

POLICY PAPER

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**TRANSFORMATION OF THE MONGOLIAN ELECTRONIC MEDIA:
PROSPECTS OF PUBLIC BROADCASTING IN A DUAL SYSTEM**

1. SUMMARY

The "Law on Freedom of Press" passed in summer 1998 prohibited state ownership on media and fixed the establishment of public service broadcast media in Mongolia. This paper analyses the situation of electronic media, gives a description of endeavors to transform the broadcasting system in Mongolia before and after 1998 and provide proposals for improvement of the current bill on "Public service broadcasting".

2. SCOPE OF THE PROBLEM / OBJECTIVES

On August 28, 1998, the Mongolian Parliament, the State Great Khural, passed "The law on Freedom of Press", main idea of which has been to free the state owned media from the government control and to prohibit censorship. In connection with the enforcement of this law the State Great Khural adopted the Resolution # 103 on "Some Measures to Enforce the Law on Freedom of Press". According to the resolution, "The Department of the Radio and TV Affairs and the national news Agency Montsame are to be dismantled as government coordination agencies and to be organized as national public media organizations (§4). The Parliament' Standing Committee on the State Institution was entrusted to elaborate a draft decision regarding the structure, composition and statutes of the broadcast institutions by 15 October 1998. Even though more than 3 years have gone since the resolution was ratified, the National Mongolian Television and Radio still remain in government's grip and the local broadcasters under local Governor's Chancelleries have been waiting in uncertainty for a new broadcasting regulation.

The current paper aims to analyze the development of the media policy in regard to transformation of the Mongolian broadcasting system, explore existing draft laws by comparing them with the practice of more experienced as well as transition countries. The information provided in this paper as well as proposals how to improve the broadcasting policy can contribute first of all to the enlightenment and strengthening of self-interest groups (journalists, professional organizations, media institutions etc.) as potential actors of policy making. At the same time, as the first ever systematic analysis and summary of the endeavors to transform broadcasting in Mongolia and evaluation of the (final) bill with regard to future prospects, this paper can render basic source for politicians to develop a legislated broadcasting policy in accordance with circumstances unique to Mongolia, but also

regarding the international development trends in a context of technological revolution, globalization and rise of commercial environment.

3. BACKGROUND

The Mongolian media landscape in the 90s was characterized by postulating of freedom of the press as the basic right, abolition of the censorship authorities and emergence of free publications on the one hand, the absence of a democratic media law and the lasting power monopoly of the state owned media on the other hand. This contradictory situation was determined by lack of knowledge and conflicting understandings about media freedom: as the new constitution adopted in 1992 guaranteed the freedom of expression, nobody knew quite right, if and how this freedom should be specified in a special media law. Most politicians have had only vague ideas about uncontrolled media, many of them were of solid conviction that under the new social conditions the government needed its own media. After eight years arguments the "Mongolian Law on Media Freedom" has been passed by the parliament. Until this time, the main concern of public debate around media has been the question, if and how the freedom of expression guaranteed in the new Constitution from 1992 has to be defined in a special media law. The primary aim was to ensure the freedom and independence of media, hence the question, what is public service broadcasting and how it should function has not explicitly been on the agenda yet. Thus, all discussions about broadcasting circulated around the alteration of the state run National Television; the question about transformation of the whole broadcasting system has hardly been arisen.

The Law on Freedom of Press represented a serious step towards breaking the state monopoly on news, since it legalized the idea of both private and public media and prohibited state ownership on media, and it brought the discussion on public service media up to date. Understanding the concept of public service broadcasting has been in Mongolia a long learning process. The "Law on Media Freedom" contributed to the process, that the principles and structure of public broadcasting has been definitely put on the agenda of public debate, and the concept of public service broadcasting has found more clear contours. Around 10 draft laws dealing to different extent with the transformation of the National Broadcasting has been presented to media managers and politicians in the time since 1992. Most of them were elaborated independently from each other and not all of them reached the broad interested public. Some of them had been proposals how to restructure the Mongolian Television, but did not deal with the concept of public broadcasting in a broader sense. But every approach to change Mongolian broadcasting system contributed on the one hand to a better understanding of the necessity to transform the broadcasting system, and, on the other hand, to draw public attention to the issue respectively keep this issue on agenda. The proposals have been attended by seminars with foreign experts and proposals on the privatization of the electronic media and models of public service broadcasts. However, it should be underlined, that all these efforts in connection with broadcasting reform come from national and international NGO-s and journalists themselves, whereas the government used to proceed quite hesitantly with decision makings concerning liberalization of electronic media. In fact, legal and organizational regulations for a new broadcasting system are still missing as well as a clear formulated government strategy to develop independent and pluralistic media in Mongolia. UNESCO declarations and media strategy

documents of other international organizations has been favorite sources for politicians to show their dedication to democracy and media freedom. A legislated policy that enable media to fulfil its democratic mission as means of strengthening citizen's access to and participation in public affairs is, however, missing. This time of contradiction between political promises and politics, legal regulations and real life may apparently last long in want of sustained public policy action, to include providing the public and interest groups with information necessary to understand the current media policy.

4. KEY ISSUES

Statutes and bills on the transformation of Mongolian broadcasting will be analyzed with respect to following issues:

1. Concept of public service broadcasting

It must be granted that it is nearly impossible to find a "standard" definition of what is public service broadcasting. Taking the classical ideal which traditionally formed the basis for setting up the public service model in television and in most industrialized countries this paper assumes that the concept of public service broadcasting can be defined by following, most common principles:

- The principle of universality, which implies universality of availability as well as universality of appeal.
- The principle of pluralism which includes diversity of programming (ranging from news to fiction, from information to education and entertainment), diversity of audiences addressed (young people, elderly, various minorities etc), and diversity of the subject dealt with (responding to the various interests of the public and reflecting topical social debates).
- The principle of independence with regard to private interests and political authorities, that is in fact a precondition for realizing the public service.

2. Financing problems of public service broadcasting

The question, what type of financing should be preferred for public broadcasting is a crucial one since the way it is financed determine its capacity to fulfill its public mandate independently from particular interests.

The current paper will analyze possible interdependencies between the public service functions and sources of revenue proposed in the present and previous broadcasting bills. In addition, the financial situation and financing problems of the Mongolian National Television will be presented as well the funding structure of public service institutions in advanced countries will be addressed with respect to global problems they encounter.

3. Controlling mechanism: Composition and powers of the Board of Governors

The composition of the supervisory authority (Board of Governors) has proved to be the most controversial issue during discussions on the draft law. Indeed, the independence of programming of public broadcasters depends also on the composition and powers of the board.

The accountability of public broadcasting requires that its program and management be subjected to supervision by other bodies or institutions, which are responsible for assessing its performance. In order to derive an appropriated for Mongolian circumstances model, this paper will follow regulatory systems used in experienced countries and models proposed in previous and current bills in Mongolia to ensure independent controlling of public broadcasting.

4. Regulating private interests: limitations for commercial broadcasting

The public service broadcasting can only be realistic if it is defined within the framework of the commercial environment, taking private actors on the market into account. Recent developments show, that all over the world public broadcasting faces a crisis of legitimacy caused by proliferation of private entrepreneurs and development of a multichannel broadcasting universe that increasingly urge public broadcasts to compete harder for an audience, for purchasing programs, for qualified staff, for financial resources, etc. This paper will try to elaborate, to which extent the commercial broadcasting can be regulated so that a comprehensive broadcasting system – a dual system can be established where commercial and public broadcasting do not repulse but counterbalance each other.

5. DISCUSSION

5.1 The concept of public service broadcasting

During discussions on the transformation the Mongolian Television in the beginning of 90-s first approaches to outline public service broadcasting has been made. But establishing of public service broadcasting has clearly been defined as political objective not earlier than with the law on media freedom from 1998. Since this time principles and structure of public broadcasting has been definitely put on the agenda of public debate, and the concept of public service broadcasting has found more clear contours. A dozen laws dealing to different extent with the transformation of the National Broadcasting has been presented to media managers and politicians. Most of them have been elaborated independently from each other and not all of them reached the broad interested public. Nevertheless they all have contributed to the understanding of what is and how should function public service broadcasting. The last bill that is going to be discussed during the next parliament session in fall 2002 comprises fairly well the idea of public service broadcasting as it has been originally defined in most European countries.

Notwithstanding this draft as well as the most of previous bills have some common weaknesses. The main defect is that in most proposals the principle of independence, the fundamental principle and precondition of utilizing public service, has been defined halfway only, if not missed at all. It may be connected with the history of communist past and the long tradition of monopoly of state run media, that especially the last bills underline the principle of independence of public broadcasting explicitly with regard to the freedom from political power. In nearly all proposals broadcasting is not seen as economic activity, commercial interests are not considered as a danger for the independence of broadcasts. Meanwhile, rejection of commercial interests and the belief that a public service function

and economic interests such as maximizing profits were incompatible had been the main reason behind the establishment of public broadcasting in almost all advanced countries. Recent developments in global media environment show, that broadcasting is no different from the general economic trends marked by competitiveness and commercialism, and the public broadcast does not remain untouched from this trend unless its independence is ascertained by an appropriated media policy. In addition to the ignorance of the role economic interests the present and previous bills suggest, that the public broadcasting can be founded by nearly all sources: state subsidy, license fee, advertising, program sales, sponsoring and others. The idea of public broadcasting, namely providing of public service by independent and diverse programming in return to recourse to public funds loses under the current bill its justification, all the more the diversity of programming has also been defined partially only.

Public service broadcasting, as it has been traditionally defined, has to be different from commercial broadcasts in a way that it does not resort to "profitable" programs focused on entertainment, but provide a wide range of broadcast types seeking to reflect the diversity of public tastes and to satisfy an aggregate of audiences with different interests. In the most of proposed laws and statutes, however, the principle of balanced and diversified programming in respect to broadcast mode and audience addressed is omitted, underlining particularly the plurality of opinion to be expressed as the only attribute of diversity. Under these proposals the difference of public broadcast from commercials and hence the legitimacy of public service is endangered to become obscure. Meanwhile the strength of public service broadcasting that justify its existence is exactly the ability to provide diverse programs in all respects, being not only a forum for exchange of opinions but also providing a service which meets various interests and needs. Omitting to lay explicitly down the principle of diversity of programming while allowing all means of financing in addition to state subsidies and license fee can drag broadcasting in the direction of more profitable programs and hence drive them to the same pattern of programming as the most commercials pursue. Apart from this it must be added that the concept of public service broadcasting can only be realistic if it is defined within the framework of the commercial environment, taking the competitive market context into account, where private actors can not be kept out. Public broadcasting, which traditionally has been set up as the exclusive means of education, protected from competition and commercial pressure, faces nowadays nearly all over the world a crisis of legitimacy. This crisis is being caused by proliferation of private entrepreneurs and development of a multichannel broadcasting universe that increasingly urge public broadcasts to compete harder for an audience, for purchasing programs, for qualified staff, for financial resources, etc. The reason, why in Mongolia the necessity of a comprehensive broadcasting legislation is denied, or rather disregarded might be the persuasion that there is no competitive environment due to monopoly of the only nationwide radio and television. On the other hand, accentuating of the issue on the dismantling of the state ownership on media and liberalization of broadcasting from state control might have concealed the other challenge of time, namely, the development of an appropriated legal framework both for private and public broadcasting to ensure their complementary co-existence.

5.2 Financing problems of public service broadcasting

The question of financing of public television is a crucial one: the amount of money public television has at its disposal and the sources of funding determine the capacity of public service broadcasting to fulfill its mandate and missions.

In the declaration from the conference of the European Broadcasting Union held in Brussels in 1993 it is stated that in order to achieve their objectives public television channels must have a combination of adequate and evaluative funding at their disposal which can call on both public and commercial resources while taking into account national traditions.

The revenue type which is considered to be the most appropriate for public service broadcasting in many countries is license fee. It does not stem from private companies, which could try to abuse their influence for private interests, and it does not stem from direct public revenues of the governments, that could try to abuse its influence for political targets. All broadcasting bills discussed in this paper agree that license fee shall be one of revenue sources of public broadcasting. However, it is widely recognized, that due to the extremely sparse population density of Mongolia, the low number of inhabitants and the weak infrastructure license fee is problematic and would not ensure sufficient income. It is problematic not only in respect to efficiency or fairness of collection of the license fees due to the nomadic way of life of significant number of citizens. Generally it is considered that license fee creates a contractual relationship between broadcast institution and the public: the public feel a greater sense of involvement with public broadcasting, and vice versa, the broadcaster is challenged to fulfill its mandate of public service. In Mongolia, where politicians and media managers, never mind the general public are learning first to understand the mission of public service broadcasting, license fees create more confusion than emphasize the role of public service broadcasting. Not only viewers who does not receive television signals because of technical or other matters feel to be treated unfair, but also commercial broadcasters complain for being disadvantaged and claim to share the license fee with the National Radio and Television. But not only wanting understanding of public service can be blamed for this confusion. Public service broadcasting is emerging in Mongolia in an environment, where commercial broadcasters have been established relatively long ago. Whereas the programming of the state run National Television and Radio has been dependant from political interests, the private broadcasters took over certain public service functions in a sense of providing a forum for different opinions and highlighting social and political problems in the course of social development.

License fee, called in Mongolia "television fee" has become part of revenue sources of the Mongolian National Television since 1998. To mention is, that the television fee has been collected in Mongolia since 1972, but it would have been more correct to call it "transmission fee": the whole amount accumulated from households went directly to the Mongolian Telecom to cover transmission costs. Since 1998 collecting and distributing of the financial assets donated by households for "watching TV" has been assigned to the State Directorate for Broadcasting Affairs. The Directorate aggregates the direct state grants to the amount collected from households and distributes between the Mongolian Radio, Television, transmission station and the technical department of the Mongolian National Television. Part of the funds has been allocated for financing the Broadcasting Directorate. Furthermore, from the "television fee" collected in Ulaanbaatar each of the local

broadcasters UBS, EAGLE TV and Channel 25 receive 10%. The Mongolian National Television get an amount of 10 Million Mongolian Tugrik (around 9000 USD) per month assigned from the Directorate. This grant consists of the state subsidy and "television fee", but neither the director of the National Television, nor the head of the finance department have an idea of how much they receive from their viewers and how much from the state.

The fact, that also commercial broadcasts share this fee with the National Television is actually not wrong: The monopoly of the state owned National Television on the advertising market diminishes the possibility of self-sustainable development of other broadcast institutions. For this reason providing the commercial broadcast institutions with additional funding sources secure to a certain extent pluralism on the electronic media market. But unfortunately this distribution of the "television fee" between UB broadcasts is not being done because of policy driven considerations with the aim to support pluralism of media. The State Directorate for Broadcasting Affaires was forced to share the "television fee" with other broadcasts: they (the UBS, Channel 25 and Eagle TV) claimed strongly on their right to receive funding from viewers for providing them with television programs. Both the demand of commercial broadcasters and the acceptance of the State Directorate for Broadcasting to share the "television fee" reveal that the "television fee" is seen not as payment for providing a certain service to the public but rather as a charge for watching TV in general, independently from the quality and content of the broadcast programs. Also viewers mostly do not care, why and for what reason they pay "television fee" and who receives their money. The fee, included into the monthly apartment rent is hardly considered as something for which certain service can and should be claimed (those who live in a "ger" in UB suburbs and in the countryside pay the television fee to inspectors working for the State Directorate for broadcasting affairs). At this point it must mentioned, that the State Directorate for Broadcasting Affairs has the power to determine the amount of the television fee, and this decision does not have to be done on the base of program evaluation. Thus, the "television fee" in Mongolia can not be determined in a sense of "license fee" used in countries with public service broadcasting. The broadcasting system in Mongolia, the inadequate structure of the Mongolian National Television and Radio and the lack of legal regulations for public and commercial broadcasts, as well as the lack of understanding of the term and mission of the "public service broadcasting" results in the indefinite term of the "television fee" having been considered by commercials, the Directorate for Broadcasting Affairs, the National Television and their viewers each in their own way.

Despite of all above mentioned backwards of license fee it should remain one of revenue sources of public service broadcasting. However, additional arrangements to promote the mission of public service broadcasting should be made as well as the mechanism of collecting license fee can be contemplated. Of interest is the experience of the Japanese public service broadcasting NHK: NHK collects the fees itself and at the same time asks people to comment on the quality of the broadcast service. This way, a portion of bureaucracy can be saved as well as the relation between the broadcaster and its viewers can be strengthened.

The other type of public funding, direct state subsidy, has been considered in Mongolia to be the main source of revenue of public broadcast institution. The proposal from Kh. Naranjargal and the

bill from 1998 suggest that the National Television can apply for state subsidy in order to realize concrete broadcast projects. Apart from the fact that it remains unclear, what kind of projects can be expected to be financed from the state, state subsidy can be seen indeed an important type of financing: the extremely sparse population density of Mongolia, the low number of inhabitants, the specific market conditions and cultural peculiarities stipulate, that license fee would not ensure sufficient income, market revenues have to be limited to a certain extent. Therefore, for the Mongolian public broadcast institution it is not a matter of ascertaining whether to use state subsidies or not. However, state subsidies can cause political dependence with regard to authorities, which determine the amounts. So the point at the issue is rather, how to safeguard the sovereignty of the public broadcast institution despite their financial dependence on the state? How to avoid state controlling by arbitrarily withdrawing or reducing the annual subsidy? Unfortunately these issues are not considered in the last bills.

In most industrialized countries which highly rate the advantages of independent public service broadcasting (U.K, GERMANY, Switzerland) non-governmental bodies determine the amount of public financing (not only subsidies but also license fee). In case for Mongolia however, this solution of non-governmental decision making has disadvantages that make it scarcely possible to realize. Firstly, it is more costly than the government decision making, and secondly, the willingness, but also capability to participate in collective procedures of decision-making is comparatively low. Hard economic situation in Mongolia, but also lack of experiences and consequently lack of ability to assess the value of public service broadcasting stipulate, that the readiness for additional expenses for public broadcasting as well as for other arrangements to reduce above mentioned disadvantages is hardly there.

Under these circumstances the most appropriated solution would be that the amount of the state subsidy would be fixed by the Parliament. However, public broadcasting should be involved in the process by which the funds are fixed. The broadcaster can determine their financial needs under supervision of an expert commission entrusted by law. The latter should exercise competence and objectivity with regard to the question whether the proposed amounts are in keeping with the missions of public service broadcasting and whether they comply with the principles of economy and good management. This solution has in comparison to the fixed percentage of subsidy allocated by Parliament and included in the Broadcasting act the advantage, that the financial needs can be adjusted to the changing financial needs of public broadcast institution within the context of the development of a competitive environment. In order to avoid state controlling by reducing or withdrawing the amount of proposed subsidies, the Parliament can be obliged to justify grant cuts more specifically, or revenue cuts by Parliament can be limited to a certain percentage, or the amount of state subsidies as the major part of revenue can be indexed in relation to the yearly price changes.

Market revenues like advertising revenues, revenues from sponsoring and merchandising etc. are seen in most countries with a long tradition of public service broadcasting as alternative or rather supplementary sources of funding. In Mongolia, however, the majority of proposals consider all kinds of market revenues adequate with public financing.

Even though advertising, sponsoring and other commercial activities generate significant extra funds, which create independence from political power, this independence has to be paid for dearly by its

high dependence on commercial expectations: e.g. revenues from advertising can only be raised when the programs reach a high audience of people with high purchasing power – leaving aside the program preferences of poor people, old people and minorities. Consequently, some evidence of an adverse correlation has been realized between the extent to which the public service broadcasting is funded from advertising and the proportion of output dedicated to factual, children's and cultural programming.

The proportion of commercial revenues compared to the license fee revenues varies considerably between the different countries in the world: whereas in Japan, the U.K., Germany or Sweden, for instance, more than 90% of the public broadcasting revenues stem from license fees. In other countries, like Italy or Switzerland, advertising revenues have a higher proportion (of about 25% of the total revenues) or a proportion that exceeds that from license fees (like Austria). Some countries even have no license fees at all, but only some kinds of (less abundant) non-market revenues, like private or public donations, (such as Canada, or, to less extent, the USA, for instance) or they do not even have these types of non-market revenues. (In some of these countries (like in Spain) the broadcaster revenues from advertisements are passed on to the governments budgets, out of which the broadcasters are then financed according to the governments decisions. This solution is most negative, as it combines the defects of commercial financing for the program structure and contents and of governmental financing for the political independence of the broadcasters.)

In Mongolia, defender of market revenues without any limitation argue, that the advertising market is not as big so that market revenue anyway can not bring significant income. However, they must have overseen, that because of its nationwide transmission the Mongolian National Television is the only one who can attract the most high number of advertisers. This means, that the National Television dominate the advertisement market generating more and more revenue from commercials. The consequence is that on the one hand the share of market revenues overweight public revenues, and in long term commercial interests could dictate the principles of programming. On the other hand, the exclusive monopoly on the advertising market affects the external plurality and competitive environment in broadcasting, which is as very important for the development of a democratic society. Public broadcasting is being introduced to secure plurality and support competition for good programming, but not to set up a single monopoly and banish other broadcasters.

In this sense it has been an important progress as the recent bill (Mai 2001) suggested some limitations for advertisement: advertisement should not exceed 10% of the daily program, children programs as well as news programs can not be interrupted with advertisement. At present, the total of television fee and state subsidy do play almost a marginal role in the revenue of the Mongolian Television: 14% of the total revenue are covered by public funds (state subsidy and television fee), the remaining 76% come from commercial sources, mainly from advertising. Enactment of the law on public broadcasting would lead to the dissolution of the State Directorate for Broadcasting affairs which again would free the amount of money spent for running the Authority. But the law, according to the last draft, would also set limitations for advertisement: the share of advertisement should not exceed 10% of the daily programming time. Critics say it would be better to establish limitations for advertisement per hour but not for the whole programming time. Others suggest to prohibit advertisement at all in order to stress the public service functions of the Mongolian National

Television¹. But the present director of the National Television Ts. Enkhbat considers, that these proposals are unrealistic and miss any objective foundations based upon calculations. Even confining the advertisement time to 10%, not to talk about prohibition of advertisement, would obstruct the MNTV operation, unless the public funding will be drastically raised. At present about 15% of the weekly programming time is devoted to advertisement, in addition to which come paid programs on demand of companies, political parties etc. The fact that the MNTV is the only broadcast which cover the entire Mongolian territory stipulates that most advertisers are interested to place their ads here, even though the MNTV is also the most expensive one. Since the MNTV is monopolizing the television sector because there are no national private television channels, the high share of advertising revenues do not necessarily mean that the MNTV is dependent on advertisers to the point where its program is affected. Right now the MNTV is in a strong position yet to negotiate with advertisers so that the influence of advertising on the program is minimal. The situation will be different, when the advertising will be regulated so that through a limitation of the advertising time in the MNTV the private televisions have a possibility to compete for this type of income.

5.3 The Governing structure: Composition of the Board of Governors

The concept of public service broadcasting implies the right of viewers being served to request that the service being offered meets their interests and expectations. Thus, accountability is central to any public service broadcasting system. On the other hand, public service broadcasting implies independence of broadcasters, particularly the freedom of broadcasters from undesirable political accountability. The public service broadcasting is expected "to be both politically independent and politically accountable, simultaneously controlled and uncontrolled by the government."² To reconcile the relative autonomy of public television and its essential accountability, a regulation mechanism must be ensured which allow to distance broadcasting from direct government intervention, while maintaining ultimate government control over it. In many countries the balance between the independence of the regulatory authority and its political accountability has been tried to achieve in a way that the state delegated certain categories of powers to other institutions. So for example, the state can maintain its ultimate control by granting licenses to broadcast, but once the broadcasting corporations are established, the governments' power to intervene directly can be restricted by the legal documents, authorizing other institutions to regulate broadcasting. The institutional relationship between regulatory bodies and the state definitely raises the question of the independence of that body in relation to the executive. The answer to this question can be found particularly in the system for appointing members of the regulatory bodies.

The question of supervision over the public broadcasting has been during the public debate about transformation of Mongolian Broadcasting the most controversial one. It has been mentioned previously that the establishment of public service broadcasting was proclaimed as an objective on

¹ "Recommendations of foreign experts to improve the draft law on Public Broadcasting", Good Governance program paper, unpublished. The government of Mongolia, Ulaanbaatar 2002

² E.Etzioni-Halevy, Inherent Contradictions of Democracy, "Illustrations from National Broadcasting Corporations", in Comparative Politics, Vol. 20, No.3, April 1988, p.332

government level for the first time when the law on Media Freedom was adopted in 1998. Until this time bills which dealt with broadcasting in Mongolia suggested a general regulatory body which shall coordinate both commercial and public service broadcasts. After 1998, the debate around transformation of Mongolian broadcasting clearly concentrated on establishment of public service broadcasting. Since this time the fundamental element of discussions has been the question of the governing body, specifically the appointment of the council members.

The parliamentary working group which has been established in relation to the enactment of the Law on Media Freedom in 1998 proposed a board consisting of 9 members one of which shall be nominated by the President, two by the government, three by the parliament and three by professional associations. The persons nominated shall be approved by the President. In the vast majority of European countries, the government, or the supervisory minister nominates members of the regulatory body, and in certain countries such as Bulgaria, Czech Republic, Estonia, Slovenia etc. national parliaments exercise the exclusive power to appoint members of the regulatory body. Independence is a concept that only can be assessed by taking into consideration not only legal provisions about the system of nomination but also the political situation and legal traditions of respective countries. In countries like Sweden, where the government is seen as the best guarantor of pluralism, there is no reason to doubt the independence of the government appointed Broadcasting Commission. Even though experiences of other countries such as Belgium, Germany, Latvia etc. show that involvement of specific groups strengthens the independence of the regulatory body, it would be dangerous to come for this reason to a conclusion that all regulatory bodies which do not include representatives of the society were not independent. And in contrary, in countries like Mongolia even the presence of professional associations can not be seen as the guarantee for the independence of the regulatory body, if we take into account the legal "traditions" of 70 years political partisanship which is the prevailing attribute of the social life even today. Regarding the current political situation where the vast majority of the Parliament (72 of 76 seats) is represented by the communist party, the situation is even worse: the danger of decisive influences of the governing party would be under this bill unavoidable.

The "improved" version of this bill which has been elaborated by a newly appointed working group at the Ministry of Justice and Interior after Parliament elections has changed this and proposed, that all 9 members of the Council will be appointed by Parliament, Prime Minister and President. Neither critics on the previous bills, nor foreign expert advises, nor recent political situation of one party monopoly in the Parliament has been taken into consideration.

The mechanism which ensure that the public service broadcaster is accountable to the public, rather than to the state of market, is settled most explicitly by the sphere of competence assigned to governing bodies. The countries with a dual broadcasting system attempted in different ways to strike the balance between the guarantee of independence vis-à-vis the political power and economic interests on the one hand, and the ultimate control power of the state on the other. The best known models of a successful regulation of the public sector are self-regulation systems of Germany in the form of ZDF and ARD, and the United Kingdom, with the BBC.

Independent from the type of power authorities with responsibility for broadcasting exercise it is quite common that the majority of regulatory bodies enjoy the power to supervise the program

content. This responsibility can be exercised on a case by case basis: a breach of principles of objectivity of information, a breach of the rules on high moral standards (violence, protection of minors). The authority can also conduct quantitative monitoring: by making detailed checks, they can verify whether a broadcaster is respecting his obligations to screen certain quotas of programs: independent productions, information, cultural, educational programs etc. This type of monitoring can have indirect effect on financing in the broadcasting sector when it focuses on restrictions of advertising and sponsorship. As the French CSA has pointed out: "The function of monitoring is one of the nerve centers of regulation. The legislation and the rules, the commitments and obligations set down in agreements... are what make up the juridical framework for freedom of communication. These would scarcely be effective if it were not possible at all times to ensure they were being respected."³ How effective the monitoring is, depends of the range of sanctions and the efficiency of implementation, but also on the financial and staffing resources made available to the regulatory body.

Some regulatory authorities draw up codes of conducts from programming. The BBC has such codes, other examples can be found in the Czech Republic, Germany, Greece, Ireland, Netherlands, Poland etc.

When in Mongolia the bills on public broadcasting were under discussion, the question of independence of the governing body was the burning issue. To listen to people involved in working groups, the main purpose of the Board of Governors is not regulate but to be independent. Self-regulation is not considered as an appropriated method of accountability, as the regulatory body shall be independent from the broadcaster, too. The bill from 1999 prohibits even, that the Board of Governors intervene into the programming policy, but it does not determine who and how shall assess the broadcasting performance. The main function of the Board of Governors according to both last bills is of administrative nature: set the strategy, define the structure, internal rules and regulations of the broadcaster, appoint management, monitor financial activities and present the financial report to the Parliament. The bill from 2001 proposes, that the Board shall set the programming policy, but it remains unclear, who shall monitor the compliance of programming with the policy, laws and regulations.

An essential element of the realization of public accountability is to establish a procedure to deal with complaints. However, those authorities that have to manage and monitor the broadcasting sector need to be distinguished from those that have an exclusive function to help resolve disputes. The second type can be approached by private individuals. This is true of the "Kommission zur Wahrung des Rundfunkgesetzes" in Austria, the Broadcasting complaints Commission in the United Kingdom, or the Independent Authority for the Examination of Complaints in Switzerland. As far as methods of referral are concerned, the complaint authority has mainly the option of accepting a claim or of taking nor further action. But when it comes to the proceedings, some authorities have the power to impose sanctions on the broadcaster, while others only have the option of suggesting administrative sanctions to the competent authority.

In case for Mongolia, the broadcasting bill from 1999 suggested, that the Board of Governors shall proceed all complaints which deal with public broadcasting.

³ CSA, 3d Annual Report, 1991, p.195

The newer bill does not contain any provisions concerning complaints.

5.4. Towards a dual broadcasting system: Regulations for commercial broadcasters

Because the electronic media offer tremendous advantages such as immediacy, mass coverage, authoritativeness, but also because of their immense potential to influence peoples' attitudes - all advanced countries seem to agree on the need for certain regulations concerning the development of entire broadcasting system, though it will limit the liberty of private entrepreneurs in the media sector. That is why in industrialized countries experienced in dual broadcasting system also commercial broadcasts are committed to fulfill certain obligations. This refers first of all to restrictions concerning licensing: decisions must be made as to who among a number of competing applicants should be licensed and whether a licensee should continue to hold a license. Therefore, licensees must propose and maintain certain technical (and programming standards). A specialized regulatory agencies were introduced in many countries to make those decisions on the basis of a body of accumulated and expert knowledge and practice. In 1948 the Australian Broadcasting Control Board was established, and in the course of the 1950-s similar regulatory agencies were introduced in Japan and Great Britain in order to license newly created commercial broadcasts. Also newly independent countries such as Czech Republic and Poland created regulatory agencies responsible both for public and commercial sector. The Council for Radio and Television Broadcasting of the Czech Republic has the power to supervise the content of programs in both the commercial and the public sector in order to see whether broadcasters have complied with their obligations.

Program content is the subject of wide-ranging regulations in many national legal systems. Based on the principle that the broadcasting both in public and commercial sectors should take into account public interest, regulations are laid down to provide the framework for guaranteeing a certain quality of program in the system by taking into account cultural diversity and the need to facilitate access for all citizens to educational programs, information and entertainment. The accountability of private broadcasts is outlined by program duties such as an obligation to devote a minimum amount of time for children or educational programs, to observe restrictions concerning depiction of sex, violence and profanity. Furthermore their programming can be restricted by the limitation of the amount of the time allocated to advertising as well as by confining the content of advertising (e.g. prohibition of political or religious advertisement). The assignment to supervise the programming accomplishment of private broadcasts belong to above mentioned external organizations (such as regulatory agencies developed by legislatures). But it must be added that also several levels and forms of internal control of programming are prevalent. Countries where there are large numbers of individually owned and operated stations such as USA, Canada, Japan, Great Britain etc. networks and associations of broadcasters have codes of conduct that influence their programming. Standards usually deal with treatment of sexually explicit material, violence, ethnic minorities, religious and political groups, children and possibly handicapped.

In most countries where there are national associations of broadcasters there is some sort of voluntary code of practices speaking to the need of broadcasters to remember their responsibilities to their audiences. Associations in the United States, Japan, Australia and Canada have more

elaborate codes of practice. The Japanese National Association of Commercial broadcasters in Japan and United States feature a great deal of violent fare during prime time hours, but it must be mentioned that there is little evidence that the codes have had influence over the nature or amount of such programming. Part of the reason may be lack of penalties, although codes can bring peer group pressure to bear on an individual operation which appears to be stepping out of line. Self-regulation, after all, is based at least in part on the idea that if the industry regulates itself, the government will not have to regulate it, or at least not as much. Some national associations have appointed advisory panels for certain activities (children's advertising, medical products), but that is not general practice. Still, national associations and their codes can have an impact on programming.

In countries well known for their distinct dual broadcasting system such as Germany, Great Britain, France, the government, usually through the legislative body or the minister responsible for broadcasting, established overall limits on amount and content of advertising: in Germany advertising should not take more than 20% of the entire program of commercials, adds for alcohol and tobacco products are prohibited. In Great Britain private channels can not carry more than 7 Minutes adds per hour. Political and religious advertising as well as advertisement for tobacco and gambling are prohibited. Children program, documentaries and information programs with a duration of less than 30 Minutes can not be interrupted by adds. Similar regulations bind commercials in France, too.

Almost in all industrialized nations ownership relations are sharply trimmed with the aim to secure fair competition and pluralism on the media market. The 1996 Telecommunications Act of the USA, for example, stipulates that the television stations owned by a single party cannot reach more than 35 percent of all TV households in the United States. In Germany the share of television broadcaster in the viewer market should not exceed 30%. In France a restriction is prevailing which allow entrepreneurs a share of maximum 49% in one single broadcaster, maximum 20% for foreign investors and there are additional provisions for cross-ownership.

In view of the immense role broadcasting can play in the society regulation of the whole system including commercial sector has proved necessary: there is no example of a country with a dual broadcasting system, which solely rely on public service broadcasting and do not touch the freedom of private broadcasters.

Unfortunately, in Mongolia the idea of an absolute freedom of media as well the lack of related knowledge and the fear to restrict the constitutional freedom of expression result in the current situation of disregarding the commercial broadcast media as subject to regulation.

Private electronic media exist in Mongolia since the beginning of 90-s. According to the "Monitoring Mongolian Media"⁴ project, 23 private broadcasters (radio and television, excluding cable operators) have been operating in Mongolia, which make 44 % of all broadcasts. This reality of a dual system has been ignored in the existing legislation as well as in most broadcasting bills proposed during the last 10 years. Even though the broadcasting bills, particularly those proposed before the Law on Media Freedom comprised both commercial and public service media, they hardly include any

⁴ "Monitoring Mongolian Media - 2001 first half-year. Press Institute, Ulaanbaatar 2001

specific provisions concerning private broadcasters. The only bill which impose both commercials and public service media to fulfill certain obligations has been presented by Robert Mulholland in 1994. According to him all broadcasters independently of their status and affiliation have to stick on the principle of pluralism, maintain a balance between information, education and entertainment, respect national and international legal acts on human right, pornography, violation and privacy. In the draft law proposed by P.Ochirbat in 1995 there is a provision which prohibits every monopoly in the media sector. The National broadcasting council shall prevent emerging of news monopoly on the media market when granting licenses and take care that a new broadcast does not endanger pluralism of program types. However, the bill neither defines the term "monopoly" nor describes how the council shall prevent its development. The rest of bills concentrate exclusively on the National Radio and Television as public service broadcasts.

It must be granted, that private television plays an important role especially in the capital contributing to the diversity of information sources and providing not only entertainment but also an amount of public interest programs. Following is the weekly programming structure of the main four broadcasts of Mongolia:

	MNTV	UBS	EAGLE TV	CHANNEL 25
Weekly transmission hours	68	60	56	28
News	18%	10%	52%	16%
Information: Politics & Social Arts & Culture	10%	6%	3%	11%
	4%	1%	2%	3%
Sports	5%	5%	2.5%	3%
Non-fictional program for Family & Youth (education, household consulting, health programs,)	4%	2%	5%	3%
Children	4%	6%	13%	3%
Music	4%	10%	3%	3%
Non-fictional Entertainment (Shows, games, quiz)	17%	7%	0.5%	4%
Fiction TV Drama, Movies	29%	47%	18%	55%
Other	1%	2%	0	0
Advertisement	15%	5%	1%	NA

The share of "public interest programs" (news, information, culture, children program) in the entire programming of the National television is relatively low (36%) compared to public service

broadcasts in advanced countries (53 % in Germany, 55% in Great Britain, 56% in Australia). The programming of private broadcasts is less balanced: 55% of the Eagle TV programming are news, other categories with the exception of movies and children programs play a marginal role. The Channel 25 is distinctive through emphasizing on the role of information programs on political issues whereas other programs with the exception of news and movies do play a minimal role. The share of public interest programs offered by private broadcasts in Ulaanbaatar amounts to 50%, which is high compared to some countries with a dual broadcasting system: in Germany private broadcasts devote 21% of their broadcasting time to public interest programs, in France and Australia respectively 32%.⁵

Private broadcasts in Mongolia do perform public service functions not only through transmission of public interest programs. In a situation where the Mongolian National Television remains government run the private broadcasts do play a significant role ensuring pluralism of opinions and external plurality on the electronic media market. It must be granted that the Mongolian National Television is seeking to reflect the diversity of public's tastes through different types of broadcasts. It also tries to meet different interests through addressing certain audiences (children, young or elderly people). In this sense the Mongolian National Television fulfill to a certain extent some principles attached to the idea of public service, namely the principles of universality and diversity. But it is lacking in the main requisite of public service, the independence from private interests and political authorities. To fulfill public service, the broadcaster should be able to express current ideas in the society absolutely freely, make possible that through its programming information, opinions and criticism circulate. The current status and structure of the Mongolian National Television stipulate an explicit dependence on political authorities and constrain the objectivity of information: critics on the government or the ruling political party are in the MNTV hardly present, the information programs, especially news are clearly aligned with the government and parliament' majority. At this point it must be noticed that also private broadcasts have been bound by partial interests of the owners: the Eagle TV, despite of its high professionalism of news programs clearly pursue a missionary function promoting Christian values. The Channel 25 is a sympathizer of the current president, but it does not directly support the government. But on the other hand it must be mentioned, that the extent of commercialization of private broadcasts in Mongolia cannot be compared with that in industrialized countries.⁶ The National television which cover the entire territory and for this reason considered as the most popular broadcast in Mongolia monopolizes the advertising market, so that advertising and therefore chasing after "profitable" viewers is not specific for private televisions yet. On the other hand, there is also no mechanism which promote the process of commercializing: there are no objective audience measurements which identify broadcast and program ratings, and the advertising prices do not correlate with the number or type of viewers, or the actual popularity of programs. Nevertheless a certain extent of competition for the viewer's ratings can still be identified, and for the

⁵ I.Hamm, Die Zukunft des dualen Systems. Aufgaben des dualen Rundfunkmarktes im internationalen Vergleich. Gütersloh 1998

⁶ Commercialization is understood here as a tendency to drop activities which are considered to be unprofitable, for instance programs for minorities or "heavy serious" programs on political issues, so as to promote others which are more popular and likely to generate profits.

private broadcasts the only mean to attract the viewers is to make use of the weakness of the National Television - its one-sided information and news programs. The Eagle TV, as well as the Channel 25 are distinctive through their more balanced news programs and government opposed position in information programs.

Since the monopoly of the only one nationwide television limits the space for commercial activities of private channels, their program considerably differs from those in industrialized nations.

Nevertheless, or exactly that is why the current disregarding of the private actors in Mongolia can lead to an increasing imbalance on the broadcasting market or even dismissing of private broadcast institutions leaving the sole monopoly the National Broadcaster and may be those missionary stations mainly financed from abroad like Eagle TV. Meantime, a dual broadcasting system needs a lively competition to prove its advantages, and competition can only be there where functionally equivalent broadcasts can compete with each other. Thus, to create an environment which provide conditions for media pluralism and a competition for good, qualitative programming, rather than the competition for audience ratings is the primary challenge in Mongolia. At the very least it should be defined what is permissible in regard to protection of young persons like prohibition of glorifying and trivializing of violence or war and establishment of a time to which violation or programs or depiction of sex cannot be broadcast. Furthermore it is essential to determine principles by which advertisement should be regulated in both public service and private media institutions. E.g. the principle of separating of advertisements and program items respectively prohibition of surreptitious advertising should be laid down. Experiences of other countries show, that mechanisms which guide programming policies such as networks and national organizations could be helpful at least to keep program quality issues on the agenda. At present in Mongolia there's a single association of broadcasters: the Association of Rural Radio Broadcasts, which require its members to follow certain programming guidelines such as plurality of program types and consideration of the listener needs of all social groups. Establishment of an Association of TV broadcasts is under discussion, but there is also much criticism about "too many media associations and organizations for such a little nation". In the current situation of ignorance of the necessity of a comprehensive broadcasting law in Mongolia, broadcaster's networks and associations might not only have some influence on the quality of programming, but also make the public and policy makers aware, that only if public and private broadcasters are seen as an entire system, a sustainable development of both institutions can be ensured.

Despite of this situation, as mentioned before, private broadcasts are not subject to discussions. Maintaining of a certain quality of programs and taking public interests into account is left at the discretion of broadcasters. Except some external control mechanisms such as restrictions concerning licensing, nor any other forms and levels of regulations have been laid down for private broadcasters. There are general laws prohibiting depiction of pornography, glorification of violence and promotion of tobacco and alcohol, but there are neither self-regulation mechanisms nor any systems developed by legislators to oversee compliance and penalize, if necessary.

There is no special law on advertising yet, and the share of advertising in the programming of private broadcasts in Ulaanbaatar is relatively low due to the monopoly of the Mongolian National Television.

If the law on public service broadcasting will be approved, the advertisement of the MNTV will be limited leaving some space for private channels. More competitive environment will be created inspiring private broadcasts to developments towards stronger commercialization. But it must be taken into consideration, that fair competition and pluralism on the media market can only be secured if development of monopolies can be prevented. In the current media situation in Mongolia it is not easy to dismantle the monopoly of the only nationwide Mongolian National Television. But supporting small private channels through preserving a space for commercial activities and at the same time restricting the possibility for growing of new monopolies through multiple and cross ownerships further strengthening of the existing monopoly can be bound favoring the development of pluralistic media.

Furthermore it attracts attention, that while in Ulaanbaatar a more or less competitive environment for electronic media has been established, the situation in the countryside is characterized by the sole monopoly of the Mongolian National Television. Low population density and limited advertising market in rural areas impose that private television has hardly have any chance to survive. This situation gives rise to concentrations and in print media a process of merging has already been commenced with the fusion of some local newspapers of Zavkhan, Khentii, Khovd , Orkhon and Bulgan aimag under one owner, Egel Co.Ltd.

The biggest Media corporation of Mongolia, the "Mongol news Co.Ltd" has been running at present one of the 5 dailies of Mongolia, an English-language weekly newspaper "The UB Post", a weekly children paper "Bi Bi Bi", a weekly magazine "Nyam garig Weekend", the FM Radio 102,5 and the TV Channel 25.

6. SUMMARY

1. "The law on Freedom of the press" passed in August 1998 and the resolution adopted in connection with the enactment of the law impose to dismantle the Directorate for the Radio and TV Affairs and the National News Agency and organize the national radio and television as national public media organizations. Despite of several weaknesses this law represented a serious step towards breaking the state monopoly on news, since it legalized the idea of both private and public media, prohibited state ownership on media and brought the discussion on public service media as a clearly formulated political objective on the agenda.

2. In connection with the enactment of the above mentioned law the Parliament' Standing Committee on the State Organization was entrusted to elaborate a draft document regarding the structure, composition and statues of the broadcast institutions by October 15, 1998. However, the Mongolian National Television and Radio as well as broadcast organizations under local Governor's Chancelleries remain government run until today. Since 1998 3 bills on public service broadcasting have been elaborated, no one passed to the Parliament. The reason for this situation can be seen in the lack of experiences and knowledge, or difference of opinion. Beyond this, lack of political will and thus lack of clearly formulated government strategy to ensure a sustainable development of independent and pluralistic electronic media in Mongolia impose the current situation, where statues regulating broadcasting in Mongolia in accordance with the Constitution of Mongolia, the "Law on Freedom of Press" and other related laws are still missing.

3. Lack of a long term policy to transform the broadcasting system could be documented by following:

3.1 In the time between 1990 – 2002 around ten statues and bills have been elaborated and submitted to politicians and the interested public. Almost all those documents have been proposed independently from each other and pursued different aims: to reform the National Television within the existing structure, to regulate the print and electronic media including private, state owned and public service media as a whole system, or to provide legal conditions exclusively for public service media. Just few of the those documents reached the broad interested public. The need to transform the existing state owned radio and television has been for the first time officially formulated in 1998, when the law on "Freedom on of Press" was passed. In 2002, 4 years since the state ownership on media has been prohibited, a total of 29 broadcast institutions, which make 49% of all broadcasts, were government run.

3.2 The debate on proposed draft laws and the possibilities to transform the broadcasting in Mongolia has been attended by seminars with foreign experts and other arrangements. But it should be underlined, that all these efforts in connection with broadcast reform come from national NGO-s, international donor organizations and journalists themselves, whereas the government used to proceed quite hesitantly with efforts concerning liberalization of electronic media.

3.3 Common weaknesses in nearly all draft laws refer, that no consistent and systematical analysis and review of existing documents, bills and reports have been done. Neither the criticism of journalists and foreign media experts has been consequently taken into account in draft laws and statues.

4. In the result of analyzing of existing draft laws and statues by comparing them with the practice of more experienced as well as transition countries following has been detected:

4.1. The main weakness of most draft laws which deal with public service broadcasting is, that the fundamental principle, the basic precondition for a functioning public service broadcasting, namely the principle of independence has been defined halfway only if not missed at all. To note is, this principle has been determined explicitly with regard to the freedom from political power. In nearly all proposals broadcasting is not seen as economic activity, commercial interests are not considered as a danger for the independence of broadcasts.

4.2. In addition to the ignorance of the role economic interests almost all bills proposed during last 5 years suggest, that the public broadcasting can be founded by nearly all sources: state subsidy, license fee, advertising, program sales, sponsoring and others. The idea of public broadcasting, namely providing of public service by independent and diverse programming in return to recourse to public funds loses under the current bill its justification.

4.3 Almost all discussed bills agree, that direct state subsidy will be the main source of revenue of public broadcast institution. Using public funds has the advantage of keeping public television away from private interests and commercial pressures. However, this type of public funding can cause political dependence with regard to authorities, which determine the amounts. The point at the issue is thus, how to safeguard the sovereignty of the public broadcast institution despite their financial dependence on the state? How to avoid state controlling by arbitrarily withdrawing or reducing the annual subsidy? These very important questions remain untouched in the last bills: neither concrete mechanisms of determining the amount of subsidy have been suggested, nor defined, who shall determine the amount of funding.

4.4 It has been an important progress that the recent bill (Mai 2001) suggested some limitations for advertisement: advertisement should not exceed 10% of the daily program, children programs as well as news programs can not be interrupted with advertisement. It is a question to investigation, whether 10% of daily program will be adequate to counterbalance the total revenue or whether it would be preferable to restrict advertising in certain times instead of to certain percentage of programming.

4.4 Public service broadcasting has to be different from commercial broadcasts in a way that it does not resort to "profitable" programs focused on entertainment, but provide a wide range of broadcast types seeking to reflect the diversity of public tastes and to satisfy an aggregate of audiences with different interests. In the most of proposed laws and statutes, however, the principle of balanced and diversified programming in respect to broadcast mode and audience addressed is omitted, underlining particularly the plurality of opinion to be expressed as the only attribute of diversity. Under these proposals the difference of public broadcast from commercials and hence the legitimacy of public service is endangered to become obscure, since the strength of public service broadcasting that justify its existence is the ability to provide diverse programs in all respects, being not only a forum for exchange of opinions but also providing a service which meets various interests and needs. Omitting to lay explicitly down the principle of diversity of programming while allowing all means of financing in addition to state subsidies and license fee can drag broadcasting in the direction of more profitable programs and hence drive them to the same pattern of programming as the most commercials pursue.

4.5 The fear for ultimate political controlling over the broadcasting council and suggestions to include media representatives have been expressed several times during discussions on this subject. Critics constantly stressed that a politically non-aligned board shall oversee the public service broadcast, and experts suggested various options feasible for the democratic selection of the board members to ensure the independence of the regulatory body. Neither critics on the previous bills, nor foreign expert advises, nor recent political situation of one party monopoly in the Parliament has been taken into consideration: after some variations of the number of members to be nominated by the Parliament or Prime

Minister, the last bill suggest, that that all 9 members of the Council will be nominated by the Parliament, Prime Minister and President respectively and approved by the Prime Minister. Regarding the current political situation where the vast majority of the Parliament (72 of 76 seats) is represented by the communist party, the danger of decisive influences of the governing party would be under this bill unavoidable.

4.6 Self-regulation is not considered as an appropriated method of accountability, as the regulatory body shall be, according to proposed bills, independent from the broadcaster. Most bills do not determine who and how shall assess the broadcasting performance. The main function of the Board of Governors according to last bills is of administrative nature: set the strategy, define the structure, internal rules and regulations of the broadcaster, appoint management, monitor financial activities and present the financial report to the Parliament. The current bill proposes, that the Board shall set the programming policy, but it remains unclear, who shall monitor the compliance of programming with the policy, laws and regulations.

4.7 An essential element of the realization of public accountability of public service broadcasts is to establish a procedure to deal with complaints. A provision of this nature has been suggested once 1999, but in no bills later.

4.8 Even though the broadcasting bills, particularly those proposed before the Law on Media Freedom comprised both commercial and public service media, they hardly include any specific provisions concerning private broadcasters. Experiences of industrialized countries show, that to ensure a sustainable development of both public and private media, a regulation of the whole system including commercial sector is necessary: there is no example of a country with a dual broadcasting system, which solely rely on public service broadcasting and do not touch the freedom of private broadcasters. The current disregarding of the private actors in Mongolia can lead to an increasing imbalance on the broadcasting market or even dismissing of private broadcast institutions leaving the sole monopoly the National Broadcaster and may be those missionary stations mainly financed from abroad like Eagle TV. Meantime, a dual broadcasting system needs a lively competition to prove its advantages, and competition can only be there where functionally equivalent broadcasts can compete with each other.

5. Analyzing of the situation of electronic media with regard to problems and prospects of a dual system in Mongolia brought following results:

5.1. State owned, private and local public media (which do play a marginal role), determine the structure of the Mongolian broadcasting system today.

5.2. The leading position belongs to the state run Mongolian National Television (MNTV), which cover 98% of the territory of Mongolia and is the only nationwide broadcast. The

MNTV fulfill to a certain extent public service functions, trying to reflect the diversity of public's tastes through different types of broadcasts and meet different interests through addressing various audience groups such as children, young and elderly people. But it is lacking the main requisite of public service broadcasts, the independence from private and political authorities: the current status and structure of the MNTV stipulate an explicit dependence on political authorities and constrain objectivity of information. Chances for a radical programming alteration are confined due to its current legal status and structure, limited financial resources and the monopoly position on the market.

Even though the MNTV is state run, and a conviction is wide spread that state subsidy is its main revenue source, market revenues overweight in the income structure and public funding do play a marginal role thanks to the . The monopoly of the Mongolian National Television on the advertising market diminishes the possibility of self-sustainable development of other broadcast institutions and on the other hand strengthen the position of the MNTV to negotiate with advertisers so that the influence

of advertising on the program is minimal. "Television fee", which is part of public funding used by the MNTV, can not be determined in a sense "license fee" used by in countries with public service broadcasting tradition: for the National TV it plays as revenue source just a marginal role, private broadcasts do claim on their right to receive "television fee", and the viewers do not expect a certain service from the MNTV for the fee they have paid.

5.3. Private broadcasts do exist in Mongolia since 1994. In a situation where the Mongolian National Television remains government run the private broadcasts do play a significant role ensuring pluralism of opinions and external plurality on the electronic market. The extent of commercialization of private broadcasts in Mongolia can not be compared with that of industrialized countries due to the monopolizing of the advertising market by the MNTV and consequently less competitive environment.

Private broadcasts do play certain public service functions: the share of public interest programs offered by private broadcasts in Ulaanbaatar is high compared to those of commercials in industrialized countries. In addition, their news and information programs are more balanced, since they are, in contrary to the Mongolian National Television, free to criticize the government and parliament.

5.4. Through the significant role of private broadcasts in Ulaanbaatar and some other urbanized areas, more or less pluralistic broadcasting programs have been offered there. The situation in the countryside is characterized by the sole monopoly of the Mongolian National Television. Law population density and limited advertising market in rural areas impose that private television has hardly have any chance to survive. This situation makes a concentration of media organizations necessary, and in print media a process of merging has already been commenced with the fusion of several local newspapers.

5.5 In general, understanding of "public service broadcasting" and the role of private broadcasts has been in Mongolia a learning process for politicians, media managers,

journalists and viewers as well. This might be the reason, that the necessity of a comprehensive broadcasting legislation which regulate both public service and private broadcasts has not been recognized or even denied.

7. CONCLUSION / RECCOMENDATIONS

Addressing Mongolian Legislators & Politicians, following can be recommended with regard to establishing an appropriated legislation for broadcasting in Mongolia:

1. Because the electronic media offer tremendous advantages such as immediacy, mass coverage, authoritativeness, but also because of their immense potential to influence peoples attitudes there is a real need to regulate not only the public service but also private broadcasts. Almost in all industrialized countries experienced with dual broadcasting system also commercial broadcasts are committed to fulfill certain obligations. E.g. it should be defined what is permissible in regard to protection of young persons like prohibition of glorifying and trivializing of violence or war and establishment of a time to which violation or programs or depiction of sex cannot be broadcast. It is also essential to determine principles by which advertisement should be regulated in both public service and private media institutions. E.g. the principle of separating of advertisements and program items respectively prohibition of surreptitious advertising should be laid down.

Experiences of other countries show, that mechanisms which guide programming policies such as networks and national organizations could be helpful at least to keep program quality issues on the agenda. Thus, encouraging by legal provisions or other way the broadcast institutions to create those associations can be one way to establish regulating mechanisms for private institutions.

A comprehensive broadcasting legislation is needed not only to oblige private broadcasts with certain duties. A balanced and competitive environment to support the development of pluralistic media and ensure the sustainable development of public and private media can only be created if public and private broadcasters are seen as an entire system.

2. Concerning the previous and current bills on "public service broadcasting", which in fact can be part of a comprehensive broadcasting act, following has to be taken into account:

2.1 In general it must be noted, that in almost all bills including the current one the major terms such as "Public media", "program", "advertising", "monopoly" etc. are not defined despite the fact that these terms are differently used in Mongolian and thus can create confusion.

2.3 Especially the term "public service broadcast" must be clearly defined taking into account the major attributes such as a) universality in a sense of accessibility for all citizens independently from the tastes and interests but also from the distance between transmitter and viewer; b) pluralism in a sense of diversity of programming, diversity of audiences addressed and diversity of the subject dealt with; c) independence from private interests and political authorities. To note is, that in the current bill all above mentioned attributes have been laid down partially only: instead of a general remark "the broadcast serves public and national interests" the principle of universality shall be defined more

clearly (e.g. The public broadcast shall seek to reach as wide public as possible by means of appropriate programming for a wide range of tastes and interests. No one shall be disenfranchised by distance or by accident of geography). The principle of "pluralism" has been narrowed down to "pluralism of opinions in political and economic issues". Instead, the diversity of program types, a balanced treatment of different subjects and views as well as reflection of various interests and needs shall be clearly defined as fundamental principles which the public broadcast strive to fulfill. The key attribute, the principle of independence has to be defined more explicit, requiring not only independence from political authorities, but also from private, economic and one-sided interests. The analysis of draft laws proposed during the last 10 years show, that commercial interests are not considered as a danger for the independence of broadcasts. Meanwhile, rejection of commercial interests and the belief that a public service function and economic interests such as maximizing profits were totally incompatible were the main reason behind the establishment of public broadcasting in almost all advanced countries. Recent developments in global media environment show, that broadcasting is no different from the general economic trends marked by competitiveness and commercialism, and the public broadcast does not remain untouched from this trend unless its independence is ascertained by an appropriated media policy.

2.3 The question of financing of the public service broadcast shall be reviewed in the current bill. First of all, the amount needed for the Mongolian National Television as public service broadcast shall be identified upon objective assessment of its current revenue and expenditure structure. The belief that the state subsidy provide the major part of the revenue of the MNTV and thus make the broadcast financially too dependant from the state is unjustified. Investigations show, that public funding, which in case for the MNTV consists of the direct state grant and the "television fee", do play a marginal role in the revenue structure. In contrary, market revenues overweight, making more then 70% of the income of the MNTV. In some developing countries missing capacities to provide public broadcasters with non-market revenues make necessary to accept market revenues as the second best revenue for public service broadcasters. The higher extent of the role of this revenue type in Mongolia has the advantage, that on the one hand it makes the MNTV less dependant from the state. On the other hand, thanks to its monopoly position, the possibilities of advertisers to influence the programming of the MNTV is minimal, too. The negative consequence is, that this unlimited monopolizing of the advertising market strengthens the position of the single nationwide broadcaster, confining financial activities of other (private) broadcasters and blocking market access for new television stations. That is why the way of financing of the public service broadcaster in Mongolia should be thoroughly considered, taking into account the circumstances unique to Mongolia, and regarding experiences of advanced countries and current trends of global development. Unfortunately neither an objective financial assessment of the MNTV operation, nor other circumstances concerning the situation of electronic media has been done to propose a realistic provision in the broadcasting act. The current as well as almost all previous bills suggest all kinds of possible revenues for financing of the public service broadcaster in Mongolia (state subsidy, television fee, advertising, sponsorship, merchandising, program sales and others). According to the recent bill, advertising shall not exceed 10% of the daily programming time, but it does not define what shall be understood under "advertisement". Paid programs, hidden advertisement and other types of promotion are not taken into account. Some foreign experts suggest to prohibit advertising

in the National Television at all, which is missing any objective foundation with regard to the current situation of the MNTV and capacities available to provide sufficient public funding for the public broadcaster in Mongolia. An ideal suggestion for the financing of the public service broadcaster can not be made in this paper, since it was impossible to more thoroughly analyze the financial situation and capacity of the National Television, assess market potentials and review the public funding possibilities within the frame of this project. Such an analysis would be desirable not only with regard to establishment of functioning public service broadcasting in Mongolia, but also regarding the future of the Mongolian broadcasting system in general.

Furthermore, in the current bill a provision is missing about who and how shall determine the amount of public founding for the public service broadcaster. It might have been considered that it is clear that the Parliament shall fix the annual state budget. But in order to safeguard the sovereignty of the broadcaster and avoid state controlling by arbitrarily withdrawing or reducing the annual subsidy, this issue must be treated very carefully.

In most industrialized countries which highly rate the advantages of independent public service broadcasting (U.K, GERMANY, Switzerland) non-governmental bodies determine the amount of public financing. In case for Mongolia however, this solution of non-governmental decision making has some disadvantages the main of which is, that it is more costly than the government decision making. Hard economic situation in Mongolia, lack of experiences but also lack of political will stipulate that the readiness of politicians to make additional expenses for public broadcasting is hardly there. Thus, the most appropriated solution would be that the amount of the state subsidy would be fixed by the Parliament. However, public broadcasting should be involved in the process by which the funds are fixed. The broadcaster can determine their financial needs under supervision of an expert commission entrusted by law. The latter should exercise competence and objectivity with regard to the question whether the proposed amounts are in keeping with the missions of public service broadcasting and whether they comply with the principles of economy and good management. This solution has in comparison to the fixed percentage of subsidy allocated by Parliament and included in the Broadcasting act the advantage, that the financial needs can be adjusted to the changing financial needs of public broadcast institution within the context of the development of a competitive environment. In order to avoid state controlling by reducing or withdrawing the amount of proposed subsidies, the Parliament can be obliged to justify grant cuts more specifically, or revenue cuts by Parliament can be limited to a certain percentage, or the amount of state subsidies as the major part of revenue can be indexed in relation to the yearly price changes.

2.4 The composition of the governing body or the method of appointing shall be reviewed in the current bill: under the current political situation of the dominance of the Mongolian People's Revolutionary Party the danger of decisive influence of the government is unavoidable. Including professional or other social groups into the Board of Governors, or changing of the system of nominating by giving e.g. professional organizations and associations the right to nominate candidates, introducing a provision which oblige the Parliament to include an appropriate number of representatives from the opposition could contribute to raising of the independence of the governing body.

According to the current bill the board of governors shall determine the programming policy, but it remains unclear who and how shall assess the programming performance, e.g. the compliance with the programming policy, laws and other regulations. In public broadcasting experienced countries it is common that self-regulatory bodies have the power to supervise the program content. This responsibility can be exercised on a case by case basis: a breach of principles of objectivity of information, a breach of the rules on high moral standards (violence, protection of minors). The authority can also conduct quantitative monitoring: by making detailed checks, they can verify whether a broadcaster is respecting his obligations to screen certain quotas of programs: independent productions, information, cultural, educational programs etc. This type of monitoring can have indirect effect on financing in the broadcasting sector when it focuses on restrictions of advertising and sponsorship. How effective the monitoring is, depends of the range of sanctions and the efficiency of implementation, but also on the financial and staffing resources made available to the regulatory body. Some regulatory authorities draw up codes of conducts from programming. The BBC has such codes, other examples can be found in the Czech Republic, Germany, Greece, Ireland, Netherlands, Poland etc. These experiences could be desirable to introduce in Mongolia, too. The current bill is missing an essential element of the realization of public accountability, namely provisions determining a procedure to deal with complaints. To mention is, that those authorities that have to manage and monitor the broadcasting sector need to be distinguished from those that have an exclusive function to help resolve disputes. The second type can be approached by private individuals. This is true of the "Kommission zur Wahrung des Rundfunkgesetzes" in Austria, the Broadcasting complaints Commission in the United Kingdom, or the Independent Authority for the Examination of Complaints in Switzerland. As far as methods of referral are concerned, the complaint authority has mainly the option of accepting a claim or of taking no further action. But when it comes to the proceedings, some authorities have the power to impose sanctions on the broadcaster, while others only have the option of suggesting administrative sanctions to the competent authority.

Addressing NGO-s, media managers, journalists, professional and educational organizations as potential actors of policy making, following can be recommended:

Under the situation of wanting of a clearly formulated government strategy to liberalize the electronic media and support the development of pluralistic broadcasting media system in Mongolia a sustained public policy action is essential, to include providing the public and interest groups with information necessary to understand the current political and media situation and their own role and capacities.

1. Dissemination of following ideas & knowledge is essential to enable potential actors of policy making to understand and influence shaping of the broadcasting policy in Mongolia:

- The concept of media freedom versus responsibilities of journalists and media organizations
- The structure, role and functions of media systems in the society, particularly in Mongolia
- The basic idea of public service broadcasting, the role of private broadcasts, understanding of media institutions in the social context, as an entire system
- Media commercialization and its consequences
- The role of networks, professional associations. Understanding of self-regulation mechanisms

- The idea of public policy, the role of NGO-s, non-profit organizations and associations

These ideas can and should be spread first of all by educational organizations in journalism, management, but also NGO-s and professional associations by organizing seminars and training courses in cooperation and assistance of foreign and Mongolian experts, publications in print media and handouts. Even though a number of seminars and meetings have been organized in the course of past time, the main failing was, that these arrangements were organized mainly among and for politicians. The journalists and the public in general are, meantime, lacking in the understanding of idea of public service, the ability to assess the complex media situation as well as the role they can perform.

2. In addition, a consequent and systematical policy action shall be undertaken to move the government and politicians towards the legislated government policy with the aim to create an appropriated legal environment for the development of a dual broadcasting system in Mongolia. These include joint agreements on the media development strategy and assessment of the own capacities, systematical interaction with politicians (joint meetings, exchange of views, joint working groups with concrete objectives etc.). Even though certain meetings and other arrangements of this kind have been done in the past time, they were sporadic and isolated and did not pursue concrete and long term objectives.

3. For more efficiency it would be desirable to join not only own capacities among domestic journalists, NGO-s and media organizations, but also international and bilateral organizations which support the development of a democratic media system in Mongolia. Until now the main role in the organizing of meetings, seminars and other arrangements promoting establishment of the public service broadcasting in Mongolia has been performed by international donor organizations who financed those arrangements. But again, these activities have been organized occasionally, without coherence with arrangements organized/ financed by other donors.