

## Offers of program services distributors

### Case study

#### Introduction

Pursuing to insure the defense of the rights of the program consumer to receive fair and objective information contributing to the free formation of opinions, the Broadcasting Coordinating Council (BCC) is bound to exert a series of duties, imposed through the Moldovan Broadcasting Code (henceforth – the Code.)

Thus, the right of the services distributors to create and provide the public with offers of program services is not an absolute right, since this right is on the same plane with the rights of the program consumers: *“In the Republic of Moldova, the right to full, objective and truthful information, the right to the free expression of opinions and the right the free communication of information by means of radio and television outlets are guaranteed under law” (art.10 para.(1).)*

In its capacity of a guarantor of the defense of the public interest in the sector of audiovisual communication on democratic principles, the BCC is bound to insure the defense of the program consumers’ rights (*art.10 para.(2) and art.41 para.(1)*). This obligation corresponds to one of the key duties of the BCC – monitoring the offers of the program services insured by services distributors in accordance with *art.40 para.1, let.d*), including by verifying the observance, by services distributors, of the provisions of *art.7 para.(1)*: *“In the spirit of the respect of the fundamental human freedoms and rights, by transmitting and re-transmitting program services, political and social pluralism, the cultural, linguistic and religious diversity, informing, educating and entertaining the public are realized and insured.”* At the same time, under *art.40 para.(1) let.m*), in order to exert its duties, the BCC is entitled to issue decisions as regulation norms.

#### Findings

In order to outline a real and genuine picture of the way in which the program services distributors observe the provisions of the Broadcasting Code, insure the rights of the program consumers and the rights of the national, regional and local broadcasters to be accessible to the public, through letter no.30/9 of 30 September 2008, the Electronic Press Association APEL requested the following information from the BCC:

1. *The list of the services distributors functioning on the territory of the Republic of Moldova (RM);*
2. *The list of the national broadcasters which are included into the program services offers of all the services distributors functioning on the territory of the Republic of Moldova (RM);*
3. *The list of the services distributors which do not have in their program services offers the program services of all the national broadcasters, with the specification, which program services of the national broadcasters are not included into each offer of the program services;*
4. *The list of services distributors which do not have in their program services offers the program services of regional and local broadcasters (transmitting within the areas covered by each services distributors), with the specification, which program services of the regional and local broadcasters (transmitting within the areas covered by each services distributors) are not included into each program services offer;*
5. *The list of the broadcasters under the Moldovan jurisdiction, which ask payments from services distributors (acting on the Moldovan territory) for re-transmitting their program services;*
6. *The list of services distributors acting on the Moldovan territory, which take payments from broadcastes (under Moldova’s jurisdiction) for re-transmitting their program services;*
7. *The main problems emerging after the Broadcasting Code entered force in the relations between the broadcasters (under Moldova’s jurisdiction) and the services distributors (under Moldova’s jurisdiction,) of which the BCC members and apparatus are aware of;*
8. *The normative provisions adopted by the BCC, which serve as ground for the contractual relations between the broadcasters (under Moldova’s jurisdiction) and the services distributors (under Moldova’s jurisdiction);*

9. *The activities the BCC has undertaken to insure, defend and guarantee the right of any person (who benefits from program services offers of services distributors) to freely receive the program services offered to the public by the broadcastres under Moldova's jurisdiction;*
10. *The activities the BCC has undertaken in order to encourage free competition among the broadcasters (under Moldova's jurisdiction) and the services distributors (under Moldova's jurisdiction.)*

The 26-page answer to this letter, registered under no.685 of 17 October 2008, was sent within the terms provided by the law. Considering that information allows us to find the following:

- the re-transmission of the program services of the public broadcasters is done in agreement with *art.29 para.(5)*: “*The distributors re-transmitting program services through telecommunications networks shall freely include into their program services offers the program services of the public broadcasters...*”. Thus, the TV program service of the national public broadcaster Teleradio-Moldova is re-transmitted by all the Moldovan services distributors (165), while the program services of the regional public broadcaster Teleradio-Gagauzia is re-transmitted within that area by 8 services distributors;

- the re-transmission of the program services of the private broadcasters is done in accordance with *art.29 para.(5)*: “*The distributors re-transmitting program services through telecommunications networks shall freely include into their offers the program services of the public broadcasters and, if possible, of the local broadcasters.*” The program services of private broadcasters included in over 10 program services offers are:

**Pervyi kanal Moldova (Prime)** – relayed by **158** services distributors;

**TV Dixi** – relayed by **141** de services distributors;

**NIT** – relayed by **134** services distributors;

**PRO TV Chişinău** – relayed by **124** de services distributors;

**Muz TV** – relayed by **115** services distributors;

**Euro-TV Chişinău (EuTV)** – relayed by **105** services distributors;

**TV7** – relayed by **71** de services distributors;

**N4** – relayed by **52** de services distributors;

**2 Plus** – relayed by **40** de services distributors;

**Mega TV** – relayed by **31** de services distributors.

According to the information of the BCC, no services distributor takes payments from Moldovan broadcasters to re-transmit their program services.

It's however worth mentioning, that certain private broadcasters, by the way being on the list of the most distributed by the cable operators, according to the BCC's information, take payments to allow service distributors to re-transmit their program services and namely:

**TV Dixi** (S.R.L. „Teledixi”),

**TV7** (S.A. „Analiticmedia-Grup”),

**N4** (S.R.L. „Selectcanal-TV”),

**Mega TV** (S.R.L. „Muzic-Ramil”).

It's worth remarking that the BCC's reply does not present information about the services distributors, which do not have, in their offer, the program services of the regional and local broadcasters (transmitting on the areas covered by each of the services distributors,) with the specification, which of the program services of the regional and local broadcasters (airing in the areas covered by each of the services distributors) are not included into each program services offer.

Among the acts adopted by the BCC containing normative provisions for the contractual relations among broadcasters (under Moldova's jurisdiction) and services distributors (under Moldova's jurisdiction) the following were mentioned:

- BCC decision no.7 of 29.11.2006 on the expiration of broadcasting licenses;

- BCC decision no.51 of 12.04.2007 on the share of Moldovan music in the audiovisual program services;

- BCC decision no.125 of 04.12.2007 on the Regulation on managing the Broadcasters Support Fund;

- BCC decision no.127 of 26.12.2007 on the Broadcasters Conduct Code;

- BCC decision no.9 of 12.02.2008 on the Regulation of the joint advisory committee for the study of the issues related to the usage of radio-electrical spectrum dedicated to broadcasting and of the issues related to the development of the new technologies with impact upon the broadcasting;
- BCC decision no.10 of 12.02.2008 on the Regulation on the procedure of holding the contest for the office of a member of the Observers Council of the public broadcasting institution;
- The BCC decision no.14 of 12.02.2008 on the rent contractual relations among audiovisual services distributors;
- BCC decision no.21 of 26.02.2008 on the access of deaf people to TV programs;
- BCC decision no.24 of 26.02.2008 on the regulation of the conditions of airing SMS messages by the TV stations under Moldova's jurisdiction.

### **Conclusions**

Among the normative acts of the BCC invoked by the broadcasting regulating authority as sources of some normative provisions for the contractual relations among broadcastes (under Moldova's jurisdiction) and the services distributors (acting on the Moldovan territory), there is none to directly envisage the area of the relations among services distributors and broadcasters. Or, the information received from the BCC clearly shows that the presence of the program services of the national and local broadcasters in the offers of services distributors is different, some having full coverage (100%), and others – of less than 30%. Especially are ignored the program services of the local TV stations. We specify that those normative acts should also remove the existent discriminatory conditions where some broadcasters, under Moldova's jurisdiction, take payments from cable operators for the distribution of their program services, contrary to the legal provisions.

Ever since the Code was adopted, in its capacity of a guarantor of the defense of the public interest in broadcasting on democratic principles and of the program consumers' rights, the BCC has not been concerned with and has not contributed to:

- drafting and adopting some key normative provisions for the contractual relations among the broadcasters (under Moldova's jurisdiction) and the services distributors (acting on Moldova's territory);
- drafting and adopting some official interpretations of the provisions from art.29 para.(5) and art.30 para.(1) of the Code;
- insuring, for broadcasters, equal conditions of access in the offers of services distributors;
- insuring a balanced relation among the program services offered by national broadcasters and the ones offered by local and regional broadcasters in the offers of services distributors;
- protecting the information space, the linguistic and cultural-national heritage, including the culture and the languages of the national minorities, in approving the program services offers of the services distributors.

### **Suggestions**

In order to improve the situation in such an important field as the distribution of the audiovisual program services is, we consider it timely to recommend the BCC:

- in order to insure the rights of program consumers to full, diverse pluralist information, it should draft additional regulations regarding the compulsoriness of the services distributors to include, into their program services offers, the program services of national, regional and local broadcasters broadcasting on the area covered by the cable operator (curbing the practice when some broadcasters under Moldova's jurisdiction levy payments for distributing program services by cable;)
- in order to insure the transparency of its own work, under law, as well as the activities of broadcasters, it should post, on its web page, the contents of all the program services offers of the services distributors, distinctly by compartments.