



YEREVAN PRESS CLUB



FRIEDRICH EBERT FOUNDATION

**EXPERT ANALYSIS
OF THE BROADCAST
LICENSING COMPETITION
RESULTS OF DECEMBER 2010**

REPORT

Yerevan
2011



YEREVAN PRESS CLUB

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	4
FOREWORD	
GOALS, OBJECTIVES AND METHODOLOGY OF THE STUDY	6
LEGAL GROUNDS AND PRACTICE OF ORGANIZING AND CONDUCTING LICENSING COMPETITIONS	10
RESULTS OF THE EXAMINATION OF BIDS BASED ON THE CRITERIA ESTABLISHED BY THE LAW	14
1. THE PREVALENCE OF OWN AND DOMESTIC PROGRAMS	14
2. VALIDITY OF THE BUSINESS PLAN OF THE TELEVISION COMPANY AND FINANCIAL CAPACITIES OF THE BIDDER	18
3. THE CAPACITY TO PROMOTE PLURALISM	24
4. TECHNICAL CAPACITIES OF THE BIDDER	26
5. PROFESSIONAL BACKGROUND OF THE STAFF	31
6. RESULTS OF THE SURVEY ON FOUNDERS OF LEGAL ENTITIES PARTICIPATING IN THE COMPETITION	38
RECOMMENDATIONS	46
ANNEX	48

EXECUTIVE SUMMARY

From March to June 2011, a group of experts invited by Yerevan Press Club (YPC) has conducted an expert analysis of the organization and implementation process of the competitions for digital broadcast licensing, as well as of the submitted bids by the TV companies and the competition results.

The subject of the study was - the legal grounds for organizing the competitions, the competitions' process, the applications presented to participate in them and the decisions on determining the winners rendered by National Commission on Television and Radio (NCTR).

As a result of the study, the group has made the following main conclusions:

1. Amendments made to the RA Law "On Television and Radio" on June 10, 2010 did not ensure the development of the TV market, the holding of free, fair and transparent competitions, pluralism and diversity of TV air.
2. The articles in the chapter of the Law related to licensing, and the competitions held by the National Commission on Television and Radio based on those articles, did not rule out the possibility of subjective decision-making. This was particularly clear during the summarization of competition №.11, when the bid of the founder of "A1+" TV company "Meltex" LLC was given a score of only 2.
3. The possibility of holding a ratings-based voting according to separate assessment criteria was never determined. The Law delegates the definition of rating vote procedure to NCTR. In the order approved by NCTR, it is mentioned: "After comparing the information presented in the bids and documents of the participants of the given competition, the member of the Commission assesses each participant of the competition with a score of 0-10". Thus the whole package receives one score.
4. Competitions have been announced and conducted in the timeline established by the Law "On Television and Radio" and NCTR.
5. NCTR has refused to provide the YPC expert group certain documents from competitive bids claiming that they contain trade or personal secrets.
6. While summarizing the results of the competitions, NCTR has not shown a uniform approach in forming justifications. For the four competitions which had two participants, NCTR has provided justifications regarding the decisions on determining the winner. Whereas, in cases when the competition had one participant, all 21 NCTR decisions on determining the winners have the same standard formulation: " (...) after reviewing the submitted bid and attached documents it has become clear that they meet the requirements established by RA legislation". According to the expert group, this does not meet the justification standards required by Part 3 of Article 49 of the RA Law "On Television and Radio".
7. When it came to voting, in 27 out of the 29 cases, members of the Commission gave similar scores. Thus, they have given similar scores to television companies with long-term experience that hardly have any technical, human resource, or financial issues, and newly established companies that have nothing but good intentions.

8. Initially, NCTR had not specified the mandatory and optional lists of financial documentation to be presented in the bids. As a result, the applications are composed in “freestyle”; financial documents, agreements and forecasts presented in bids are not subject to any standardization. This makes them almost impossible to compare. There is no list of parameters, documents mandatory for submission, as well as a scale of indicators guiding the Commission. Financial documents are often developed carelessly, and contain arithmetical and factual errors.

9. The Procedure for Conducting Licensing Competitions, approved by NCTR, only provides that the bid should contain information on the technical means and equipment to be used. This document does not contain clear criteria for technical assessment of the bid; there are no clear technical criteria which should be met by the bidder. As a result, NCTR members can assess the sections of bids related to technical means as they wish.

FOREWORD

GOALS, OBJECTIVES AND METHODOLOGY OF THE STUDY

From July to August 2010, 25 digital broadcast licensing competitions for national, regional and TV channels of Yerevan were held in Armenia. 29 Armenian TV companies participated in the competitions, but only four competitions were considered competitive, with two companies submitting their bids. In each of the remaining 21 cases, there was only one bidder. The results of the competitions were summarized on December 16 and 23.

The following competitions were announced based on the area of coverage and profiles of television programs:

COMPETITIONS	Quantity
National Coverage	
Competitions №.1-5: general profile	5
Competition №.6: rebroadcasting	1
<i>Total number of competitions for national coverage</i>	6
Yerevan Coverage	
Competition №.7: entertainment	1
Competition №.8: youth	1
Competition №.9: music	1
Competition №.10: youth/educational/scientific	1
Competition №.11: international/current affairs	1
Competitions №.12-14: rebroadcasting	3
<i>Total number of competitions for Yerevan coverage</i>	8
Regional Coverage	
Competition №.15: general profile, coverage in Yerevan	11
Competition №.16: general profile, Tavush region	
Competition №.17: Lori region	
Competition №.18: Gegharkunik region	
Competition №.19: Ararat region	
Competition №.20: Armavir region	
Competition №.21: Vayots Dzor region	
Competition №.22: Kotayk region	
Competition №.23: Shirak region	
Competition №.24: Syunik region	
Competition №.25: Aragatsotn region	
<i>Total number of competitions for regional coverage</i>	11
TOTAL	25

According to the Annexes of the October 21, 2010 № 71-A and October 28, 2010 № 73-A NCTR decisions the following legal entities have submitted applications to the competitions:

Competition Number	Area of Coverage	Participants
№.1	National	“ARMENIA TV” CJSC
№.2	National	“SHANT” LLC
№.3	National	“SECOND ARMENIAN TV CHANNEL” LLC
№.4	National	“MULTIMEDIA-KENTRON TV” CJSC
№.5	National	“HUSABER” CJSC
№.6	National	“ANSVER” LLC
№.7	Yerevan	“ATV” LLC
№.8	Yerevan	1. “ALM HOLDING” LLC 2. “YEREVAN TV COMPANY” CJSC
№.9	Yerevan	“DAR-21 TV COMPANY” CJSC
№.10	Yerevan	“AR TV COMPANY” LLC
№.11	Yerevan	1. “ARMNEWS” CJSC 2. “MELTEX” LLC
№.12	Yerevan	“KAYM TV COMPANY” LLC
№.13	Yerevan	“PARADIZ” LLC
№.14	Yerevan	“ARAJIN ALIQ” LLC
№.15	Yerevan	“SHARK” LLC
№.16	Tavush region	“TAVUSH TV” LLC
№.17	Lori region	“FORTUNA” LLC
№.18	Gegharkunik region	“GEGHAMA MEDIA HOLDING” LLC
№.19	Ararat region	“TELELEX” LLC
№.20	Armavir region	“NOR DAR, NOR HAZARAMYAK” LLC
№.21	Vayots Dzor region	“ARPAINFORM” LLC
№.22	Kotayk region	1. “ABOVYAN TV EDITORIAL OFFICE” LLC 2. “SIRAK” LLC
№.23	Shirak region	1. “CHAP” LLC 2. “TSAYG” LLC
№.24	Syunik region	“DZAGEDZOR TV COMPANY” LLC
№.25	Aragatsotn region	“YEREVAN MEDIA HOLDING” LLC

The main intrigue while summing up the competition results was - whether “Meltex” LLC, the founder of “A1+” TV company, will receive a broadcast license, i.e. whether the June 17, 2008 ruling of the European Court of Human Rights on the case of “Meltex” LLC versus the Republic of Armenia will be enforced, whether “A1+” will be on air? As soon as the competitions’ results were summarized, it was evident that the answer to these questions was no.

The main objective of this study, initiated by Yerevan Press Club within a project supported by Friedrich Ebert Foundation, was to identify to how the broadcast legislation, the organization, holding and summing up of the licensing competitions does enhance the TV market, pluralism and diversity if opinions on air.

The goals of the this study were: to analyze bids submitted to the competitions and the related conclusions of the National Commission on Television and Radio; to determine whether NCTR had demonstrated the same approach while summarizing the results of all competitions or had displayed bias in different cases; to determine whether a subjective approach had influenced the decisions on competition winners.

To conduct the study, YPC established a working group, which included experts from different fields. The expert analysis and the respective sections of the present report were submitted by **Mesrop HARUTIUNYAN**, Media Expert, **Anna ISRAELYAN**, Observer of “Aravot” daily, **Suren SAGHATELYAN**, procurement specialist and Board Member of Transparency International Anti-Corruption Center, **Isabella SARGSYAN**, specialist in finances and Project Coordinator of Eurasia Partnership Foundation, **Konstantin GEODAKYAN**, Technical Director of Internews Media Support public organization, **Mikayel HOVHANNISYAN**, Project Coordinator of Eurasia Partnership Foundation, and **Edik BAGHDASARYAN**, Head of “Investigative Journalists” NGO.

The applications of all TV companies were obtained from the NCTR. It should be noted that NCTR management did not submit the full bidding packages, justifying withdrawal of some documents with allegations that these documents contain trade or personal secrets.

The expert group has reviewed the bids received by NCTR based on the competition criteria established by the Law, has assembled the facts that might have seem dubious for the NCTR members’ and tried to clarify whether NCTR had reviewed these facts. Every expert submitted a conclusion on the criterion he or she had reviewed.

It should be noted that from the 25 competitions announced there was a real contest in only four of them. The other competitions had only one applicant. However the study of these applications was important from the perspective that the company that applies for getting a broadcast license pretends for a limited public resource, and it should be determined whether the usage of the given limited public resource by the TV company is conform to the legislative and public demands.

In addition, the group has also reviewed the legal grounds for conducting the competitions and the NCTR decisions on the winners.

In order to determine the practical implementation of the mandatory quota imposed to own and domestic programs, a several day monitoring of the air of some of the TV channels (chosen in a selective mode) has been implemented. The comparison table was developed based on the results.

The report is based on all the acquired data.

This study does not cover bids for rebroadcasting competitions because, according to the experts, the conditions for acquiring rebroadcasting licenses differs from the other competitions. For example, it is not reasonable to require broadcasting of a mandatory quota of own and domestic programs for the rebroadcast competition. Therefore, the NCTR's approach to legal entities that applied for rebroadcasting licenses should have differed from the approach towards participants in the other competitions, though actually, this was not the case (see *below*).

Ed. Note *YPC expert group has reviewed the applications of all the 29 TV companies participating in the licensing competitions. However, the report presents the results of the study of only those bids that contain serious shortcomings, the contents of which is inaccurate, which have caused some issues regarding the holding of licensing competitions, or which are necessary to compare with the other bids presented in the report.*

LEGAL GROUNDS AND PRACTICE OF ORGANIZING AND CONDUCTING LICENSING COMPETITIONS

Digital broadcast licensing competitions are carried out in the Republic of Armenia based on the RA Law “On Television and Radio”, amended on June 10, 2010. More precisely, this procedure is regulated by the Section 6 of the Law, “Licensing of Television Companies”.

Based on the requirements of this Law on June 28, 2010, the National Commission on Television and Radio approved the Procedure for Conducting Licensing Competitions of TV Companies for On-Air Broadcasting through the Digital Network.

It should be noted that even during the debates over the amendments to the Law, the statements of journalistic NGOs indicated that “the draft is not intended for the future, but fixes the current status quo in the television market, which is convenient for the government”. Broadcast digitalization was expected to present unlimited opportunities, however, the amendments to the law led to the reduction of broadcasting channels in Yerevan. In any case, until private multiplexes are launched in 2015, the number of broadcasting channels has reduced from 22 to 18. In essence, in the regions, there remained 6 channels that broadcast nationwide (one of them a rebroadcasting channel) and one local channel. Whereas, according to the media experts, even if only one extra multiplex had been exploited in the entire country, not only would the number of channels not have decreased, it may actually have increased.

Despite multiple demands by journalists’ organizations, a simplified licensing procedure has not yet been adopted, and all other types of alternative broadcastings (satellite, internet) remain dependent on the ability to broadcast on-air on the territory of the Republic of Armenia.

Articles included in the Law section related to licensing and the procedure for conducting the competitions, which was adopted by the National Commission on Television and Radio based on these articles, still did not prevent subjective decision making.

Firstly, despite multiple proposals from journalists’ organizations to publicly debate bids once they were opened, to organize public hearings, and to consider opinions expressed during public hearings when summarizing bids, the provision for this has not been included in the Law.

Secondly, the opportunity to have ratings-based voting according to separate assessment criteria has not been established. Both Article 49 of the Law and the Procedure for conducting the competitions approved by the National Commission on Television and Radio provide that:

“While determining a person for licensing, the Commission considers:

- 1) prevalence of producing own programs,**
- 2) prevalence of producing domestic programs,**
- 3) validity of the TV company’s business plan,**
- 4) capacity to promote pluralism,**

- 5) **technical and financial capacities of the bidder,**
- 6) **professional background of the staff.”**

Since the Law assigns the NCTR with the authority to define ratings-based voting, the NCTR has mentioned in its procedure that: **“After comparing information submitted by the participants in their bids and attached documentation, a Commission member shall evaluate each participant with a score from 0 -10 (whole numbers)”**.

In other words, there is only one score for the entire package. Whereas evaluation based on assessment of separate criteria would have avoided the kind of situation that took place on December 11, 2010, when results of Competition №.11 were summarized. Then, based on a negative conclusion related to one criterion, seven out of eight Commission members gave a score of 0 to the entire bid of the “Meltex” LLC, “A1+” TV company.

As early as during the discussion of the draft law “On Television and Radio”, some experts mentioned that the criterion of “capacity to promote pluralism” is redundant, because, unlike other criteria, it is abstract and does not have a clear scoring method. However, it remained in the Law and naturally was included in the procedure approved by the NCTR.

Both the Law and the Procedure approved by the NCTR did not make any difference in requirements related to the bids for broadcasting and rebroadcasting and their assessment criteria. Thus, Article 48 of the Law (the provisions are identically repeated in the procedure approved by the NCTR) states:

“Article 48. Bid for Participation in the Licensing Competition

1. The following information shall be mentioned in applications submitted for broadcasting licensing:

- 1) **name and location of bidder**
- 2) **thematic profile of television programs**
- 3) **area of coverage**
- 4) **information on whether the bidder is a founder or has legal rights to another radio, television or media company, as well as information on their production and distribution**
- 5) **volume of own and domestic production**
- 6) **date of the bid submission.**

2. The following documents shall be attached to the bid: copies of the company’s founding documents, documents verifying the status of legally accountable person, the company’s business plan, data on technical tools and equipment, documents verifying financial sources, number of staff, their level of education and professional qualifications, as well as a receipt for the payment of state duty for participation in the licensing competition according to the RA Law on ‘State Duty’.”

We have already mentioned above what is taken into account by the NCTR during evaluation of the bids.

Thus, it appears that based on the Law and the Procedure, during the rebroadcasting competition, a bidder shall submit information on the “volume of own and domestic production”, “capacity to promote pluralism”, “professional background of the staff”, and the NCTR shall consider these criteria during their evaluation. Moreover, after comparing

the competition announcements published by the NCTR on July 20, 2010, we have not been able to find any differences in the texts of announcements for competitions №.1-5 (general profile, national coverage) and 6 (national coverage, rebroadcasting), or of №.7-11 (coverage in Yerevan) and 12-14 (coverage in Yerevan, rebroadcasting).

The competitions were conducted within the timeframe established by the Law and the Procedure established by the NCTR. However, some incidents that took place during the process raised doubts. The fact of submitting application by specific legal entities for the specific competition was kept confidential until NCTR released the list of bidders on October 22, 2010. After the publication, many realities became apparent. For example, there was only one bid submitted for competitions №1-5 (which did not differ from one another). If everything was secret, then how could this happen? Either the NCTR leaked the information that some company already submitted a bid for a particular competition, or TV companies agreed to divide the national coverage market in order to avoid competition.

Article 49 of the Section 3 of the RA Law “On Television and Radio” states:

“The National Commission shall make a decision regarding the winner of a competition based on the results of a ratings-based vote. The decision of the National Commission shall be properly grounded and justified”.

While summarizing the results of the competitions, the NCTR did not demonstrate a unilateral approach in presenting the justification for the results. Thus, while the NCTR submitted justifications of decisions on determining winners for competitions №.8, №.11, №.22, №.23, the same cannot be said about the remaining 21 decisions.

Hence, in the December 16, 2010 NCTR Decision 96-A “On Determining the Winner of Competition №.11 for Digital Broadcasting of International/Current Affairs Programs in Yerevan”, the participants of which were “ArmNews” CJSC and “Meltex” LLC, the NCTR made a very detailed comparison of the bids based on the available criteria and suspicions related to the bid of “Meltex LLC”, concluding that:

“Upon individual evaluations and analyses conducted by each Member and contained herein, the NCTR Members concluded:

The bid and attached documents submitted by “ArmNews” CJSC are valid and can secure digital broadcasting of international/current affairs television programs covering in Yerevan, as proposed by the bidder.

Despite the fact that “Meltex” LLC submitted information regarding the volume of domestic production, volume of its own production, capacity to promote pluralism, acceptable level of professional background of the staff, this information, as well as information on financial resources necessary to ensure availability of technical tools is not acceptable due to the fact that a significant number of documents verifying availability of necessary financial resources are forged and unfounded (120,000 USD and 280,000 Euros). This makes it impossible to have complete digital broadcast of international/current affairs television programs covering Yerevan.”

The decision contains results of a ratings-based vote, including evaluations prepared by eight members of the NCTR, according to which “ArmNews” CJSC received 44 points, while Meltex LLC received 2 points.

Unlike this competition, the other three competitions which had two bidders, as well as the remaining cases where only one bidder participated in a competition, all 21 NCTR decisions on winners contain the following standard wording: “ (...) **after reviewing the submitted bid and attached documents it has become clear that they meet the requirements established by RA legislation**”. We do not think, that the phrase “(...) **meet the requirements established by RA legislation**” can be considered as proper grounds or a justification required by Part 3 of Article 49 of the RA Law “On Television and Radio”. Most notably, as the experts’ research shows, the bids submitted by many participants also contained documents that might have raised the suspicions of NCTR members and should have been checked. Therefore, if nothing is said about these in the justifications, it means that either the NCTR did not consider them worthy of checking, or it simply did not examine the other bids in such details as in the case of the bid of “Meltex” LLC.

Another interesting observation about the decisions on winners is that the 8 members of the NCTR gave a combined total of 232 scores for the 29 bids submitted to 25 competitions (8 members x 29 bids), and in 230 cases it was the same score. Only in the case of “ArmNews” and “Meltex”, one member gave a score that differed from the others. All companies that were declared winners received a standard score of 6 from all members of the Commission (except the founder of “Yerevan TV Company” CJSC, which won over the founder of “ALM Holding” LLC, which received 5 from each NCTR member - a total score of 40, and the abovementioned “ArmNews” CJSC, which received 2 points from one NCTR member). It turns out that companies that have years of experience, that hardly have any technical, human resource or financial issues, and new companies that have nothing but good intentions received the same score from the Commission members. Moreover, the bid of “Yerevan TV Company” CJSC, as mentioned, received a score of 40 (all members of the Commission assessed it as 5), and the bid of “Yerevan Media Holding” LLC TV company (Competition №.25, Aragatsotn region), which according to the assessment of our experts is almost a complete copy of the former, received a score of 48 (all members of the Commission have assessed it as 6).

RESULTS OF THE EXAMINATION OF BIDS BASED ON THE CRITERIA ESTABLISHED BY THE LAW

As we have already mentioned above, Article 49 of the Law and the Procedure approved by the NCTR establishes that:

“While determining a person for licensing, the Commission considers:

- 1) prevalence of producing own programs,**
- 2) prevalence of producing domestic programs,**
- 3) validity of the TV company’s business plan,**
- 4) capacity to promote pluralism,**
- 5) technical and financial capacities of the bidder,**
- 6) professional background of the staff.”**

The results of the examinations conducted by the expert group are presented in an order based on the criteria. While the first and second criteria were examined together, the third one “validity of the TV company’s business plan” was examined together with financial capacities (it is mentioned in the Law as the 5th criterion, together with technical capacities).

1. THE PREVALENCE OF OWN AND DOMESTIC PROGRAMS

The study of these criteria shows that all television broadcasting companies include a large share of domestic and own production programs in their bids.

The share of domestic programs, according to Part 1 of Article 8 of the Law, “Protection of Producers of Domestic Programs”, **“cannot be less than 55% of overall airtime”**.

In the bids of some TV companies, there is an intention to have up to 98% domestic and 95% original (own) programming. The Commission should have been apt to believe the information mentioned in the bid. And here, the problem is in maintaining the announced guidelines. And it is possible to do so only by conducting a study of what is actually aired. Studies conducted by journalistic organizations (“Internews” Media Support public organization, Yerevan Press Club, “Asparez” Journalists Club of Gyumri) in the past clearly show that TV companies not only do not maintain established quotas of domestic production, but also violate the advertisement quantity defined by the Law “On Advertising”.

According to transitional provisions, particularly to Article 59 of the Law “On Television and Radio” adopted in 2000, broadcasting of films and cartoons in foreign languages was only to be allowed until 2005. But the short TV monitoring we conducted has proved that even today, 6 years after the transition period, some TV companies (particularly “Yerkir Media”, “Armenia”, “Kentron” and Second Armenian TV channels) show films and cartoons without translation or sub-titles.

A few observations on program policies reflected in the submitted bids (***Ed. Note** The figure before each title is the competition number. Titles of participating companies are presented according to the abovementioned table. If necessary, the name of the TV channel is mentioned in brackets*).

№.1 “ARMENIA TV” CJSC

Upon examining the applicant's staff qualifications presented in the submitted bid, its organization and program policy, it is apparent that, though “Armenia TV” is taking part in the competition for general profile broadcasting, its focus, according to our assessment, is in fact on entertainment. In the application, it is mentioned that the share of news programs will make up 12% (page 7), and the share of scientific, cultural programs, 7% (page 8). And if we have in mind that the two submitted current affairs programs - “TV Duel” and “In Reality”, are not on air for a long time (by the way, “TV Duel” is also presented in the bid of “ArmNews” TV company), it turns out that nearly 80% of the program schedule is reserved for entertainment programs (various shows, soap operas, etc.), and the Commission, in our opinion, should have paid attention to this fact. In addition, the company intends to have 92% national programs, and 90% original programming. In the application package, only the programs and projects realized during the previous years are mentioned (page 10-27), most of which are no longer on air, and there is no information as to which programs will be aired or what new programs are planned.

№.5 “HUSABER” CJSC (“YERKIR MEDIA” TV CHANNEL)

In the bid submitted by “Yerkir Media”, it is mentioned that if it acquires a digital broadcasting license, the company intends to enrich its programming with shows like “Tyur”, “Yerkir Avetyats”, “Baghramyan 20”, “Erkir.AM”, “Kamurj - Yerkrits Yerkir” (“Bridge - from Country to Country”). All these programs are merely copied and pasted from the bid presented by the company for the competition held in 2003, and which have not yet been implemented. By 2020, the TV company intends to make the share of domestic programs 98% compared to 91% in 2011, and the share of original programs, from 82% to 95%.

№.7 “ATV” LLC

In its application presented to NCTR, on the one hand, “ATV” LLC has mentioned that its target audience includes people from 5-55. On the other hand, when presenting its programming schedule, it has recorded that it is intended for everybody. Particularly, it states: “The series ‘When You Will Be Mine’ makes the peace of old people complete.”

In the list of programs to be broadcasted by “ATV” LLC, mostly non-original programs are presented. Nevertheless, on page 8 it is mentioned that the 61% of programs are original, and on page 36, that within 10 years, the volume of original programs will increase by 14.5% and by 2020, it will reach 72.7%. The volume of domestic programs within that period will reach 95.6% from 86.6%.

№.8 “YEREVAN TV COMPANY” CJSC

On page 13 of the application submitted, “Yerevan TV Company” CJSC mentions that domestic programs are going to make up a minimum of 55% of monthly airtime. On page 15 of the bid, there is a table about program distribution, according to which the domestic programs for 2011-2020 will make up 86-88%. This second indicator was taken as grounds by the NCTR for making a note in Decision 93-A: “On average, the volume of national programs in ‘Yerevan TV Company’ CJSC during the period of license validity makes up 87.2% (according to the NCTR calculation, “Business Plan”, page 15)”. It should be noted that the volume of national programs of “ALM Holding” LLC was 80.5%. And the volume of national programs is one of the two criteria according to which the offer of “Yerevan TV Company” was considered predominant.

№.10 “AR TV COMPANY” LLC

It is apparent from the program schedule that the profile for which the competition was announced - “youth/educational/scientific”, will not be predominant. The percentage of programs is presented in the competition package, from which, it becomes apparent, that the programs considered as “youth/educational/scientific” all together make up nearly 50%. “AR TV company” suggests to include news/current affairs programs, particularly, the news program “Azdarar”, which if the competition requirements were met, should have broadcasted solely “youth/educational/scientific” news. But it is formulated in the bid that “Azdarar” has a “Hamar Zhoxovrdi Hamar” (“Number for People”) service, which “pays close attention to vulnerable groups not only by highlighting their problems, but also by providing material assistance.” The program “You and Me” is included in the bid, which, according to the explanation given, “analyses relationships between men and women based on the opinions of our citizens.” Another example, the program “Investigation Secrets ” is included, which, as presented, “is prepared together with the RA General Prosecution Office” and refers to the most severe criminal cases. Apart from these specific programs, they even confirmed in the bid that they do not intend to act only within the defined direction. Thus, in the section on future programs, they have stated: “If it wins the digital broadcast licensing competition, “AR TV Company”, as a general profile **TV company** (*Ed. Note* - highlighted by report authors), abiding by the adopted program policy, will continue its activity along the way of dynamic development”. In the application “AR TV Company” has promised that “Problems of citizens living in the capital voiced out through the “Number for People” service, as well as problems of families living in difficult social conditions, will remain in the focus of attention of “Azdarar” newscast”. By the way, though they won the competition for broadcasting in Yerevan, they also mentioned in the bid that they are ready to “broadcast throughout the whole territory of the Republic”.

№.11 “ARMNEWS” CJSC

In the December 16, 2010 NCTR Decision 96-A “On Determining the Winner of Competition №.11 for Digital Broadcasting of International/Current Affairs Programs in Yerevan” it is stated:

- “1. The volume of original programs of “ArmNews” CJSC during the period of license validity makes up 82.5% (according to the bid).
2. The volume of domestic programs of “ArmNews” CJSC during the period of license validity makes up 87% (according to the bid).”

In our opinion, a question should have arisen for NCTR members - How can the company ensure 82% volume of original programs, when it devotes half of every hour to rebroadcasting of Russian programs from “Euronews” TV Company? We think that this fact also must have been taken into account and they should have inquired - What was “ArmNews” going to change, in order to make the volume of own programs 82%, and the volume of domestic programs 87%? Will the company cut down the “Euronews” rebroadcasting? Anyway, this is not clear from the program policy.

№.15 “SHARK” LLC (“HAY” TV CHANNEL, CURRENTLY BROADCASTED UNDER THE LOGO “12”)

On page 9 of the bid presented by “Shark” LLC, the classification of airtime is presented for September 2010. According to it, entertainment programming makes 22%, and movies

- about 47.5%. So in fact, entertainment programming makes up 70% of airtime, while the information-analysis programming makes up only 13.8%, and sport programming 9%.

Taking part in the competition for “general profile and matching the interests of the given area” (in this case of Yerevan), the company has only one offer on issues regarding Yerevan city. On page 23, it is mentioned that “a project will be broadcasted, which will refer only to concerns of the people in Yerevan”.

According to the bid, by 2020 the share of domestic programs will reach 92.2% from 72.1% in 2010, and the share of own programs, from 68.7% to 88.9%.

№.17 “FORTUNA” LLC

On page 36 of the bid presented by the company it is written: “Provision to people in Armenia of information about the Diaspora is one of the most important factors of the information policy. There is an agreement with “Shant” TV Company on provision of information about the life and activity of Armenians living in that country (...). Which country are they speaking about?”

The present and future program policy is presented normally, but in the submitted business plan, “Fortuna” has indicated that “there is an intention to create such a TV company by the help of which people of the regions will feel like citizens of an independent country which is a constituent of the world civilization.” This literally coincides with the following promise fixed in the bid of Second Armenian TV Channel: “The TV company produces and intends to produce programs by the help of which people of the regions will feel like citizens of an independent country which is a constituent of the world civilization”. This is not the only coincidence. “Fortuna” has mentioned: “In terms of ideology and the way of presentation the programs should bear an optimistic nature and inspire hope in the audience”. This is, word-for-word, the same formulation in the bid of “Multimedia-Kentron TV” company: “In terms of ideology and the way of presentation the programs should bear an optimistic nature and inspire hope in the audience”.

№.22 “ABOVYAN TV EDITORIAL OFFICE” LLC

On page 7 of the bid presented by the company, it states: “Moral and psychological principles and norms, as well as the traditional values of the Armenian nation served as a base for the activities of “Abovyan” TV company. In terms of ideology and presentation, the programs bear an optimistic nature and inspire hope in the audience”. This is again a slightly changed “adoption” from page 15 of the bid of the “Multimedia-Kentron TV” company, which also was quoted by “Fortuna” LLC - without any changes: “Moral and psychological principals and norms, as well as the traditional values of the Armenian nation serve as a base for the policy of television broadcasting. In terms of meaning and presentation, the programs should bear an optimistic nature and inspire hope in the viewer”. During the years 2015-2020 the TV company intends to make the share of domestic programs 85%, and the share of own programs 59.5%.

№. 23 “TSAYG” LLC

On page 8 of the bid presented by the company, as an own program, the TV company mentioned the program “Tesaketneri Khachmeruk” (“Crossroad of Views”) produced by “Free Europe”/Radio “Liberty” Armenian Service, which is only rebroadcasted by “Tsayg” TV channel, as well as by many other regional TV companies. In the same way “Erkri

Hartsy” (“The Country’s Problem”) is presented as an own program, though it belongs to “Yerkir Media” TV channel and is again only rebroadcasted. In the end, as own programs were presented “Mer Teman” (“Our Topic”) and “Teman” (“Topic”) - made by “A1+” TV channel for Hamaspyur network. After violating copyrights, the company added that “nearly all political figures of RA have been hosted in the program”. Besides, if in the latter programs it is mentioned that “Tsayg” receives materials from “Yerkir Media” TV channel, the names of “Free Europe”/Radio “Liberty” Armenian Service and “A1+” are not mentioned at all.

№. 25 “YEREVAN MEDIA HOLDING” LLC

In its application submitted to NCTR “Yerevan Media Holding” LLC like “Yerevan TV Company” CJSC has promised to broadcast a program called “SMS Chat”, which according to the bid, “Through highly artistic music videos allows a meaningful discussion on various topics young people are interested in, as well as allows us to establish direct communication with viewers. It also helps people with different complexes to have free communication”. The formulation is the same as in the case of “Yerevan TV Company”.

In the “Description of Audience” section, it is mentioned that: “Aragatsotn region inherited its name from Aragatsotn province of Airarat Ashkharh”; “Aragatsotn region is rich with historical monuments, such as the monasteries of Amberd, big and small Katoghike (in Talin), Tsiranavor (in Ashtarak), Spitakavor and others. The grave of Saint Mesrop Mashtots - the inventor of the Armenian alphabet, is in Oshakan”. It turns out that Yerevan Media Holding” LLC imagines the abovementioned monasteries and Mashtots' grave to be its audience as well.

2. VALIDITY OF THE BUSINESS PLAN OF THE TELEVISION COMPANY AND FINANCIAL CAPACITIES OF THE BIDDER

Apparently, the NCTR did not initially establish specific criteria and standards, which would act as a list of binding or optional documents and points to be presented in the bids. As a result, the proposals are not structured in any particular style, financial documents, agreements and projections included in the bids cannot be standardized, and it is almost impossible to compare them. The list of mandatory requirements, documents necessary for submission, the scale specifying the assessment indicators used by the Commission during evaluation is not available.

Financial documents are often carelessly prepared; include arithmetical and factual mistakes, like the case of “Yerevan TV Company” CJSC. The contracts are signed only by one party, like, for example some documents of “ArmNews” or the delivery-acceptance act for the transfer of asset of the regional TV company “Geghama Media Holding” TV company. There are many agreements that have not been carried out. It is worth mentioning that in some documents of “AR TV Company” LLC, lines for the name, last name, address, position are covered with white bars, for example, fax paper of NBC Universal. In the bid of “Meltex” LLC (“A1+” TV company) the document for equipment delivery by Pro Motions Company, Slovenia, is not signed and the name of the person making an offer is missing.

Often, the practical purpose of the submitted documents is not understandable. For example, the analysis part prepared by “Yerevan TV Company” CJSC is based on the presentation of demographic data of population; however, this data is not precisely relevant to the practical plan of the television company. Or “AR TV Company” LLC has attached the letter of “Reuters Limited” company about changing the name of the

organization. The “Second Armenian TV Channel” LLC submitted an agreement on transportation of household waste. “Multimedia-Kentron TV” CJSC founder of “Kentron” TV channel has submitted a thank you letter from the Armenian Olympic Committee.

And just the contrary, in some cases documents certifying the promised investments are missing.

Some examples are given below:

№.3 “SECOND ARMENIAN TV CHANNEL” LLC (“H2” TV CHANNEL)

According to the application submitted to NCTR, the TV company is intended to invest 320 million AMD in 2012; however, the sources of this funding are unclear. As an additional guarantee, this television company attached the statement issued by Local Developers LLC, which does not contain specific financial assurances. The agreement made with ACBA-Credit Agricole Bank does not correspond with the required format. It is not on an official blank, is not executed and signed, and is therefore suspicious.

№.10 “AR TV COMPANY” LLC

In the application submitted by the TV company long-term loans and payments for commercials are mentioned as main sources of cash inflow. According to the company’s declaration, long-term loan agreements for 9 billion AMD have been made; however, the copies of the agreements are not attached, despite the fact that they cannot be considered a trade secret. Or, according to the estimates submitted by the company, the annual incomes in 2011-2020 will be from 720 million AMD to 1.2 billion AMD, however, details regarding funding sources are missing.

№.16 “TAVUSH TV” LLC

In its application the television company has submitted only one document verifying its financial capacity - the minutes of 2010 General Meeting of shareholders of “Grand Commerce” CJSC, which includes information on the income of the company and dividends paid to the shareholders. Contracts (commercials etc.) and references from banks are missing.

№.22 “ABOVYAN TV EDITORIAL OFFICE” LLC

All documents submitted by the TV company include information on free transfer of personal assets of owners and director of the company and their investments. There are no other verifying documents.

Usually, submitted business plans do not include required factual justifications, supporting documents, references to verifiable sources and other important information.

Some examples are given below.

№.1 “ARMENIA TV” CJSC

According to the estimates included in the application submitted by the television company, its payroll will increase twice in 2011-2020 and will exceed 5 million USD in 2020; however, financial justification of this growth is completely absent. The television company did not submit a cost estimate for the high quality equipment that it intends to

purchase, nor did it provide financial sources for this acquisition. "Armenia TV" submitted information on increased income due to enhanced production. It also presented the projections for future growth, but did not submit justification for its estimates. The same concern is related to the estimate for acquisition of technical tools. The estimate here is presented in detail to the dram, but calculations of sources for funds are missing. Everything is based solely on projections. Concerning the validity of the business plan, we must mention that the television company wrote down in detail a development plan for the next 10 years, including the integration of social media (Facebook, Twitter), however financial revenues expected from the application of these programs are not included - there are no corresponding calculations.

№.2 "SHANT" LLC

According to the application submitted by the TV company, "Shant" expects to invest 8 million USD within the next 10 years for improvement of its facilities, training, technical retooling, and improvement of external marketing policies; however the sources of funding are not mentioned. For the next 10 years, the main sources of financial revenues are expected from advertisements, and sale of the produced programs on the international market and satellite subscriptions, however even estimates of revenues are missing. Agreements or declarations on intentions regarding sale of its production on international and domestic markets are missing.

№.3 "SECOND ARMENIAN TV CHANNEL" LLC ("H2" TV CHANNEL)

In the application submitted by the television company the names of several companies with whom it intends to continue cooperation in 2011 in broadcasting commercials are presented. However, agreements with these companies are not presented, and therefore, it is hard to make precise estimates even for growth of financial inflow in 2011. Some advertising agreements related to "H2" include other parties, such as "RTR" TV channel of Russia.

№.4 "MULTIMEDIA-KENTRON TV" CJSC ("KENTRON" TV CHANNEL)

According to the application submitted by the TV company, it has mentioned that it is preparing to use a new strategic approach in this close competitive environment. It did not reveal, however, any precise tool, step or approach. For example, "Nevertheless, the strategy adopted by "Kentron" TV company ensures equal distribution of resources promoting the implementation of the company's mission," (page 12). How the equal distribution of resources promotes implementation of the mission is not explained. The application of the company is also missing contracts with various contractors.

№.5 "HUSABER" CJSC ("YERKIR MEDIA" TV CHANNEL)

According to the application submitted by the TV company in 2010, the assets of this television company reached 250 million AMD and, according to their forecasts, will increase up to 2 billion by the year 2020 (8-fold increase). This is not realistic and not substantiated (no appropriate financial calculations are available).

№.7 "ATV" LLC

According to the application submitted by the TV company, increase of salaries, as promised by this television company, is not substantiated; the resources for such an increase have not been presented. It is planned to acquire materials and equipment worth

260 million AMD in 2011-2020, however the results expected from these purchases are not mentioned. It is not mentioned how the calculations were made, and what the sources are for their figures. Forecasts of the income received from advertising have absolutely not been substantiated financially. They are simply defined as, "According to the forecasts of the experts". The company's revenues during the first 9 months of 2009 were 5.8 million AMD and they forecasted that they will reach 10 million AMD by the end of 2010 (3 months later). This is not substantiated. This trend towards the increase of revenues is taken as the basis used for financial calculations in the years to come. Income forecast for 2011-2015 is 2.315 billion AMD - not substantiated; the breakdown of these amounts is not available (page 55). Calculations of incomes and revenues are not substantiated in any form (page 56).

№.8 "ALM HOLDING" LLC

According to the application submitted by the TV company, the main income of this television company is based on irrevocable investments made by the founder. According to the commitment, they will reach 600 million AMD in the coming 10 years. However the resources for investment of this money are not available. Note that the company has been operating with loss in 2010, with a negative ownership capital factor. In this context, sufficient substantiation is not available concerning the successful financial state of the company. The company has not provided sufficient grounds or calculations to prove the expected increase of its revenues in the coming 10 years. According to the forecasts of the authors of the bid, the revenues of the company would increase 10-fold by the year 2020.

№.8 "YEREVAN TV COMPANY" CJSC

In the application submitted by the TV company it makes reference to Wikipedia, an electronic resource, which is considered inadmissible for an authoritative entity, as it is not a very reliable resource.

№.9 "DAR-21 TV COMPANY" CJSC

According to the application submitted by the TV company, in its forecasts, the company has provided a list of advertisers as a resource for future increase of income. However, the grounds for future cooperation with these advertisers are not specified. The television company points out that part of their future financial income may come from loans, without mentioning the amounts of these loans, their distribution in the development plan of the company and the mechanisms to pay them back. Note that the application mentions that presently, the television company is broadcasting about two minutes of advertising per hour and in the future, it plans to increase this figure fourfold, without exceeding the legal limits of more than 58,400 minutes per annum. Any monitoring would reveal, however, that presently the advertising on this channel would easily exceed 2 minutes per hour on average.

According to the company's reports, it operated with approximately 8 million AMD losses in 2009 but, in the meantime, the company expects a sharp increase of revenues in the coming year (without appropriate financial calculations).

№.11 "ARMNEWS" CJSC

In its application presented to NCTR, the television company presented detailed forecasts of financial revenues for the coming 10 years, by articles (incomes and expenses). However the calculations of generation of these incomes and expenses are not available

and their resources are not mentioned. According to the submitted table, the company's revenues have dropped in 2008-2009, however the TV company predicts a sharp increase in 2011 and 2012, without financially substantiating this forecast.

№.15 “SHARK” LLC (“HAY” TV COMPANY, CURRENTLY BROADCASTED UNDER THE LOGO “12”)

According to the application submitted by the TV company, although the company's revenues will be mainly comprised of advertising and paid air time, and the cost of advertising is based on current market prices, the company's bid does not provide the advertising prices for “prime time” and “not prime time”. Instead, they provide their advertising revenues for 2009 in one figure. Note that in 2009, the company operated with a loss.

№.16 “TAVUSH TV” LLC

According to the application submitted by the TV company, it expects that its net revenues would reach 173 million AMD by 2020, with expected 46 million AMD in 2012. However, the calculations it had provided are not substantiated, and are presented as a single line of text. According to the bid, the TV company's net profit will be more than 52 million AMD in the year 2020, however the calculations for this forecast are not available.

№.17 “FORTUNA” LLC

According to the application submitted by the TV company, this television company puts the main emphasis of its finances on preparation and broadcasting of advertising. However, no clear substantiation is available for their forecasted almost tenfold increase of revenues.

№.19 “TELELEX” LLC

According to the application submitted by the TV company, “Telelex” has made financial forecasts for 10 years (2011-2020), using the reduced cost of monetary flow method for evaluation of investments. According to the company's calculations, the results of the application of this method are positive, evidencing that the investments are advisable, however the calculations made with the mentioned method have not been submitted, nor have the effects of possible risks been considered (such as changes of foreign currency exchange rates, global financial crisis, etc.). According to this company's calculations, advertising revenues will increase threefold in the period between 2011 and 2020. However, calculations of the amounts of advertising revenues are not available and no substantial grounds have been submitted to prove such growth.

№.20 “NOR DAR, NOR HAZARAMYAK” LLC

According to the application submitted by the TV company, since the second year of its operation, this company forecasts high revenues and reliability, without presenting sufficient substantiation (contracts, proofs of plans for cooperation, etc.). They mention that the volume of advertising requests depends on agricultural developments and climatic conditions, which indeed are unpredictable. The company forecasts about a threefold increase of sales and revenues. However, the company would be operating with a loss if they would only increase twofold. Therefore, serious risks are present in their financial plan.

№.21 “ARPAINFORM” LLC

According to the application submitted by the TV company, this company was established by one founder who announced his plans of investing 53.975 million AMD of his personal resources, along with taking a loan of 182.5 million AMD (500,000 USD) from the company Frunzik International Limited. We point this out particularly because it is quite interesting. A Google search does not reveal such a company. The loan contract, however, mentions an offshore company:

BRITISH VIRGIN ISLANDS

Trident Trust Company (BVI) Ltd

Trident Chambers, Wickhams Cay, PO Box 146

Road Town, Tortola, British Virgin Islands

Tel +1-284-494-2434; Fax +1-284-494-3754

bvi@tridenttrust.com.

<http://www.tridenttrust.com>

It is also mentioned in the bid that “This business plan will be implemented by the ‘Armenian Television and Radio Broadcasting Network’ LLC”, which is not clear. In the company’s bid, it is pointed out that the prices of advertising and sales of air time will be developed based on competitor’s prices and seasonal changes. However, price calculations are not available among the presented documents. Besides, there are discrepancies in calculations of financial expenses and revenues. In particular, according to their estimates, expenses would make up 415 million AMD in 2010, and 197 million AMD in 2011, whereas revenues of these years would be 128 million AMD and 123 million AMD, respectively. According to the next table, revenues of the first year were 128 million AMD, but the expenses were 118 million AMD, rather than 415 million AMD, which means that the company would operate with a profit. The situation is similar for the second year, or for 2014, when the predicted expenses are 165 million AMD (Table 2) and on another table (page 63) the same expenses are indicated in the amount of 118 million AMD. The reasons for these differences are not mentioned.

№.22 “SIRAK” LLC (“HRAZDAN” TV CHANNEL)

According to the application submitted by the TV company, this company believes that its primary marketing objective is to increase the volume of advertising sales fourfold by the end of 2011. However, as its strategy towards this objective, the company only mentions cooperation with advertising agents, improving the skills of advertising agents, developing a flexible system of discounts. These methods and conditions are not sufficient for a quadruple increase of sales, and therefore this forecast is not sufficiently substantiated. The company presented its future expenses in two sections: short-term (expected in 2011) and long-term (2012-2020). Starting in 2012, the flow of expenses is represented in annual growth percentage; however this increase of expenses is not substantiated. According to the company’s forecasts financial revenues would reach 50 million AMD in 2011, reaching 150 million AMD by the year 2020. This growth, however, is based on the marketing program, without sufficient substantiation of growth in sales.

№.22 “ABOVYAN TV EDITORIAL OFFICE” LLC

According to the application submitted by the TV company, the company forecasted that its revenues from preparation of advertising would reach 317 million. AMD in 2011-2015, and 461 million AMD in 2016-2020, whereas their expenses would be 218 million. AMD

and 248 million. AMD respectively. However substantiation for generation of these figures is not available.

№.23 “CHAP” LLC (“GALA” TV CHANNEL)

In the application submitted by the TV company no calculations concerning forecasting of revenues, implementation of programs or financial flows are available.

№.23 “TSAYG” LLC

In the application submitted by the TV company no details are available for the income generated from the revenues presented by the company, and therefore profits to be used for payment of loans and interest are not substantiated. According to the company's forecasts, the revenues from advertising will increase by about five times - from about 29 million AMD in 2011 to 149 million AMD in 2020. However, substantiation of this growth is not available in their presented calculations. According to the company's forecasts their general revenues would increase by 4.5 times in the period between 2011 and 2020, from 37.4 million AMD to 168.3 million AMD respectively. Calculations for these forecasts are also not available.

№.25 “YEREVAN MEDIA HOLDING” LLC

The application submitted by the TV company is very similar to the application of the founder of “Yerevan” TV channel, “Yerevan TV Company” CJSC (not to say that it was copied). The investment fund is 20 million AMD, which is expected to be loaned by two companies (“Elite Shant” and “Eco Food”). These companies will be advertising on this television company's airtime for 10 years (the exact same approach used by “Yerevan” TV channel). This television company used the reduced cost of monetary flows method for evaluation of investments. According to the company's calculations, it was equal to 6 million AMD; however the calculations are not available. According to this company's forecasted calculations, the expenses for the whole ten year period will reach 487 million AMD, including 195 million AMD expenses for new equipment. The expected revenues for the same period will be 507 million AMD. Thus the company's net profit in 10 years is rather small - about 20 million AMD, which is a very risky figure.

3. THE CAPACITY TO PROMOTE PLURALISM

During our research, we have also referred to the content of the program policy presented in the competition applications taking into account another criteria provided by the law entitled, “The Capacity to Promote Pluralism”.

And, as there is no lack of optimistic promises on program policy and promoting pluralism in the competitive bids, during our research we have paid more attention to and indicated below only those parts of the proposals which relate to the capacity of implementing these promises with the assigned staff, or to the proposals that do not meet the competition criteria.

*However, first we would like to stress that the majority of TV companies have provided only general views on this criteria, such as the bidder for Competition №.21, “ArpaInform” LLC: **“Pluralism will be the basis of producing TV programs which will maintain the further development of the programs and will engage wider classes of***

the public and different age groups of population from regions on discussions of hot public issues” (Page 8 of the application presented by the company).

№.1 “ARMENIA TV” CJSC

According to the application submitted by the TV company, although it has provided a general statement on promoting pluralism, we think that the real lack of current affairs programs in this TV company should have raised doubts on ensuring the advocacy of pluralism.

№.11 “ARMNEWS” CJSC

According to the application submitted by the TV company, in the subsection on pluralism it has indicated the program, “Escalibur or Tur Ketsaki”, which will present the career path of a political leader. Taking into account that it should recount “the challenges, career before coming to power and the first steps” of a political leader; it is assumed that this program, which is meant to ensure the provision of pluralism, will be exclusively dedicated to the authorities. It is also unclear how the abovementioned promises align with the ones provided in the “Future Financial Forecasts” section of the bid: “The company anticipates increasing the number of political and socio-economic programs of its own production, which will increase the company’s profit as they will be commercial in nature”. Does this mean that the abovementioned political programs are going to be commercial in nature?

№.19 “TELELEX” LLC

In the application submitted by the TV company it is mentioned that it intends to promote pluralism, however, it is also stated: “To cover periodically the issues of sects and the principles religious education” (Page 15). This statement indicates that there will be no pluralism on issues of religion.

Of course, the NCTR can argue about this and about the other noted statements, saying that they cannot be part of an evaluation criteria or competition neither by Law nor by the Procedure defined by NCTR, and that they are not authorized to intervene in the program making policy of TV companies as it can be seen as a censorship. They can argue that they are just reviewing the proposals taking into account data on promoting pluralism and increasing the production of own and domestic TV programs. Nevertheless, we believe that if the NCTR had fulfilled its regulative function during the past years, it could have had data on hand on how the TV companies that participate in the competition have fulfilled their promises, whether they have maintained pluralism in their broadcasts or breached the Law. And even if they did not have their own observations they could have used the research results of the journalists or NGOs. We would like to repeat that it is not a legislative requirement to consider these criteria while summarizing the evaluation results, however, the members of NCTR should have had some questions and reservations instead of just believing the promises.

Even during the discussions of the draft law, some experts noted that “the requirement to promote pluralism” is superfluous because in contrast with other criteria, it is abstract and immeasurable. This means it does not have measurement criteria and the competition committee has to simply believe the promises. And that is what happened.

Secondly, “pluralism” itself refers more to socio-political pluralism, or to begin with it is accepted as pluralism on socio-political issues. In this instance, the necessity to provide

such policy is unclear when submitting bids on cultural, entertainment and children programs.

Therefore in this conclusion, partially referring to the abovementioned issue, we believe that the abstract requirement of “The Capacity to Promote Pluralism” should be eliminated from the list of evaluation criteria provided by the Law.

4. TECHNICAL CAPACITIES OF THE BIDDER

The Procedure for Conducting Licensing Competitions of TV Companies for On-Air Broadcasting through the Digital Network merely states, that the application of the TV company should include data on the technical means and facilities to be used. There are no definite criteria for technical assessment in this document and no technical standards are mentioned to which the applicant should conform. So, member of the NCTR should rate it as he/she understands.

To our opinion, they must have mentioned all existing broadcasting national standards and (at least) the expected technical criteria of image and voice quality which the TV viewer should get - after shifting to digital broadcasting.

Modern technical solutions must have been considered while rating the applications. For example, if everybody is considering the quality of voice and image as one of the core factors of shifting to digital broadcasting - the applications involving aspiration of passing to HD (High Definition) should be separated (or rated higher).

№.1 “ARMENIA TV” CJSC

In its application submitted to NCTR the TV company declares that it works with digital HD format - starting from filming up to bringing the content to the broadcasting point. Before bringing the signal to analog transmitter -it transforms from HD to SD (Standard Definition) format. This means, that if tomorrow there will be a possibility to broadcast HD - the TV company will not need to change anything. According to the application, this TV company is the most developed in Armenia in technical terms. It conforms with international standards. The most modern technical solutions are used here. The quantity and quality of facilities allow to produce the declared content.

№.2 “SHANT” LLC

In its application submitted to NCTR the company has declared about passing to HD format. At present the company has entirely automated its broadcasting. Existing technical means are mentioned. The company declares that within 10 years it is going to invest an amount equal to 7 million USD for re-equipment, territory enlargement and improvement of conditions. A separate detailed budget is missing in the application. We conclude, that the company has technical and staff potential to produce the declared content.

№.3 “SECOND ARMENIAN TV CHANNEL” LLC (“H2” TV CHANNEL)

Judging from the application submitted to NCTR, the company has been using digital technologies for production of its content. Unfortunately, it is not possible to assess and make conclusions because of absence of detailed data on infrastructures. Everything is presented in a declarative manner.

№.4 “MULTIMEDIA-KENTRON TV” CJSC (“KENTRON” TV CHANNEL)

The list of existing facilities is presented in the application submitted to NCTR. Those are mainly not modern facilities of 7-10 years old, and a professional analog Betacam SP and of digital DVCAM format. The company works with old methods - cut materials are recorded on rollers or DVD disks and broadcast there from. The company is planning also to make investments for re-equipment. It is anticipated, that all purchased facilities will be of HD format. The company has minimum facilities needed for provision of the declared content. It may not be considered as one of the leaders in Armenia technical terms. The company declares willingness and aspiration for creation of a modern digital TV.

№.7 “ATV” LLC

In the application submitted by the TV company there is no information on production spaces and studios. There are general data on modernization of facilities; filming in DV and HDV formats. It is mentioned that the whole process is digital - from filming to end product and bringing the signal to transmitter. There is no information on the facilities used. The concept of re-equipment is also missing. It is declared that the company will purchase new equipment for 260 000 000 AMD, including HD cameras, virtual studio, mobile TV station, as well as facilities for internet broadcasting. There is no concrete information in the application- there are only general data and general intentions.

№.8 “ALM HOLDING” LLC

In the application submitted by the TV company the equipment the TV company works with is not described in details. Everything is written in general terms. It is mentioned, that: “All monitors operating in the TV company are connected with SDI digital exits”. SDI (Serial Digital Interface) is a modern digital technology, which ensures high quality. According to the application, it is difficult to judge on the current technical condition. There is neither a re-equipment concept, nor one on shifting to HD broadcasting. There is a table on purchases for a 10 years' period, which includes a list of facilities and their quantity.

№.8 “YEREVAN TV COMPANY” CJSC

In the application submitted by the TV company there is no information on the current format, facilities and technologies of the TV company. The company presents data on initial capital investment (mainly in the form of equipment) for 10 years. Particularly, the company plans to purchase a digital transmitter for digital terrestrial broadcasting (DVB-T). Anyway, the transmitter is not mentioned in the final budget. According to the plan on shifting to digital broadcasting, the “broadcaster” will not carry out the digital broadcasting (emission) of its channel/content (signal). However, it is not clear why it is necessary to purchase the transmitter of terrestrial broadcasting. May be the company is speaking of a temporary broadcasting before shifting to digital broadcasting?

A 241 thousand USD (89,000,000 AMD) investment is mentioned - in the form of premises. It is planned to construct a big hall of 700 sqm with 300 seats (it is not clear why the TV company needs this. It would be understandable, if they meant a shooting hall, an apparatus-studio block or complex). The TV company has a staff of 42, but in the staff list there is no technical supervisor - director or chief engineer (we think it is difficult to provide the local product of mentioned quantity with 42 employees).

The technical budget (appendix 8) consists of equipment checks. The logic and technical concept are not visible. It would be desirable to see a concept budget including a systemized structure. We may conclude from the budget, that there is a desire to create two studios - each with three cameras. For establishing a studio also other components are needed: studio light, connection and TV prompts. Cameras are modern, not expensive (cameras are mentioned without objectives: either the company already has them, or that is an omission). The descriptive part including the strategy of technical development is missing in the application.

As to the possibility of ensuring the declared 15 hours' content of local production - we think it is a disputable, at least a difficult problem, considering the given potential, especially the staff.

№.9 “DAR-21 TV COMPANY” CJSC

In the application submitted by the TV company it has numerated the equipment it works with. It has an SD format; the cut content is transferred on video (roller) or optical mediums. Broadcasting is realized from a roller or a DVD disk. There is no automated air system. The re-equipment plan is very weak - it is spoken mainly of purchasing HD cameras, tape recorders and boosting the computers. There is no modern technical concept.

This is one of the companies with weak technical facilities. It has a level of a regional TV company.

№.10 “AR TV COMPANY” LLC

According to the application submitted by the TV company, it has made investments during the last 7 years and modernized the equipment. Now it has all prerequisites for totally shifting to digital broadcasting. The company has presented all necessary technical data on systems and components. This is one of the complete and literate technical descriptions.

All necessary systems and components for production and distribution of a technically quality content exist here. The company, judging from the presented application, is one of the modern companies in technical terms. It already has digital infrastructures necessary for future development.

№.11 “ARMNEWS” CJSC

According to the application submitted by the TV company its equipment is the most modern. At present AVID systems produces the most expensive professional equipment for TV, radio and media companies.

The company has an intention to create a website for HD real-time broadcasting of events. But at the time of the survey the <http://www.armnews.tv> website notes that it is under construction from 2009.

Judging from the application, the company is well developed in technical terms. Such a company should have met international standards in the field of news broadcasting, analysis, live reportages (a few times in a day), for none of the TV companies participating

the competition has declared technical means for broadcasting live reportages, especially from regions.

№.11 “MELTEX” LLC (“A1+” TV CHANNEL)

According to the application submitted by the TV company, the company can produce 2.5 hours' local news-analytic content.

By means of the equipment presented by the company it is possible to produce the declared content - only in SD format. Later on, a re-equipment will have to be done for shifting to HD format.

№.15 “SHARK” LLC (“HAY” TV COMPANY, CURRENTLY BROADCASTED UNDER THE LOGO “12”)

The application submitted by the TV company does not include information on production spaces. The list of facilities is the shortest. It has only one news studio of elementary level.

The company presented a list of equipment to be purchased, which includes only names and quantity of some facilities. There is no concept; the choice of the broadcasting model and format are not clear. It seems that everything is starting from zero. In technical terms this is the weakest application. With such equipment it is difficult to work nowadays - even in the territory of Yerevan.

№.18 “GEGHAMA MEDIA HOLDING” LLC

The application submitted by the TV company makes a picture of a possibility to produce the declared content in case of joining of the three regional companies. There are data on current facilities. They are not modern, but are useful for production of materials in SD format.

The technical strategy of shifting to HD format in future is missing in the application. It is mentioned that a depreciation fund will be created by 2020 - for modernization of equipment and introduction of modern technologies.

№.19 “TELELEX” LLC

According to the application submitted by the TV company the technical resources available in it allow the production of the declared content. The company intends to buy new equipment, but mainly for filming, cutting, and studio use. It is not declared about purchase of air automatization components. And that is the basis of shifting to digital broadcasting.

№.20 “NOR DAR, NOR HAZARAMYAK” LLC

According to the application submitted by the TV company at the beginning of its activity the company plans to purchase a number of facilities, but the expenses are not worth, for it is a newly created company that makes such an investment, but doesn't have an established group of clients and a guaranteed consumption market. The company has presented a rather modern concept for a regional broadcaster. The existing equipment allows the production of declared content; the described technical concept conforms to the modern notions and demands.

№.21 “ARPAINFORM” LLC

According to the application submitted by the TV company, the company is newly created; it does not have premises and technical means for operation.

The model of a modern TV companies of international level is described in the technical part. There are also examples of a not adequate notion of technical details. Thus, it is mentioned: “it is planned to purchase a videosever of a rather big capacity (1 terabit) and place it in the facility hall”, when this capacity is no longer considered as a big volume in digital TV. It is mentioned about purchase of “a modern transistor equipment” when transistor electronics was modern in the 70-s of the last century.

In fact, a hypermodern approach is described: optical fiber local network, an entirely automated air, not linear cutting etc. Perhaps, at the moment such things exist only in “Shant” and “Armenia” TV channels.

This is a very brave and optimistic approach. We would like to think it is realizable. In theory, with the technical means described in the application, of course, it is possible to produce and provide the declared content. The only suspicious thing is that the company has neither a TV experience, nor experience in using digital technologies. It does not have its own technical staff - to carry out such a pretentious 24 hours' program, in which the local production should make 80% (19 hours). For comparison: “Shant” TV company , which has 15 years of experience, 300 employees and a serious technical resources - produces only 10,5 hours' local production.

№.22 “SIRAK” LLC (“HRAZDAN” TV CHANNEL)

In the application submitted by the TV company data are presented on the existing equipment. They are mainly outdated facilities of VHS, DV formats, which is quite natural taking into account the “age” of the TV company - 20 years. They have all necessary technical means for production of materials, their preservation and broadcasting. The company declares that will purchase modern digital filming, cutting, studio facilities, as well as an automated broadcasting system. There is no description of digital technical development and digital broadcasting perspective.

It is a typical small local TV company. The staff and facilities are minimal for broadcasting. Because of absence of general data, it is difficult to rate the possibilities of local production content.

№.22 “ABOVYAN TV EDITORIAL OFFICE” LLC

According to the application submitted by the TV company, the facilities of the company fit a small local TV station. Those are mainly consumer and semiprofessional video and audio technical facilities. At the moment it does not have a prompter, studio light, automated air system. The company presented a list of planned purchases. The “classical” approach is seen here and never the tendency of shifting to modern digital technologies (server broadcasting, air automatization, etc.).

The company presented an application, where a model of a small station is seen - without modern technical approaches. The existing equipment may not be called professional. The re-equipment plan does not fully match to the TV development trends of the digital age. Principally, it is possible to produce and broadcast with such resources.

№.23 “CHAP” LLC (“GALA” TV CHANNEL)

In the application submitted by the TV company detailed list of facilities is presented. Filming facilities are of DV, DVCAM format; cutting system is not linear. It has technical facilities of a typical small station - without modern technologies, for instance, air automation, etc. Technical perspectives and development trends are not mentioned. There are data on technical facilities, wherefrom it is possible to conclude, that the company is able to produce and provide materials with the mentioned resources. Perspectives of technical development are not mentioned and there is no note on new technologies.

№.23 “TSAYG” LLC

The application submitted by the TV company includes data on existing equipments. The production and broadcasting are realized by them. Those are outdated facilities, which can produce the declared content. Technical development approaches are not seen in the application, as well as passing on to modern TV technologies. From a 19 years old company we could expect a more modernized technical unit.

№.24 “DZAGEDZOR TV COMPANY” LLC (“SOSI” TV CHANNEL)

According to the application submitted by the TV company it currently works with DV, DVCAM (SD) formats, has got modern technologies of material creation, preservation and broadcasting. The system is built on the basis of AVID (network non-linear cutting) and Digi-TV (air automatization). The company declares that it has “portable cutting computers”, which allow the journalists to do the cutting in place and enter it directly into servers. This is a big advantage for a regional TV company.

The company plans to make up to 138 million AMD investment on reconstruction of premises and purchase of new facilities. It is declared that there is an intention to get facilities of HD format.

The approaches of the company are in line with modern technical concepts and trends. The company demonstrates ability of finding right technical solutions with limited budget. The company has clearly mentioned its technical perspectives and development trends. It is one of the best applications in technical terms.

№.25 “YEREVAN MEDIA HOLDING” LLC

According to the application submitted by the TV company the technical unit is missing in the organizational structure of the company. The company presented a list of facilities to be purchased with 120 million AMD (copied from the list of “Yerevan” TVC). It is suspicious, that it is possible to produce the declared 12 hours' content with a staff of 21 and an average salary of 50 thousand AMD. Technical problems and objectives are not mentioned. Mainly there are thinkings on benefit and advantages of digital broadcasting. It is an utopian application.

5. PROFESSIONAL BACKGROUND OF THE STAFF

Both the RA Law “On Television and Radio” (Article 49), and the Procedure for Conducting Licensing Competitions of TV Companies for On-Air Broadcasting through the Digital

Network approved by the NCTR merely indicate that when selecting the licensed entity, the National Commission takes into account “(...) 6. The professional background of the staff”. And there are no clarifications on how this criterion should be rated. In this respect, NCTR President Mr. Grigor Amalyan has made some clarifications during his interview, published in “Aravot” daily on April 9, 2011.

“(...) It is not as though individual people should be rated in order to rate the general creative capacities of a staff, but rather - the principles for selection of people and staff formation - according to educational qualification, professional competences, etc. I think that it was possible not to submit personalized information at all.”

“I repeat that the principle is not to present individuals nominally - the staff rating should not be perceived by persons, but according to the principle of formation of that personnel: what units are anticipated, etc.”

“I repeat that we are not interested in the nominal existence of employees. The company submits the organization of its staff, the number of specialists needed for its activity, etc. In case this and the means provided for this are sufficient - the labor market is not personalized. It is presumed that individual staff members may change - the stability of the personnel is not guaranteed. The license is not a slavery agreement.”

Certainly, the Commission should not review, verify and rate individual data of all employees working in TV companies with staffs of 40, 50, 100 and more. Of course, no personnel are everlasting and it will change and grow over. Even the organization of staff cannot be eternal, and may change due to the new demands of the time.

But we think that the Commission should have rated at least:

- A) The organization matching the given period and the adopted program policy.
- B) The professional level (suspicious information in their personal data should be checked) of management (administration unit, heads and editors of the main news, social, political, entertainment program departments, directorate of programs).
- C) Principals of staff formation and selection, possibilities and procedures for promotion, which should be reflected in the bids.

For these reasons, we have reviewed the information on the criterion “professional background of the staff” submitted in the bids of TV companies that have participated in the competition.

№.1 “ARMENIA TV” CJSC

In the application submitted by the TV company the number of employees in the Directorate of Programs makes up 60% of the company’s total staff (page 35).

“Professionals in their field as well as many Honored Workers of Armenian Art represent the staff of ‘Armenia TV’” (page 47). Though only 8 of the presented persons are the core employees of TV company, others are actors, in whose biographies it is even mentioned that they work at other places. For instance:

Armen Maroutyan (page 56): In his biography, it is mentioned, that he has been an actor in the Yerevan National Theatre after G.Soundoukyan for 40 years, although “he has been acting in the ‘Masquerade’ television series broadcasted by ‘Armenia TV’ since 2010”.

Hovak Galoyan (page 59): “From 1994 to the present works in the State Theatre of Musical Comedy after Hakob Paronyan. At ‘Armenia TV’, he acted in a television series ‘Captives of Destiny’, ‘Ruthful Happiness’ and ‘Masquerade’”.

Aida Babajanyan (page 60): “After the Yerevan tour of 1992, she was invited to the Soundoukyan theatre, where she still works. Currently she acts in the ‘Masquerade’ television series of ‘Armenia TV’”.

Albert Safaryan (page 60): “In 1993, he was invited to the Yerevan National Theatre after G. Soundoukyan, where he still works. Currently he acts in the television series ‘Masquerade’ of ‘Armenia TV’”.

Besides, there are employees mentioned in the package who simply do not live in Armenia:

Aleksandr Khachatryan (page 63): “Moved to the USA in 1991 with his family for permanent residence, where he staged a few performances. Since 2007, he has been acting in various television series on ‘Armenia TV’”.

Alis Kaplanjyan (page 63): “Moved to the USA in 1991 with her family for permanent residence, where she had many shows and acted in performances. She has been acting in the ‘Armenia TV’ television series ‘Return’ since 2010”.

According to the biography presented on page 48 of the TV company’s application, it appears that Vahagn Sargsyan, the Deputy President of the TV company graduated from the Yerevan State Economic University when he was 17 (1992), consequently he had entered the university when he was at least 13. We think that this fact should have attracted the attention of the NCTR members and an inquiry should have been made to verify whether it was true or false information.

On page 49 of the TV company’s application in the biography of Gagik Mkrtchyan, it is written that he entered the Yerevan State Economic University in 1996 and graduated in 1991.

On page 54 of the TV company’s application the biography of Rafik Hovhannisyan is submitted, which is included also in the package of “ArmNews” CJSC, on page 79 without any changes.

Thus, it was not possible to rate “Armenia TV” on the criterion of “professional background of the staff” for a simple reason - it presents only the biographies of the management team and the biographies of actors who are involved in series, whereas data on the core team - to put it in their terms, managers of the “news/political programs”, is missing.

№.3 “SECOND ARMENIAN TV CHANNEL” LLC (“H2” TV CHANNEL)

In the section “Staff of the television broadcasting company” of the application submitted by the TV company, page 70, it is quoted: “Employees of H2 receive new education, training and professional practice in various leading institutions and TV companies around the world, such as (...) USA Embassy in Yerevan(...) Ministry of Internal Affairs of Russian Federation”.

When talking about programs, the authors of this bid do not hold back in praising their presenters and authors. Here are some examples:

On page 39 of the application it written - "In the news program 'Lraber' the post-soviet Armenian female host with the longest work history, the most attractive male presenter and the most experienced persons are involved". It is not possible to understand from the text who it refers to.

On page 43 of the application it written - "'Special Report' is one of the oldest programs on H2. It is presented by one of the most exclusive investigative journalists of Armenia, Christine Karslyan." It is hard to judge from the submitted documents what makes Christine Karslyan "exclusive".

On page 47 of the application it written - "It may be said, that 'Magaavto+' is one of the veteran programs of Armenian television. In its time this was the most courageous step made by a fragile girl. Instead of kitchen and children - cars have always been the passion of the author and host Maga. She fell in love with cars like a man and decided to make a program for men."

On page 48 of the application it written - "'Unexpected Guests' is one of the signatures of H2 (...). The program brand, authors Davit and Suren are not just a host and an operator - they have bonded with each other long ago, and neither the most popular Armenian director Suren, nor the most modern operator Davit is ever bored".

№.5 "HUSABER" CJSC ("YERKIR MEDIA" TV COMPANY)

On page 69 of the application submitted by the TV company, the correspondent offices in Mountainous Karabagh, Russia, Georgia, USA, Iran, France, Poland, Lebanon, Syria and Turkey are mentioned, but we do not have information on the employees of those offices on hand. Therefore, it is not possible to know how professional their employees are.

On page 96 of the application it is mentioned - "In managing human resources, 'Yerkir Media' has adopted the most ideal modern approach - human resources management based on competences, which entirely conforms with the international standard of the quality management systems - ISO 9001:2008 requirements". (?)

On pages 96 to 105 of the application the personnel policy is described as well as the number of staff, its increase, average salary dynamics, etc. are presented, but the documents we have on hand do not contain data about concrete employees. Therefore, it is not possible to make a complete rating of the personnel's professional level.

№.7 "ATV" LLC

According to the part about staff policy (page 15) of the application submitted by the TV company: "From the very first day of its establishment the 'ATV' channel has been trying to create a strong and professional team. People who work here have wide experience and there is also a young staff. Names like Garik Martirosyan, Misha Galustyan, Egor Glumov, Arminka, Sofy Mkheyan, Arthur Maratovich, Emma Balbabyan, Armen Margaryan represent our staff."

The NCTR should have found out the positions of the staff members who are Russian residents and the basis of their contractual relationships, as well as whether they were members of the staff or not.

According to page 40 of the application the "Key persons" of "ATV" channel are:

Hrach Qeshishyan -has been at the TV company since 2009. He is mentioned as the Chief Producer. According to the information we have acquired, Hrach Qeshishyan acts also as Adviser to the Chairman of the Council of Armenian Public Television and Radio Company. We think there is a conflict of interests.

According to page 42 of the application Hrachuhi Utmazyan has been at the TV company since 2009 as a host. She is the Chief Editor of the magazine “Cosmopolitan Armenia”. It is intended to enlarge the staff with 88 more employees - making it 164, instead of the current 76. It is difficult to rate the professional level of the staff, for there is only information on the chief producer, head of programs (Gayane Manukyan), Egor Glumov as a host without a biography, camera operator Vyacheslav Marjanyan and presenter Hrachuhi Utmazyan.

№.8 “YEREVAN TV COMPANY” CJSC

From the lists on pages 44 and 128 of the application submitted by the TV company, it is seen that the company’s creative staff is only made up of 15 people, one of which is Vardges Avetisyan, the News Director, the other, Christine Voskanyan, the Coordinator, and only 4 journalists. The presenters even outnumber them (6 in number). In order to prove the professional competence of the staff, the TV company has mainly mentioned the education they have acquired - higher. But there are also exceptions, for instance:

On page 47 of the application the fact of being the winner of a Russian language international Olympiad and certificates on conducting festivals are presented as assets of the news commentator Erna Avetisyan.

On page 48 of the application, in order to demonstrate the professional level of the presenter, commentator and journalist Mane Varosyan, it is indicated: “Diplomas, cash awards, a municipality diploma and an Anahit gold coin.”

On page 49 of the application, to prove the professional level of the presenter Diana Grigoryan, it states, “Program ‘For the Sake of the Motherland’, a diploma after V. Sargsyan, and a Golden Eagle medal.”

№.9 “DAR-21 TV COMPANY” CJSC

On page 28 of the application submitted by the TV company, the mobility of the staff is presented from the day of its establishment. The TV company has not grounded the competences in any way. It has only mentioned the proportion of staff members who have higher and vocational education. Also, it is indicated that there is an intention to enlarge the staff with 15 more employees.

№.10 “AR TV COMPANY” LLC

On page 50 of the application submitted by the TV company it states that, “Each employee of the TV company is a personality.” There would not be problems with the personnel of “AR TV Company” if the company took part in the tender for general profile licensing and not for the “youth/educational/scientific” one. The bid includes the whole previous staff of “AR”, including the staff of the news service. Moreover, from this fact and from the program schedule it is seen clearly that the direction of the announced competition will not be predominant.

№.11 “ARMNEWS” CJSC

In the part of the application submitted by the TV company regarding the biography of Menua Harutyunyan it is written:

Born on 03.04.83, village Agarak.

In 1990, graduated from No 2 humanitarian college. (This means he graduated from college when he was 7).

Rafik Hovhannisyan is presented both in this application and in the one submitted by “Armenia TV” CJSC.

Service contracts included in the bid and concluded with persons living in different cities are incomprehensible. Are those people employees? In this case, where are their professional competences mentioned? That is, who are Egor Balabin (Moscow, contract on page 190-192), Irina Yolyan (Goris, contract on page 193-195), Jan Galstyan (Gugarq, contract on page 196-198), Alla Nahapetyan (Vanadzor, contract on page 199-201), Karine Vardanyan (Armavir, contract on page 202-204), Nver Ghazaryan (Aparan, contract on page 205-207), Arman Avagyan (Paris, contract on page 208-209), Armine Amiryan (Pouchiki, Yerevan (**Ed. Note**, this is their misspelling) 2nd, contract on page 213 -215). Moreover, these contracts, which were made for correspondents only a few days before the tender are not duly signed and sealed.

The “ArmNews” bid includes the biography of the journalist Arkady Grigoryan (page 83), which shows that he doesn’t work at “ArmNews” at the moment. In the biography, it is mentioned: “From 2004 to 2006, worked at ‘ArmNews’ TV Company as a journalist. From 2006 - 2010 worked at ‘Zham’ (“The Hour”) news program for ‘Armenia TV’ company as a journalist”.

The same goes for the data submitted on Hermine Baghdasaryan (page 87-88). According to the data, she currently does not work at “ArmNews”. The application states: “In 2007, joined ‘ArmNews’ TV Company as a journalist (...). From February 2010 to present works at ‘The Hour’ news service of ‘Armenia TV’”.

№.15 “SHARK” LLC (“HAY” TV COMPANY, CURRENTLY BROADCASTED UNDER THE LOGO “12”)

On page 35 of the application submitted by the TV company the data on the professional qualifications of Hripsime Arakelyan, Head of the company’s news programs, are submitted. For others, only education is mentioned in an annex, pages 56-57.

Thus, the information on the personnel of “Hay TV”, brought in the list of staff on page 56-57 is presented according to positions and levels of education, and is not a sufficient base to judge the professional level of the company’s staff.

№.16 “TAVUSH TV” LLC

In the application submitted by the TV company it is mentioned that “7 professionals with higher education and relevant professional qualifications are employed at the TV company: an editor, a journalist, a camera operator, an issuer etc”. Though, from the application’s section titled “Information on the number, education and professional level of staff” and presented on page 81, it turns out that one of the 7 persons is an editor, the

second is a journalist/ issuer, the third is an operator/driver, and the rest - director, accountant/treasurer, issuer/engineer, and guard/worker.

Among the staff, which is called a “group of initiators”, the name of Vardan Ananyan is the 5th. He is currently the owner and Director of the “Kamut” TV company of Noyemberyan, as well as its producer, issuer, etc. Jora Malkhasyan is the operator of the same “Kamut” TV company and performs all function there.

For the coming years, there is an intention to enlarge the staff with specialists acquiring higher education, and, for reasons unknown - 10 reporters on a contractual basis and not on the staff. They plan to have only one producer, 2 operators, but 13 reporters. If we consider that in the group of initiators there is also one operator - this means that 3 operators will have to work with 13 journalists, and the programs will have one producer and one editor.

Thus, the initiators not only lack sufficient staff, but are not planning for their long-term activities. The fact that the founders of the TV Company do not have any idea of what they are going to deal with is seen from the two tables on the personnel (in the header it says page 24, and in the footer, page 37 and 38 -in handwriting). In both tables, the staff is divided into two parts -“administrative staff” and “labor staff”: In the first one, next to the director, deputy director, chief editor and editor, the driver, cleaner and guard service are mentioned. And in the second table, AMONG THE LABOR STAFF -the producer, operator, journalist/cutter, sound engineer, presenter and computer specialist.

№.17 “FORTUNA” LLC

According to the application submitted by the TV company the high professional level of the company's staff is presented in this way: “THIS IS AN INDISPUTABLE FACT”. It is also added: “The company has nearly always been honored with high awards, diplomas, money awards. All documents verifying the mentioned facts will be submitted on demand”. It is also mentioned: “The Company’s personnel is guided by the slogan: “The more you know, the more valuable you will be to yourself and to the company.”

On pages 78-83 of the application, the staff organization and the names of the 20 current employees are mentioned. But the problem is, that Karen Arshakyan, the only owner and President of the TV company, acts at the same time as the Program Director of “Shant” LLC, and, according to our information, has a permanent residence in Yerevan.

№.19 “TELELEX” LLC

On page 4 of the application submitted by the TV company it is stated: “Owing to the high professional level of the TV company’s journalists, many problems have been solved in the region. It is no coincidence that most of the journalists enjoy the respect and love of people in the region. Most of them were honored with many incentives and high appreciation of professionals.”

In the application the education level of the journalist Irina Tadevosyan is mentioned as secondary, the qualification/trainings undertaken -“Casting studio”. Command of languages: “Armenian, Russian (fluent).” But the experience mentioned is “International journalism”.

On pages 28-31 of the application the name “Internews” is mentioned with the same misspelling, “Inetronews”, and repeats in the CVs of the executive director, chief editor, accountant, presenters and the operator.

№.20 “NOR DAR, NOR HAZARAMYAK” LLC

According to the subsection “Information about the number, education and level of professionalism of staff” of the application submitted by the TV company the Executive Director of the “A” TV company is Hayk Proshyan - the very same bishop Mkrtych Proshyan, the Bishop of the Diocese of Aragatsotn. It is difficult to judge on his level of professionalism as a member of staff. Data on other staff members are sufficient. The professional level of the staff submitted by “Nor Dar, Nor Hazaramyak” or “A” TV company does not cause any doubts. Almost the whole creative and technical staff of “Shoghakat” TV channels is presented in the submitted application.

№.21 “ARPAINFORM” LLC

The application submitted by “ArpaInform” TV company does not include any information on the staff at all. The envisaged staff list for the future is presented, and only the name of the Executive Director is mentioned - Ruzanna Ghazaryan (page 72), who graduated from the Faculty of Biology of the State University, as well as the Faculty of Fine Arts. However, it is not clear who will be filling the vacancies and what competences they will have.

By the way, we have clarified that Garik Badalyan is mentioned as the owner of the company, but the real owner is the ex-Governor of Vayots Dzor, Deputy of the RA National Assembly and member of the Republican Party of Armenia, Samvel Sargsyan.

№.25 “YEREVAN MEDIA HOLDING” LLC

The application submitted by the TV company contains no information on the personnel: there is only a list including 21 staff members (only 6 staff members are provided for the creative team) and a short statement about Armen Hovsepyan - the only founder and Director of “Yerevan Media Holding” LLC.

The criterion “professional background of the staff” should have been scored as 0, for there is no staff as it is.

6. RESULTS OF THE SURVEY ON FOUNDERS OF LEGAL ENTITIES PARTICIPATING IN THE COMPETITION

The YPC expert group has studied also the composition of the founders of legal entities (television companies) which have taken part in the competition to check the fulfillment of the requirements of the RA Law “On Television and Radio”.

The Article 16 of the RA Law “On Television and Radio” defines the following:

Article 16. Founders of Television and Radio Broadcasting Companies

1. Founder of a television and radio broadcasting company may become any physical and legal entity with the exclusion of those listed in this Law.

2. On establishing TV and radio companies or after that the amount of foreign capital should not be equal or exceed the amount of the capital that provides the result of the decisions. A bigger share may be defined by interstate agreements.

3. Persons not permitted to found a television and radio broadcasting company:

- 1) The President of the Republic of Armenia and persons related to him,
- 2) Representatives of the government or local self-government bodies,
- 3) Members of the Republic of Armenia Government and persons related to them,
- 4) Members of the National Assembly of the Republic of Armenia and persons related to them,
- 5) Chiefs of Local Self-Government Bodies and persons related to them,
- 6) Members of the Council of the Public Television and Radio company and persons related to them,
- 7) Members of the National Commission on Television and Radio and persons related to them,
- 8) Judges and persons related to them,
- 9) Political parties,
- 10) Persons recognized incapable through a judicial procedure; persons convicted to imprisonment according to a lawful decision and those serving a sentence; as well as persons sentenced for a crime, whose criminal record has not been removed or cleared by the prescribed procedure.
- 11) Citizens below the age 18.

First of all, by means of a letter of inquiry we tried to get answers from the NCTR Chairman Grigor Amalian to a number of questions. We already know that, according to the information received from the Agency of State Register of Legal Entities of the RA Ministry of Justice, a few television companies operating in Armenia have foreign capital. Information on the shareholders of some companies is closed.

Below the questions addressed to the NCTR Chairman - Mr. Grigor Amalyan, together with his answers are presented:

Question – *Has the NCTR checked the shares and the identity of shareholders of the television companies participating in the competition?*

Grigor Amalyan - Yes, it conforms to the RA Law “On Television and Radio”.

Question – *Does the NCTR possess any information on the amount of foreign capital of the companies, which have taken part in the competition?*

Grigor Amalyan - Yes, it is available - it conforms with the RA Law “On Television and Radio”.

Question- *Among the founders of a television company there is one registered in British Virgin Islands. That island is considered as an offshore territory. Has the NCTR clarified who the founders of that company are? The question on founders is asked, for according to the Law, there are restrictions for the founders of private TV companies.*

Grigor Amalyan - Yes, it has clarified - it conforms with the RA Law “On Television and Radio”.

It is difficult to say, how credible the answers of the NCTR Chairman Grigor Amalyan are. Has the NCTR checked the names of the participants of the companies? Names of participants of companies registered in an offshore territory are closed data. Has the NCTR applied to an authority to get that information? These data could be presented by the company participants. During our meeting, to the question “How have you checked it?”

Mr. Amalyan answered, that the companies had presented their data and they were all RA citizens. Mr. Amalyan refused to present that documents, saying, that he may not lay them open to public. After getting the answer to our written inquiry, we applied to Mr. Amalyan for getting familiarized with the packages of the companies participating in the competition. In NCTR it was possible to get familiarized with packages of a few companies. These were mainly LLCs. As to CJSCs, we were not permitted to get information on founders, motivating, that the law does not allow to publish the shareholders. According to the law, shareholders of CJSCs are unknown, unless the shareholders themselves want to be known.

According to the Law, the information on change of shareholders is possessed by the “Central Depository of Armenia” OJSC, and information from there may be received only with the approval of the shareholders.

Part 2 of the Article 16 of the RA Law “On Television and Radio” defines: **“On establishing TV and radio companies or after that the amount of foreign capital should not be equal or exceed the amount of the capital that provides the result of the decisions. A bigger share may be defined by interstate agreements.”** This means that NCTR must know who the shareholders are. That is NCTR should be the first to possess the information on owners and foreign capital. It is difficult to say whether this provision of the Law is violated or no, unless these data are publicized. After all, there are many cases when authorities hide that kind of information from public.

Herewith we present the results of the survey carried out. The results are gained from three main sources: NCTR competition packages we had a possibility to get acquainted with in place; the statements received from the Agency of State Register of Legal Entities of the RA Ministry of Justice; and the third source - representatives of organizations taking part in the competition, different office holders.

According to the data received from the Agency of State Register of Legal Entities of the RA Ministry of Justice, several TV companies operating in Armenia have foreign capital.

(Ed. Note. The legal entities are presented below according to competition sequence, except “ArmNews”, which is presented after “Armenia TV” CJSC - for visibility of comparison of the shareholders in both companies).

№.1 “ARMENIA TV” CJSC

Shareholder changes were made in this company before the competition. We managed to find out some information on the company shareholders. There are two shareholders in “Armenia TV” CJSC (see the table).

Name, patronymic, surname, or the name of the organization	Citizenship	Share
Artem English Sargsyan	RA	50%
“Benet Group” Inc. LLC		50%

“Benet Group” Inc. LLC is registered in an offshore territory - address: Trident Chambers, 281 Waterfront Drive, P.O. Box 146, Road Town, Tortola, British Virgin Islands.

“Benet Group” LLC owners are unknown, but according to verified data, it belongs to Michael Minasyan (son- in- law of RA President Serzh Sargsyan) and Arthur Janibekyan. The latter is the Chief Producer of “Comedy Club Production” LLC registered in Russian Federation.

During the meeting with Grigor Amalyan we got the following answer to the question about the shareholders of this company: ““Benet Group” LLC owners are citizens of the Republic of Armenia, there is no foreign capital”.

The second shareholder - Artem Sargsyan is the father of Bagrat Sargsyan. Bagrat Sargsyan is one of the founders of the “Armenia” Media Holding.

Note: “Armenia TV” company was founded by the Sargsyan family in 1999. In 2001 the American famous businessman Gerard Gafeschyan also became a shareholder of the company. Up to August 2010 the “Gafeschyan family” Fund and Sargsyan family were the shareholders of the company.

№.11 "ARMNEWS" CJSC

Formerly, the founder of “ArmNews” was “Cinemax” LLC. Founders of “Cinemax” were “Hermes” CJSC and “ArmNews” CJSC.

This time “ArmNews” CJSC has taken part in the competition. There are two owners of “ArmNews” CJSC:

Name, patronymic, surname, or the name of the organization	Citizenship	Share
Astghik Artem Sargsyan	RA	50%
“Benet Group” Inc. LLC		50%

We have mentioned above about “Benet Group” Inc. LLC.

Astghik Sargsyan is probably the daughter of Artem Sargsyan.

If Astghik Sargsyan is the daughter of Artem Sargsyan - there is a violation of the Part 2 of the Article 18 of the RA Law “On Television and Radio”, for father and daughter are owners of two television companies.

“Article18. Antimonopoly Guarantee

1. Physical entities may be licensed for not more than one Television or Radio broadcasting Company.

2. Physical entities and people related to them may become founders and (or) participants for not more than two broadcasting licensed entities (one television company and one radio company”.

Note: Formerly, during the survey carried out in 2010, we found out that founders of “Hermes” CJSC are Deputies of the National Assembly Harutyun Pambukyan (52.5%) and “Investment Worldwide Grow Road Town” company registered in British Virgin Islands (47.5%). The shareholders of “ArmNews” CJSC are unknown. The fixed capital of “ArmNews” is 140,100,000 (one hundred forty million one hundred thousand AMD), it makes 14,100 (fourteen thousand one hundred shares), that is every share costs 10,000 AMD. According to our information, in this company there was also foreign capital and, most probably, one of the shareholders was again Gerard Gafeschyan.

The shares of “Hermes” CJSC and “ArmNews” CJSC in “Cinemax” LLC were not found out. This would clarify the foreign capital of the company. The amount of foreign capital in “ArmNews” CJSC is also unknown. One of the shareholder companies was registered in offshore territory.

№.2 “SHANT” LLC

“Shant” LLC was founded in 1994 by Arthur Ezekyan, in Gyumri. The fixed capital is 203 million 320 thousand 900 AMD.

Currently there are two founders:

1. Arthur Ezekyan - 52%

2. Armen Minas Shaharmahali - 48% (Federative Republic of Germany, Waldbron, Terastian Kneif).

Armen Minas is an Armenian businessman from Iran. He lives in Germany. According to one of our information sources in Germany, he represents a religious grouping, and taking up the television company was initially connected with using it for promulgation purposes. Anyway, he didn't manage to do that. Relationship of the founders is very cold.

№.3 “SECOND ARMENIAN TV CHANNEL” LLC (“H2” TV CHANNEL)

There are two founders of the LLC:

1. Samvel Mayrapetyan - 50%
2. Natalya Martinyan - 50%.

Samvel Mayrapetyan is a businessman and is known with the business of construction of elite buildings in the city center. The second founder - Natalya Martinyan, according to some information sources, is a person related to Armen Gevorgyan, the Deputy Prime Minister, Minister of Territorial Administration. We tried to clarify from the Deputy Prime Minister if he is one of the owners of the “Second Armenian TV Channel” LLC. In response to our inquiry - the press secretary of the Deputy Prime Minister neither confirmed, nor denied it; he only advised to check the information from the TV Company. Also, there are opinions, according to which, Sedrak Kocharyan, son of the RA ex-President Robert Kocharyan, takes part in the administration of the TV company.

№.4 “MULTIMEDIA-KENTRON TV” CJSC (“KENTRON” TV CHANNEL)

We managed to find out, that there are two owners of the company:

1. Sedrak Arustamyan - 90%
2. Ruben Jaghinyan -10%. The latter is one of the owners of “Sharm” company.

Sedrak Arustamyan is the Director of “Multi Group” company which belongs to the leader of “Prosperous Armenia” Party, Deputy of RA National Assembly - Gagik Tsarukyan. He is also the Chairman of the Board of Directors of the Yerevan Ararat-Brandy-Wine-Vodka Factory and the General Director, as well as the Director of the “Ararat Cement” factory. The real owner of the TV Company is Gagik Tsarukyan.

***Note:** This company has been created by the authorities in order to solve the issue of “A1+”. At that period the company “Sharm” which received the broadcasting license, had fulfilled the political order, but some time later it appeared in a vague situation. Soon “Sharm” sold the company to Gurgen Arsenyan, President of the United Labor Party. The latter sold it to the NA MP - Murad Guloyan, who is the father of the son-in law of Gagik Tsarukyan. The actual owner of the TV Company is Gagik Tsarukyan. He has not denied the fact during different interviews.*

№.7 “ATV” LLC

In August 2010 there was a change of participants. There are three founders of the company:

1. “Hopar Media” LLC - 20%
2. Vahe Ghazaryan - 30%
3. Edgar Avagyan - 50%.

The founder and owner of “Hopar Media” LLC is Otari Hakobyan. The real owner of “Hopar Media” LLC is Arthur Janibekyan, the Chief Producer of “Comedy Club Production” LLC.

Note: This is the former “ArmenAkob” TV company. The former owner of the TV company - Armen Amiryan is now the Executive Director of the Public Radio. In 2008 there was a change of owners.

№.8 “YEREVAN TV COMPANY” CJSC

Unlike the other CJSCs, there was information on the shareholders of this company in the State Register Agency. Moreover, the only shareholder of the company is Varsham Gharibyan.

Varsham (Yura) Gharibyan is the owner of “Shant” TV company. He is the President of “Elite Shant” company, as well as one of the owners of the “Shant” restaurant complex. Varsham Gharibyan is under patronage of Aghvan Hovsepyan, the RA General Prosecutor.

№. 9 “DAR-21 TV COMPANY” CJSC

There are four founders:

1. Naira Aghababyan
2. Ashot Aghababyan
3. Anahit Popovyan
4. Gagik Abrahamyan.

The first three shareholders are registered in Gyumri, at the address: Leninakan str. 16-6. They are the family members of the NA deputy, businessman - Ashot Aghababyan. Naira Aghababyan is the daughter of the NA deputy. Anahit Popovyan is the wife. And the fourth shareholder is perhaps the MP - Gagik Abrahamyan, brother of the famous businessman Ara Abrahamyan.

№.10 “AR TV COMPANY” LLC

One of the shareholders of the company was changed prior to the competition - Artik Zargaryan replaced Hrant Vardanyan.

Name, patronymic, surname, or the name of the organization	Citizenship	Share
Silva Alagulyan	RA	16%
Lyudmila Saharyan		16%
Artik Rubik Zargaryan		68%

Note: In June 2010 there were three shareholders of the company:

1. Hrant Michael Vardanyan - 68%
2. Silva Alagulyan - 16%

Silva Alagulyan is the wife of Stepan Margaryan, the adviser on Djavakhq issues to the ex-prime minister Andranik Margaryan. Stepan Margaryan was removed by the Prime Minister Tigran Sargsyan. That position no longer exists.

3. Lyudmila Saharyan - 16%. She is the wife of the ex-Deputy Mayor of Yerevan Vardan Vardapetyan. Formerly, Merujan Ter-Gulanyan was the owner of the company’s 17% share, now he is a Member of the Council of the Public Television and Radio Company. In 2002 he sold his share to Hrant Vardanyan, the Chairman of the “Grand Holding”. At the moment of sale he possessed 51% of the company - as a result of the transaction, his share became 68%. Silva Alagulyan and Lyudmila Saharyan do not take part in administration of the TV company. We would like to remind, that Hrant Vardanyan became the owner of “AR” before the parliament elections in 2003. At that period, the PanArmenian Labor Party headed by him had concluded a pre-election alliance with the ARF “Dashnaksutiun” party.

№.15 “SHARK” LLC (“HAY” TV company, currently broadcasted under the logo “12”)

There are two founders of the “Shark” LLC:

1. Gagik Buniatyan - 33%
2. Arman Sahakyan - 67%.

Gagik Buniatyan is the Executive Director of the Public Television Company.

Arman Sahakyan is a businessman, friend of Michael Minasyan - son-in-law of RA President’s Serzh Sargsyan- and the Deputy Chief of Staff of President’s Administration. During the last two years Arman Sahakyan managed to take a definite stand in the Armenian media market: he owns the “Press Stand” agency for press dissemination, the www.tert.am, www.armsport.am websites (they are among the top 10 in the Armenian net), as well as the www.hayutyun.am, “Capital” daily, “Business class” magazine, and the “Radio Aurora” broadcasted on 100.6 FM. Taking up the TV company by Arman Sahakyan was another step towards strengthening the positions in the media field.

№.16 “TAVUSH TV” LLC

The company was registered on October 1, 2010. There are two founders:

1. Aida Saribek Ghazaryan - 51%
2. Samvel Seryoja Sahakyan - 49%.

Samvel Sahakyan is a former deputy of the NA. Now he is the Executive Director of “Masis Tobacco” LLC. The Vardanyan family backs this company. The Deputy of the NA - Michael Vardanyan, was selected elected MP from Tavush region.

№.17 “FORTUNA” LLC

The only owner of the company is Karen Arshakyan. He is currently the program Director of “Shant” TV company.

№.18 “GEGHAMA MEDIA HOLDING” LLC

There are three founders, who joined the company with equal shares and all the founders represent regional TV companies: “STV1” of Sevan, “Zangak” of Martuni and “Qyavar” of Gavar.

№.20 “NOR DAR, NOR HAZARAMYAK” LLC

There are four owners of the company:

1. Vardges Manukyan - 25% (address: town Etchmiatsin, Holy See)
2. Samvel Khachatryan - 25% (address: town Etchmiatsin, Holy See)
3. Manya Sardlyshvily - 25% (address: apt. 48, Vratsakan str. 17, Yerevan)
4. Hayk Proshyan - 25% (address: house 2, Lomonosov str. 2nd b.a., town Etchmiatsin).

The real owner of this company is the Armenian Apostolic Church.

№.21 “ARPAINFORM” LLC

Garik Badalyan is the 100% owner of “ArpaInform” LLC. He lives in Yerevan. According to not verified information, the real owner is the former Mayor of Vayots Dzor region, Member of the RA NA, member of the Republican Party of Armenia - Samvel Sargsyan.

№.22 “ABOVYAN TV EDITORIAL OFFICE” LLC

The company has two owners:

1. Artashes Mehrabyan - 60%
2. Vaghinak Abovyan - 40%.

№.23 “TSAYG” LLC

The company was founded in 1991. It has four shareholders: Arthur Ghandilyan, Valya Ghandilyan, current Director of "Tsayg" - Margarita Minasyan and Andranik Ghandiyan (*see the table*):

Name, patronymic, surname, or the name of the organization	Citizenship	Share
Arthur Ghandilyan	RA	36%
Valya Ghandilyan	RA	20%
Margarita Minasyan	RA	26.5%
Andranik Ghandiyan	RA	17.5%

№.24 “DZAGEDZOR TV COMPANY” LLC

There are two owners of the company:

1. Elichka Alexan Harutunyan - 80% (address : apt. 14, Lernagorcneri 11, town Qajaran)
2. Vahagn Soso Sargsyan - 20% (address: apt. 45, Njdehi str. 18, town Kapan).

According to not verified information, the real owner of the company is the owner of the Zangezour cooper-molybdenum factory - Maxim Hakobyan.

№.25 “YEREVAN MEDIA HOLDING” LLC

The company is registered in Yerevan, at the address : apt. 9, Mashtots str. 24. Since 2010 the only owner and participant of the company has been Armen Aghvan Hovsepyan, who, according to our information, is the son of Aghvan Hovsepyan, the RA General Prosecutor.

RECOMMENDATIONS

As a result of the review of licensing applications submitted by TV companies of the Republic of Armenia to competitions for digital broadcasting, the main conclusion is that amendments made to the RA Law “On Television and Radio” on June 10, 2010 did not ensure development in television, holding of free, fair and transparent competitions, pluralism and diversity on television. The law does not rule out a subjective and biased approach, which has been demonstrated on several occasions, such as when members of the NCTR carefully reviewed the bid of “Meltex” LLC (“A1+” TV company) and found inaccuracies, based on which the whole bid was assessed as 0, while no attention was paid to the unilaterally signed documents of “A1+” competitor - “ArmNews” CJSC. The latter were not considered invalid.

Summarizing the conclusions of the experts, we recommend:

1. To amend the RA Law “On Television and Radio” so that the rating is guided by criteria provided by legislation, and so that different sections of bids are rated separately, instead of giving one score to the entire bid. (This regulation should not be delegated to the competition procedure approved by NCTR.)
2. To provide in the same document, that “professional background of the staff” criterion is assessed taking into consideration the professionalism of the management staff and clarity of organizational structure. The existence of legitimate employment contracts with staff should also be deemed as a mandatory condition for assessment. This is necessary to avoid repetition of facts recorded during the last competition process, when Russian show business stars, actors of different theatres, and people living abroad were presented as employees of Armenian television companies. Or in some cases, employment contracts were presented without any signatures or stamps. Additionally, the conformity of staff structure to adopted program policy should be taken into account.
3. To remove “capacity to promote pluralism” from the assessment criteria provided by the Law, and replacing it with “conformity of program policy with orientation of the competition.”
4. To add a new criterion in the Law, according to which, while assessing the bids of currently active television companies, NCTR will be obligated to take into consideration the extent to which the bidder has kept promises made in past license terms, and license requirements.
5. To improve NCTR assessment procedures, we recommend establishing one format for presentation of the volume of domestic and own programming. This shall prevent repetition of the precedent that was established during the last competition, when NCTR selected a winner between two competitors based on the competitors’ own calculations of volumes of domestic and own programs.
6. There should be provision in the Law that will oblige NCTR to post competition bids with all attached documents on its website immediately after opening of the documents for the conduction of public discussions. The bids should be kept there during the whole term of license validity. This will enable others as well to monitor the extent of fulfillment of assumed program and other obligations by TV companies. Bids should not even in part be

closed, confidential documents. Commitment to conduct open and transparent competitions should be ensured through such publicity as well.

7. To establish a list of mandatory and optional financial documents that bidders are to provide within the procedure approved by the NCTR on conducting competitions for digital broadcasting.

8. In the same set of guidelines, to provide clear criteria for assessment of the technical component of the bid.

9. To prescribe a legislative provision, according to which the companies registered in offshore zones will be banned of being a founder of RA TV companies. This will ensure the TV companies financial transparency and their owners' transparency.



ANNEX

Comment on the Report on the Expert Analysis of the Results of Licensing Competitions in Armenia: International Criteria for Assessment of Broadcasting Tenders

13 July 2011

Introduction

In this Comment, ARTICLE 19 provides an expert analysis of the final report on the results of licensing competitions in Armenia, implemented within the framework of the Expert Analysis of the Broadcast Licensing Competitions Project. The project aimed to clarify how the legislation relating to broadcasting area and the organization of tenders for licenses, the examination of the bids, and the outcome of the tenders promoted the development of television industry, variety of opinion and pluralism. The Comment was commissioned by the Yerevan Press Club, who was the lead implementing organization of the project, based on materials gathered in the course of monitoring and evaluation.¹

In view of the expertise and experience of ARTICLE 19, this Comment focuses on the compliance of the tender procedures with European regional media standards. ARTICLE 19 has a vast experience in developing standards and commenting on laws, draft laws and policies as well as litigation related to broadcasting and broadcast licensing around the world. In particular, ARTICLE 19's standards on broadcasting are distilled in the publication, *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation*;² ARTICLE 19 has so far produced more than 50 analyses of various broadcasting regulations and other publications on the subject.³ Specifically, on Armenia, ARTICLE 19 previously analyzed the Law and draft law on mass media, right to information law and various legislation on defamation.⁴

This Comment is divided into two parts. The first part outlines the relevant digital broadcasting laws and policies at the European level and identifies the key government and broadcasting regulator's obligations concerning licensing. Then, in the second part, the Comment examines the compliance of the TV and Broadcasting Act of Armenia and

¹ Disclaimer: ARTICLE 19 did not review all the materials gathered within the evaluation project. The Comment was produced based on translation of selected materials and selected legislation provided by the Yerevan Press Club. Namely, we had an access to the Memorandum on Observation of competitive bids submitted by the television companies for contests for broadcasting of television programs through digital telecommunication network and to translation of selected provisions of the TV and Radio Broadcast Act. ARTICLE 19 takes no responsibility for the accuracy of the translation or for comments made on the basis of the lacking the access to complete documentation and complete relevant legislation gathered in the project.

² Available at <http://www.article19.org/pdfs/standards/accessairwaves.pdf>.

³ For all analysis of laws and draft laws of related to broadcasting, visit ARTICLE 19's website: <http://www.article19.org/search/index.html>.

⁴ For all analysis of laws and draft laws of Armenia, visit ARTICLE 19's website: <http://www.article19.org/search/index.html>.

the practice of the National Television and Radio Commission with the relevant media standards.

1. European law and policies relating to digital broadcast licensing

The European standards on broadcast licensing are set out by Council of Europe in the Recommendation Rec(2000)23 of the Committee of Ministers on independence and functions of regulatory authorities for the broadcasting sector⁵ and the Recommendation Rec(2003)9 on measures to promote democratic and social contribution of digital broadcasting.⁶ The first recommendation defines guarantees for the independence of broadcasting authorities and guidelines concerning their powers. The second recommendation sets out a set of basic principles for digital broadcasting and elaborates on the measures which states' authorities are obliged to adopt to safeguard and promote media pluralism in the development of the digital radio and television.⁷

The standards concerning broadcast licensing have been confirmed by the European Court of Human Rights.⁸

a) *Freedom of expression principles and state obligations*

Right to freedom of expression is connected with media freedom, guaranteed by Article 10 of the European Convention on Human Rights ("ECHR"). As the European Court of Human Rights has held:

Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to [legitimate restrictions] it is applicable not only to "information" or "ideas" that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society".⁹

The primary goal of regulating the activities of the media, including broadcast media, is to guarantee the existence of a wide range of independent and autonomous media. Licensing is a key to ensure media pluralism. This does not imply that the broadcast media should be entirely unregulated; Article 10 of the ECHR states that the right to freedom of expression "shall not prevent States from requiring the licensing of broadcasting ... enterprises". Hence, the state has an obligation to guarantee the

⁵ Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector; adopted by the Committee of Ministers on 20 December 2000 at the 735th meeting of the Ministers' Deputies; available at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=393649&Lang=en>.

⁶ Recommendation Rec(2003)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting; adopted by the Committee of Ministers on 28 May 2003 at the 840th meeting of the Ministers' Deputies; available at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=38043&Site=CM>

⁷ The International Telecommunication Union and the European Union have adopted standards concerning allocation of radio frequencies and policies and rule that govern radio spectrum management in the EU. However, these standards are not examined in this comment as they concern technical issues and are not relevant to the licensing activities of the Armenian National Television and Radio Commission reviewed within the *Expert Analysis of the Broadcast Licensing Competitions Project*.

⁸ See the decision in *Meltex and Mesrop Movsesyan vs. Armenia*, decision of 17 June 2008; see also *Glas Nadezda Eood and Elenkov vs. Bulgaria*, decision of 11 October 2007.

⁹ *Handyside v. the United Kingdom*, 7 December 1976, Application No. 5493/72, para. 49.

existence of a wide range of independent and autonomous media in the broadcasting sector.

However, three key principles apply to broadcast regulation.

- First, the state should establish an independent regulatory authority for the broadcasting sector. It is critical that any such bodies with regulatory powers must be independent of government. The Council of Europe Recommendation stresses the need for public broadcasters to be fully independent of government and commercial interests, stating that the “legal framework governing public service broadcasting organizations should clearly stipulate their editorial independence and institutional autonomy” in all key areas, including “the editing and presentation of news and current affairs programmes.”¹⁰ At the same time, the state should ensure that the regulatory authorities have expert knowledge in the area.
- Second, the states must adopt adequate and proportionate regulation.¹¹
- Third, an important goal of regulation must be to promote diversity in the airwaves. The airwaves are a public resource and they must be used for the public benefit, an important part of which is the public’s right to receive information and ideas from a variety of sources.

In particular with respect to digital broadcasting, the states should “create adequate legal and economic conditions for the development of digital broadcasting that guarantee the pluralism of broadcasting services and public access to an enlarged choice and variety of quality programmes.”¹²

b) Responsibilities of regulatory authorities

In accordance to the European legal standards noted above, the regulatory authorities are responsible to

- draft and carry out licensing procedure: the regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner; and the decisions made by the regulatory authorities in this context should be subject to adequate publicity;¹³
- pay particular attention to the promotion of media pluralism in the discharge of their mission;¹⁴
- ensure that the services on offer are many and varied, and encourage the establishment of regional/local services that meet the public’s expectations at these levels.¹⁵

Regulatory authorities must fulfill their mission in an effective, independent and transparent manner in accordance with the guidance.¹⁶

¹⁰ Recommendation No. R (96) 10 on the Guarantee of the Independence of Public Service Broadcasting , adopted 11 September 1996. Guideline I.

¹¹ Recommendation Rec(2000)23, *supranote* 5.

¹² Recommendation Rec(2003)9, *supranote* 6.

¹³ Recommendation Rec(2000)23, *supranote* 5, para 14.

¹⁴ See Recommendation No. R (99)1 on Measures to Promote Media Pluralism, adopted by the Committee of Ministers on 19 January 1999; available at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=399303&Site=CM>.

¹⁵ Recommendation Rec(2003)9, *supranote* 6.

¹⁶ See Rec. (2000) 23 and Res 1636 (2008).

c) Restrictions on freedom of expression

As noted above, the right to freedom of expression is not absolute. Both international law and the Constitution of Armenia (in Article 43) recognise that freedom of expression may be restricted.

However, any limitations must remain within strictly defined parameters. Article 10(2) of the ECHR also recognises that freedom of expression may, in certain prescribed circumstances, be limited:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority or impartiality of the judiciary.

It follows that restrictions must meet a strict three-part test, requiring any interference to be (1) prescribed by law, (2) pursue one of the legitimate aims listed and (3) be necessary in a democratic society. 13 International jurisprudence makes it clear that this test presents a high standard which any interference must overcome. The European Court of Human Rights has stated:

Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.¹⁷

The European Court of Human Rights has held that the requirement that an interference is 'prescribed by law' will be fulfilled only where the law is accessible and "formulated with sufficient precision to enable the citizen to regulate his conduct."¹⁸ Second, the interference must pursue a legitimate aim. These are the aims listed in Article 19(3) of the ICCPR and Article 10(2) of the ECHR. Third, the restriction must be necessary to secure one of those aims. The word "necessary" means that there must be a "pressing social need" for the restriction. The reasons given by the State to justify the restriction must be "relevant and sufficient" and the restriction must be "proportionate to the aim pursued."¹⁹

2. The legal framework and practice in Armenia

a) The compliance of the TV and Broadcasting Act of Armenia (RA Law "On Television and Radio") with international standards

In Armenia, the legislation fails to meet international standards outline above for several reasons.

¹⁷ See, for example, *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.

¹⁸ *The Sunday Times v. United Kingdom*, 26 April 1979, Application No.13166/87, para. 49..

¹⁹ *Lingens v. Austria*, 8 July 1986, Application No.9815/82, paras. 39-40

First, the Armenian legislation does not guarantee independent broadcasting regulator.

- The National Commission of Television and Radio (“NCTR”) is not independent from the president because its members represent President or reproduces the present political power structures;
- The legislation also does not impose a requirement for the integrity and high moral standing for the members of the NCTR;
- NCTR is subjective on the parliamentary majority since there is no automatic guarantee of their financial independence

Second, the broadcast legislation, the Television and Radio Broadcasting Act, does not require pluralism and safeguards for pluralism and the procedure for licensing contains no safeguards against arbitrariness. In terms of legal grounds for licensing contests, the international and European standards guarantee that the regulation of licensing process should be in the interest of freedom of media. As already noted, the national broadcasting regulator should be independent from the government and business interests and services on offer should be many and varied.²⁰ Establishment of regional and local services that meet the public expectations at these levels should be encouraged. However, in Armenia, the NCTR cannot guarantee ideological and political pluralism as

- The NCTR does not represent political and ideological minorities because its members represent the majority in Parliament and President;
- The legislation is very vague as regards pluralism because it does not include guidance for or conditions which should be met for ensuring pluralism.
- Ensuring pluralism is not among the factors which NCTR should consider when giving preferences to companies in case of other equal conditions in the tender for licensing.

Third, under the international and European standards, the licensing procedures must provide sufficient guarantees against arbitrariness. In this respect, the basic criteria for licensing conditions must be clearly defined in the law, including issues of technical parameters, type of service, minimum duration of programs, geographical coverage, type of funding, any license fees, potential audience, obligations deriving from international legal instruments, the content of the license application and the documents to be submitted by candidates. In particular, candidates should indicate their company's structure, owners and capital, and the content and duration of the programmes they are proposing. At the same time, the licensing conditions must be applied in an open, transparent and impartial manner and the authorities must furnish their decision with proper reasoning. The licensing decisions should be subject to adequate publicity and should be opened to judicial review.

Only some of these requirements appear to be met in the Armenian legislation. The provisions of Article the TV and Radio Broadcasting Act stipulate that the meetings of the NCTR are public.²¹ It is positive that the decisions of the NCTR are “adopted openly”, however, it is not clear whether these are public documents and on what basis they can be accessed (although we assume that this might be specified by the legislation on access to information, which ARTICLE 19 has not had an access to for the purposes of this analysis). In this respect, ARTICLE 19 notes that in the case of Meltex and Mesrop Movsesian against Armenia, the European Court found a concluded that there has been an interference with the applicant’s freedom to impart information and ideas and that this

²⁰ For example, the Broadcasting Commission of Ireland must ensure that the number and categories of broadcasting services made available “best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity”.

²¹ See Article 44 paragraph 3 of the TV and Radio Broadcasting Act.

interference had not met the requirement of lawfulness under the European Convention of Human Rights. The European Court noted in particular that a procedure which did not require a licensing body to justify its decisions did not provide adequate protection against arbitrary interference by a public authority with the fundamental right to freedom of expression.

ARTICLE 19 notes that till recently, the provisions of Armenian legislation did not provide guarantees against arbitrariness in terms of time limits. In particular, the Radio and TV Act does not set out a time period for submission of applications which makes it possible for a call for a tender to be made without providing sufficient time for all candidates to prepare their bids. ARTICLE 19 understands that such time limits were introduced only recently in the Procedure Rules of the NCTR, that are the by-laws of the NCTR. Moreover, the criteria for selection include a requirement for the NCTR to take into account the ability of the applicant to promote pluralism. The Law however does not establish how this requirement will be assessed. This opens the door for arbitrariness.

b) Practice of the National Commission of Television and Radio

This section contains the comment of ARTICLE 19 to the results of the licensing competitions in Armenia, as ascertained by the research within the framework of the Expert Analysis of the Broadcast Licensing Competitions Project. The project assessed the review of applications for broadcast license of 25 Armenian companies whose bids were approved by the NCTR. ARTICLE 19 did not have a sight of neither of all the documents submitted by the companies within the contest nor the conclusions and the assessment reached by the NCTR on these applications. The conclusions below are based on translated section of the project findings.

On the outset, it should be stressed out that the whole process of the assessment of the bids in Armenia is unclear and the criteria for evaluation are unspecified. Both Article 49 para 3 and the Procedure for Conducting Contests of TV Companies for Broadcasting TV programmes Through Telecommunication Network state that the selection is done based on assignment of credits (on scale of 0-10). From the available information, it appears that the members of the NCTR assign credit points to individual aspects of the bid (e.g. certain points for production of its own programmes, certain number of points for ability to promote difference of opinions or for technical and financial capacity of a bidder) and each individual comes with its own final result (on the scale from 0-10). After summarizing all the score points from all members, the bidder with the most points is successful. However, this assessment is entirely unclear. It is not possible to assess on what basis and based on what comparisons are individual score points awarded and which aspects of the assessment prevail. For example, it can be possible that the bidder will score fully in terms of professional qualifications of the staff and technical capacities and will have no points for criterion of validity of business plan.

Based on the information received, ARTICLE 19 finds that the following instances show that the Armenian regulator did not take into account the European standards in this area.

- i. It is not clear how the NCTR assessed whether the granting of the license would help to promote the objective of making sure that there is a **wide variety of viewpoints reflecting the diversity and needs of the population**. The NCTR only gives priority (again, based on uncertain credit points) to those “producing their own programmes” and those “producing domestic programmes” and to “ability to promote difference of opinion”. The materials on “ability to promote

difference of opinion” are missing from the project assessment and only two former criteria were available.

The material suggests that NCTR came to conclusion that “capacity to promote difference of opinion” was abstract and did not assign any scoring points to this category. While ARTICLE 19 agrees with the conclusion that the criterion is extremely unclear, we point out that no alternative has been devised in this respect. The NCTR entirely seems to give up on assessing the plans to cover issues and programs related to disadvantaged population, for rural population, for minorities, for people with disabilities and etc. The NCTR does not appear to make any evaluation of these issues.

The material submitted to ARTICLE 19 also contains a brief overview of material marked as “the capacity to promote media pluralism”. The information provided here is most likely meant to demonstrate the fact that the applicant shall aim to promote diversity of views and cater to the needs of population at large. However, the information submitted here is merely declaratory. It is limited to statements that the “pluralism will be basis for producing TV programmes” or that will “promote pluralism”. In one application, the applicant clearly stated that they will “nourish religious principles” without any further elaboration. As already stated, it is not clear whether and how the NCTR assessed these form of declarations in the absence of other comprehensive information and materials on the subject.

In terms of assessing ability to produce their own programmes, the material submitted to ARTICLE 19 does not allow for any assessment. The material only indicates that the assessment is done based on the declaration of the applicants on percentage of the programme that shall be produced on their own and domestically. Apart of the self-declaration, this issue does not seem to be further examined – e.g. in terms of finances, planning, types of programmes and the like. ARTICLE 19 does not agree with the conclusion that this criterion cannot be assessed prior to “examination of the broadcast”, that is only after the license was granted. As noted above, such ability can be ascertained through various means prior to deciding positively on the applicant from the complexity of materials examined.

- ii. From the available information, it remains entirely obscure how the NCTR examines whether the granting of a license would help to **promote pluralism of ownership** (e.g. how does the NCTR makes sure that control of broadcasting is not concentrated into hands of few owners or to similar types of owners). The Armenian legislation does require the assessment of such criterion and no information has been submitted in this regard. It is therefore assumed that this issue is not reviewed at all. ARTICLE 19 notes with concern that this can result in media concentration with possible serious effects on pluralism and freedom of expression.
- iii. The assessment of whether the applicant has a **realistic business plan and finance** that will allow it to run the broadcasting service as required and without interruption also appears haphazard and unclear. Materials submitted here are limited to declarations with no justification, supporting documents or other verifiable sources of information. At the same time, some companies provided only scattered and piecemeal information. E.g. one company only submitted the minutes from the general meeting of shareholders on the company’s income and dividends paid to shareholders. There is also no assessment on how the

respective companies aim to achieve their declared sources of income in the light of the market situation in Armenia and in general. For instance, one company stated that among main sources of income will be sale of produced programs on international market and satellite subscriptions without any estimates how this shall be accomplished. It can even be concluded from submitted material that no company provided proper financial calculation and realistic predictions on their financial forecasts.

In this respect, ARTICLE 19 finds surprising that the bid of the Meltex LLC was rejected with conclusion that “significant number of documents verifying availability of necessary financial resources are forged and unfounded... , which makes impossible to have complete broadcast of international and local informational-analytical television programmes covering capital city through digital telecommunication network”. Not only it is not clear on what basis the NCTR concluded that the information is “forged” but it is also puzzling to see how the unsubstantiated information provided by successful applicants differed from those provided by Meltex.

- iv. The Armenian legislation does require an assessment of whether the applicant has **the technical skills and capacity** to run the broadcasting service. Hence, the NCTR reviews both technical and financial capacities of bidders as well as professional capacities of the staff. The information provided to ARTICLE 19 was divided to assessment of the materials related to professional level of the staff and those related to “technical capacity” of applicants. It is assumed that the financial capacities are only assessed in the framework of the review of business plans, commented on above.

Information on the technical equipment of the applicants seems to be provided in a great detail. However, we note that there is no specification indicated as for what technical equipment is required, whether it should be owned or maintained by the company or whether this can also be contracted. The lack of clarity on this information and requirement does not allow comprehensive and clear conclusions.

As for the professional level of the staff, first of all, we reiterate that the credit system is unclear also in this respect. It is not for example clear whether there is an assessment of various aspects of broadcasting (such as professional and technical staff, their experience, and results of the work in the past). It is also not clear whether this review is limited to staff that would be employed by broadcaster or whether any assessment is carried about the option of contracting transmission services from others (considering that successful applicants need not be responsible for transmission themselves).

Available information under this criterion is again scarce and not broken down based on various issues. In this respect, we note that the information provided is limited to the percentage of the staff and the naming of specific persons who are associated with the company without much specification on their responsibilities, role or experience in the particular area for which they should be responsible. For example, one company stated that the employed staff shall make 60% of the workforce of the company, and that the company works with “honoured workers of the Armenian art” and provided CVs of eight alleged staff members. The available information then shows that these persons do not work for the company and might only be appearing in the programmes of the broadcaster.

Based on this information, ARTICLE 19 concludes that the vague Armenian legislation that fails to both meet the international standards and to include guidance for or conditions which should be met for ensuring pluralism resulted in the situation where the procedure is applied in unclear and non-transparent manner. The decisions of the NCTR in the applications reviewed do not give any indications of coherent and clear assessment and indicate possibility for arbitrariness, with ultimate impact on the right to freedom of expression of the Armenian citizens.