

## Legal Assessment of Laws affecting media in Mongolia

Conducted for Media Ownership Monitor (MOM) Mongolia, November 2016

### Part I: Description of the legislation on media concentration and ownership as well as its implementation, monitoring and transparency

#### I.1. Legal framework

*Legal regulations to prevent media concentration and monopolies are lacking*

The Constitution of Mongolia and the Civil Law do not in any way address the issue of media concentration. The Competition law, adopted in 2010 and amended in 2015 states in its Article 1 that its purpose is to ‘regulate matters related to creation of conditions for fair competition in the market for entities conducting business activities, identification and implementation of legal and organizational basis for prohibition, restriction and prevention of any activities impeding competition.’<sup>1</sup> However, the law does not specifically address concentration or monopoly issues in the media sector.

The “General Terms and Conditions of Broadcasting Regulation<sup>2</sup>” approved by the regulatory agency of the Mongolian government, the Communications Regulatory Committee<sup>3</sup> (CRC) demands transparency of license owners (paragraph 5). Paragraph 6.2 of this regulation says, “License owners may not transfer their rights and obligations to others; or conclude contracts to change main operations, rights and duties”. Paragraph 11.12 limits the number of foreign channels transmitted by one cable operator to no more than 30 percent of all channels offered by the operator.

In June 2015 the Competition law was amended by a new provision stipulating that in branches, in which special licenses are granted by a dedicated authority, the amount and size of goods and products supplied by special license enterprises and their sales prices may not be regulated the Authority for Fair Competition and Consumer Protection. (AFCCP) However, the Competition law does not specifically assign the CRC (which is in charge for licensing and regulating the broadcasting sector) to regulate dominating or monopoly activities in the sector<sup>4</sup>.

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<sup>1</sup> Law of Mongolia on Competition, §1.1, <http://legalinfo.mn/law/details/12?lawid=12>

<sup>2</sup> General Terms and Conditions for Broadcasting Regulation /2016.04.01/, CRC resolution No 15, 2015 /Amended on 2016.04.01 /

<sup>3</sup> The Mongolian Parliament renewed the structure of the Mongolian Government per resolution No 12, 2016

<sup>4</sup> Law of Mongolia on Competition, §6 <http://legalinfo.mn/law/details/12?lawid=12>

In March 2016, the CRC approved the “Methodology for defining natural monopoly or dominating enterprises<sup>5</sup>”. According to this methodology, the monopoly or dominating position of enterprises in the information technology, postal services and communications sector will be identified based on the assessment of companies with regard to their coverage scope of products and services; geographical scope of their market and the market share. Enterprises identified as “dominant” or “monopolistic”, shall, in accordance with the Competition Law (Art. 8) submit an application to the AFCCP in the case of restructuring through consolidation and merger, purchasing more than 20 percent of common stock and more than 15 percent of preferred stock from competitive company which sale similar products or consolidating and merging with related party. The AFCCP shall draw permitted or refused conclusion within 30 days after receipt of application. A refused conclusion can be drawn if the Authority decides that the restructuring of the respective enterprise will create conditions of restricting competition.

The CRC, using the above methodology, assessed and named following enterprises as natural monopoly companies:

- DDish TV LLC in the multichannel television and radio satellite transmission service sector;
- National Network of Radio and Television (State enterprise) in the radio and television terrestrial transmission service sector
- Sansar Cable TV in the cable TV operator sector
- Mongol Shuudan LLC with state shares in the postal network service sector
- Gemnet LLC in the Internet wholesale service sector.<sup>6</sup>

As of October 2016, no restructuring applications were submitted to the AFCCP by above named companies.

Regarding online news media, according to the CRC’s “General terms and requirements for digital content service”<sup>7</sup>, mobile content providers and news websites shall be registered at the CRC. Mobile content providers need to apply for a license in accordance with “Terms and requirements of the license of content aggregator” approved by CRC in 2011 and amended in 2015<sup>8</sup>.

Even though there are no laws that specifically address media concentration, the regulations described above, specifically the Competition law and the CRC’s regulations, contain some provisions to measure dominating positions on the market and restrict mergers and consolidations that might negatively affect conditions for competition. These provisions cover distribution networks, broadcast and online media only. Ownership and concentration of print media remains unaddressed.

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<sup>5</sup> [crc.gov.mn/contents/raw/3/7/425/20160307.doc](http://crc.gov.mn/contents/raw/3/7/425/20160307.doc)

<sup>6</sup> General terms and conditions for digital content service regulation, CRC, 2015 <http://crc.gov.mn/k/1u/24>

<sup>7</sup> General terms and conditions for digital content service regulation <http://www.crc.gov.mn/file/juram/content.pdf>

<sup>8</sup> General terms and conditions for digital content service regulation CRC, <http://www.crc.gov.mn/en/k/2mg>

The draft Law on Media Freedom<sup>9</sup>, submitted to the Parliament in 2014 by a group of 7 members of Parliament lead by MP M.Batchimeg, included provisions on safeguarding editorial independence and restricting influence of owners or shareholders on professional decision making processes in newsrooms, as well as a provision that required transparency of media owners and their shares. After the parliamentary elections in 2016 the newly formed Parliament approved the Order No. 44 to return 99 draft laws to their initiators, among them the draft Law on Media Freedom, due to the need “to take views and suggestions of the new Government in to consideration”<sup>10</sup>

### *Media concentration is not legally defined*

Due to absence of any laws specifically addressing media concentration, there is no legal definition of what constitutes concentration in the media sector. The Competition Law defines *market concentration* as “the share of products sold by an enterprise solely and with others, or by related parties”. However, it does not define how high this share can be in order to reach the level of „concentration.” The Law on Corporate Income Tax defines the one who owns 20 (twenty) percent or up of the common stock; or has the right for 20 percent or up on the dividends or income distributions; or has the right to appoint 20 percent or more of the management of the corporate entity; or to determine its business policies as “dependent party to taxpayer.”<sup>11</sup>

According to the Law on Regulating Public and Private Interests in Public Service and Preventing Conflicts of Interest (2012)<sup>12</sup> family members (one’s father, mother, brother, sister, cohabitants, spouses; the father, mother, brother or sister of a spouse and other affiliated persons) are defined as “related persons” and individuals or legal entities who are connected with a public official through profit generating activities belong to “affiliated persons”. However, this law covers those ‘in public service role’ only, and does not apply to business persons in the media sector, excluding the senior management of the national Public service broadcaster.<sup>13</sup>

Over the past five years there were not any efforts made to introduce legal regulations for preventing media concentrations. The draft Law on Media Freedom submitted to the parliament in 2014 and returned to its initiators in 2016 without being discussed, contained provisions for transparency of media ownership but did not address the issue of media concentration.

### *Efforts to control foreign ownership in media business in-effective*

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<sup>9</sup> Draft law on Media Freedom <http://vip76.mn/law/project/294>

<sup>10</sup> Parliament resolution No 44, 2016 to return draft laws [www.parliament.mn/laws/translate?page=3&field=name](http://www.parliament.mn/laws/translate?page=3&field=name)

<sup>11</sup> Corporate Income Tax Law

<http://archive.resourcegovernance.org/sites/default/files/Corporate%20Income%20Tax%20Law.pdf>

<sup>12</sup> Conflict of Interest Law in Mongolia. Hogan Lovells. 2012

[http://www.hoganlovells.com/files/Uploads/Documents/Mongolia%20newsflash\\_-](http://www.hoganlovells.com/files/Uploads/Documents/Mongolia%20newsflash_-)

[Conflict\\_of\\_interest\\_law\\_Sep%202012\\_1002858.pdf](http://www.hoganlovells.com/files/Uploads/Documents/Mongolia%20newsflash_-)

<sup>13</sup> Anti-corruption law эсрэг хууль, §4.1.4, [www.legalinfo.mn/law/details/8928?lawid=8928](http://www.legalinfo.mn/law/details/8928?lawid=8928)

The Mongolian Law on Investment (2013) requires foreign government owned legal entities to apply for authorization from the government in order to hold 33 percent and more percentage of the total shares issued by the legal entities in the media and communications sector<sup>14</sup>. As per this law, non-governmental “foreign investors” (foreign citizen or stateless person who is a non-resident in Mongolia as well as a Mongolian citizen residing permanently in a foreign country, making investment in Mongolia)<sup>15</sup> do not need to apply for permission to hold shares or own a media entity.

Even though the above mentioned provision seeks to control foreign ownership in the media sector, it only applies to foreign government owned legal entities. Absence of systems to measure ownership shares in the media market and lack of clear thresholds to control the market share of foreign owners limits the effectiveness of the existing legislation to regulate foreign ownership on media.

## **I.2. Implementation – control and monitoring of media concentration**

### *Deficient institutional systems to address media concentration*

The Communications Regulatory Committee (CRC) is the Government Regulatory Authority in charge for granting, prolonging and revoking licenses, concluding contracts, monitoring compliance with relevant rules and regulations and registering entities in the broadcast media and communication sector. According to the Communications law, the function of the CRC is “to develop effective and fair competition environment for market participants of all property types and citizens, to issue licenses, elaborate professional conclusions and comments, and make decisions<sup>16</sup>”

When granting licenses, the CRC strives to create effective and fair competition conditions that take development trends of the information and communication service networks, technological trends and customers’ rights and needs into consideration.<sup>17</sup> According to the CRC rule (3.2.2) decisions concerning granting, suspending, changing or resuming licenses are made by Committee meetings, while all other decisions (e.g. prolongation of license terms, changing the license holders) can be made by the head of the Committee directly.<sup>18</sup>

The CRC, in accordance with its ‘Procedures for granting licenses in the communications sector’, regularly publishes information about names, scope of

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<sup>14</sup> Mongolian law on investment (2013) Art. 21.1.3 [http://ambasadamongolii.pl/wp-content/uploads/2014/10/Foreigninvestlaw\\_Unofficial\\_translation.pdf](http://ambasadamongolii.pl/wp-content/uploads/2014/10/Foreigninvestlaw_Unofficial_translation.pdf)

<sup>15</sup> The Mongolian Law on Investment §3.1.3

<sup>16</sup> The law of Mongolia on Communications, § 8.1 <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan042187.pdf>

<sup>17</sup> Communications Regulatory Committee. Procedures for granting licenses in the communications sector. § 1. <http://www.crc.gov.mn/k/2Ed>

<sup>18</sup> Communications Regulatory Committee. Procedures for granting licenses in the communications sector. § 1. <http://www.crc.gov.mn/k/2Ed>

activities and contacts of license holders as well as the Committee meeting minutes and decisions on its website.

Neither the general Procedures for granting licenses in the communications sector, nor other regulations defining the terms and conditions for granting permissions in the radio, television or online news media sectors contain provisions that aim to prevent media monopolies.

The Authority for Fair Competition and Consumer Protection (AFCCP) and the General Authority for Intellectual Property and State Registration (GAIPSR) have the rights to submit a proposal for suspending online and broadcast media licenses to the CRC if the Advertisement Law is violated.<sup>19</sup>

The mandate of the AFCCP is to monitor implementation of the Competition Law, organize realization of competition policies and protect the interests of economic entities and citizens.<sup>20</sup> Regulation or monitoring of media concentration does not belong to AFCCP's areas of coverage.

As of print media, there is no need to obtain any special permission for running a newspaper or magazine, but the media outlet needs to be registered in accordance with the Law on registration of legal entities.<sup>21</sup> The owner of the outlet, his shares in the company or media market or the size of income are not relevant for the registration procedure. Information and documents requested for the registration include the company rule, minutes of founding meeting and a copy of resolution about appointment of executive management.

#### *Licensing and registration authorities belong to the government*

Article 4 of the Law on Radio Waves states that “the State shall, as an owner of radio wave, issue the right to use radio frequency and radio frequency band to other persons with the terms and conditions specified in his Law.” The organization entitled to allocate radio frequencies on the behalf of the state is the CRC.

The head and members of the CRC are appointed by the prime minister for 6 years. There are not any legal regulations as to who can dismiss the CRC members and how. The CRC is set up in accordance with the Communications Law and this law does not explicitly guarantee the independence of this organizations. The appointment process of CRC members lacks independence, transparency and public participation; however there are some measures to prevent conflict of interest with the media industry. Article 8.6.2 of the Law on Communications provides that the Chairman and Members of the CRC shall not be persons who possess 20 percent or more of common stock of the provider or persons with common interests with the provider.

The Law on Communications and the Law on Radio Frequencies include provisions to respect the Constitution and to adhere to the international law. Some laws and the CRC

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<sup>19</sup> Law of Mongolia on Advertisement <http://www.crc.gov.mn/en/k/x8/1q>

<sup>20</sup> Law of Mongolia on Competition §14.1, <http://www.legalinfo.mn/law/details/12?lawid=12>

<sup>21</sup> General Law on State Registration of Legal Entities §8.1.8, <http://legalinfo.mn/law/details/10928?lawid=10928>

regulations mention obligations of the public's interest. For example, the Law on License of the Business Activities protects legitimate public interests (art. 9) as one of the principles in granting licenses. The law is about licenses to use public property and radio frequencies are public property in accordance with the Law on Radio Frequencies (art.4). The CRC's radio and television regulations oblige commercial broadcasters to protect the public interest (art. 5.1). The regulation also contains a requirement for domestic production that at least 50 percent of weekly programming must be locally produced or produced by the Mongolian citizens and legal entities registered in Mongolia (art. 5.4) which can be viewed as an obligation to protect national interests.

Despite these regulations conflicts of interest and cases of abuse of regulatory power are still present, since it remains in the power of the Prime minister to appoint the CRC head and members in accordance with own interests.

For example, depending on the structure of the CRC executive staff, the political party in power will have a strong influence over the licensing process. Most broadcasting channels owned by members of the Democratic Party acquired their licenses during the party's term in office (2004 to 2008). In the following four years, with the People's Party now at the helm, most broadcasting houses in the possession of its members were granted their licenses.<sup>22</sup>

The AFCCP, in contrast to the CRC, has a legal guarantee in the Competition Law (14.3) to "perform its principal duties within the scope of its full powers, independently and self-sustained from any person". However, since the AFCCP is a state agency, the government approves its Operational rules, which defines the decision making procedures of the AFCCP.

The budget of both authorities is approved by the Government, and both agencies report to the government. So for example, Article 8.11 of the Law on Communications provides that the CRC shall report its budget performance and work activities to the Government each year. The Cabinet of Minister's decree states: "Regulatory authorities should be accountable to the public for their activities."<sup>23</sup> The CRC should therefore be accountable to a multi-party body, such as parliament or a committee thereof, rather than to the Government.<sup>24</sup>

Article 8.11 also states that the Government shall ratify the annual budget of the Regulatory Committee. However, this provides little, if any, protection to the financial independence of the Committee.

*Decision making with regard to licensing issues does not take media concentration into consideration*

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<sup>22</sup> Asian Media Barometer. Mongolia 2012. Friedrich Ebert Stiftung. Ulaanbaatar 2012, p. 48

<sup>23</sup> Recommendation (2000) 23, Guideline 25.

<sup>24</sup> Access to the Airwaves, Principle 15.1.

According Communications Law, the CRC has the right to refuse granting a license in following cases:

- 14.2.1 There is not radio frequency bandwidth which the applicant requested for;
- 14.2.2 The applicant has not been furnished with financial-economical, technical and professional capacity required to set up and operate communications network;
- 14.2.3 safety or interest and national securities aspects would be prejudiced as a result of license being granted

The CRC has also the right to assign fixed term tasks, official requests or reprimands to broadcast and online media companies to eliminate violations of rules and regulations, to fine or suspend or hold back licenses. According to the General Administrative Law, such administrative measures taken by the CRC are only effective after being recorded in the General administrative measures book of the Ministry of Justice and Interior.<sup>25</sup>

Legal bodies who disagree with the CRC's decision to suspend a license can, according to the Communications Law (paragraph 15.3) appeal to court. A recent example includes the case of the news website Amjilt.com. On July 3, 2014, Amjilt.com published a story about a prime minister owned tourist camp example, shedding sewage into Tuul river. The story was documented by a photo taken from the spot. The CRC accused the website of 'violating the law' and registered it on its black list, closing access to the website from Mongolia. The website appealed to court and November 2015 the website was re-opened.

In short, decision making with regard to licensing issues does not take media concentration into account. To note is, however, that the CRC has the right to limit the number of licenses to be issued in a certain sector. According to the CRC's Procedures for granting licenses in the communications sector (§ 14)<sup>26</sup> following situations can justify the CRC's decision to limit the number of licenses to be issued:

- It has been determined that too many competitors in one sector lead to an ineffective competition /14.1.1/
- There is a need to protect investments in services that require a long pay back period /14.1.2/

In case if the CRC decides to limit the number of licenses in one sector due to above reasons, it has to provide a detailed public justification of the decision and take citizens opinions into consideration by organizing a public discussion.<sup>27</sup>

*Methods and criteria for assessing the level of media concentration are lacking*

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<sup>25</sup> General Administrative Law, <http://www.legalinfo.mn/law/details/11259?lawid=11259>

<sup>26</sup> Communications Regulatory Committee. Procedures for granting licenses in the communications sector. § 14 <http://www.crc.gov.mn/k/2Ed>

<sup>27</sup> Communications Regulatory Committee. Procedures for granting licenses in the communications sector. § 14 <http://www.crc.gov.mn/k/2Ed>

As government agencies, all institutions involved in licensing, registration and monitoring of media (CRC, AFCCP, GXX3X, and GAIPSR) are obliged to publish their rules, regulations, decisions and license holder data on their website, as required by the Information Transparency and Right to Information Law<sup>28</sup>. So for example, all terms and conditions for licensing broadcast or online media, meeting minutes, decisions, the list of licenses issued as well the financial and activity reports of the CRC can be retrieved from its website<sup>29</sup>.

According to the CRC' "Methodology for defining natural monopoly or dominating enterprises"<sup>30</sup> published on its website, enterprises monopolizing or dominating the information technology, postal services and communications sector are identified based on the assessment of companies with regard to their coverage scope of products and services; geographical scope of their market and the market share. This assessment method does not take specifics of media business into account and thus does not use criteria such as audience share, circulation, turnover/revenue, distribution of share capital or voting rights; It also does not consider mergers within the same branch of activity or control by a single person, company or group of key elements of the production and distribution processes, and related activities such as advertising as important criteria for business concentration.

The regulatory bodies mentioned above are part of the government structure and the decisions made by these bodies can directly be influenced by the government.

### *Mergers, acquisitions and investments into media business over the past five years*

For example, the National News Corporation established in 2011 launched in 2012 the Bloomberg TV Mongolia and in 2014 the daily newspaper Government News. The company's website also says that it owns the Mongolian Branch of the world's leading outdoor advertisement company, the JCDecaux Mongolia. On the other hand, the Bloomberg website states that the Bloomberg TV Mongolia operates as a subsidiary of TDB Media LLC, one of the largest commercial banks of Mongolia.<sup>31</sup>

The number of media outlets has been growing rapidly until 2012. As of 2011, an average of 12 new local televisions was launched every year. However, starting from 2012 the number of local media outlets started to decrease and 2012 – 2015 the Press Institute recorded a decrease of rural media outlets by 30 percent.<sup>32</sup> To note is that half of the 37 local newspapers covering rural provinces belong to one private company

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<sup>28</sup> Information Transparency and Right to Information Law

<http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan047231.pdf>

<sup>29</sup> <http://crc.gov.mn/en/>

<sup>30</sup> [crc.gov.mn/contents/raw/3/7/425/20160307.doc](http://crc.gov.mn/contents/raw/3/7/425/20160307.doc)

<sup>31</sup> <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=317061838>

<sup>32</sup> Mongolian Media Today. Press Institute. 2009, 2010, 2011

Egel LLC.<sup>33</sup> As of January 2016 at least eight legal entities owned four and more media outlets.

### **I.3. Transparency of media ownership**

#### *Ownership disclosure practices are deficient*

Paragraph 3.6.1.4 of the National Security Concept of Mongolia<sup>34</sup>, approved by Parliament in 2010 states:

“Ownership and affiliations of media shall be transparent and their activities realistic, balanced and responsible.” The National Security Council is responsible for monitoring and evaluating the implementation of the Concept. As of October 2016 the Council did not make any decisions or statements concerning the implementation of the media ownership transparency provision of the Concept.<sup>35</sup>

Furthermore, the Action Plan of the Government of Mongolia 2012-2016 included a proposal “to disclose the shares of media ownership and their revenues strengthen the independence of media organizations and the right of citizens to publish.” Based on this, the Ministry of Justice approved a List of laws to be drafted until 2016, which included “A legal regulation to provide for transparency of terms for media registration, shares of media ownership and revenues.” A working group was established to develop the draft law, but did not achieve the intended outcome, though. The Mongolian People’s Party (MPP) which won the majority of Parliament seats in June 2016 had promised in its election program “to legally protect the media freedom and to refrain from any policies to constrain media operations.” However, new Government formed after the elections decided in its Action Plan 2016–2020<sup>36</sup> to omit endeavors to establish ownership disclosure practices in the media sector. The Action Plan includes general proposals to “strengthen the legal environment in support of competition and consumer protection” /2.12/, and “to ensure transparency of tenders and publicly funded projects and to implement the “Glass Tender” policy” /5.2.2/.

The CRC’s “General Terms and Conditions of Broadcasting Regulation” require television and radio license holders to provide for transparency of license ownership “in order to ensure independence, openness and responsibility of broadcasting.” According to this rule, license holders are obliged to submit to the CRC a written statement concerning the following:

- Names and ownership shares of owners and investors (and citizenship of foreign owners)
- Address and contact information of license holders

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<sup>33</sup> Mongolian Media Today. Press Institute. 2016

<sup>34</sup> National Security Concept of Mongolia [http://zasag.mn/uploads/gov\\_plan2012-2016-1.pdf](http://zasag.mn/uploads/gov_plan2012-2016-1.pdf)

<sup>35</sup> [http://zasag.mn/uploads/gov\\_plan2012-2016-1.pdf](http://zasag.mn/uploads/gov_plan2012-2016-1.pdf)

<sup>36</sup> Action Plan of the Government of Mongolia 2016-2020, Parliament resolution No 45, 2016

- Management structure, names and citizenship of executive staff

As of October 2016 the CRC website listed the names of companies, founders and executive staff of 16 national broadcasters, 25 FM radios covering Ulaanbaatar, 73 local televisions and 56 cable operators. Even though the above mentioned General Terms require disclosure of ownership shares, this information is not published on the CRC's website. Citizens can freely access the CRC's website to obtain ownership information. However, the above mentioned list is published on the page for license holders (and not on the page designed for citizens) and it requires certain efforts to find ownership information from the website.

The list of license holders on the CRC's website has been last updated in January 2016. According to the "General Terms and Conditions of Broadcasting Regulation" license holders have to submit ownership statements every first quarter of the year and within one month in case of changes in the ownership and management.

In case of non-fulfillment or violation of the General Terms the CRC has the right to assign tasks to eliminate violations or meet standards, take administrative measures, reprimand, hold back or suspend licenses. All decisions of the CRC regarding such measures need to be presented to relevant parties and publicized. As of October 2016 the CRC did not make take any measures with regard to non-fulfillment of ownership disclosure requirements.

Online news media, according the General terms and requirements for digital content service need to be registered with the CRC, but there are no ownership disclosure requirements for these media.

Apart from above mentioned rules and policies there are no any other legal and voluntary regulations that require disclosure of media ownership. Disclosure of ownership information on own initiative is non-existent, most media companies keep information on circulation, sales and market-share confidential.

The General State Registration Law of Mongolia had until 2015 required written permission from the legal entity or person in order to access registration information about that entity or person.<sup>37</sup> In January 2015 the Registration Law was revised and according to the revised legislation, all information relating to state registration, save for that which is confidential, is to be made publicly available on the official website of the Legal Entity Registration Office. However, searches require the unique registration numbers of the relevant legal entities in order to obtain a limited amount of information. Detailed information, such as information in relation to company shareholders and copies of company charters, is not available electronically.

#### **I.4. Other state influence on media organizations**

*State tax policy and practices do not discriminate against or favor specific private media outlets*

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<sup>37</sup> General State Registration Law of Mongolia, § 15.1

There are no taxation policies and regulations specific to media. Media companies, similarly to other sector enterprises, are obliged to pay income taxes as defined per Corporate Income Tax Law.<sup>38</sup> Specifically, annual incomes of up to three billion togrogs are taxed at the rate of 10 percent. Incomes exceeding three billion togrogs are taxed at the rate of 300 million togrogs plus 25 (twenty five) percent of income.

Until January 2016 newspaper sales were exempt from value added tax, which created favorable conditions for developing pluralistic newspapers in Mongolia. However, in July 2015 the Value added tax law was revised to remove the provision about newspaper exemption from VAT. Consequently, starting from January 1 2016 all media entities (including newspapers) with an annual income of more than 50 Million togrogs pay a value added tax of 10 percent, as required by the Value Added Tax Law<sup>39</sup>.

For small media entities, especially those in rural areas of Mongolia, the existing taxation regulations and lacking specific policies in support of rural/community media create significant challenges, according to the editor-in-chief of the local newspaper “Khovdiin medee”, A.Byambasuren.<sup>40</sup> The newspaper is published in a remote western area of Mongolia, Khovd province.

#### *There are no entry barriers for new entrants to the media market*

According to the General Law on State Registration<sup>41</sup> newly established print media need to be registered with the General Authority for State Registration and Intellectual Property. The registration procedure requires basic documents such as minutes of the founding meeting and the decision related to the appointment of the executive staff plus 44000 togrog (about twenty USD) registration fee. In other words, there are no any barriers restricting new entrants in the media market. Legal entity registration statistics show that as of the end of 2015 there were 3477 media outlets in the state register.

As of licensing procedure for broadcast media, according to the CRC’s General Terms and Conditions of Broadcasting Regulation, new entities need to submit following documents to apply for a license:

1. Human resources information;
2. Technical specifications of facilities in accordance with CRC approved standards;
3. Editorial policies and program/content structure (outline of main components)
4. Financial capacity and investment information
5. Operational plan.

The General Terms and Conditions of Broadcasting Regulation state that the CRC „shall review the license application taking market capacity and demands into

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<sup>38</sup> Corporate Income Tax Law

<http://archive.resourcegovernance.org/sites/default/files/Corporate%20Income%20Tax%20Law.pdf>

<sup>39</sup> Value added tax law § 5.2 <http://www.legalinfo.mn/law/details/11227?lawid=11227>

<sup>40</sup> Interview with A.Byambasuren on October 11, 2016

<sup>41</sup> General law on State Registration of Legal Entities, <http://www.legalinfo.mn/law/details/511?lawid=511>

consideration. “ However, since there are no specific methods and practices to measure the market capacity, this criterion does not play an important role in the licensing process.

Paragraph 3.4 of the General Terms and Conditions for Digital Content Service approved by CRC in 2014 and amended in 2015<sup>42</sup> requires news websites to be registered with the CRC. The registration rule requires submission of “truthful and detailed” information about the owner of the domain name in “WHOIS” data base. The registration is made online through the website

In general, the CRC rules and regulations concerning terms and requirements for licensing of broadcast media and registration of online media and procedures for decision making are available on its website [www.crc.gov.mn](http://www.crc.gov.mn). Paragraph 4 of the “General Terms and Conditions for Broadcasting Regulation” states that licensing decisions “shall be made fair and independently, in a transparent manner, in support of pluralistic programs, domestic content and common rights and demands of citizens” However, decision making processes concerning licensing are in-transparent and lack public participation. Information is available on the CRC’s website only once the decisions are already made.<sup>43</sup>

#### *State advertisement is distributed without any rules*

All public organizations agencies have a public communication department or officer with a certain advertisement budget. There are no rules as to how to distribute funds allocated for advertisement and public communication. Public communication specialists at government organizations state that they use their ‘common sense’ to judge which media outlet might be ‘the biggest one’ or choose the cheapest one, or the executive management simply orders to use the media outlet of his/her friend or affiliated person.<sup>44</sup> There are no practices of public tender announcement for selection of channels for state advertisement.<sup>45</sup>

Even though there are no legal grounds for direct state interference into editorial decision making, government organizations use advertisement distribution as a tool to influence media content by concluding “contracts of collaboration” to restrict criticism or negative coverage.<sup>46</sup> Systems to monitor allocation of state advertisement do not exist.

The Media Freedom Law (1998) prohibits censorship. Legal regulations concerning media content include CRC’s “General Terms and Conditions for Broadcasting Regulation”, General Terms and Conditions for Digital Content Service Regulation”, the Law of Mongolia on Crime Prevention<sup>47</sup>, Anti-pornography Law<sup>48</sup>, Child Protection

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<sup>42</sup> General Terms and Conditions for Digital Content Service Regulation, CRC resolution No 8, 2011, No 40, 2014, No 60, 2015 with amendments on 2015.10.23

<sup>43</sup> <http://crc.gov.mn/k/3v>

<sup>44</sup> Interviews with press officers of General Court Council, Financial Regulatory Committee, Ministry for Human Development and Social Protection on October 10, 2016

<sup>45</sup> Assessment of Media Development in Mongolia. p.63, 2016. UNESCO

<sup>46</sup> Asian Media Barometer. Mongolia 2012. Friedrich Ebert Stiftung. Ulaanbaatar 2012

<sup>47</sup> <http://www.legalinfo.mn/law/details/225?lawid=225>

Law<sup>49</sup>, Advertisement Law<sup>50</sup> and Copy right law<sup>51</sup> which contain provisions to protect citizens from violent or pornographic content or protect intellectual property or children's rights. Media outlets violating these laws can be shut down. So for example, according to CRC's activity report for 2014, licenses of 9 televisions and 8 radios were suspended due to violation of content provisions of the General Terms and Conditions<sup>52</sup>.

*Conclusion: Media Freedom is guaranteed by law, but not realized in practice*

The new Constitution of Mongolia ratified in 1992 guarantees the freedom of expression and opinion and right to information. The Law on Media Freedom adopted in 1998 prohibits censorship and state ownership on media. In 2005, the Law on Public Service Radio and Television opened up the process of dismantling state monopoly in broadcasting sector by transforming the formerly state run national radio and television into public service entities and restricting advertisement revenues for the national broadcaster to provide competition space for commercial televisions. The Law on Information Transparency and Right to Information (2011) guarantees the right of citizens to obtain information of public concern from government officials. Defamation was decriminalized by the new Criminal and Offence laws<sup>53</sup> adopted in 2015. (The Election law, however, still contains a provision according to which defamation during elections is considered as a criminal offence.)

The legal regulations described above show that there is a relatively strong legal environment for protection of media freedom in Mongolia. In reality, however, the freedom of media and editorial independence is limited. Legal guarantee for editorial independence applies for the Public Service broadcaster only due to the relevant provision in the Law on Public Service Radio and Television. Nevertheless, political influence on Public Service Broadcaster (PSB) operations is still strong, as it can be seen from the politically influenced appointments of the PSB Governing Board members and its senior management.<sup>54</sup>

Legal and voluntary regulations for safeguarding editorial independence of commercial media do not exist. Media owners, their friends and partners as well as advertisers directly influence editorial decision making and professional operations of newsrooms.<sup>55</sup> Because regulations to prevent conflicts of interests are weak and in-effective, there is an unwritten rule among journalists to refrain from critics if the subject matter deals with persons or companies affiliated with the owner or advertiser.<sup>56</sup>

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<sup>48</sup> <http://www.legalinfo.mn/law/details/445?lawid=445>

<sup>49</sup> <http://www.legalinfo.mn/law/details/11710?lawid=11710>

<sup>50</sup> <http://www.legalinfo.mn/law/details/259?lawid=259>

<sup>51</sup> Law of Mongolia on Copyrights and Related Rights <http://www.wipo.int/edocs/lexdocs/laws/en/mn/mn032en.pdf>

<sup>52</sup> Assessment of Media Development in Mongolia. p.45, 2016. UNESCO

<sup>53</sup> Criminal Law of Mongolia, Offence Law will come into effect on July 1, 2017

<sup>54</sup> Asian Media Barometer. Mongolia 2012. Friedrich Ebert Stiftung. Ulaanbaatar 2012.

<sup>55</sup> Asian Media Barometer. Mongolia 2012. Friedrich Ebert Stiftung. Ulaanbaatar 2012

<sup>56</sup> Assessment of Media Development in Mongolia. p.31, 2016. UNESCO

## Part II. Indicators – Checklist

### II.1 Regulatory safeguards against high concentration of ownership and/or control in media (horizontal)

NA: Not applicable MD: Missing Data

TELEVISION		Yes	No	NA	MD	
1	Does the <b>media legislation</b> contain specific <b>thresholds or limits</b> , based on objective criteria (e.g. number of licenses, audience share, circulation, distribution of share capital or voting rights, turnover/revenue) to prevent a high level of <b>horizontal concentration</b> of ownership and/or control in this sector?		√			Existence (E) of safeguards
	Can a high level of <b>horizontal concentration</b> of ownership and/or control in each sector <b>be prevented</b> via merger control/competition rules that take into account the <b>specificities of the media sector</b> , for instance:		√			
2	- By containing <b>media-specific provisions</b> that impose stricter thresholds than in other sectors		√			
3	- The <b>mandatory intervention of a media authority in M&amp;A cases</b> (for instance, the obligation for the competition authority to ask the advice of the media authority);		√			
4	- The <b>possibility to overrule the approval</b> of a concentration by the competition authority for reasons of media pluralism (or public interest in general)		√			
5	Is there an administrative <b>authority</b> or judicial body actively <b>monitoring compliance</b> with these thresholds and/or hearing complaints? (e.g. media and/or competition authority)	√				
	Does the law grant this body effective <b>sanctioning/enforcement powers</b> in order to impose proportionate remedies (behavioral and/or structural) in case of non-respect of the thresholds, such as:		√			
6	- Refusal of additional licenses	√				
7	- Blocking of a merger or acquisition					
8	- Obligation to allocate windows for third party programming		√			
9	- Obligation to give up licenses/activities in other media sectors		√			
10	- divestiture		√			
11	Is there <b>evidence</b> (for instance in case law or positive evaluations in independent reports) of these powers being <b>effectively and appropriately exercised</b> ?		√			
12	Are the <b>conditions</b> imposed at the moment of mergers <b>effectively</b>		√			E

	<b>monitored?</b>				
13	Are competition authorities taking into account (implicitly or explicitly) considerations about <b>media pluralism</b> when applying competition rules to the media sector? Do they assess the <b>impact</b> of a proposed concentration on media pluralism? If merger procedures provide for the intervention of the media authority at some stage (like rendering its advice), is the <b>competition authority</b> taking the utmost <b>account of that opinion</b> (either because it is bound by the advice or because it does so in practice)?		√		
	<b>Total</b>	2	12		

<b>PRINT</b>		<b>Yes</b>	<b>No</b>	<b>NA</b>	<b>MD</b>	
1	Does the <b>media legislation</b> contain specific <b>thresholds or limits</b> , based on objective criteria (e.g. number of licenses, audience share, circulation, distribution of share capital or voting rights, turnover/revenue) to prevent a high level of <b>horizontal concentration</b> of ownership and/or control in this sector?		√			Existence (E) of safeguards
	Can a high level of <b>horizontal concentration</b> of ownership and/or control in each sector <b>be prevented</b> via merger control/competition rules that take into account the <b>specificities of the media sector</b> , for instance:		√			
2	- By containing <b>media-specific provisions</b> that impose stricter thresholds than in other sectors		√			
3	- The <b>mandatory intervention of a media authority in M&amp;A cases</b> (for instance, the obligation for the competition authority to ask the advice of the media authority);		√			
4	- The <b>possibility to overrule the approval</b> of a concentration by the competition authority for reasons of media pluralism (or public interest in general)		√			
5	Is there an administrative <b>authority</b> or judicial body actively <b>monitoring compliance</b> with these thresholds and/or hearing complaints? (e.g. media and/or competition authority)		√			
	Does the law grant this body effective <b>sanctioning/enforcement powers</b> in order to impose proportionate remedies (behavioral and/or structural) in case of non-respect of the thresholds, such as:		√			
6	- Refusal of additional licenses		√			
7	- Blocking of a merger or acquisition		√			
8	- Obligation to allocate windows for third party programming		√			
9	- Obligation to give up licenses/activities in other media sectors		√			

10	- divestiture		√			
11	Is there <b>evidence</b> (for instance in case law or positive evaluations in independent reports) of these powers being <b>effectively and appropriately exercised</b> ?		√			
12	Are the <b>conditions</b> imposed at the moment of mergers <b>effectively monitored</b> ?		√			Effective Implementation (I)
13	Are competition authorities taking into account (implicitly or explicitly) considerations about <b>media pluralism</b> when applying competition rules to the media sector? Do they assess the <b>impact</b> of a proposed concentration on media pluralism? If merger procedures provide for the intervention of the media authority at some stage (like rendering its advice), is the <b>competition authority</b> taking the utmost <b>account of that opinion</b> (either because it is bound by the advice or because it does so in practice)?		√			
<b>Total</b>			15			

RADIO		Yes	No	NA	MD	
1	Does the <b>media legislation</b> contain specific <b>thresholds or limits</b> , based on objective criteria (e.g. number of licenses, audience share, circulation, distribution of share capital or voting rights, turnover/revenue) to prevent a high level of <b>horizontal concentration</b> of ownership and/or control in this sector?		√			Existence (E) of safeguards
	Can a high level of <b>horizontal concentration</b> of ownership and/or control in each sector <b>be prevented</b> via merger control/competition rules that take into account the <b>specificities of the media sector</b> , for instance:		√			
2	- By containing <b>media-specific provisions</b> that impose stricter thresholds than in other sectors		√			
3	- The <b>mandatory intervention of a media authority in M&amp;A cases</b> (for instance, the obligation for the competition authority to ask the advice of the media authority);		√			
4	- The <b>possibility to overrule the approval</b> of a concentration by the competition authority for reasons of media pluralism (or public interest in general)		√			
5	Is there an administrative <b>authority</b> or judicial body actively <b>monitoring compliance</b> with these thresholds and/or hearing complaints? (e.g. media and/or competition authority)	√				
	Does the law grant this body effective <b>sanctioning/enforcement powers</b> in order to impose proportionate remedies (behavioral and/or structural) in case of non-respect of the thresholds, such as:		√			

6	- Refusal of additional licenses	√				
7	- Blocking of a merger or acquisition		√			
8	- Obligation to allocate windows for third party programming		√			
9	- Obligation to give up licenses/activities in other media sectors		√			
10	- divestiture		√			
11	Is there <b>evidence</b> (for instance in case law or positive evaluations in independent reports) of these powers being <b>effectively and appropriately exercised</b> ?		√			
12	Are the <b>conditions</b> imposed at the moment of mergers <b>effectively monitored</b> ?		√			Effective Implementation (I)
13	Are competition authorities taking into account (implicitly or explicitly) considerations about <b>media pluralism</b> when applying competition rules to the media sector? Do they assess the <b>impact</b> of a proposed concentration on media pluralism? If merger procedures provide for the intervention of the media authority at some stage (like rendering its advice), is the <b>competition authority</b> taking the utmost <b>account of that opinion</b> (either because it is bound by the advice or because it does so in practice)?		√			
<b>Total</b>		2	13			

INTERNET		Yes	No	NA	MD	
1	Does the <b>media legislation</b> contain specific <b>thresholds or limits</b> , based on objective criteria (e.g. number of licenses, audience share, circulation, distribution of share capital or voting rights, turnover/revenue) to prevent a high level of <b>horizontal concentration</b> of ownership and/or control in this sector?		√			Existence (E) of safeguards
	Can a high level of <b>horizontal concentration</b> of ownership and/or control in each sector <b>be prevented</b> via merger control/competition rules that take into account the <b>specificities of the media sector</b> , for instance:		√			
2	- By containing <b>media-specific provisions</b> that impose stricter thresholds than in other sectors		√			
3	- The <b>mandatory intervention of a media authority in M&amp;A cases</b> (for instance, the obligation for the competition authority to ask the advice of the media authority);		√			
4	- The <b>possibility to overrule the approval</b> of a concentration by the competition authority for reasons of media pluralism (or public interest in general)		√			

5	Is there an administrative <b>authority</b> or judicial body actively <b>monitoring compliance</b> with these thresholds and/or hearing complaints? (e.g. media and/or competition authority)		√			
	Does the law grant this body effective <b>sanctioning/enforcement powers</b> in order to impose proportionate remedies (behavioral and/or structural) in case of non-respect of the thresholds, such as:					
6	- Refusal of additional licenses		√			
7	- Blocking of a merger or acquisition		√			
8	- Obligation to allocate windows for third party programming		√			
9	- Obligation to give up licenses/activities in other media sectors		√			
10	- divestiture		√			
11	Is there <b>evidence</b> (for instance in case law or positive evaluations in independent reports) of these powers being <b>effectively and appropriately exercised</b> ?		√			
12	Are the <b>conditions</b> imposed at the moment of mergers <b>effectively monitored</b> ?		√			Effective Implementation (!)
13	Are competition authorities taking into account (implicitly or explicitly) considerations about <b>media pluralism</b> when applying competition rules to the media sector? Do they assess the <b>impact</b> of a proposed concentration on media pluralism? If merger procedures provide for the intervention of the media authority at some stage (like rendering its advice), is the <b>competition authority</b> taking the utmost <b>account of that opinion</b> (either because it is bound by the advice or because it does so in practice)?		√			
	<b>Total</b>		14			

## II.2 Regulatory safeguards against high degree of cross-ownership

CROSS-OWNERSHIP		Yes +	No -	NA	MD	
1	Does the media <b>legislation</b> contain specific thresholds, based on objective criteria, such as number of licenses, audience share, circulation, distribution of share capital or voting rights, turnover/revenue, to <b>prevent a high degree of cross-ownership</b> of different types of media?		√			Existence (E) of safeguards
	Can a <b>high degree of cross-ownership</b> of different types of media be <b>prevented</b> via merger control/competition rules that take into account the <b>specificities of the media sector</b> , for instance:		√			
2	- By containing <b>media-specific provisions</b> that impose stricter thresholds than in other sectors;		√			
3	- The mandatory <b>intervention of a media authority in Merger &amp; Acquisition cases</b> ;		√			
4	- The possibility to <b>overrule the approval of a concentration by the competition authority</b> for reasons of media pluralism (or Public interest in general).		√			
5	Is there an <b>administrative authority</b> or judicial body actively monitoring compliance with these thresholds and/or hearing complaints? (e.g. media and/or competition authority)	√				
	Does the law grant body effective sanctioning/enforcement powers in order to impose proportionate remedies (behavioral and/or structural) in case of non-respect of the thresholds, such as:		√			
6	- refusal of additional licenses;		√			
7	- blocking of a merger or acquisition;		√			
8	- obligation to allocate windows for third party programming;		√			
9	- obligation to give up licenses/activities in other media sectors;		√			
10	- divestiture.		√			
11	Is there evidence (for instance in case law or positive evaluations in independent reports) of these powers being effectively and appropriately exercised? Is there pro-active and effective policy making and implementation?		√			Effective Implementation (I)
11	Are the <b>conditions</b> imposed at the moment of mergers <b>effectively monitored</b> ?		√			
12	Are competition authorities taking into account (implicitly or explicitly) considerations about media pluralism when applying competition rules to the media sector? Do they assess the impact of a proposed concentration on media pluralism? If merger procedures provide for the intervention of the media authority at some stage (like rendering its		√			

	advice), is the competition authority taking the utmost account of that opinion (either because it is bound by the advice or because it does so in practice)?					
	<b>Total</b>	<b>1</b>	<b>14</b>			

### II.3 Regulatory safeguards for transparency of ownership and/or control

	Transparency Provisions	Yes +	No -	NA	MD	
1	Does national (media, company, tax...) law contain <b>transparency and disclosure provisions</b> obliging media companies to <b>report (changes in) ownership structures to public authorities</b> (such as the media authority)?	√				Existence (E) of safeguards
2	Does national (media, company, tax...) law contain <b>transparency and disclosure provisions</b> obliging media companies to publish their ownership structures on their website or in records/documents that are <b>accessible to the public</b> ?	√				
3	Is there an obligation by national law to <b>disclose</b> relevant information after <b>every change</b> in ownership structure?	√				
4	Are there any <b>sanctions</b> in case of non-respect of disclosure obligations?		√			Effective Implementation (I)
5	Do transparency and reporting provisions provide the public authorities / the public with <b>reliable and accurate information about media ownership</b> ?		√			
6	Do these obligations ensure that the <b>public knows which legal or natural person effectively owns or controls</b> the media company?		√			
	<b>Total</b>	<b>3</b>	<b>3</b>			

### II.4 Regulatory Safeguards against political control over media and distribution networks ownership

Ownership by politicians	Yes +	No -	NA	MD
Does any law contain <b>limitations</b> to direct and indirect <b>ownership/control</b> of mainstream media <b>by politicians</b> ?		√		
Does the <b>regulation</b> apply to <b>all media</b> (print, audiovisual and online) with no significant exemptions?		√		
Is there an administrative or judicial <b>body</b> actively <b>monitoring compliance</b> with		√		

these rules and/or hearing complaints?				
Does the law grant body effective <b>sanctioning/enforcement powers</b> in order to impose proportionate remedies in case of noncompliance with the rules?		√		
<b>Total</b>		4		

## II.5 Regulatory Framework for Media Regulation

Corresponding authorities responsible for media concentration monitoring in Mongolia:  
If there are different authorities, please copy the checklist and fill in one checklist for each authority.

<b>Authority for fair competition and consumer protection ]</b>	<b>Yes +</b>	<b>No -</b>	<b>NA</b>	<b>MD</b>
Are there any explicit constitutional or legal <b>guarantees of independence of the media authority</b> from political or commercial interference?		√		
Are <b>appointment procedures</b> for the media authority <b>transparent, democratic and objective</b> and designed to minimize the risk of political or commercial interference, for instance by including rules on incompatibility and eligibility?		√		
Are the <b>procedures for allocation of budgetary</b> resources for the media authority transparent and objective, <i>i.e.</i> leaving no scope for arbitrary decisions by the governing powers?		√		
Are the <b>tasks, duties and responsibilities</b> of the media authority defined in detail in the law ( <i>e.g.</i> grant licenses, compliance monitoring, sanctioning, other)?	√			
Does regulation attribute <b>sanctioning powers</b> to the media authority ( <i>e.g.</i> warning, fine, suspension or revocation of license, other)?	√			
With regard to the media authority decisions, are there <b>effective appeal mechanisms</b> in place?	√			
Are the appointment procedures for the media authority <b>respected in practice</b> ?		√		
Does <b>decisional practice of the media authority</b> indicate that the authority uses its powers in practice in the interest of the public?		√		
Is the <b>budget adequate</b> and consistent for the media authority to safeguard its independence and/or protect it from coercive budgetary pressures and to perform its functions?		√		
The Government cannot arbitrarily <b>overrule the decision of the media authority</b> .	√			
Is the media authority <b>accountable to the public for its activities</b> , ( <i>e.g.</i> is it required to publish regular or ad hoc reports relevant to their work or the exercise of their missions)?	√			
<b>Total</b>	5	6		

<b>Communications regulatory committee</b>	<b>Yes +</b>	<b>No -</b>	<b>NA</b>	<b>MD</b>
Are there any explicit constitutional or legal <b>guarantees of independence of the media authority</b> from political or commercial interference?		√		
Are <b>appointment procedures</b> for the media authority <b>transparent, democratic and objective</b> and designed to minimize the risk of political or commercial interference, for instance by including rules on incompatibility and eligibility?		√		
Are the <b>procedures for allocation of budgetary</b> resources for the media authority transparent and objective, <i>i.e.</i> leaving no scope for arbitrary decisions by the governing powers?		√		
Are the <b>tasks, duties and responsibilities</b> of the media authority defined in detail in the law ( <i>e.g.</i> grant licenses, compliance monitoring, sanctioning, other)?	√			
Does regulation attribute <b>sanctioning powers</b> to the media authority ( <i>e.g.</i> warning, fine, suspension or revocation of license, other)?	√			
With regard to the media authority decisions, are there <b>effective appeal mechanisms</b> in place?	√			
Are the appointment procedures for the media authority <b>respected in practice</b> ?		√		
Does <b>decisional practice of the media authority</b> indicate that the authority uses its powers in practice in the interest of the public?		√		
Is the <b>budget adequate</b> and consistent for the media authority to safeguard its independence and/or protect it from coercive budgetary pressures and to perform its functions?		√		
The Government cannot arbitrarily <b>overrule the decision of the media authority</b> .	√			
Is the media authority <b>accountable to the public for its activities</b> , ( <i>e.g.</i> is it required to publish regular or ad hoc reports relevant to their work or the exercise of their missions)?	√			
<b>Total</b>	<b>5</b>	<b>6</b>		