

**CONFRONTING THE CHALLENGE:**  
**INNOVATION IN THE REGULATION OF**  
**BROADCASTING IN MALTA**





# **CONFRONTING THE CHALLENGE: INNOVATION IN THE REGULATION OF BROADCASTING IN MALTA**

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Confronting the Challenge: Innovation in the Regulation of Broadcasting in Malta

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# CONFRONTING THE CHALLENGE: INNOVATION IN THE REGULATION OF BROADCASTING IN MALTA

## INTRODUCTION

1. Broadcasting plays a fundamental role in the development and proper functioning of democracy. The free flow of news and information enables citizens to exercise their democratic rights more fully, especially during elections.
2. Despite the proliferation of news sources due to new technologies, television has retained its position as one of the main sources of news in Malta, as it has globally, and the way in which television is managed, influenced and regulated has a major impact on the attitudes, beliefs and knowledge of viewers.
3. The regulation of broadcasting protects fundamental civil rights, including the right of freedom of expression.
4. The need to review the regulation of the broadcasting sector in Malta has often been stated.
5. Broadcasting is described in clauses 118 and 119 of the Constitution of Malta and is an important element in the country's democratic structures.
6. Various amendments have been made to Malta's Constitution over the last five decades since Malta attained its independence. The forthcoming Constitutional Convention intends to launch a debate on whether the Constitution now requires a thorough overhaul.
7. The report 'A Review of the Constitution of Malta at Fifty: Rectification or Redesign?' (2014) by the Today Public Policy Institute makes specific proposals concerning the Broadcasting Authority but also states that,

*"... the discussion during the Convention should be under-pinned by a sound assessment of where the Constitution stands today, what are its strengths and weaknesses and how it might be improved for the greater good of the country. It is hoped that the assessment in this report will help to set a base-line for discussion and stimulate an informed debate about key issues. It is no good trying to cherry-pick aspects of the Constitution – whether it be, say, neutrality, or national days, electoral reform or public broadcasting, to mention just a few items which have caught the public eye – without at the same time recognising that each action has an equal and opposite reaction. The Constitution has to work as an organic whole."*

## AIMS

8. This Discussion Paper, 'Confronting the Challenge: Innovation in the Regulation of Broadcasting in Malta,' attempts to provide an overview of certain aspects of the broadcasting sector in Malta, which may serve to inform the debate which is to take place within the Constitutional Convention.
9. In particular, this Discussion Paper focuses on clauses 118 and 119 of the Constitution as well as the Broadcasting Act, exploring possibilities for innovation in the sector while also taking into account the implications of the rapid changes brought about by new technologies.
10. The changes to the broadcasting sector proposed through this Discussion Paper **do not assume that a thorough overhaul of the existing Constitution is necessary**. It is the opinion of the authors of this Paper that certain weaknesses in the regulation of the broadcasting sector can be addressed within the current structure of the Constitution which has served the country well for the last fifty years.
11. The 1980s are considered to have been a time of political manipulation of popular opinion through the domination of the public broadcaster by the government of the day. This Discussion Paper contends that this, to a large extent, is the root of the current weaknesses in the sector today which evolved significantly in the 1990s as a counter-reaction to the political interference in public broadcasting during the 1980s.
12. This counter-reaction eventually led to two of the three main television newsrooms in Malta being owned and run by the two main political parties. While the dominance of television by the two major political parties is not desirable, this Discussion Paper contends that any proposed changes to the broadcasting sector must ensure that plurality in the provision of local news is not undermined.

## Part I

### THE EVOLUTION OF BROADCASTING IN MALTA

#### BACKGROUND

13. Broadcasting in Malta has been closely linked to politics from its inception. The first cable radio station in Malta was established in 1935 for political reasons, specifically to counter Italian fascist propaganda on the air-waves. In 1957 Malta began receiving television signals from Italy. In 1962 Malta Television began its own local broadcasts. The national station, called Malta Television (MTV), then *Xandir Malta* in the 1980s and, later, Television Malta (TVM), is currently run by Public Broadcasting Services Ltd (PBS). Until the 1990s this was the only local station which was broadcasting in Malta, and it had the only television newsroom. The Maltese viewer did, however, have access to Italian television stations which provided a form of pluralism with regard to international news.

14. In the 1980s, the single news bulletin on the public broadcaster was not contradicted or counter-balanced by any other local news station since no other broadcaster was permitted to operate in Malta. During this period, a radio station was set up in Sicily by the Opposition Party in order to broadcast news, as an attempt to counteract the domination of the broadcasting media by the Labour government of the day.
15. In 1987, the newly-elected Nationalist government introduced media pluralism in broadcasting as a means to move away from news being controlled by a single source. The Broadcasting Act was enacted in 1991. The first private broadcasting licences were granted soon afterwards to the two major political parties which established radio and television stations, and to the Roman Catholic Church which set up its own radio station. Other private commercial broadcasting licences were issued later.
16. Television broadcasting licences were granted to the political parties before licenses were issued to private commercial companies. This gave them a distinct advantage with regard to advertising revenue. By the time other private commercial television stations came on air, their access to advertising revenue was limited. The way that the first private broadcasting licences were issued in the 1990s established a strong party political presence in television broadcasting which has persisted to this day and which has kept other potential commercial television stations out of the sector.
17. The Broadcasting Authority, which is a Constitutional body set up to regulate the broadcasting sector in Malta, was initially opposed to the idea of issuing broadcasting licenses to political parties, yet notwithstanding its reluctance licences were issued to the main political parties, as well as to the Roman Catholic Church.
18. The first private television station was set up by the Malta Labour Party. The Nationalist Party was initially not in favour of opening a television station, however it felt obliged to follow suit with its own television station a few years later in order to keep up with its political adversaries.
19. Most of the advertising revenue available to private television stations was now directed towards the stations owned by the political parties, and the other private commercial stations did not have much chance of competing on the same terms. At the same time, the lion's share of advertising revenue is absorbed by the public broadcaster which depends upon commercial revenue together with state funding for its operations.
20. The political parties also have access to other sources of revenue to support their broadcasting media such as fund-raising events, donations and subscriptions. These other sources of revenue are not utilised by other private commercial stations which are set up as profit-making ventures whereas the ownership of television stations by political parties is primarily intended to support political campaigning towards re-election. The underlying aims of ownership and management of television stations by political parties and by other private commercial entities are therefore fundamentally different.
21. Pluralism in the Maltese media has certainly come a long way since 1991 when the Broadcasting Act was enacted. Over the last twenty-four years, Malta has moved from a state monopoly of one television station and two radio stations, to six television stations,

numerous nation-wide and community radio stations, and internet broadcasting. The Maltese audience also has access to a large variety of foreign television and radio stations through cable and satellite networks.

22. Running costs for radio are relatively low and a share of the advertising revenue can go a long way. However, the television scenario is not as financially healthy due to high running costs and a limited pool of advertising revenue.

## PUBLIC BROADCASTING

23. Public Broadcasting Services Ltd (PBS) is responsible for the running of the public broadcasting stations, which are currently TVM 1 and TVM 2, three radio stations and a news website with both streaming and on demand programmes. The stations are managed following a model that combines commercial programming which generates advertising revenue, with public service broadcasting which is funded by around two million euros in government grants to ensure that public service commitments are met.
24. PBS both produces and buys programmes. This practice was first introduced in the early 1990s and was boosted significantly after the restructuring of PBS in 2005. In the case of commercial programmes, production houses can enter into various arrangements to pay for air-time through advertising, or through the sharing of advertising revenue with the station. In the case of public service programmes, production houses are allocated the funds which are provided by government.
25. One of the side benefits of the 2005 restructuring was the creation of a new industry of production houses. These form an important part of the creative industries in Malta and create opportunities for employment, particularly for university graduates in the arts and in communications.
26. PBS has its own newsroom and journalists who produce its daily news bulletins, and also has its own current affairs programmes. The news bulletin is considered to be the most important part of its public service obligation and programming and it also generates the most significant advertising revenue of all programmes on all the television schedules.
27. TVM currently provides the most politically balanced news on local television, in comparison with the other stations, and attracts a significant number of viewers. It is perceived to offset some of the blatant partisan reporting of the two political stations. Until recently it was common for interested viewers to watch the main news stories three times in an evening – first on One TV, then on NET TV, and finally on TVM 1. However, since October 2013, NET TV has aired its news at the same time as ONE TV and this has diminished the possibility of listening and comparing all three ‘versions’ of the news.
28. The public does not, however, have full trust in the public broadcaster. This is partly because of its history of government interference, and partly because recruitment to the newsroom and managerial positions is carried out by the Board of Directors which is appointed directly by the Minister responsible for Broadcasting.

29. Real or perceived, this problem exists and it is essential that pluralism in the provision of the local news is retained.
30. Strengthening the independence of the public broadcaster by making it less directly controlled by the government of the day is a crucial step to be addressed. However, this goes beyond the scope of this Discussion Paper.

## PRIVATE STATIONS

31. The public broadcaster continues to have a strong following and the major slice of advertising revenue for both its stations, TVM 1 and TVM 2. The only two private stations which command a significant viewership and a reasonable amount of advertising revenue are the two political party stations, One TV and NET TV.
32. Malta is the only EU country where political parties own television stations and newsrooms. This was brought to the attention of the European Parliament in 2005 by *Alternattiva Demokratika* together with the Italian journalist and MEP, Lilli Gruber.
33. The memory of the 1980s keeps the country in this anomalous situation, which will remain difficult to address until the public broadcaster is perceived to be free from undue government influence, and until a wider range of independent private commercial television stations is sustainable.
34. **Pluralism in local news is provided by the existence of multiple newsrooms. Without credible changes in the newsroom of the public broadcaster to eradicate the perception and the reality of political bias, and to diminish the possibility of government and ministerial interference, it would be dangerous for the country to rely on a single newsroom for its news. Pluralism in broadcasting is a vital tool for the proper functioning of democracy.**
35. The arguments against the direct ownership of media stations by political parties include issues related to party funding and transparency, the manipulation of news and perception, patronage and the lack of a level playing field.
36. This state of affairs has become the accepted norm in Maltese society with many viewers taking this in their stride.
37. Furthermore, as explained below, the political bias in broadcasting is reflected in the Broadcasting Act and in the Broadcasting Authority's interpretation of political balance according to article 13(2) of the Act.

## Part II

# REGULATION AND POLITICAL PARTISANSHIP (‘PARTITOCRACY’)

### BROADCASTING IN THE CONSTITUTION OF MALTA

38. Sections 118 and 119 of the Constitution of Malta, together with the Broadcasting Act, refer to broadcasting. These Sections no longer relate adequately to current circumstances, in particular to the concept of media pluralism and emerging media technology.
39. The media landscape, particularly through convergent technology in which the medium has become less important since content is available through a range of devices, has changed the broadcasting scenario radically.

### THE BROADCASTING AUTHORITY

40. The Malta Broadcasting Authority was set up in 1961. A new Broadcasting Act was enacted by Parliament in 1991 (Act XII of 1991). The Malta Broadcasting Authority was set up to monitor and regulate all radio and television broadcasts originating from the Maltese Islands. It is an independent statutory body consisting of a chairman and four other members appointed by the President of Malta in accordance with the advice of the Prime Minister given after consultation with the Leader of the Opposition.
41. The manner in which the Broadcasting Authority is appointed is laid out in Article 118 of the Constitution of Malta, which states that,
  - (1) *There shall be a Broadcasting Authority for Malta which shall consist of a chairman and such number of other members not being less than four as may be prescribed by any law for the time being in force in Malta.*
  - (2) *The members of the Broadcasting Authority shall be appointed by the President, acting in accordance with the advice of the Prime Minister given after he has consulted the Leader of the Opposition.*
42. Perhaps the most urgent issue to be addressed regarding the Malta Broadcasting Authority is its composition. Despite its function as a Constitutional organ of the State, the Authority is compromised by the manner in which its members are nominated.
43. In practice, two members are chosen by the Prime Minister, two members are chosen by the Leader of the Opposition, and the chairman is nominated by the Minister responsible for Broadcasting or by the Prime Minister.
44. The Malta Broadcasting Authority is therefore limited to only five persons chosen by and in the interests of the two main political parties. This leads to the perception that political



interests may be put before the public interest, which erodes trust in the Authority particularly since the two main political parties also own and manage their own media outlets.

45. A former chairman of the Malta Broadcasting Authority, Chief Justice Emeritus Joseph Said Pullicino, noted in the 2004 Annual Report of the Authority that, “It is difficult to convince an essentially bipartisan Authority to distance itself from political pressures [...] I reiterate my conviction that the time is ripe for a rethinking on the composition of the Authority. The practice limiting members to representatives of political parties in government and opposition might have been acceptable before the advent of pluralism. Considering that parties have their own media structures, it is today anachronistic. It is conceptually jarring that the Authority, essentially a regulator, is made up exclusively of members chosen by political parties which, as media owners, are amongst those regulated. The defence of true democratic values requires a strong and effective Authority. Political parties realize that this is in the country’s interest but often expediency prevents them from putting what they preach into practice. Understandably, other regulated persons like broadcasters and production houses, intent on defending vested interests, favour a weak, ineffective regulator. It is against this background that the Authority’s future role should be assessed.”<sup>1</sup>
46. Said Pullicino also commented that, “It’s true, political polarisation has been transported to this Board [...] Undoubtedly I agree with wider representation; I actually advocate it. Widening representation on the Board would represent public opinion more fairly, and besides, it would ensure that decisions taken would be based not only on Party political grounds.”<sup>2</sup>
47. In July 2008, the then Prime Minister Dr Lawrence Gonzi proposed to the newly-elected leader of the Labour Opposition, Dr Joseph Muscat, that a discussion should take place on the reform of the Broadcasting Authority to end the dominance of the political parties and to strengthen the contribution of media experts and civil society: “*Ghandi diversi suggerimenti ohra x’niproponi ghad-diskussjoni bhal [...] regolamentazzjoni aqwa u aktar effettiva ta’ l-istazzjonijiet tal-partiti politici jew sahsitra revizjoni tas-sehem tal-partiti politici fil-media lokali; reform fl-Awtorità tax-Xandir biex tispicca d-dominanza tal-partiti politici u jissahhah il-kontribut tal-esperti fix-xandir u s-socjeta civili.*”<sup>3</sup>
48. In April 2009, the editorial of the *Times of Malta* recalled this letter, noting “the basic structural flaw that there is in the composition of the MBA.” It stated that the MBA, “represents the political parties and their partisan interests and not the Maltese people in general. The present composition of the MBA may have been well and good when it was introduced but now Maltese society has moved ahead and the regulator should move along with it. As things stand now, its very composition practically violates the very impartiality in broadcasting the MBA is supposed to be promoting and safeguarding [...]

<sup>1</sup> Broadcasting Authority Annual Report 2004.

<sup>2</sup> ‘Said Pullicino: caught in a balancing act’ in *Maltatoday* (4 April 2004)

<sup>3</sup> Translation: “I have various other suggestions to propose for discussion such as [...] stronger and more effective regulation of the stations of the political parties, or a revision of the participation of political parties in the local media; a reform of the Broadcasting Authority to end the dominance of the political parties and to strengthen the contribution of media experts and civil society.” Dr Lawrence Gonzi in a letter to Dr Joseph Muscat, 7 July 2008

The law should be changed so that the MBA will morph itself into a body that primarily works to raise standards and protect viewers and listeners more than the political parties. The presence of broadcasting experts together with people representing different sections of the public would help bring a paradigmatic change in the regime of broadcasting in Malta and give broadcasting a breath of needed fresh air. Let us hope that the political class will follow the stand taken by the Prime Minister [...] and enact the necessary legislation that will give flesh to these positions. The sooner this is done, the better.”<sup>4</sup>

49. **It is for consideration that** the representation of civil society on the authority which regulates the broadcasting sector should be increased and widened, to include representatives of various sectors of the wider community together with technical experts.
50. **It is for consideration that** the Board of the authority which regulates broadcasting is increased in number and is appointed by the President after open consultation with a Parliamentary Committee representing all elected parties or a Council of State and representatives of Civil Society, instead of solely with the Prime Minister and the Leader of the Opposition, ensuring that civil society is well represented in the composition of the Authority.
51. The Malta Broadcasting Authority supervises all local broadcasting stations to ensure their compliance with legal and license obligations, as well as due impartiality with respect to matters of political or industrial controversy or relating to current public policy; while fairly apportioning broadcasting facilities and time between persons who belong to different political parties. This reflects the Constitution of Malta Chapter XI, 119 (1), which states that,
- It shall be the function of the Broadcasting Authority to ensure that, so far as possible, in such sound and television broadcasting services as may be provided in Malta, due impartiality is preserved in respect of matters of political and industrial controversy or relating to current public policy and that broadcasting facilities and time are fairly apportioned between persons belonging to different political parties.*
52. The Malta Broadcasting Authority also aims to ensure that local broadcasting services consist of public, private and community broadcasts which offer varied and comprehensive programming. The Broadcasting Authority’s stated aim is to help the Maltese public better understand how its values and diversity shape our unique personality by regulating local broadcasting services in open flexible ways fostering creativity and better programming.
53. Other functions of the Malta Broadcasting Authority include the issuing of radio and television licences and setting the schedule for pre-election broadcasts on the public service broadcaster.
54. The Malta Broadcasting Authority also acts as a tribunal with media-related responsibilities. The Broadcasting Authority therefore functions as both regulator and judge, which presents an undesirable conflict of powers.

<sup>4</sup> ‘Broadcasting Watchdog must protect viewers’ in *Times of Malta* (13 April 2009)

55. One of the main roles of the Malta Broadcasting Authority is therefore to act as a 'watchdog' over broadcasting in Malta, to ensure impartiality in the news, to act as a safeguard against malicious broadcasting, and to ensure that broadcasting facilities and airtime are "fairly apportioned between persons belonging to different political parties."
56. **It is for consideration that** Section 119 (1) of the Constitution of Malta should be revisited to ensure that civil society is also given adequate access to broadcasting services and that this safeguard should not be restricted to persons belonging to different political parties.

## 'PARTITOCRACY'

57. The report by The Today Public Policy Institute, 'A Review of the Constitution at Fifty' notes that, "Overridingly, it has been a Constitution dominated by two political parties – two political mass movements which are closely in touch with their grass roots, including through their own mass media outlets. The two parties are the king-makers in Maltese politics and, effectively, the "Masters of the Constitution."
58. As described earlier, the domination of the two political parties is also reflected in the manner in which the Malta Broadcasting Authority is appointed, as well as its regulatory brief which states that broadcasting facilities and time are fairly apportioned between persons belonging to different political parties.
59. The dominance of the two main parties is also, however, perpetuated in the manner in which the Broadcasting Authority uses the discretionary power granted to it in clause 13 (2) of the Broadcasting Act, to interpret impartiality in broadcasting.
60. Clause 13 (2) of the Broadcasting Act states that, "except in the case of public broadcasting services, in applying paragraphs (c) to (f), the Authority shall be able to consider the general output of programmes provided by the various broadcasting licensees and contractors, together as a whole."
61. The interpretation of this clause by the Broadcasting Authority has been deemed objectionable and perhaps even unconstitutional. It effectively and conveniently ensures that the impartiality of the news which is broadcast by the two political party television stations is not regulated for political bias. The political bias of the two stations is simply assumed to create a form of balance.
62. This clause enables the programmes aired by certain broadcasting stations to be exempt from being monitored individually for political balance by the Malta Broadcasting Authority. The intention of this clause may have been to create space for open journalistic practices, by moving away from the stifling monitoring of individual news and current affairs programmes. Yet as pluralism in the media evolved in Malta and political parties joined the fray, the interpretation of this clause by the Malta Broadcasting Authority has given rise to a regulatory environment which does not serve the best interests of the public.

63. The interpretation of this clause by the regulating Authority may unrealistically assume that everybody watches the news transmitted on each and every television station. It does not take into account the possibility that viewers might watch only one television station and not watch the other television stations to counter-balance any political bias.
64. This interpretation encourages polarization and may serve to discourage impartiality by obliging the political party stations to continually strive to counteract, with equal force, the political bias in the news which is broadcast by their political opponents.
65. It has been pointed out by Professor Kevin Aquilina, a former chief executive of the Broadcasting Authority and now professor of media law at the University of Malta, that article 13 (2) “appears to fall foul of the constitutional provision which requires that ‘due impartiality is preserved in respect of matters of political or industrial controversy, or relating to current public policy’ and which does not seem to admit of balancing out political party stations with each other as the Broadcasting Act invites the Broadcasting Authority to do in such cases.”<sup>5</sup>
66. This is echoed by commentator Michael Falzon, a former Nationalist minister, who stated that, “We should also drop the idea that stations owned by the two political parties balance each other out – a concept that is written in the Broadcasting law but which may well be unconstitutional. The problem, of course, is that the Constitution was overtaken by events. The way it was worded did not envisage broadcasting pluralism; much less the idea of political parties owning broadcasting stations. The root of the problem may well be the abuses of the past but the solution intended to stop those abuses has led to new abuses of the present. Clearly the Constitutional and legal framework on broadcasting needs to be revised and revamped in the light of the negative side effect that pluralism – which is here to stay – has wrought.”<sup>6</sup>
67. In further comments, Joseph Said Pullicino stated that, “I think it is about time that one studies the way the Constitution and Broadcasting law are written, because in my view they do not respond to today’s needs anymore [...] The Constitution was written when we just had public broadcasting, and it was easy at that time for the Broadcasting Authority to produce its own programmes and allocate equal airtime. Nowadays it is a regulator and there is a lot that needs to be done to bring the Constitution and Broadcasting law – passed ten years ago – in line with today’s requirements.”<sup>7</sup>
68. Furthermore, Said Pullicino stated that, “The way the law is drafted gives leeway to the parties’ interpretation, that one station balances the other [...] That’s the parties’ interpretation of balance. I personally disagree with this interpretation [...] My point is that when it comes to news, political party stations should take a different approach. While they have every right to give news their own slant, they should respect facts for what they are, and comment should be clearly presented as such [...]”<sup>8</sup>

<sup>5</sup> Kevin Aquilina, ‘The Legal Framework of the Maltese Media’ in J. Borg, A. Hillman & M. Lauri, *Exploring the Maltese Media Landscape* (2009): 113

<sup>6</sup> ‘Broadcasting: where did it all go wrong?’ in *Maltatoday* (13 May 2009)

<sup>7</sup> ‘Said Pullicino: caught in a balancing act’ in *Maltatoday* (4 April 2004)

<sup>8</sup> *Ibid.*

69. The editorial of the *Times of Malta* stated, “In the case of broadcasting, the Constitution demands balance and impartiality. When this clause was inserted, it obviously referred to the state broadcasting system that existed then, which was the only medium on the airwaves. With the introduction of broadcasting pluralism, the MBA interpreted this mandate in a collective fashion. One would be able to get a cumulative balanced view of the local situation if one were to attend to all the news bulletins of the different news sources. Such a decision, besides going against professional journalistic work, made sure that the media be itself a victim, and, furthermore, reinforces the local tendency at polarizing everyone and everything.”<sup>9</sup>
70. In 2010, MEP Dr Simon Busuttil, now leader of the Nationalist Opposition, stated that the Broadcasting Authority’s handling of impartiality is anachronistic and needs to change, stating that, “Frankly, the idea that the TV stations of the two political parties ‘balance each other out’ renders a disservice to democracy and to pluralism and quality in broadcasting in particular. It is high time that the Authority’s mandate be reviewed.”<sup>10</sup>
71. MEP Edward Scicluna, today Minister of Finance, criticised the Broadcasting Authority for fining the private television station Smash TV for political bias in a programme that he hosted, stating that all MEPs should be able to express themselves, “irrespective of who owns the private station and the country where it is transmitted. I have nothing but scorn for those who miss the point that I am putting across and mumble something to the effect that I should go on Super One and say what I like. Democratic principles in this country deserve better. [...] My interpretation of the law is that, within reason, the BA must see that there is overall balance between ALL private stations, but more importantly must encourage and not discourage pluralism of ideas and modes of expression. [...] MEPs I talked to were astounded to hear that my legitimate work from the European Parliament is being interfered with by our local regulator based on a very narrow interpretation of our Maltese law and our Constitution. I have no doubt they will join me in the Europe wide campaign which I intend to take up on this issue.”<sup>11</sup>
72. Despite the frequent criticism of the interpretation of article 13 (2) of the Broadcasting Act, neither political party has addressed this issue in a decisive manner.
73. **It is for consideration that** clause 13 (2) of the Broadcasting Act and its interpretation should be revisited.

## THE MALTA COMMUNICATIONS AUTHORITY

74. In 2001, the Malta Communications Authority was set up to liberalise and regulate telecommunication services. Thus “while the onus of broadcasting content remained the prerogative of the Broadcasting Authority, telecommunications licences including those for radio frequencies in the UHF Band and digital terrestrial television broadcasting had

<sup>9</sup> ‘The quest for sound ethical journalism’ in *Times of Malta* (18 April 2009)

<sup>10</sup> ‘Political foes like-minded on BA’s stance’ in *Maltatoday* (20 June 2010)

<sup>11</sup> Ibid.

to be endorsed by the Malta Communications Authority which took over the operations of the Wireless and Telegraphy Department.<sup>12</sup>

75. The Malta Communications Authority is the statutory body responsible for the regulation of the electronic communications sector (telecommunications, radio communications and broadcasting transmission), the monitoring of spectrum usage for television and radio, e-commerce and the postal sector. Its mission, mandate and functions derive from the Malta Communications Authority Act Cap.418.
76. The Malta Communications Authority is responsible for promoting competition, for protecting consumers and for encouraging innovation. It enables competition in the communications sector by facilitating market entry through general authorization to provide networks and services and by regulating access to networks so as to develop effective choice for consumers. The Malta Communications Authority provides the framework for the introduction of new services.

### Part III

## THE NEED FOR INNOVATION IN REGULATION

### A NEW MALTA MEDIA AUTHORITY: CONVERGENT TECHNOLOGIES

77. Television and radio content can today be accessed by the viewer on other media, such as internet and mobile telephones. Content is increasingly interactive due to increased and widespread use of the internet and on-demand entertainment.
78. The viewer can choose when and what to access, and viewing is not restricted to the schedules currently approved by the Malta Broadcasting Authority and proposed by television stations. It is possible to watch television programmes on-demand without owning a television. Technologies can be accessed simultaneously and in an interactive manner by the consumer.
79. Content providers encourage consumers to access their content on as many platforms as possible. Communications authorities also aim to enable consumers to access as many networks as possible and eliminate barriers.
80. The current and future media scenario based on new media technologies calls for a review of the regulatory framework for the sector.
81. The convergent technologies of television, radio, internet and telephony make it possible for the consumer to view the same content on different media. For example, the same news bulletins and current affairs programmes can be viewed on television and on the internet on demand. It is therefore desirable for the regulator to be able to deal with all

<sup>12</sup> [www.ba-malta.org/the-authority](http://www.ba-malta.org/the-authority)

these technologies simultaneously. The tendency in the EU Member States is to move towards the converged regulation of broadcasting and telecommunications.

82. The European Union's Audiovisual Media Services Directive (AVMS) entered into force on 19 December 2007. It aimed to preserve the core principles of existing European rules for television and adapt them to the new audio-visual environment. The Directive covers both traditional television broadcasting and new services such as on-demand films and news.
83. This Directive recognizes that traditional television broadcasting and new on-demand services are to be regulated together.
84. **It is for consideration that** the Malta Broadcasting Authority and the Malta Communications Authority should be merged to form one new regulatory body called the 'Malta Media Authority', regulating both telecommunications and broadcasting.
85. A new Malta Media Authority would be better equipped to approach the new audio-visual environment in the holistic manner which is promoted by the European Union.
86. As things stand, the Malta Communications Authority regulates the electronic communications sector, including telecommunications, radio communications, and broadcasting transmission. It is also responsible for protecting consumers, promoting competition and encouraging innovation. It provides the framework for the introduction of new services.
87. On the other hand, the Malta Broadcasting Authority supervises television and radio stations, with a focus on content, political bias and advertising. Licenses granted by the Malta Broadcasting Authority are endorsed by the Malta Communications Authority.
88. Due to new technologies and consumer patterns, it is no longer necessary or advisable to separate the regulation of broadcasting and telecommunications. The merging of the two existing regulatory authorities, the Malta Communications Authority and the Malta Broadcasting Authority, would streamline resources and also create a converged and simpler regulatory framework implemented by an entity in an improved position to deal with the ever-increasing range of new media technology.
89. In order to encourage investment in networks and communications technology, a new Media Authority would promote a stable and consistent regulatory framework, with a level playing field for all operators.
90. The existing separation of the regulation of content by the Malta Broadcasting Authority from communication services regulated by the Malta Communications Authority, is out of step with current needs. A new 'Malta Media Authority' would be better equipped to deal with issues of network access, spectrum availability, and licensing.<sup>13</sup>

<sup>13</sup> The earliest attempt in Europe for a converged media authority is the independent Italian AGCOM Autorita' per le Garanzie Nellie Comunicazioni established in 1997. OFCOM, the Office of Communications in the United Kingdom since 2003 is the regulatory and competition authority for broadcasting, telecommunications and the postal industries. Also in 2003 Singapore established a convergent media authority, MDA - Media

91. The areas traditionally monitored by the Malta Broadcasting Authority, such as political balance, content and advertising, could be absorbed by the new Malta Media Authority with a wider representation than that of the current Malta Broadcasting Authority which has supported the persistence of a polarized media landscape in Malta.
92. **It is for consideration that** the Board of the new Malta Media Authority might, for example, include representatives of private media operators, telecommunications operators, the public broadcaster, the government, journalists, experts in media technology and media content. From its members and other persons, the board might, for example, nominate sub-committees to focus on the following areas: licensing/fees; content monitoring/advertising; and media technologies.
93. The new Malta Media Authority would be in a position to keep up to date with current and future viewer habits, in a scenario where a constantly growing number of people are selecting video on demand and peer-to-peer exchanges of audio-visual content on social networking sites. Content and technology cannot be separated as was previously the case.
94. A single regulator would simplify regulatory processes, it would provide the advantage of a one-stop shop for the industry as content and platform are increasingly integrated, and it would provide financial advantages as it could avoid the duplication of administrative costs associated with having two separate authorities.
95. **It is for consideration that** the new Malta Media Authority should ensure that all television stations, regardless of ownership, should be judged on their own practice and not in relation to, or balanced out by, programmes aired by other television stations.
96. **It is for consideration that** the new Malta Media Authority should ensure that the interests of various minorities in society, who may not be represented by either of the two main political parties, are safeguarded.

## A NEW CIVIL SOCIETY CHANNEL

97. **It is for consideration that**, in order to widen the participation of civil society in the broadcasting sector, the public services broadcaster should provide increased opportunities for civil society as well as for political parties, through the setting up of a dedicated television channel for this purpose.
98. A new public services channel focusing on civil society and civic participation and engagement might create opportunities for programmes edited by different political parties, civil society groups and non-governmental organisations. This would increase pluralism by granting television broadcasting access to other voices within the community without the need to own or manage a television station with prohibitive running costs.

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Development Authority to regulate broadcasting, films and publications, and the Singapore Film Commission under the Ministry of Communication. Australia also operates a convergent regulatory authority, the ACMA - Australian Communication and Media Authority, which has been operating in this format since 2005.



99. The prohibitive cost of running a television station or creating television programmes reduces the number of voices and opinions on television. Radio is cheaper to run and a plurality of opinions are already present within this medium. A new public service television station dedicated to civil society matters could provide a tool for increasing the democratization of society and plurality in the broadcasting media.
100. This would also be in line with the point put forward for consideration by the TPPI report 'A Review of the Constitution at Fifty', that the Constitution should adopt a greater citizen-centred, rather than State-centred, approach.
101. A new channel of this type might provide one step towards moving away from the dominance of the private broadcasting stations by the two major political parties, by providing an alternative forum for political parties to make their voices heard and thus reducing the perceived importance of ownership of broadcasting media outlets. Until these two political television stations close down, it will be very difficult for any independent private stations to successfully establish themselves in Malta.

## CONCLUSION

102. The changes to the broadcasting sector proposed in this Discussion Paper **do not assume that a thorough overhaul of the existing Constitution is necessary**. It is our view that certain weaknesses in the regulation of the broadcasting sector can be addressed within the current structure of the Constitution which has served the country well for the last fifty years.
103. **It is for consideration that** the representation of civil society on the authority which regulates the broadcasting sector should be increased and widened, to include representatives of various sectors of the wider community together with technical experts.
104. **It is for consideration that** the Board of the authority which regulates broadcasting is increased in number and is appointed by the President after open consultation with a Parliamentary Committee representing all elected parties, or a Council of State and representatives of Civil Society, instead of solely with the Prime Minister and the Leader of the Opposition, ensuring that civil society is well represented in the composition of the Authority.
105. **It is for consideration that** Section 119 (1) of the Constitution of Malta should be revisited to ensure that civil society is also given adequate access to broadcasting services and that this safeguard should not be restricted to persons belonging to political parties.
106. **It is for consideration that** that clause 13 (2) of the Broadcasting Act and its interpretation should be revisited.
107. **It is for consideration that** the Malta Broadcasting Authority and the Malta Communications Authority are merged to form one new regulatory body called the 'Malta Media Authority', regulating both telecommunications and broadcasting.

108. **It is for consideration that** the Board of the new Malta Media Authority might, for example, include representatives of private media operators, telecommunications operators, the public broadcaster, the government, journalists, experts in media technology and media content. From its members and other persons, the board might, for example, nominate sub-committees to focus on the following areas: licensing/fees; content monitoring/advertising; and media technologies.
109. **It is for consideration that** the new Malta Media Authority should ensure that all television stations, regardless of ownership, should be judged on their own practice and not in relation to, or balanced out by, programmes aired by other television stations.
110. **It is for consideration that** the new Malta Media Authority should ensure that the interests of various minorities in society, who may not be represented by either of the two main political parties, are safeguarded.
111. **It is for consideration that**, in order to widen the participation of civil society in the broadcasting sector, the public services broadcaster should provide increased opportunities for civil society as well as for political parties, through the setting up of a dedicated television channel for this purpose.

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