary terrestrial licensees embraced the digitalisation narrative of the telecom regulator CRC (as an international requirement) while trying to block CEM initiatives to licence analogue TV channels. In this respect, the introduction of DTT was a means to stop extra competition in the name of more analogue channels. At the meeting with CEM in relation to the withdrawal of their complementary channel, Nova TV's statement revealed that domestic incumbents perceived the DTT as a forceful agenda that the EU imposed on the national broadcasters, while they felt they "did not need it" (CEM Minutes, 16/09/2014). According to Nova TV's lawyer, however, they did not oppose it either, as it was accepted as a key EU requirement for a nationwide television to take part in the DTT (CEM Minutes, 16/09/2014).

In addition, another CEM member, the former MP, Ivo Atanasov, attempted to link the problematic DTT transition in Bulgaria to its origins beyond the EU, i.e. the ITU. Already during the discussion of the bTV case, Atanasov drew attention to the fact that the Bulgarian state was allocated more spectrum for digital broadcasting than they expected to receive initially (CEM Minutes, 01/04/2014), which at that time brought great satisfaction both to the government and private players, however, its utilisation subsequently failed. As seen below neither of the multiplexes planned for the first phase of digital transition have been utilised in full capacity. According to Atanasov, Bulgaria received from the ITU in 2006 more than what the state expected and could handle (Atanasov, 26/04/2014).

The external factors (EU and ITU) however were only part of the story. Domestically, there were a number of sectoral factors that played a decisive role in the transition process and its observed outcomes. As mentioned separately in Chapter 3, García Leiva, Starks and Tambini (2006: 41-42) and García Leiva and Starks (2009: 803) have argued that factors such as market size, extent and strength of terrestrial, cable, satellite viewership prior to DTT switch-off, role of PSB, the degree of competition among broadcasters as well as the availability of pay DTT services along with free to view offers, have all influenced the transition outcomes worldwide. Yet, looking beyond the above factors that 'seem' as direct cause for the outcomes of the DTT transition in Bulgaria, it is argued here that the domestic

institutional capacities, the relevant powers of actors, and the characteristics of policy-making have ultimately shaped the extent of influence of those factors.

To start with, the first factor that the stakeholders of the DTT transition recognised to have an effect on the outcomes of the process was:

- 1) High pay TV platform viewership - mainly cable and satellite, but also an increasing penetration of IPTV

According to the latest statistics, cable and satellite platforms are present in about 85 percent of the households in the country (CPC Decision 279, 24/03/2015; CPC Decision 467, 03/062015). Satellite viewership has continued to grow in the last few years, from 6 percent in the end of 2009 to 32 percent by January 2014 (Eurobarometer Report, 2014: 65). The decrease in analogue cable reception has been offset by the steady growth of digital cable reception which increased from 15 percent in the first quarter of 2011 to 33 percent in January 2014. According to Eurobarometer, cable television (analogue and digital) amounts to 53 per cent penetration of households. Thus, together with satellite television, subscription-based television reception reaches 85 percent of the households. IPTV has also increased its presence in the country. Although still quite low, the penetration of broadband-based television services reached almost 5 percent in 2013 (CPC Decision 467, 03/062015), while only a mere 0.5 percent of the households subscribed to IPTV in 2010 (Antonova and Georgiev, 2013: 16).

More importantly, the terrestrial platform in Bulgaria was used predominantly by socially and economically disadvantaged households (CPC Decision 279, 24/03/2015). Thus, as also implied by bTV and Nova TV above, broadcasters had little stimulus to pay transmission fees for reaching those households, which were unlikely to attract private advertisers.

Besides this, however, as admitted by the former chair of the parliamentary media committee during the mandate of the triple coalition, Ivo Atanasov (currently a board member of CEM), during the planning phase of the legislative and regulatory

frameworks for the DTT switchover, the policy-makers and private stakeholders missed to acknowledge the extent of the cable and satellite domination in the country (Atanasov, 26/04/2014). More precisely, as seen in Chapter 5, the characteristics of the national broadcasting sector were indeed taken into consideration when reasoning the legislative proposals giving opportunity to a single operator to acquire three multiplexes. The (wrongly) calculated benefits of this model, however, backfired when the Stanishev government allowed for, and the Borissov government maintained inactivity towards, the growing ownership and market concentration of multiplex operators and the monopolisation of the transmission market. It is important to remind the reader that the policy-making process consists of not only policy actions, but also inactions and policy silences that produce benefits for some and constraints for others (Freedman, 2010; 2014). A point that has been noted also in the previous chapter as regards the response of the Bulgarian state to the EU's infringement procedure. As discussed further below, the concentration in terrestrial transmission arguably resulted in increased charges, which contributed to withdrawals of television programming from the multiplexes (see, also Kapital, 10/07/2015). In the words of Nova TV's lawyer the process was explained as follows:

... Without [clearly] defined rules some [multiplex] operators were selected. After that, some scandals started around the companies that won [the multiplex competitions]. They were told to be offshore companies; it was not known which [offshore] company owned which multiplex. As a whole, [the process] developed in the worst possible way. (CEM Minutes, 16/09/2014).

This was in short how Nova TV saw the development of the digitalisation in the country. However, at the time of the policy formation, none of the terrestrial broadcasters brought up as an issue the low free-to-air terrestrial and high pay TV penetration in the country. Moreover, as Atanasov reminded, both bTV and Nova TV had fiercely fought to obtain more broadcasting capacity in the multiplexes. The then chair of the parliamentary media committee admitted that there was indeed huge pressure from the broadcasters towards the legislature to include more must-carry opportunities in the legislation (CEM Minutes, 01/04/2014). The revelations of Nova

TV's lawyer confirmed how the must-carry legislation was developed at the time of the triple coalition:

I participated in all negotiations when we were discussing that problem again at the Council of Ministers. It sounds a bit childish, but we wanted to be equal with bTV, because one famous advertising boss, through lobbying had managed somehow to guarantee six [must-carry] channels for bTV, and four for us, which, as you would remember, did not happen<sup>91</sup>, because we simply fought as usual. Then, when we had the negotiations, none of us knew what the prices would be like today. We wanted to have equal terms then, but after that none of us knew how exactly the multiplexing market would be structured; we did not yet have the multiplex operator as a clear subject at that time. (CEM Minutes, 16/09/2014).

Thus, the high penetration of cable and satellite as a factor, although highly relevant, seems to have not been taken genuinely into consideration. The primary interest at stake has been the distribution of resources (either multiplexes as such or their capacity) that could potentially guarantee long-term domination and market power over competitors.

## 2) Low subscription fees for pay TV platforms

Although still high, the decline in cable subscription in comparison to the growth of the satellite television in Bulgaria has been related to the lower price rates offered by satellite operators. According to IHS data, in 2010 the satellite TV operator, Bulsatcom<sup>92</sup>,

cut the price for its basic package with about 20 pay channels and ten free from BGN10.80 (€5.70) to BGN5.80 (€3.00), although the price has since risen to BGN6.80 (€3.60). By contrast, entry-level prices on cable start from

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<sup>91</sup> They received the right to have equal number of must-carry channels broadcast on the multiplexes.

<sup>92</sup> Bulsatcom also has a multiplex licence, granted as a result of the started EU infringement procedure, demanding the country to provide an opportunity for more players to enter the DTT transmission market. Bulsatcom has not utilised its licence and it has not established a multiplex network so far.

BGN15.00 (€7.90) to BGN20 (€10.50) for over 50 analogue channels. Because of the tough economic conditions a number of cable TV subscribers jumped to Bulsatcom's low-cost offer with a further boost coming from Bulsatcom's fibre optic cable Internet roll-out that started in 2010 and bundles fast broadband at competitive speeds and prices. In the case of the two other satellite TV operators prices start from BGN11.80 (€6.20) for Vivacom's offer to BGN38.00 (€20.00) for HD-focused Satellite.BG. (IHS Technology, 27/02/2013).

The prices are affordable for Bulgarian citizens, although their income is the lowest within the EU. The low prices, the delays in the introduction of DTT prior to 2013, and the characteristics of its distribution system have made the satellite television the only alternative in rural areas of the country (IHS Technology, 27/02/2013).

Beyond that, however, the low prices of cable and satellite subscription in Bulgaria have a different dimension. A long-standing issue within the domain of pay TV broadcasting in the country has been the presence of a complete blackout in relation to the exact numbers of subscribers of the cable and satellite services. According to commercial broadcasters the cable and satellite operators have been hiding the real number of their subscription base to avoid paying higher fees for using their copyrighted programming. In the last couple of years the issue resurfaced at the time of contract negotiations between the two sides (see, Digital TV Europe, 04/01/2013; Mihaylova, 03/06/2015a). The chair of the association of commercial terrestrial broadcasting operators – ABBRO went as far as to announce that:

Nothing else has such serious influence over the failure of the model of the digitalisation than the unprecedented penetration of the pay television, which is exceptionally cheap due to the total robbery of copyright and related rights. It is cheap and while it [stays] cheap any other ... service, [such as] the terrestrial, that [has] restricted capacity, cannot work [successfully]. (CEM Minutes, 16/09/2014).

Pay TV operators have also demanded that policy-makers introduce legislative changes that would oblige commercial broadcasters to increase transparency about the rates the latter have been charging different cable and satellite operators for the provision of their content (Mihaylova, 03/06/2015a, see, also CPC Decision 279,

24/03/2015). The government, while not taking a proper action as regards the demands of the cable and satellite operators, have decided to finally tackle the demands of the broadcasters for more transparency in relation to the subscription numbers of pay TV operators. This was achieved with an amendment to the Law on Electronic Communications (LEC) in April 2015 which obliged all telecommunications providers to publish the number of their subscribers online, whilst the telecoms regulator CRC was given the responsibility to maintain an electronic public register of the data collected from telecom companies (Mihaylova, 03/06/2015b). According to Mihaylova (03/06/2015b), the introduced measure did not give reliable data as regards the penetration of pay TV subscriptions. According to the register of CRC, the penetration of cable and satellite television in the country has been just under 60 percent. As already stated above, however, other official sources, e.g. Eurobarometer and CPC, had declared a 25 percent higher viewership rate for pay TV operators. As rightly pointed out by Mihaylova (03/06/2015b), if the penetration of cable and satellite was as low as 60 percent, the market share of DTT would have been almost 40 percent. Such a high DTT penetration in the country, however, would have attracted more broadcasters (as noted in the case of Croatia in Chapter 3) to appear on the multiplexes, instead of leaving them as the two incumbents did.

### 3) Restricted (advertising) market

According to the latest information, the advertising market continued to remain in stagnation in 2014 and the prospects for 2015 do not seem much different (Kapital, 27/03/2015). For both 2013 and 2014, the advertising market grew less than 1 percent (24 Chasa, 27/03/2014; Kapital, 27/03/2015). Advertising on television remains dominant in the multichannel and multiplatform media sector in Bulgaria (Kapital, 27/03/2014). According to data by the association of Bulgarian advertisers, led by Krasimir Gergov, the television's share in the advertising pie for 2014 was just over 60 percent (Kapital, 27/03/2015; see, also BMB, 2014: 45). According to the 2014 Balkan Media Barometer (BMB) report, however, one needs to note that:



The real value of the Bulgarian advertising market is difficult to estimate because the advertising budgets, calculated on the basis of official data, are inflated. [...] Discounts, barter deals and arrangements between media and advertisers outside the official rates significantly lower real advertising revenues. (BMB, 2014: 45).

In this respect, the discrepancies between gross and net incomes from advertising have been significant in the Bulgarian television market for the last two years (24 Chasa, 27/03/2014: Kapital, 27/03/2015). This been related to high degree of concentration in the advertising market in the country (BMB, 2014: 11, 37).

The restricted advertising market in the country has in return increased the vulnerability of broadcasters towards various sources of funding, including the state. The state has become a major source of income for broadcasters, through the provision of funds for promoting various EU operational programmes and other public projects (BMB, 2014: 43). Like in Greece, as mentioned in Chapter 4, the media in Bulgaria have operated as a way to get public contracts and money in return for favourable media coverage. Thus, business and political elites both benefit and further reinforce clientelistic relationships in the market. In 2013, scandalous tapes revealed instances of clientelism and cronyism in the award of public procurement contracts to media during the CEDB government (BMB, 2014: 44). In addition, as already pointed out in the previous chapter, accusations of favouritism were raised in relation to the public procurement procedures for carrying out the DTT information campaign and the distribution of set-top-boxes to low-income families as well.

And finally and most importantly,

#### 4) Lack of competition in the multiplexing market

Out of the seven multiplexes licensed, only three are to some extent utilised, as the table below shows.

**Table 7.2 Licensed DTT multiplexes and the number of channels distributed**

<b>Nurts Digital</b> – 2 multiplexes	Mux 1: bTV, Nova TV, News 7 (former BBT), TV7 Mux 2: Bulgaria on Air
<b>First Digital</b> – 1 multiplex	BNT1, BNT2, BNT HD, BNT World
<b>HD Media Services</b> – 3 multiplexes	N/A
<b>Bulsatcom</b> – 1 multiplex	N/A

Source: Compiled from CPC Decision 279, 24/03/2015 & CPC Decision 467, 03/06/2015

The multiplex 1 of Nurts Digital and the so-called ‘public’ multiplex, owned by First Digital are reported to cover 96.2 percent of the population, while multiplex 2 operates within 85 percent coverage (CPC Decision 467, 03/06/2015). The three multiplexes owned by the offshore company HD Media Services (initially licensed to the Latvian company Hannu Pro) were supposed to be developed at the so-called second phase of the digitalisation, which, however, so far has not occurred. For the Bulsatcom’s multiplex there has never been enough clarity when it could be indeed operationalised, being left to depend on the release of frequencies as a result of the switchover and the Ministry of Defence, which has occupied some of the spectrum bands for broadcasting.

More importantly, however, what has to be noted is that Nurts Bulgaria, formerly known as Nurts<sup>93</sup>, which owns the multiplex Nurts Digital, provides its transmission services both to Nurts Digital and First Digital (CPC Decision 467, 03/06/2015; Parliamentary Standing Committee on Culture and Media, 18/06/2015). Therefore, as pointed out by the competition regulator, Nurts Digital holds 100 percent market share in the transmission of DTT signals, as all multiplexes in operation use its infrastructure services (CPC Decision 467, 03/06/2015). This led the CPC to

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<sup>93</sup> Just to remind the reader, initially, Nurts was the Bulgarian Telecommunications Company’s (BTC) unit that managed the transmission infrastructure for radio and television broadcasting in the country. In 2010, 50 percent of it was sold to the Cyprus-based offshore company, Mancelord, and became know as Nurts Digital, a joint venture between Mancelord and BTC. In 2011, the other half of the Nurts Digital was sold to another offshore company, based in Dubai, Blusat Partners. In June 2015, Nurts Bulgaria, together with its subsidiary Nurts Digital, the owner of the two multiplex networks, was acquired back by BTC.

conclude that a factor for the lack of success of the created DTT system in the country had been the missed opportunity to establish competition between the multiplex operators themselves as well as between them and the alternative platforms for television access. This lack of competition, as a result, did not increase the attractiveness of the terrestrial provision so that more broadcasters would potentially wish to take place in the multiplexes. This could in return increase chances for attracting more viewers and thus continue to strengthen the cycle of competition in the broadcasting sector as a whole (CPC Decision 279, 24/03/2015).

A point that has not been noted by the CPC, but that appears directly relevant to the issue of competition, is the issue of prices charged by the multiple operators for transmission of their channels. The established legislative framework has stipulated that the pricing for the transmission service is a matter of commercial negotiation between the private players on the market, on the basis of cost-orientation. If negotiations fail, either side is allowed to request CEM and CRC to determine the conditions for the transmission of the programming<sup>94</sup> (CPC Decision 279, 24/03/2015). Opposite to the expectations of the broadcasters to have considerably discounted prices for digital transmission in comparison to the analogue, the transmission fees were reported to have remained high. Concrete prices were not found in the used primary sources but the multiplex operators have revealed that the commercial broadcasters were offered to pay twice less than in the analogue times (CPC Decision 279, 24/03/2015). According to Nova TV, however, this was not enough to stimulate them to provide their programming on the multiplexes, given that they could reach almost the same number of the population by being on the cable and satellite platforms, for which they were paid (CEM Minutes, 16/09/2014; see, also Standing Parliamentary Committee on Culture and Media, 18/06/2015). Nova TV continued to claim that the practice of their Swedish owner, MTG, had shown that the price decrease in the digital transmission in other European countries had been five or six fold than during analogue broadcasting (Standing Parliamentary

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<sup>94</sup> During my fieldwork in Bulgaria, however, interviewees explained that there was no clear mechanism provided for such intervention, if required. Perhaps, for this reason, although the issue of pricing has become highly problematic, according to both commercial and public broadcasters, it has not been officially referred for a solution to the media and telecom regulators.

Committee on Culture and Media, 18/06/2015). The issue appears to be more crucial for BNT as, unlike the commercial operators, the public service broadcaster is constrained with a must-offer obligation to provide its channels to the First Digital multiplex, to which BNT had to pay more than for analogue transmission (Standing Parliamentary Committee on Culture and Media, 18/06/2015).<sup>95</sup>

The lack of competition and monopolisation of the digital transmission system was also confirmed with the decision of the Court of Justice of the European Union (CJEU) on 23<sup>rd</sup> April 2015 (CJEU, 2015). The Court upheld the infringement decision of the EC, concluding that the established legislative framework on DTT in the last months of the Stanishev government had been in breach of three EU directives as regards provision of electronic communications networks and services<sup>96</sup>. Thus, according to the CJEU, the LEC rule that restricted the total of initially six multiplexes to be given to two licensees only (three multiplexes each) was discriminatory and non-proportionate. Similarly, the legislative measures in LEC that banned the television content providers (broadcasters) to apply for multiplexes and the multiplex operators to have a transmission network for radio and television broadcasting was not based on objective, transparent, non-discriminatory and proportionate criteria (see, CJEU, 2015). As a result, the Bulgarian government is now awaited to take corrective action with regard to the non-objective, non-transparent, discriminatory and non-proportionate allocation of frequencies to the first two multiplex operators (initially to Towercom and Hannu Pro), who were granted six multiplexes in total (Ognyanova in Mihaylova and Antonova, 25/04/2015). This in practice would mean revocation of the licences. Yet, the governments after 2009<sup>97</sup> have refused to take any action to cancel the already issued

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<sup>95</sup> In fact, it was revealed that BNT was not able to afford paying for its transmission at all and it asked the government to provide more funding to cover its operations (Standing Parliamentary Committee on Culture and Media, 18/06/2015).

<sup>96</sup> Those were: the Directive 2002/77/EC on Competition in the markets on electronic communications networks and services; Directive 2002/22/EC on the Authorisation of electronic communications networks and services (Authorisation Directive); Directive 2002/77/EC on a Common regulatory framework for electronic communications networks and services (Framework Directive).

<sup>97</sup> Five in total, two of them were caretaker governments.

multiplex licences by the triple coalition<sup>98</sup> (Antonova, 29/03/2012), remaining ‘silent’ on public claims about the concentration of ownership behind certain off-shore companies.

Recently, however, an opportunity for change has occurred as a result of the crisis created by the scandalous split in the close relationship between the MRF’s MP, Delyan Peevski, and the CCB’s majority owner, Tsvetan Vassilev in 2014. As noted in Chapter 4, the split between the two led not only to the bankruptcy of CCB, but also to the resignation of the Oresharski government, formed by BSP and MRF in 2013. The subsequent developments revealed what had been arguably a ‘public secret’ for several years – that Vassilev stood behind both multiplexes. In March 2015, a Belgian businessman announced that he had acquired 43 percent of BTC, the multiplexes Nurts Digital and First Digital, TV7, and the audience research company GARB<sup>99</sup> from Tsvetan Vassilev (Mihaylova and Stoyanov, 20/03/2015a; Kapital, 22/04/2015). At a press conference in Sofia, he declared his newly established Luxembourg-based Investment Company – LIC33 had acquired the above-mentioned enterprises for the price of a single Euro, with the agreement to repay debts of EUR 900 million to creditors, notably the CCB (Lateva, 24/03/2015). A week after the businessman announced his acquisition (which Vassilev confirmed in Dachkov, 03/04/2015), the competition regulator, which according to formal rules had to receive an ex ante notification and to approve before an acquisition of that calibre could be completed, declared that it started to collect information regarding any change of ownership upon the revelations made (CPC News, 30/03/2015). By the beginning of June 2015, when the CPC approved an acquisition of Nurts Bulgaria

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<sup>98</sup> Unlike the case with the revocation of the LPB at the beginning of its mandate, the CEDB government did take effective measures to the amendment of the allegedly anti-competitive and discriminatory legislative rules for multiplex licensing. The advancing of the initiated infringement procedure of the EC pressured the government to amend the LEC in the winter of 2011. It provided an opportunity for licensing of a new multiplex operator under new rules that permitted broadcasters to apply for multiplexes and multiplex operators to own a transmission network. As pointed out in Chapter 6, the rules constrained the subsidiary of the Austrian PSB, ORS, and the BTC, then owner of Nurts, to bid for multiplexes.

<sup>99</sup> Including two other companies occupying strategic national industries, such as arms and ammunition manufacturing (Dunarit) and airplane maintenance (Aviomans) (Nikolova, 30/03/2015).

and its subsidiary, Nurts Digital, by BTC<sup>100</sup>, there was yet no official confirmation of the claimed transfer of ownership (see, CPC Decision 467, 03/06/2015).

As a consequence, the DTT model in the country is now under revision. More than a year after the first withdrawal of channels from the commercial multiplex was initiated, the parliamentary media committee gathered stakeholders to discuss amendments to the established DTT structure. All key decision-makers unanimously acknowledged that the DTT transition has failed in Bulgaria (see, Parliamentary Standing Committee on Culture and Media, 18/06/2015). It was surprising, however, the expression of the chair of the telecom regulator, who used the platform to argue that he had always claimed that the established transition model was wrongly designed. As seen in Chapter 6, CRC, led by the chair in 2009, rushed to announce its decisions on the licensing bid for the first two multiplexes three days before the decision of the Constitutional Court declaring anti-constitutional several of the legislative rules which the regulator relied on for the licensing process was announced. For the three other multiplex networks to be built on the second stage of the digitalisation, the decision of CRC was taken on the day of the promulgation of the Court's decision, which, however, had to wait three more days to officially enter into force (Constitution of the Republic of Bulgaria, 2007, Art. 151(2)). As pointed out by Georgieva (14/05/2015), the CRC used a window of opportunity enabled by the law, according to which the regulator was not obliged to take into consideration a Court decision if it hadn't formally entered into force. The participants in the media committee's meeting, however, decided to remain silent about the reasons behind the unanimously acknowledged failing DTT model in the country. According to a MRF's MP, who at the time of the legislation making process during the mandate of the triple coalition, sneaked one of the most controversial proposals that banned multiplex operators to own transmission infrastructure<sup>101</sup>, it was unfruitful to discuss who did what, saying that all were guided by good intentions (Parliamentary

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<sup>100</sup> Request filed already in November 2014 (CPC Case 1156/2014, 05/11/2014).

<sup>101</sup> As seen in Chapter 5, this proposal reportedly blocked the opportunities of ORS for a sensible investment to acquire the then Nurts (now Nurts Digital) and together with it to apply for digital multiplexes in the country. This was one of the articles that was found anti-constitutional by the Constitutional Court, which however did not affect the decisions of CRC, as noted above. Finally, this was one of the measures found discriminatory and non-proportionate by the EC and CJEU.

Standing Committee on Culture and Media, 18/06/2015). Of course, there was no self-criticism expressed by parliamentarians, as arguably, for the past six years neither of the major political formations (either CEDB or BSP and MRF) that led the country took *real* actions to address competition concerns raised domestically and supranationally. A revision of the failed model is now under consideration in cooperation with the EC (Parliamentary Standing Committee on Culture and Media, 18/06/2015). The narrative of the Deputy Minister of MTITC has demonstrated a determination to follow strictly the rules of the EU this time. Yet, the incentives seem more like cost concerns to escape fines for not carrying out the decision of the CJEU rather than genuine learning. Nevertheless, the time is arguably ripe for policy change, to use Kingdon's terminology. The 'problem' is apparent and the 'politics' has shifted as a result of the break in the political-economic partnership between Peevski and Vassilev. Policy alternatives are now in search.

## **7.4 Conclusions**

The first part of this chapter observed the outcomes of the DTT transition for the public service television BNT. In line with Galperin (2004a: 285), it demonstrated that the DTT transition had reinforced some of the past characteristics of the public service broadcasting system in the country. Thus, path dependencies such as state funding had reinforced the lack of independence from politicians, which in turn reinforced the marginalisation of the BNT in the decision-making process. In this respect, opportunities were missed to revise the funding model of the PSB and increase its salience among audiences and *vis-à-vis* commercial broadcasters. The chronic lack of financial stability was transferred to the digital age and the payment of high transmission fees was preserved. The high transmission costs both resulted in constraints on new content creation and were a result of not being able to fill with content and fully utilise the capacity of the multiplex allocated.

Besides, there were the financial aspects of the television's existence – the uncertainty and chronic lack of funding. The financial difficulties of the broadcaster were revealed mostly in relation to the coverage of the transmission fees paid to the

BTC in the analogue era, and later to the multiplex operator, First Digital. The expectations for lower charges in the digital age were not realised, as there was no utilisation of the capacity of the multiplex in terms of additional channels, which could potentially bring down the expenses paid for transmission for the full capacity of the provided multiplex for BNT. Some form of additional funding corresponded with election times, while legislative attempts to unblock advertising restrictions on the most attractive prime time hours of the television failed.

Apart from the outcomes for BNT, the chapter demonstrated that high penetration of the cable and satellite subscription-based platforms, most importantly the low subscription prices, the high prices charged for digital terrestrial transmission and thus the lack of enthusiasm from broadcasters to provide their content on the multiplex platforms, resulted in devaluating the importance and meaning of the digitalisation of broadcasting in the country. This resembled the outcomes of some of the CEE countries like Slovenia, Slovakia, Romania, where the process had become also too politicised and cumbersome, as discussed in Chapter 3. In addition, in Bulgaria the blame for the failing terrestrial system was put on ‘forceful’ (coercive) EU policies. The provided evidence in this chapter, however, suggested that state policy-makers miscalculated and mishandled those factors and allowed to be led by ad hoc policy adjustments and concrete influences by private sector players. As observed in Chapter 5, the decision-making was driven by short-term priorities of powerful incumbent players (major terrestrial broadcasters and advertisers) who demanded to be obligatorily granted with more spectrum capacity on the multiplexes. Their priorities, however, shifted with the change of the sectoral conditions, most notably the decline of advertising revenues over the five years after the legislative decision-making process in 2008-2009. In addition, as shown in Chapter 6, the state to introduce more clarity over the ownership behind the officially offshore registered multiplex operators and introduce more competition. Obviously, this led to the increase in transmission costs and lack of interest in content provision. Galperin (2004a: 234) has demonstrated the significance of competition in the case of DTT transition in the UK, where the government aimed at “reducing costs, promoting innovation, and punishing the less viable firms” and its “strategy was not rigged in favo[u]r any specific company.” It was, therefore, claimed here that the subtler role



of institutional structures and capacities, such as clientelistic relationships and powers to act (demonstrated through inactions), rather than sectoral characteristics, turned more decisive in shaping the outcomes of DTT transition in Bulgaria.

The mess created by a subsequent number of policy interdependencies and external pressures, sometimes by default or used as such with reference to the EU, is now pending to be sorted out by the government and to replace the failing model. Unlike Britain, Bulgaria lacks a strong PSB like BBC that could take over and lead a new model as the BBC did after the collapse of ITV Digital in 2002. Some slow actions were undertaken to revise the policies only a year after the first television channels withdrew from the multiplex. Whether change will come before windows are still open and how deep it will be remains to be seen. As Ognyanova points out, “[f]or the past six years it has been known that the digital transition has been captured [by friendly circles of business and media elites] and that the state have tolerated the capture. Time has come to pay the price” (Ognyanova in Mihaylova and Antonova, 25/04/2015). It remains to be seen if the history will repeat itself and whether the state will nationalise a losing digital structure, as “the privatisation of profits and nationalisation of losses, [has been] a major formula for creating the private sector in post-communist countries (Avramov, 2001 in Heywood and Krastev, 2006: 171).

## CHAPTER 8: Conclusions

The aim of this thesis was to look at the introduction of DTT in Bulgaria in order to find out answers to the following questions:

1. Where did the issue of digital terrestrial television in Bulgaria come from? Who set the agenda? What have been the objectives and benefits sought?
2. What have been the national and supranational actors and factors that have facilitated or constrained the transition? How have these actors and factors affected the policy making process and its outcomes?
3. What have been the consequences of the transition to DTT for the Bulgarian broadcast landscape, including public service television?

Chapter 2 set out the theoretical framework this thesis relied on in order to answer these questions. The framework drew on a mix of political science approaches for the study of the policy-making process, its politics and the outcomes. The aim was, first, to utilise John Kingdon's agenda setting theory in order to understand the complexity, ambiguity and (ir)rationality of the policy process. It is a process that, according to Kingdon, consists of three independent streams (problems, policies and politics) that combine (at least two of them at a time) to create the policy agenda. In addition, agendas can be set as a result of the emergence of rare windows of opportunities. The role of agents in the policy-making process was acknowledged by drawing on the literature on stakeholders and advocacy coalitions. These are understood as having different interests, demands and ideas about the outcomes of the agenda. On the basis of those differences, interactions between actors take place throughout the policy-making process. Yet, in order to explain whose interests and ideas prevail and why, the established framework referred to a more critical element in the analysis of the politics of the policy-making process – the concept of power. The framework acknowledged alternative views on power as a form of influence not only in overt situations of conflict in decision-making, but also as a cause for nondecision-making and the concomitant empowerment of certain interests at the expense of others. All these concepts and elements of the policy process were then

linked to the ‘new institutionalist’ approach, according to which institutional structures matter in defining policy (in)actions and their outcomes. Within the new institutionalist approach, special attention was given to the concept of path-dependence and its emphasis on the role of history and past policies in providing the structure within which subsequent policy-making processes take place. The relevance of the structure and how it has allowed certain types of actor behaviour to shape decision-making became a central focus of this thesis. Finally, within this analytical framework, additional attention was paid to the top-down role of the EU as an actor and factor in the policy-making process. The EU has provided an additional layer to this structure and its political and economic objectives must be taken into account in order to understand national level digital transition policies.

To start with the first question, in line with international developments, the Bulgarian authorities had initiated digitalisation plans as early as 2001 and the then state telecommunications company, BTC, was licensed to run a platform for pilot DTT broadcasting operations. The project, however, remained a technical exercise with limited social impact, as no further steps were undertaken for the popularisation of the initiatives to reach the wide masses that could potentially lead to the rapid take-up of digital terrestrial transmission in those early years. The policy-making process that created the digitalised terrestrial system available in the country today started around the time of the accession of Bulgaria to the EU in 2007. As seen in Chapter 3, similarly to other CEE countries as well as neighbouring Greece, the transition to DTT in Bulgaria was perceived as an externally driven (EU) process. Key actors (broadcasters and regulators) referred to it as a ‘coercive process’ imposed on the country by external priorities. The evidence in this thesis, however, suggests that the transition to digital terrestrial broadcasting was raised to the agenda primarily because it served at the time the interests of established terrestrial broadcasters that were looking for ways to block the analogue terrestrial licensing already underway and the increased market competition that would have resulted in. As seen in Chapters 4 and 5, the long period of non-decision making as regards local analogue licensing and relicensing of the temporary terrestrial licensees strengthened the positions of the established broadcasters (nation-wide incumbents and local temporary licensees). Under the pressure of the EU, the licensing process was

officially resumed following the adoption of the so-called broadcasting ‘strategy’. As illustrated in Chapter 5, as soon as the analogue licensing preparations resumed in 2006, the incumbent terrestrial broadcasters and temporary licensees started to look for opportunities to prevent the licensing to take place. The conclusion of the ITU’s Regional Radiocommunication Conference held in May-June 2006 in Geneva, which decided on the international digital terrestrial frequency planning, provided a window of opportunity for terrestrial broadcasters to change the course of analogue broadcasting. The broadcasters made use of the position of the telecommunications regulator CRC, which prior to the ITU’s meeting in Geneva had declared that there was available spectrum for analogue licensing, yet following the international agreement declared no availability of such spectrum. Following the ratification of the ITU’s agreement, broadcasters managed to put pressure on the content regulator, CEM, by utilising the digitalisation discourse and securing the support of stronger institutions than the sectoral regulators in telecommunications and broadcasting, most notably the Prosecutor’s Office. In this respect, Chapter 5 also suggested that the emergence of the DTT on the policy agenda weakened further the decision-making capacities of CEM. Yet, it also ‘helped’ CEM to escape the inter-institutional deadlock that had occurred on analogue terrestrial licensing and served to cancel the licensing procedures. In short, in line with Kingdon’s agenda-setting model, the digitalisation of terrestrial broadcasting entered the Bulgarian policy-making agenda through an incidental, ambiguous and rather irrational decision-making process on analogue licensing. On the one hand, as the literature on Europeanisation suggests, the digitalisation of terrestrial broadcasting in Bulgaria was an externally driven process<sup>102</sup>. On the other hand, however, its rise to the policy-agenda came as a result of domestic actors’ interests, namely the aim of existing terrestrial broadcasters to block analogue licensing which would have introduced more competition for them and would have risked the right of temporary licensees to continue broadcasting. In this respect, as examined in Chapter 3, unlike the more public service incentives for DTT transition in Western European EU member states (Britain, Denmark, Sweden), the emergence of the DTT transition in the Bulgarian policy-making arena resembled

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<sup>102</sup> As seen in Chapter 5, although the ITU’s deadline for the analogue terrestrial broadcasting switch-off was set as 2015, it was the EU’s 2012 deadline that was referred to in policy discussions in order to accelerate the decision-making process.

countries with less consensual decision-making approaches (Italy, Spain), characterised with more clientelistic and captive media systems. The utilisation of the DTT transition requirement by the terrestrial broadcasters in Bulgaria was also facilitated by the weak institutional capacities of the sectoral regulatory bodies, which having failed to anticipate the outcomes of the ITU's agreement and to take into consideration the approaching EU deadline, did not manage to coordinate the start of the analogue licensing procedures, (see, Ognyanova in Ancheva, 18/07/2006).

The DTT, however, came to dominate the broadcasting policy agenda once the political stream, as defined by Kingdon, joined what was already established as a policy problem. The approaching end of the mandate of the 'triple coalition' (BSP-NMSS/NMSP-MRF) in 2009 resulted in pushing the DTT higher on the political agenda. As the evidence in Chapters 5 and 6 demonstrated, the idea of the coalition partners, most notably the closer allies BPS and MRF, was to lay the legislative and regulatory rules in accordance with their preferences. In this respect, as detailed in Chapter 5, the initiation of the DTT policy-making process had little to do with public interest objectives. Rather, as the answer to the second research question that follows below suggests, certain domestic business and political interests used it to their benefit.

Moving to the second question, this research sought to clarify the role of national and supranational actors and factors in the transition to DTT in Bulgaria. In answering this question the thesis distinguished between two types of factors on the domestic level: 1) sectoral, understood as the specific characteristics of the broadcasting market in the country, and 2) structural, related to broader institutional (political and regulatory) setting within which the broadcasting sector operates. As seen in Chapter 7, public and private policy actors attempted to explain the failing DTT system by referring to sectoral characteristics of the Bulgarian broadcasting market, such as the high penetration of the cable and satellite subscription-based platforms, their low subscription prices, the reliance on terrestrial television by the economically non-profitable segments of the population, the restricted advertising market, the high prices charged for digital terrestrial transmission and the lack of broadcasters'

interest to provide their content on the multiplexes. These factors made a direct contribution to the outcomes of the DTT system in the country. Yet, the evidence presented in this thesis suggested that the impact of these factors were reinforced by domestic institutional characteristics of a more structural kind. This suggestion is in line with what Sparks (1998: 181-182) argued in relation to the development of PSB in post-communist countries of CEE. According to the author, it was not the advent of cable and satellite and the concomitant fragmentation of audiences that resulted in inefficient and unhealthy PSBs in CEE countries; rather it was the “political conditions” in those countries and the “politicians” that contributed to that outcome. Thus, although the unfavourable sectoral conditions could, and were used to, explain the problematic outcomes of the DTT broadcasting in Bulgaria, what led to those outcomes was more crucially the fact that politicians did not properly evaluate them in the initial stage of the policy-making process. In this respect, this thesis acknowledged the relevance of the institutional structure within which the policy process on DTT developed.

Drawing on the historical institutionalist approach, it was demonstrated in this thesis that indeed the break of the communist regime in the country resulted in a “systemic”, but not an “institutional vacuum”, as Hausner, et al. (1995) observed in Chapter 2. In Chapter 4, the background to the formation of the post-communist political and media structures in Bulgaria was examined. The analysis showed strong continuity with the pre-communist system’s privileged political elites and their domination over the state’s resources. The partial economic reforms that had been undertaken by the communist regime in its last years allowed for large businesses to be established on the basis of public-private partnerships, diverting state resources for private benefit. The reforms established a structure of patronage, clientelism and cronyism that relied on the centrality of the executive and mostly directly on prime ministerial power. Although civil liberties and ethnic peace was ensured, and significant progress towards integration with the West (Council of Europe, NATO, EU) was achieved, the review of the socio-political environment until 2014 demonstrated the persistence of the aforementioned structural characteristics in the country. On the background of this socio-political environment, the early post-communist development of the media structure included characteristics such as

delays and struggles over the adoption of laws for the regulation of the broadcasting sector, as politicians wanted to retain control over the PSB through the composition and appointment of the media regulatory body; prolonged non-decisions in rule adoption and licensing that had real consequences as they ended up empowering specific private interests and cementing the status quo and clientelistic relations with politicians; the weakening of PSB and the undermining public interest; politicisation and centrality of the government in licensing of the first nation-wide private broadcasters, that reflected the unclear regulatory framework and political silences over non-transparent media ownership. These characteristics both reflected and were reinforced by clientelistic relationships that supported corruption and captured the state's decision-making and regulatory capacities.

As demonstrated in Chapter 4, with the diversification of the political system in the 2000s and the rise of populism, the media became central to politics. The existing strong clientelistic relationships between politicians and business interests started to increasingly incorporate the media and its use to maximise mutual benefits. The media thus became part of close circles of friends, where private entrepreneurs owned them, bankers subsidised them and politicians ensured that laws were designed to protect them. In terms of transition to DTT, this thesis demonstrated continuity in decision-making practices. As observed in Chapter 5, non-transparency and centrality of the executive and most specifically the then Prime Minister, Sergey Stanishev, characterised the decision-making process on the legislative framework for the introduction of DTT in 2008-2009. The centrality of the state, however, did not ensure its strength to shape the decision-making process in favour of the public interest. The powers of visible (incumbent private terrestrial broadcasters) and 'ghost' players (informal actors that stayed behind broadcasters with unclear ownership structures) became decisive for the outcomes of the legislative process. Both managed to shape the design of must-carry rules and obliged the multiplex operators to reserve capacity for an extensive number of existing broadcasters. Those rules, extended gradually with each consecutive law, guaranteed not only the obligatory transmission of the extra channels of the two incumbent broadcasters, bTV and Nova TV, but also those (cable) channels that were yet to be licensed for analogue terrestrial broadcasting. Interestingly, this included some of the channels

that, within a different ownership structure, were previously denied access to the terrestrial market. The reported closeness of the new ownership structures with the political elite had this time allowed a change of policy, justified as an efficient use of frequencies echoing EU objectives. In addition, the amended laws were argued to have “cleared the way for a new player”, constraining the right of a particular foreign candidate (ORS) from entering the domestic transmission market. Therefore, in line with the theoretical framework of this thesis, the institutional structure within which policy-making on DTT was carried out demonstrated the importance of the behaviour (strength) of private actors and the capacity of the otherwise central state to shape (constrain or empower) this behaviour. As seen in Chapter 6, although the adopted legislation stipulated separation of the transmission from multiplexing, and additionally the separation of these two functions from content provision in order to ensure competition, the informal practices characterising the country’s broadcasting structure of hiding behind off-shore companies, consolidated those operations under an indirectly related ownership structure. As evidenced in Chapter 7, the lack of competition resulted in higher transmission prices, which in turn resulted in lack of interest in content provision and the return of DTT licences. Thus, beyond the more obvious sectoral factors that policy makers and broadcasters referred to in order to explain the failure of DTT, it was the inaction of the state to tackle non-transparency and concentration of ownership that determined the outcomes of the digitalisation of terrestrial broadcasting in Bulgaria. The clientelistic relationships between political and business elites indirectly shaped the outcomes by not questioning non-transparencies and lack of competition in the established DTT model.

Turning now to the EU, this thesis revealed three types of EU influence on DTT policy-making in Bulgaria. First, in line with the Europeanisation literature, the impact of the EU became “diffused” by domestic arrangements. As discussed in Chapter 6, in some instances the EU’s top-down intervention produced adverse outcomes, being refracted through the prism of domestic institutional capacities and dependencies. This was most clearly observed in the outcomes of two cases of European Commission (EC) intervention that appeared in the implementation stage of the adopted legislative framework on DTT. Paradoxically, in the first case, the EC reversed the outcomes of the only concrete pro-public interest action undertaken by



the telecoms regulatory body CRC when it reserved for BNT a frequency originally reserved for private broadcasters. As a result of EU intervention, the frequency was returned to the private channel (TV Europe) that it was initially allocated to. Obviously, the state's subsidiarity competences, and the public interest, were undermined on the grounds of narrow competition rules. Yet, this outcome was also produced as a result of poor (last minute) coordination between the BNT and CRC and the concomitant non-transparent and unfair treatment of other applicants. In the second case, the intervention of the EC led to the allocation of spectrum capacity for an additional multiplex with nation-wide coverage and thus restricted opportunities for the establishment of regional multiplexes. This was an outcome that could ultimately affect market competition and diversity of content. However, it was also a result of domestic path dependencies and in particular the communist era military spectrum planning and the inability of domestic institutions to manage the release of broadcasting spectrum occupied by the Bulgarian Ministry of Defence (MoD).

Second, as also demonstrated in the first appearance of the digitalisation on the policy agenda, the EU's shadow and its recommended switch-off date were often used to accelerate decision-making. This contributed to diminished public debate and transparency, as well as rushed decisions. The EU's 2012 deadline for switching off analogue broadcasting was referred to both in the decision-making and implementation phases of DTT broadcasting. As illustrated in Chapter 6, the EU factor contributed to a hasty decision-making process regarding the update of the DVB-T Plan, whereby the Prime Minister initially decided to postpone the adoption of the plan until the Ministries of Defence and Finance agreed on the release of spectrum by the former. The document was, nevertheless, adopted without stipulating a clear action plan for both sides. In another instance, the Ministry of Transport, IT and Communications asked the competition regulator CPC to back the position of the executive and allow a preliminary execution of its appealed decision on the company that was going to carry out the information campaign. The Ministry was concerned that on the top of the EC infringement procedure, which had reached its final stage and was about to move to a formal referral of the country to the EU court, any further delay that could jeopardise compliance with the switch-off deadline would worsen the situation of the government.

Third, this thesis demonstrated that the Bulgarian state responded selectively to intervention of the EU. As seen in Chapters 6 and 7, policy makers remained mostly unresponsive to EC calls for complete revision of the multiplex licensing in the country. The Commission's demands were met on paper as some of the restrictive and discriminatory stipulations of the adopted legislation were abandoned; yet the government did not cancel the disputed tenders for multiplex licences. As argued above, strong clientelistic linkages between business and political actors shielded the consolidated DTT system and prevented the re-licensing of multiplex operators.

Finally, the third question of this thesis was interested in the outcomes of the DTT introduction in Bulgaria. Overall, with the introduction of DTT in the country, the Bulgarian policy-makers disregarded the opportunity it potentially offered to completely rethink and restructure the broadcasting sector in the country. As regards public broadcasting, it has been difficult to observe any beneficial outcomes for BNT in terms of strengthening its position vis-à-vis the commercial broadcasters, increasing its reach and promoting greater engagement with citizens. Similarly to some other countries discussed in Chapter 3 (Hungary, Slovakia), the digitalisation of terrestrial broadcasting reinforced the specific characteristics of the national public broadcasting system. Its dependence on state funding determined the way the BNT was treated throughout the policy process. As Chapters 5 and 7 explained, the broadcaster was not allowed to play a key role in the design of DTT policies and it accepted any proposal of the executive as far as it could give a start to the switchover process. Although the public broadcaster had not demanded it, the executive decided between the two readings of the Law on Radio and Television (LRT) that the BNT should be granted a separate multiplex. The designed new Law on Public Broadcasting (LPB) introduced an idea for an unrealistic and cumbersome process for the digitalisation of BNT. In addition to the creation of a company that would perform the multiplexing, the law envisaged a parallel network to that of the incumbent Bulgarian Telecommunications Company (BTC) to be built for the transmission of the channels of the public service broadcaster. The elections in 2009 put the digital future of BNT on hold as the new Borisov government that took over power decided to abandon the public service law and license the multiplex allocated

for BNT to a commercial candidate. As seen throughout the thesis, transmission aspects of DTT were prioritised over content provision. The importance of new, diverse and attractive content was not acknowledged as a key driver for DTT take-up and as a result the public service broadcaster was not encouraged to expand and diversify its content. The key issue for BNT, however, remained the unpredictability and politicisation of its funding. As seen in Chapter 7, BNT's annual budget tended to fluctuate unpredictably and to rise in years of elections. The proposed legislative amendments for increasing the advertising time in prime time were blocked by commercial players seeing BNT as a competitor and wishing for it to be restricted as a minority broadcaster. Most crucially, the digitalisation preserved BNT's financial difficulties in paying for the transmission of its channels, as the cost of transmission remained one of BNT's major issues.

Unlike public service broadcaster BNT, commercial terrestrial broadcasters were able to exercise a much stronger impact on the decision-making process. Although their demands to separate the content from the distribution side of the multiplex operations were not met, they were taken into consideration and private broadcasters were compensated with the granting of must-carry status for their complementary channels. Yet, as demonstrated in Chapter 7, this did not prove to be as beneficial as expected for those commercial channels. I argued that the reasons behind that were the shortsightedness and reactive character of decision-making which responded to pressure by commercial broadcasters to gain more spectrum capacity and did not take into consideration sectoral factors, the most important of which was the growing viewership of subscription cable and satellite broadcasting. Coupled with the decrease in advertising income following the global financial crisis from 2009 onwards, this affected the business perspectives of the commercial terrestrial broadcasters and their incentives to expand on the planned multiplexes. As a result, the capacity of the multiplexes was only poorly utilised, which in turn did not help the terrestrial platform.

Overall, this thesis demonstrated that the weak institutional capacities of the Bulgarian state created a policy-making structure based on political patronage, clientelism and cronyism, which failed to ensure fair, justified and transparent DTT

switchover policies in line with the demands of the EU. In addition to the broader structural setting, the thesis pointed to more specific sectoral factors of the broadcasting market and argued that these have indeed influenced the outcomes of the DTT transition in Bulgaria, yet the extent of their impact has been determined by the structural characteristics. As a consequence, far from genuine public interest objectives such as increased media plurality, a stronger role for PSBs, more competition within and between platforms, and efficient use of spectrum, the DTT transition in the country reinforced the existing path-dependencies and historical continuities. This last point has been observed in relation to digital television policies in Western countries, such as Britain and the USA (Galperin, 2004a). More research is needed to confirm or not this conclusion in relation to other (post-communist) countries and other sectors.

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