



***Independent Study on
Indicators for Media Pluralism
in the Member States – Towards
a Risk-based Approach***

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by

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Final Report - Annex III

COUNTRY REPORTS

Spain

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Important Notice

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The country reports are not in any way intended to be an implementation of the Media Pluralism Monitor in the Member States. They were drafted during the initial stages of the study, with the intention of obtaining a better view of regulatory measures in the broad sense – including co- and self-regulatory measures – adopted in the Member States to promote or safeguard, directly or indirectly, pluralism in the media. The intention was to obtain a high-level snapshot of possible implementation problems and not to express any value judgements on existing rules. The resulting overview facilitated the development of methods for assessing the effective implementation of regulatory safeguards, which had to be, according to the Terms of Reference for the study, an intrinsic element of the legal indicators. We strongly recommend that you also download the file containing our Introduction as it sets out our approach to the initial stages of the project in detail and includes a short manual on how to read the country reports. We draw your attention to the Overview file as well.

Please note that the country reports were finalized in the middle of 2008 and do not therefore reflect progress made with the transposition of the Audiovisual Media Services Directive or any subsequent initiative by Member States. They are made available not as final deliverables of the study, but as interim deliverables, intended to illuminate part of the route taken by the study team and thereby to contribute towards the full transparency of the MPM project.

25. Overview of legal and policy measures promoting/supporting media pluralism

[SPAIN]

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National regulations relevant in the area of media pluralism

- **Legislation**

- *Sector specific legislation*

Law 31/1987 of December 18 on Regulation of Telecommunications

Organic Law 2/1988 of May 3 on regulating political advertising during elections on private television

Law 10/1988 of May 3 on Private Television (Private Television Act)

Organic Law 10/1991 of April 8 on political advertising during elections on local public radio

Law 25/1994 of July 12 to insert Directive 89/552/EEC in the Spanish legal order

Organic Law 14/1995 on political advertising during elections on local television by cable

Law 41/1995 of December 22 on Local Terrestrial Television by Cable (Local Television Act)

Law 42/1995 of December 22, 1995 on cable

Law 21/1997 of July 3 on Broadcasting Sport Competitions and Events.

Law 22/1999 of June 7 to modify Law 25/1994 to insert Directive 89/552/EEC in the Spanish Legal Order

Law 53/2002 on December 30 on Taxation, Administrative Provisions and Social Affairs (Amendments to Local and Private TV acts)

Law 32/2003 of November 3, 2003 General Telecommunications Law

Law 62/2003 of December 30 on Taxation, Administrative Provisions and Social Affairs (Amendments to Local and Private TV acts)

Law 10/2005 of June 14 on Urgent Measures for the promotion of Digital Terrestrial Television, Cable TV liberalisation and promotion of media pluralism

Law 17/2006 of June 5 on Public Radio and Television (Public Radio and Television Act)

Law 56/2007 of December 28 on Measures to the promotion of the information society

Law 10/2007 of June 22 on Reading, Books and Libraries.

Royal Decree 2296/2004 of December 10, 2004 on electronic markets, access to networks and numbering

Royal Decree 920/2006 of July 28, 2006 on the conditions for the provision of television services by cable

Royal Decree 2066/1996 of Sept. 13, 1996

- *General legislation*

Spanish Constitution

Law 30/92 on Rules for Public Administration

Law 2/84 on the Right of Rectification

Organic Law 5/1985 on the General Electoral Regime (Spanish Electoral Code)
Competition Act

- **Codes of conduct**

Deontological Code for the Journalistic Profession of the Federation of Press Associations of Spain (Journalist Code)

RTVE Corporation Information Statute (April 2008) (only to be applied to RTVE journalists)

- **Other**

CMT final decision on market 18 (February 2006)

*First RTVE Mandate Framework approved by Parliament (July 2008) *RTVE is the Spanish PBS*

TABLE 1. Constitutional protection of press and communication freedoms

Measure	Source	Scope of application	Key features
1.1. Freedom of expression	art. 20 Constitution		<p>The following rights are recognized and protected: a) right to freely express and disseminate thoughts, ideas and opinions by word, in writing or by any other means of communication; b) right to literary, artistic scientific and technical production and creation; c) the right to academic freedom; d) the right to freely communicate or receive truthful information by any means of dissemination. The law shall regulate the right to the protection of the clause on conscience and professional secrecy in the exercise of these freedoms.</p> <p>Prohibition of prior censorship.</p> <p>The law shall regulate the organization and parliamentary control of the social communications media owned by the State or any public entity and shall guarantee access to those media by the main social and political groups, respecting the pluralism of society and the various languages of Spain.</p> <p>Freedom of expression is limited by respect for the constitutional rights, the legal provisions implementing them, and especially, by the right to honor, to privacy, to personal reputation and to the protection of youth and childhood.</p> <p>The confiscation of publications, recordings, or other information media may only be carried out by means of a court order.</p>
<p><i>Note:</i></p> <p>1) <i>Professional secrecy - In which laws? What are the criteria for secrecy?</i> As far as this Spanish Constitution article is concerned and according with the main interpretation, the professional secrecy mentioned here is only applied on journalists or media workers as mentioned later in 1.4. A journalist has the right to remain silent and not being punished if any judge in a trial asks him about his sources. But, it has still to be developed as a law after 30 years of Spanish Constitution existence. In practice, the lack of this law has been a source of confrontation between justice and journalists.</p> <p>2) <i>Which law is regulating State social communications media (see text in bold) – art. 16, 4, o Public Radio and Television Act. The 17/2006 Law is regulating State Social Communications Media (This is the name that Spanish Constitution gave to Public Media Service). However, no law regulating Public Media, –in fact, any other law–, could overcome the boundaries established by Spanish Constitution, which has pre-eminence over any law. It places the frame within the law has to be developed. Once a law, which develop a particular aspect of the Spanish Constitution as this one, has been approved, the regulation becomes law and can be applied.</i> <i>Management Board will determine the internal proceedings in order to guarantee the exercise of the right to access.</i> <i>Therefore, this principle is included and developed in the Public Radio and TV Act 17/2006.</i> <i>As for rules restricting free speech and affecting media pluralism, there are three main cases.</i> <i>First, Spanish Criminal Code establishes in its 490.3 article a penalty of imprisonment (6 to 24 months) for everybody who calumniates or insults any direct member of the Royal Family. Similarly, anybody who uses King images of any of his family in order to damage their prestige will be punish with a fine. (Art. 491.2. Spanish Criminal Code).</i> <i>Second case. Spanish Criminal Code establishes as well a punishment of 1 or 2 years of imprisonment for anybody who promotes or praises terrorism or its methods using any personal communication or media diffusion.</i> <i>Third case. Spanish Criminal Code establishes as well a fine for anyone who makes a public insult to the religious feelings, rites, and beliefs of any creed.</i></p>			
1.2. Freedom of /right to information	art. 105 Constitution		<p>The law shall regulate [...] access of citizens to the administrative files and records except where they may affect the security and defense of the State, the investigation of crimes and the privacy of individuals.</p>
<i>Is there – besides constitutional provisions – a specific act dealing with citizens’ or journalists’ access to public sector information?</i>	Law on Rules for Public Administration		Elaboration of art. 105 Constitution.
<p><i>Note:</i> There is no specific act on Freedom of Information. However, the Law 30/92 on Rules and Proceedings for Public Administration provides general rules for access to government records and documents. There is no distinction between ordinary citizens and journalists.</p>			

<p>Documents can be withheld if the public interest or a third party's interest would be better served by non-disclosure or if the request would affect the effectiveness of the operations of the public service. Access can also be denied if the documents refer to government actions related to constitutional responsibilities, national defence or national security, investigations, business or industrial secrecy or monetary policy. Accesses to documents that contain personal information are limited to the persons named in the documents. There are also restrictions for information protected by other laws including classified information, health information, statistics, the civil and central registry, and the law on the historical archives</p>			
<p>Are there specific rules dealing with journalists' access to events for news reporting?</p>			
<p><i>Note: Yes, but only in the field of sport through Law 21/97 on Broadcasting Sport Competitions and Events. It states that print or radio media can have free access to any sport event or competition without any limitation in order to protect the right of information. To protect audiovisual right holders, TV stations without rights can only have free access only in order to edit up to 3 minutes headlines.</i></p>			
<p>1.3. Explicit recognition of media pluralism</p>	<p>art. 2, 1 Law 17/2006 on Public Radio and Television (Public Radio and Television Act)</p>		<p>Public Radio and Television (PSM) has the objective of promoting pluralism.</p>
	<p>art. 3, 2, b Public Radio and Television Act</p>		<p>RTVE has to guarantee true and plural information, has to comply with the criteria of professional independency and political, social and ideological pluralism.</p>
	<p>art. 3, 2, e Public Radio and Television Act</p>		<p>RTVE has to promote territorial cohesion, linguistic and cultural plurality and diversity.</p>
	<p>Art. 28 Public Radio and Television Act</p>		<p>RTVE guarantees in its programming the expression of social, ideological, political and cultural plurality of the Spanish Society.</p>
	<p>Art. 10.c. <u>First RTVE Mandate Framework</u></p>		<p>RTVE programming will be broad enough to cover all of the options and opinions developing in Spain in order to provide to the Spanish citizen with a good level of interpretation and assessment on facts. The viewpoints included will be delimited by institutional, social or economic representation and by information interest.</p>
	<p>Art. 9 Law 10/1988 on Private Television (Private Television Act)</p>		<p>Granting concessions for private television broadcasting, the Government will take into account the need to guarantee free expression and plurality of ideas and opinions.</p>
<p>1.4. Protection of journalistic sources</p>	<p>art. 10 Deontological Code for the Journalistic Profession of the Federation of Press Associations of Spain (Journalist Code)</p>		<p>The right to keep professional secrecy is a right of a journalist, but it is also an obligation which guarantess the confidentiality of the sources of information. Therefore, a journalist shall guarantee the right of the sources of information to stay anonym, if so has been requested. However, this professional obligation shall exceptionally not be applied, if it has been proved that the source has consciously falsified information or if revealing the source is the only way to avoid serious and instant damage to people.</p>
	<p>Art. 19,20,21, 22 and 23 of <u>RTVE Corporation Information Statute (April 2008)</u></p>		<p>The professional secrecy has the aim to protect the decision of a journalist not to disclose his sources to media managers or owners, public institutions or individuals except for a reasoned judicial decision. RTVE will give legal support to its journalist to protect this right. Secrecy professional right is applied as well to the work materials of journalist. It will not be disclosed or revealed unless a judicial decision has been issued. RTVE will not reveal the authors of any information pieces with no signature, except if a judicial decision orders the opposite.</p>
<p>1.5. Right of reply</p>	<p>Law 2/84 on the Right of Rectification</p>		<p>Under Ordinary Law 2/84 of 26 January any person directly affected by publication of incorrect, damaging information may require the print or broadcast publisher to publish a corrected version, without comment and with the same prominence as the original. He has to claim this right within seven days after the publication. The publisher has to</p>

			<p>comply within three days. Failure to comply can invoke court action to determine what sort of correction is appropriate.</p> <p>The right is essentially concerned with fairness, since newspapers may continue to separately assert that their version is correct. Decisions as to the truth of the different versions may be determined by separate court action. There is no requirement for the subject of information.</p>
	Art. 3, 2, m Public Radio and Television Act	They have been implemented within the <u>First RTVE Mandate Framework</u> approved by Spanish Parliament in end June 2008. The article 28 changes the right of reply mentioned in Law 17/2006 to a right of rectification. It states that RTVE will follow the proceedings of Rectification Law 2/1984.	RTVE will develop proceedings that will guarantee the right of reply
1.6. Ratification of international instruments: - CoE's Framework Convention For The Protection Of National Minorities - UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Oct 2005)	-Yes -Yes		

TABLE 2. Editorial independence

Measure	Source	Scope of application	Key features
2.1. Journalists	art. 8 Journalist Code		To guarantee the necessary independence and fairness in carrying out his/her profession, the journalist must claim for himself and for the people working for him/her: a) The right to appropriate working conditions, as it refers to earnings, as well as to the material and professional circumstances in which he/she must carry out his/her tasks. b) The obligation and right to oppose to any evident intension to monopolize or oligopolize information, which might hinder political and social pluralism. c) The obligation and right to participate in matters of the journalistic enterprise in order to guarantee his/her freedom of information in a way which is compatible with the rights of the media in which he/she is expressing this freedom. d) The right to call on to the clause of conscience, when the media on which he/she depends on proposes a moral attitude which harms his/her professional dignity or which modifies substantially the editorial policy. e) The right and obligation to professional training which is up to date and complete.
	art. 18 Journalist Code		In order not to cause mistakes or confusion among the users of information, a journalist is obliged to make a formal and rigorous distinction between information and advertising. Therefore, it is considered ethically incompatible simultaneously practice journalism and advertising business. Equally, this incompatibility applies to all activities related to social communication which may imply a conflict of interests with the journalistic profession and its principles and norms.
	art. 19 Journalist Code		A journalist shall not accept, directly or indirectly, payments or rewards of other persons to promote, direct, affect or to publish information or opinions of any kind.
2.2. News / information programmes	art. 3, 2, b Public Radio and Television Act		RTVE has to guarantee true and plural information, has to comply with the criteria of professional independency and political, social and ideological pluralism in our society and distinguish and separate information and opinion.
	Art. 16, 4, o Public Radio and Television Act		The Management Board of RTVE will approve the creation, composition and functions of the organs destined to guarantee internal control and professional independency of information services.
	Art. 24 Public Radio and Television Act		There is an Editors Council within the RTVE ensuring and promoting independency and objectivity and truthfulness of informative content
<i>Note: This objective has been implemented through the approval of the RTVE Corporation Information Statute, which includes the creation of an Editor Council art. 39 to 58. This latter body will have as main objectives to ensure the independence of journalists, to inform on editorial guidelines, to write a style guide and to express their opinion on the Editor in Chief appointment. It is made up of 22 RTVE journalists and it started to work in middle July 2008</i>			
2.3. Other media content			
2.4. Subsidies/ Training of journalists (independence,			

ethic, recruitment, etc.)			
2.5. Consultative programming structure for participation of the public/citizens to media (i.e. a mechanism to allow citizens to participate in editorial decisions, under the form of e.g. an ombudsman, ethics or liaison committee, "Société des rédacteurs" ...)			

TABLE 3. Cultural pluralism

Measure	Source	Scope of application	Key features
3.1. Structural rules (guaranteeing or promoting access by the various cultural groupings to media companies' bodies, structures...)			
3.1.1. Special representation requirements in media company structures	Art. 23. Public Radio and TV Act		The Advisory Council of RTVE is made up by 15 members. 3 from Social and Economic Council 2 from Users and Consumers Council 1 from Foreign Office 1 from Youth Spanish Council 1 from Woman Institute 1 from disabled people bodies 1 from General Immigration Council 1 from TV Arts and Sciences Spanish Academy 1 from Cinema Arts Spanish Academy 1 University expert on media 1 member from advertisers organisations 1 member from Journalists organisations. Its main goals are: 1. Advising the Board of Directors on general programming strategies 2. To inform about the norms and criteria on social and public access to Public Broadcasting Service. 3. To inform on proposals of Mandate Frameworks, on the programming guidelines and on norms related to advertising admission.
3.1.2. Special representation requirements in media advisory bodies			
3.1.3. Legal or policy measures either prohibiting discrimination in recruitment or promoting equal opportunities (ethnic minorities, gender, age, disabled...)			
3.2. Representation of the various cultural groupings in the media			
3.2.1. Access to airtime for cultural groupings	Art. 16, 4, o Public Radio and Television Act		Cf. supra
	Art. 28, 2-3 Public Radio and Television Act		The right to access to RTVE will be granted a) in a global way, by participation of important social and political groups, as sources and providers of information and opinions b) in a direct way, by specific spaces different radio and television formats The different societies of the RTVE will guarantee the availability of the technical means and human resources, necessary for the realization of the right to access.

<p><i>Note: The RTVE mandate framework defines in its article 27 how this right will be developed. The Board of Directors of RTVE will establish a set of rules on formats, times and schedules, according to the general norms to be established by a still to be born Spanish Audiovisual Council. Therefore this right will remain useless until this latter body will be created.</i></p>			
3.2.2. Content obligations			
3.2.2.1. Promotion of European works	Art. 1, cinco Law 22/1999 j. art. 5 Law 25/1994 to insert Directive 89/552/EEC in the Spanish legal order		Television operators must reserve 51% of their annual broadcasting time for European Works. For that reason they must dedicate 5 percent of their annual revenues to the financing of European movies.
3.2.2.2. Promotion of European independent works	Art. 1, seis Law 22/1999 to modify Law 25/1994		Television operators must reserve 10% of their annual broadcasting time for European Independent Works, of which more than 50% can not be older than five years.
3.2.2.3. Promotion of national/regional works			
3.2.2.4. Language requirements	Art. 5 Law 25/1994 to insert Directive 89/552/EEC in the Spanish legal order		More than 50% of the time reserved for European Works (cf.supra) should be in one of the Spanish languages
3.2.3. Representation of minorities on the screen (e.g. presenting the news, in drama, movies...; can be engagement in an internal charter or can be imposed statutory)			
3.2.4. Subsidies (apart from general PSB funding)			
<p><i>Note: The Spanish Commission for the Telecom Market stated that the current subsidy scheme does not guarantee the sustainability of cultural and/or minority productions. Producers of this type remain dependent on the granting institution. There is a need for more objective criteria that would avoid discretionary decisions and manipulation of the productions towards one or the other ideological, political or artistic preference.</i></p>			
3.3. Accessibility (i.e. special measures to promote access to media contents by special needs groupings in society, like the elderly, disabled...)	Art. 3, 3 Public Radio and Television Act		PSM promote means that will avoid any form of discrimination towards disabled.
<p><i>Note: The RTVE mandate framework defines in its article 17 how this right will be developed: RTVE will progressively broadcasts its content with audio description for blind people, and subtitles and sign language for deaf.</i></p>			

TABLE 4. Political pluralism

Measure	Source	Scope of application	Key features
4.1. Structural rules (relating to the organization and structures of media companies/advisory bodies)			
4.1.1. Restrictions to politicians' ownership/control of media (avoid one dominating voice)			
4.1.2. Requirements of independence from political parties / politicians			
4.1.3. Incompatibility of political mandate with membership in media advisory or regulatory bodies			
4.1.4. Representation requirements in media companies' bodies (board of directors...)			
4.1.5. Representation requirements in media advisory bodies and/or regulators			
4.2. Content rules (relating to media programmes, press articles, other content)			
4.2.1. (Equal/proportionate) Access to airtime for political groupings			
4.2.1.a. Non-paid access, e.g. right to insert own programmes or messages on the public channels	Art. 60, 2 Organic Law 5/1985 on the General Electoral Regime (Spanish Electoral Code)		During election campaigns the parties participating in the elections have the right to free advertising space on PSM.
	Art. 61etc. Spanish Electoral Code		Free advertising space on PSM will be distributed between the participants taking into account the total number of votes obtained by that party during the last elections (no elected representative = 10 minutes, <5% of total votes = 15 minutes, between 5 and 20% of total votes = 30 minutes, ...) A special authority (Junta Electoral Central) is entitled to distribute this free advertising space and take notice of the decisions of the PSM regarding this issue.
	Organic Law 10/1991 on political advertising during elections on local public radio		Free advertising space on local radio during local elections.
	Organic Law 14/1995 on political advertising during elections on local television by		Free advertising space on local television during local elections Also for cable television
	RTVE Mandate Framework. Article 27		Defines the access to PSM from any social group, but especially from political parties. The Board of Directors of RTVE will establish a set of rules on formats, times and schedules, according to the general norms to be established by a still to be born Spanish Audiovisual Council.
4.2.1.b. Paid access: rules on political advertising	23 rd EPRA Meeting, Elsinore, Denmark		Permanent ban on paid political advertising for television broadcast. The Spanish Electoral Code permits paid electoral advertising on commercial

	17-19 May 2006 Background paper – Plenary <i>Political advertising: case studies and monitoring</i> EPRA Secretariat		radio stations, only during the election period
	Art 60, 1 Spanish Electoral Code		It is prohibited to make contractual arrangements about space for advertising with PSM [during election periods]
	Art. 1, 1 Organic Law 2/1988 regulating political advertising during elections on private television		It is prohibited to make contractual arrangements about advertising space on private television.
	Organic Law 10/1991 on political advertising during elections on local public radio		Prohibition to make contractual arrangements
	Organic Law 14/1995 on political advertising during elections on local television by		Prohibition to make contractual arrangements
4.2.2. Government announcements	Art. 27 Public Radio and Television Act		The Government can order to program and broadcast official declarations and communications of public interest, with indication of its origin.
	Art. 16 Private Television Act		Concession holders are obliged to broadcast, freely and with indication of its origin, communications and declarations which the Government at any given moment and for any given reason deems necessary in the public interest.
4.2.3. Impartiality obligations			
4.2.4. Fair representation of political viewpoints; special rules in election periods	Art. 26 Public Radio and Television Act		In election periods, electoral legislation will apply (cf. supra)
	Art. 66 Spanish Electoral Code		Respect to political and social pluralism, as well as the neutrality regarding the information distributed by PSM during election periods will be guaranteed by the organizational structure of and control over these PSM. Decisions of the organs of these media in this election period are to be enforced by the Junta Electoral Central.
	Art. 1, 2 Organic Law 2/1988 regulating political advertising during elections on private television		Respect to pluralism and values of equality within the programs distributed during the election period by private television broadcaster will be guaranteed by the Juntas Electorales cf. the regulations for PSM (cf. supra).

TABLE 5. Geographical pluralism

Measure	Source	Scope of application	Key features
5.1. Licensing policy fostering local/regional types of media (for instance: is part of the spectrum explicitly reserved for regional/ local media; are there any rules safeguarding the local character of these media once they are operating, e.g. restrictions to cooperate or centralize programming/advertising decisions...)	Spanish Constitution. Art 149. 21		Telecommunications and radio-communications are state competences. In practice, it means that state plans the national, regional and local radio and television frequencies, and grants national TV and radio licences.
	Spanish Constitution. Art 149.27		basic norms of the system of press, radio, and television and, in general, of the other means of social communication are state competences, without prejudice to the faculties which in their development and execution belong to the Autonomous Communities The Spanish regional powers, called Autonomous Communities, grants regional and local TV and radio licences according to the frequencies available and established by the Spanish State. They regulate them as well. This is why each Autonomous Community has its own requirements regarding local content, advertising centralization and other aspects of geographical pluralism.
	<i>Law 53/2002 on Taxation, Administrative Provisions and Social Affairs (Amendments to Local and Private TV acts)</i>		Modification of Law 41/1995 on Local Terrestrial TV. Only those cities or groups of cities that meet certain population thresholds will be allowed to have local digital terrestrial television stations. This Act is approved each year, together with the Budget Act. The main object of it is to introduce amendments to existing provisions, thus acting as a "container" of amendments. This modification of Local Terrestrial TV Law was implemented in 2004 and 2005 with the National DTT plan of frequencies, which implied a change from the typical local TV Spanish station based on villages and with small coverage to an enlargement to small towns TV station.

	<i>Law 62/2003 on Taxation, Administrative Provisions and Social Affairs (Amendments to Local and Private TV acts)</i>		This act introduces new provisions that oblige all digital TV concessionaires to broadcast original TV programmes for at least 4 hours a day and 32 hours a week, including the obligation to broadcast some of those original TV programmes during prime time (between 13:00 and 16:00 and between 20:00 and 23:00). These provisions also set limits to networking agreements relating to the provision of regional or local digital terrestrial TV services: -a limit of 5 hours by day and 25 hours by week of networked content - Programming with content related with the TV geographical scope has to cover at least 4 hours during prime time as defined before. From this thresholds fixed by National Law, which are common across Spain, each Autonomous Community has increased or added different requirements on networked and syndicated programming and advertising. Usually they follow the national limits.
	<i>Law 10/2005 on Urgent Measures for the promotion of Digital Terrestrial Television, Cable TV liberalisation and promotion of media pluralism</i>		Art. 3. Modification of Law 41/1995 on Local TV. Art. 3.10. No legal or natural person may own more than one concession in the same area in which the concessions are granted.
	<i>Law 41/1995 on Local Terrestrial Television by Cable (Local Television Act)</i>		A concession can be granted by the Autonomous Communities to form a local terrestrial television for broadcasting by cable. In principle only one concession per municipality. Art. 6,g of this Law explicitly states that this station should be reserved for the promotion of local interests, stimulating the participation of local social groups, in order to nourish, promote and defend local culture and society.
	<i>Additional disposition 18 to Law 56/2007 of 28 December 2007 on Measures to the promotion of the information society – non-profit community television</i>		Non-profit, community broadcasting: The eighteenth additional disposition of the State Law 56/2007 of 28 December relating to Measures to foster the Information Society foresees the planning of frequencies for indirect management of local service of proximity television by non-profit organizations, although at the same time it states that its planning won't have priority in relation to other planned or would-be planned services. This non-profit proximity television shall be free-to-air and its programming shall consist of original contents with relation to the region or community considered as its target. Neither advertising nor teleshopping are allowed, only sponsorship. The organization responsible of this local proximity television service must have no direct or indirect conventional television licence. This 5-year-licences will be given by the regional governments and could be renewed a maximum of three times.
<i>Note: No implementation yet</i>			
5.2. Structural measures: access of various localities to media (e.g. obligation to have branches throughout country)	<i>Art. 7, 4 Public Radio and Television Act</i>		RTVE will adopt the necessary territorial structure in order to attend its function of PSM, provide regionalized content, and contribute to the development of interterritorial cohesion.

5.3. Content obligations: requirements to cover local events, etc.	<i>Law 62/2003 on Taxation, Administrative Provisions and Social Affairs (Amendments to Local and Private TV acts)</i>		As mentioned before, this law establishes as a requirement at least 4 of the 6 prime-time hours have to be related with the geographical scope of licence concession.
5.4. Regional State Aids			
5.5. Rules on national minorities			
5.6. Rules on social inclusion of remote areas (Aménagement du territoire)	Art. 7, 4 Public Radio and Television Act		RTVE [...] will attend the fact of the islands and the conditions of remote areas

TABLE 6. Pluralism of ownership/control

Measure	Source	Scope of application	Key features
6.1. Sector specific rules limiting media ownership	Art. 9.a, in fine Private Television Act		Granting concessions for private television, the Government will take into account the need for diversification of sources providing information and the objective to avoid abuse of dominant market power and competition restricting practices.
6.1.1. Moment of intervention			
6.1.1.1. <i>At moment of market entry (licensing procedure)</i>	Art. 10, e Private Television Act		A company that already holds a concession for private television or participates via shares in or effectively controls another company with a concession cannot obtain a second concession.
<i>Note: Can a company obtain a concession if it holds less than 5% shares (cf. art. 19 Private Television Act)? Yes. The Art. 19 sets limits to the art. 10 general principles.</i>			
	<i>Law 10/2005 on Urgent Measures for the promotion of Digital Terrestrial Television, Cable TV liberalisation and promotion of media pluralism has modified 4.3 article of the Private Television Act.</i>		The new Act abrogates article 4.3 of the Act 10/1988, which limited the number of national analogue terrestrial TV concessions to three. Now, the Government may grant new national analogue terrestrial TV concessions, if there are frequencies available. The new Act has also amended the Third Additional Provision of Act 10/1988, which now establishes that it will be possible to simultaneously hold a national analogue terrestrial TV concession and a digital one until the analogue switch-off takes place.
<i>Note: One new national TV licence (La Sexta) has been granted since then.</i>			
6.1.1.2. <i>At the moment of mergers & acquisitions</i>	Art. 19 Private Television Act		Art. 19 is formulated as a general prohibition
6.1.1.3. <i>Other (constant monitoring/supervision)</i>			
6.1.2. <i>Scope (i.e. trying to prevent one of the following forms of concentrated ownership and/or control)</i>			

6.1.2.1. Monomedia	Art. 19 Private Television Act		<p>Physical or legal persons that hold, directly or indirectly, 5% or more of the share capital or of the voting rights of a licence-holder cannot have a significant participation in any other company within the same coverage area. Physical or legal persons that hold, directly or indirectly, 5% or more of the share capital or of the voting rights of a national licence-holder cannot have a significant participation in a regional or local company if the population covered in each one of them exceeds 25% of the national total. Likewise, physical or legal persons that hold, directly or indirectly, 5% of the capital or of the voting rights of a regional licence-holder (autonomous communities) cannot have a significant participation in any other local company with the same coverage, if the population covered exceeds 25% of the regional total.</p> <p>Where an individual has a significant part of the share capital or the voting rights of a national, regional or local licence-holder, he cannot have a significant interest in national, regional or local licence-holders whose programs can be simultaneously received in the same area.</p> <p>Significant participation means holding directly or indirectly 5% or more of the share capital or of the voting rights of a licence-holder</p>
	Law 31/1987 on Regulation of Telecom		In the radio sector, an individual or legal entity cannot hold more than one AM licence and more than two FM licences in an overlapping area, under the condition that pluralism and diversity are being guaranteed in that area.
<i>Note: This particular rule has been deleted and modified recently. See text below.</i>			
	Law 10/2005 on Urgent Measures for the promotion of Digital Terrestrial Television, Cable TV liberalisation and promotion of media pluralism. The art. 1 modifies Law 31/1987		A natural or legal person may control up to 50% of the radio concessions available in a certain area, insofar the total number of overlapping radio concessions controlled in that area is not above five. A person can also control up to a third of the radio concessions with total or partial coverage of the State. Where there is only one frequency available in a particular area, no natural or legal person may control more than 40% radio licences of that kind in the same Autonomous Community. These percentages will be calculated with the public radio stations excluded and the limits will be applied separately to the analogue and to the digital radio stations.
6.1.2.2. Crossmedia			
6.1.2.3. Vertical integration with networks			No specific rules on vertical media concentration exist. General competition rules apply (see 6.4)
6.1.2.4. Integration with advertising sector			
6.1.2.5. Integration with other (e.g. energy) sectors			
6.1.2.6. Control over both commercial and public media			
6.1.3. Criteria used to define thresholds for maximum ownership and/or control			
6.1.3.1. Number of licences			
6.1.3.2. Market shares			
6.1.3.3. Circulation and audience shares			
6.1.3.4. Capital shares	Art. 19 Private Television Act		5%
6.1.3.5. Voting shares	Art. 19 Private Television Act		5%

6.1.3.6. Advertising revenues			
6.1.3.7. Involvement in number of media sectors			
6.2. Sector specific rules preventing cooperation between media companies	Art. 7 Local Television Act		Local terrestrial TV licence-holders cannot create a network or enter into networking agreements with other licence-holders. Networking programming is defined as 25% of total programming. They may do so only after the authorization of the Autonomous Community they belong to.
6.3. (Sector specific or general) rules preventing foreign (non-EU) ownership	Art. 13 Local Television Act		Non-EU nationals cannot hold, directly or indirectly, more than 25% of the share capital of a licence-holder.
	Law 31/1987		Same threshold as above for AM or FM licences, unless reciprocal arrangements apply.
6.4. General competition rules			
6.4.1. Antitrust			
6.4.1.1. Specific provisions for media sectors (e.g. public interest test...)			
6.4.1.2. Case law in media sectors (examples of leading cases; any specificities?)			
6.4.2. Merger control			
6.4.2.1. Specific provisions for media sector (e.g. possibility for government to overrule NCA decision, public interest test...)			
6.4.2.2. Case law in media sectors (examples of leading cases; any specificities?)			Two important cases should be mentioned here. In 2002, the only two satellite pay TV platforms that existed in Spain – Canal Satélite Digital (owned by Sogecable) and Vía Digital (owned by DTS/Telefonica) – merged. This merger was cleared by the Spanish competition authority, but only with multiple behavioural remedies set by the Spanish government. These remedies mainly concerned the vertical effects of the transaction and involved, amongst others, the granting of platform access to other TV channels, the withdrawal of Sogecable’s preferential rights concerning the acquisition of films and thematic channels produced by the major film and film distribution companies (the "majors"), as well as the prohibition on all companies belonging to the Sogecable group from entering into agreements or strategic alliances regarding the media sector with any company belonging to the Telefónica group. In 2007, when Sogecable wanted to acquire sole control over Audiovisual Sport SL (AVS), a company created to acquire and licence Spanish football TV broadcasting rights, the Spanish competition authority imposed a number of behavioural remedies to tackle competitive concerns of a vertical nature. The remedies were aimed at preventing a vertically integrated operator with exclusive rights over a quasi-essential input (football broadcasting rights) from precluding access to competing operators in the downstream market (the pay TV market) to such input. Most important remedies involved the granting of access by third parties to football broadcasting rights, the elaboration of a procedure for the selection of matches and timetables, agreed upon by both Sogecable/AVS and third parties and a limitation on the length of wholesale contracts between Sogecable/AVS and the football clubs.
6.5. Transparency obligations			
6.5.1. Transparency towards consumer (e.g. identification obligation; cf. Art. 3a)			

AVMS Directive)			
6.5.2. Transparency obligations towards regulator or in general (info on capital structure, balance sheets, either in specific media laws or in general company laws...)	Art. 20, Art. 21 j. art. 21bis Private Television Act		Information on the licence holders and all relevant transactions affecting them are recorded in the National Special Registry for Private Terrestrial Television Broadcasters within the Ministry of Industry, Tourism and Trade. Changes resulting in non-compliance with the provisions of art. 19 should be communicated to the Secretaria de Estado de Telecomunicaciones y para la Sociedad de la Informacion or to the competent Autonomous Community.

TABLE 7. Pluralism of media types and genres

Measure	Source	Scope of application	Key features
7.1. Minimum service in a number of programme strands for commercial / community / public service media			
7.1bis. Special framework for community media (“medias associatifs”): Is there a special legal framework granting protection to community media (including rules determining the criteria - e.g. being independent of political parties, non-profit, respecting the law, etc. - in order to qualify as community media; granting certain privileges to that type of media, like guaranteed access to spectrum or networks, etc.).	<i>18th additional provision of Law 56/2007 on Information Society Promotion Measures</i>		The state will plan local TV frequencies for non-profit organisations, if there is enough frequencies available. Advertising and teleshopping are forbidden, but not sponsorship. In order to have the NGO attached to territory, it has not have been granted any another TV licence national, regional or local.
<i>Note: As the National Government has still not developed the details through an specific regulation, there is no direct impact, therefore it is still to be seen the effectiveness of this provision.</i>			
7.2. Events list (please indicate what type of events are listed, e.g. only sports events or also cultural, political events...)	Resolution of 25th June 2007 on listed sport events made by the Presidency of the Sport Events Transmission and Broadcasting Council for the season 2007-2008		Beijing Olympic games: Opening and closing ceremonies. Sports with Spanish participation. Athletics, swimming, gymnastic, tennis, basket and handball. World Athletics Championship. Formula 1. Spanish Grand Prix. Basketball: Official matches of Spanish Team. Handball: European Championship. Final and Spanish matches. Cycling: Last hour of Spanish Vuelta. World Championship. Soccer: Spanish Team matches. Final Spanish Cup. 1 Champions League match with the Spanish Team. Final. UEFA Final, if an Spanish team is playing European Championship. Spanish participation and final and opening game. Motorcycling: Spanish Grand prix. Tenis: Davis Cup, if the Spanish Team is playing. Roland Garros, Semi-final and final if a Spanish player is playing.
<i>Note: Only Sport Events.</i>			
7.3. Short news reporting	Art. 2 of Law 21/97 on Broadcasting Sport Competitions and Events.		It states that print or radio media can have free access to any sport event or competition without any limitation in order to protect the right of information. To protect audiovisual right holders, TV stations without rights can only have free access only in order to edit up to 3 minutes headlines.
<i>Note: Only Sport Events.</i>			
7.4. Fixed book price	Act for Reading, Books and Libraries (2007)		double system of fixing book prices and making schoolbooks free of charge
7.5. Public service media			

<p><i>Note: The new RTVE law, which for the first time has established a broad definition of a public service established a commitment to a complete change of its management structure in an attempt to make it independent from political control of the Spanish Government and at less extent of the Parliament and to avoid a new mismanagement of public money. It has to be said that the Government has respected its commitments made possible the main structural and managerial changes defined in this law. This is a big step for Spanish standards. However, it is still too early to assess a general positive impact on quality programming and on news independency, even if some positive results could be perceived. This law has not developed the most significant financial measures, it has been a task of the Economy Department, which has devised and applied a rationalisation plan, which has resulted in a significant downsizing of the staff (40%) and reducing the programming hours for regional language programmes that RTVE has in the various autonomous communities. Simultaneously the Spanish State has begun to take on part of its debt (3,180 million euros) as stipulated in the Spanish National Budget Law for 2007 and 2008. All of this is taking place within a context where TVE's first channel is progressively losing viewers (in 2006 it was the third most viewed channel, with 18.3% of the share, behind Tele 5 and Antena 3), while RNE continues to rank as the fourth most listened to radio, with an audience of close to 1.2 million listeners.</i></p>			
7.5.1. Structural rules - organization			
7.5.1.1. Independence (from government, political powers, economic powers; is this explicitly guaranteed, how?)	art. 5, 3 Public Radio and Television Act		RTVE will be governed autonomously and will act functionally independent regarding the Government and the General State Administration
	Art. 15, 6 Public Radio and Television Act		The members of the Management Board are absolutely independent in the exercise of their functions. They can not receive instructions, directives or any type of imperative indication of the Government nor the General State Administration or other institutions or entities.
<i>Note: Parliament has chosen the first management board members along party lines.</i>			
	Art. 15, 1-2 Public Radio and Television Act		1. Membership of the Management Board is a full time occupation and the regime of incompatibilities that applies to the higher officials of the General State Administration. In any case it is incompatible with a membership of parliament. 2. Members of the Management Board can not hold any direct or indirect interest in companies dealing with audiovisuals, discographics, cinema, video, press, publicity, informatics, telecommunications, services of the information society or any other type of entity linked to the supply of material or programs to the RTVE.
7.5.1.2. Election of management, composition of board members... (government? Parliament? Other?)	Art. 10-11 Public Radio and Television Act		Management Board (main governing body) of the RTVE consists of twelve members, eight appointed by Congress and four by the Senate
	Art. 11, 4 j. art. 17 Public Radio and Television Act		The President of the Management Board will be elected by the Congress
7.5.1.3. Specific representation requirements for board of directors, other bodies	Art. 10 Public Radio and Television Act		Equal representation of men and women in the Management Board.
	Art. 11 Public Radio and Television Act		Two of the members of the Management Board appointed by the Congress will be elected among candidates proposed by the main trade unions.
7.5.1.4. Advisory bodies: ensured broad representation of cultural, political and geographic groupings	Art. 23 Public Radio and Television Act		The Advisory Board will consist of 15 members, as follows: 3 from the Economical and Social Council, 2 from the Consumers and Users Council and 1 from the Ministry of External Affairs, Council of Spanish Youth, Woman Institute, representative entities of disabled persons, General Emigration Council, Academy for Art and Television Sciences, Academy of Cinema Art, appointed by the University Coordination Council among experts in Social and Communication Science, appointed by the representative entities of advertisers, appointed by the representative entities of state press
<i>Note: The first meeting of the Advisory Board took place in July 2007.</i>			
7.5.1.5. Employment: ensured broad representation of cultural, political and geographic groupings			
7.5.2. Structural rules - funding			
7.5.2.1. Source of funding (state / tax money,	Art. 33 Public Radio and		The compensations for the effectuation of PSMS will be inscribed in the General

public / licence fees, advertising, merchandising...)	Television Act		State Budget, for every entity of the PSM separately. These compensations have an annual character and can not surpass the net cost of PSMS. Net cost is the difference between the total of the costs of every PSM and their income other than the compensations.
<i>Note: What are these other sources of income? Advertising, sponsorship, sale of IP rights, merchandising, etc.</i>			
7.5.2.2. Sufficiency of resources (taking into account the missions and new media activities)	Art. 29 Public Radio and Television Act		RTVE and its associated societies have an own patrimony.
7.5.3. Definition of public service remit			
7.5.3.1. Obligation to provide a varied and pluralistic offer	Art. 2, 1 Public Radio and Television Act		The objective of PSM is the production, edition and broadcasting of a whole of channels of radio and television with a divers and balanced program for any type of public, covering all the types and destined to satisfy needs of information, culture, education and entertainment of the Spanish society; distribute its cultural identity and diversity [...]
7.5.3.2. Obligation to engage in new media activities	Art. 3,3 Public Radio and Television Act		Part of the function of the PSM is the development of the Information Society. For that reason PSM participate in technological evolutions, using different technologies and ways of diffusion and develop new connected or interactive services to enrich or complement its offer and to bring the citizens closer to the Public Administration.
7.5.4. Content obligations (not yet mentioned in table 3, 4 or 5)	Art. 25 Public Radio and Television Act		The program-contract will establish the specific objectives and obligations which the different radio and television channels, and connected and interactive services as well as their programs must comply with. RTVE must give special attention to social groups who need specific attention given their needs and demands, such as children and youngsters. This task of PSM should be extended to issues relevant to a majority of the population or to certain groups. At the same any form of discrimination because of incapacity should be avoided.
<i>Note: The program-contract has still to be approved by Government before the end of 2008 but the last draft establishes the following aspects: Two new digital channels in 2010, one in HD and other on culture to fulfil culture goals as established in Public Radio and TV act. From the 65000 hours broadcasted today, RTVE has to add 7000 hours more in 2010 through the 8 TV digital channels. No other program-contract content has been made public.</i>			
7.5.5. Universal coverage obligations	Art. 2, 3 Public Radio and Television Act		Radio and television broadcasting services should have the objective to have a universal coverage, meaning the highest possible coverage within the national territory.

TABLE 8. Distribution (networks/network facilities/print distribution)

Measure	Source	Scope of application	Key features
8.1. Guarantees for 'public contents' to be distributed (must carry or other)	<p><u>Law 42/1995 of December 22, 1995 on cable</u> (art. 11)</p> <p><u>Royal Decree 2066/1996 of Sept. 13, 1996</u> (arts. 26, e), f) and g)</p> <p><u>Law 32/2003 of November 3, 2003 (General Telecommunications Law)</u>, additional provision 7 and transitional provision 6, § 3</p> <p><u>Royal Decree 920/2006, of July 28, 2006</u> on the conditions for the provision of television services by cable</p>		<p>Cable operators which have been granted an ‘administrative authorization’ for distribution of TV services have a must-carry obligation</p> <p>NB The current must-carry obligations arose automatically from the obligations attached to the ‘administrative concession’ (now converted into an administrative authorisation) granted to cable operators.</p> <p>NB No general interest objectives specified in the 1995 law.</p> <p>NB According to the General Telecommunications Law (2003), the government, by secondary legislation, can impose as public service obligations must-carry obligations where this is necessary to meet clearly defined general interest objectives.</p> <p>No such regulation adopted so far.</p> <p>Until switch-off, the TV channels subject to must-carry obligations are:</p> <p>1. The nationwide broadcasting services provided over terrestrial platforms:</p> <ul style="list-style-type: none"> • TVE 1 (TVE, S. A.) • La Segunda (TVE, S. A.) • Antena 3 TV (Antena 3 TV, S. A.) • Telecinco (Gestevisión-Telecinco, S. A.) • Cuatro (Sogecable, S. A.) • La Sexta (Gestora de Inversiones Audiovisuales La Sexta, S. A.) <p>2. Broadcasting services provided by the public service broadcasters in the autonomous communities</p>
8.2. Guarantees for network operators to distribute 'public contents' (must offer or other)			<p>NB No must-offer obligations via ex ante regulation</p> <p>NB On November 29, 2002 the Spanish Council of Ministers authorised the merger between Sogecable/Via Digital (satellite pay-TV platform) by imposing a number of <u>conditions</u> (34) for five years (i.e. until the end of 2007).</p> <p>NB They include the following:</p> <ul style="list-style-type: none"> • The obligation to offer to third parties at least one premium channel (equivalent to ‘Gran Vía’, channel offered by Vía Digital) – Condition number 9. • The obligation to offer to third parties the thematic channels directly produced by Sogecable or commissioned by Sogecable to third parties – Condition number 10. <p>If Sogecable acquires exclusive retransmission rights for the Spanish Football League and S.M. el Rey Cup and its summaries, it must sublicense those rights to free to air and pay per view TV.</p>
<i>Note: The general situation remains unchanged: no must-offer obligations. The Government conditions of the merger between Sogecable and Via Digital have expired at the end of 2007.</i>			
8.3. Ex ante regulation (in electronic communications): SMP market analysis for broadcasting transmission			
8.3.1. Implementation of market analysis procedure in ECNS Directives	<u>CMT final decision on market 18</u> (February 2006)		Included in market analysis: Terrestrial analogue and digital television broadcasting transmission services

			<p>delivering broadcast content to end users in Spain.</p> <p>Not included: TV transmission services on cable networks TV transmission services on cable networks TV and radio satellite transmission services Terrestrial transmission services for radio broadcasting</p>
8.3.2. Result of (first) round of market analysis of market	<u>CMT final decision on market 18</u> (February 2006)		<p>Access obligations imposed on Abertis (SMP): Includes <i>inter alia</i>:</p> <ul style="list-style-type: none"> physical access (collocation) to Abertis' technical infrastructure or other modalities of infrastructure sharing, including conduits, buildings or masts, in every Abertis' transmission and retransmission sites; and subsidiary; interconnection to Abertis' infrastructure at every transmission and retransmission site. <p>NB Abertis has been subject to an access obligation in Catalonia since 2003 as a result of the conditions <u>imposed</u> by the Spanish Council of Ministers on the merger between Abertis/Retevisión.</p> <p>Price regulation imposed on Abertis: Cost-orientation (not further defined). CMT will define Abertis' cost accounting system at a later stage.</p>
8.4. Ex ante regulation for associated facilities of networks, so-called 'bottleneck facilities'			
8.4.1. Conditional access	<u>Royal Decree 2296/2004 of December 10, 2004</u> on electronic markets, access to networks and numbering (art. 24 and 25)		<p>Responsible authority: CMT</p> <p>Scope of access: Similar provisions to Annex 1 of the Access Directive</p> <p>Who has obligation to provide access?: Operators of conditional access systems in the provision of digital radio and television broadcasting services irrespective of the means of transmission</p> <p>Remuneration: Fair, reasonable and non-discriminatory conditions</p>
8.4.2. EPG (or other search tools)	<p>Law 32/2003 of November 3, 2003 (<u>General Telecommunications Law</u>)</p> <p><u>Royal Decree 2296/2004 of December 10, 2004</u> on electronic markets, access to networks and numbering.</p>		<p>Regulatory authorities: <u>Ministry of Industry, Tourism and Trade</u> and <u>CMT</u>. No definition of EPG.</p> <p>In accordance with the Access Directive, the law specifies that CMT may impose obligations on operators to provide access to EPGs on fair, reasonable, and non-discriminatory terms to ensure accessibility for end-users to digital radio and television broadcasting services specified by the government. No decisions taken.</p>
8.4.3. API	<p>Law 32/2003 of November 3, 2003 (<u>General Telecommunications Law</u>), Annex III § 15</p> <p><u>Royal Decree 2296/2004 of</u></p>		<p>Defines APIs as '<i>the software interface made available by broadcaster operators or service providers and the digital television advanced resources equipment for digital radio and television</i>'.</p>

	December 10, 2004 on electronic markets, access to networks and numbering.		In accordance with the Access Directive, Law 32/2003 of November 3, 2003 (<u>General Telecommunications Law</u> , additional provision 7) and <u>Royal Decree 2296/2004</u> (art. 23 e)) specifies that CMT may impose obligations on operators to provide access to APIs on fair, reasonable and non-discriminatory terms to ensure accessibility for end-users to digital radio and television broadcasting services specified by the government. According to the <i>Comision Seguimiento TDT</i> measures should be taken to boost interactive services based on MHP and extend the use of this standard to cable and satellite.
8.4.4. Other			
8.5. Interoperability requirements			
8.6. Specific rules for distribution systems in print media			
8.7. General competition law			
8.8. Policies fostering distribution systems (libraries, broadband networks...) - are these in line with EU state aid rules?			
8.9. State Aids to distribution platforms and/or schemes (can be based on one or more of the following criteria: - Regional - Linguistic/minority - National)			

TABLE 9. Supervision

Measure	Source	Scope of application	Key features
9.1. National Regulatory Authority			Audiovisual Council of Catalonia - CAC (www.cac.cat)
	Art. 40 Public Radio and Television Act		The Audiovisual Authority supervises the compliance of RTVE with its mission as PSM. Therefore it can adopt recommendations or resolutions. The Authority can demand all necessary information of RTVE.
<p><i>Note: Spain is the only big country in Europe where there is no National Independent Audiovisual Regulatory Authority. The Spanish Government has its creation and development as the next step in audiovisual media policy. It will be created with a specific law, and there is no draft available yet. Until then it is up to the Ministry of Industry, Tourism and Trade, the Competition National Authority and the Telecommunications Market Commission to deal with audiovisual matters. A part from Navarra, Catalonia and Andalusia have a Regional Regulatory Authority as well. Catalonia is the most advanced case, because it controls licence procedure and awards radio and tv regional and local stations.</i></p>			
	Art. 39 Public Radio and Television Act		Parliament exercises the parliamentary control on PSM. RTVE informs the Congress and the Senate on an annual basis about the execution of the program-contract and the framework contract.
<p><i>Note: Is this control sufficient, given the fact that there is no Audiovisual Authority yet? No, because the first program-contract is still to be approved and therefore there are only general aims and goals from Public Radio and Television Act and from the Mandate Framework. It is difficult for Parliament to verify if these objectives have been accomplished. When the specific numbers on quota programming, in-house production, and minority content are in place, Parliament will have an easier task. But even then, it is up to the Audiovisual Authority to monitor how and at what cost public service remit is done. Briefly, Parliament has a minor role in monitoring the PSM, but a major role in defining the framework contract.</i></p>			
	Cullen International Study		<p><u>Ministry of Industry, Tourism and Trade</u> has separate responsibilities in telecommunications matters and on audiovisual matters. In particular:</p> <ul style="list-style-type: none"> • frequency allocation, allotment and assignment; • supervision and sanctioning powers, in particular on content matters at national level. • defines the general audiovisual media policy; • grants national broadcasting licences; <p>NB defines proposals for the regulatory framework for radio and TV broadcasting, including content and protection of industrial property in the audiovisual field.</p> <p>NB</p> <p>All regional administrations have the same responsibilities on regional audiovisual matters. They may be carried out by the regional governments directly or by independent regional audiovisual councils such as in <u>Cataluña</u>, <u>Navarra</u> and <u>Andalucía</u>.</p> <p>Responsibilities include:</p> <ul style="list-style-type: none"> • granting of regional/local broadcasting licences; and <p>NB controlling content being broadcast.</p>
9.1.1. Structure/ organisation			
9.1.1.1. Guarantees for independence			

9.1.1.2. Representation requirements			
9.1.2. Credibility and efficiency			
9.1.2.1. Sufficient resources			
9.1.2.2. Tasks and duties			
9.1.2.3. Effective sanctioning powers			
9.1.3. Cooperation with other regulators			
9.2. Press Council			
9.2.1. Broad representation of sector			
9.2.2. Sufficient resources			
9.2.3. Credibility			
9.3. Competition Authority			La Comisión Nacional de la Competencia (http://www.cncompetencia.es/)
<p><i>Note: A new competition Act entered into force in Spain on September, 1st 2007. The new Act entails a significant reform of the Spanish competition regime and brings in further harmonisation of Spanish competition law with the EU rules. The new Act replaces the individual authorisation system for agreements by a directly applicable legal exception system. It also allows for the private enforcement of national competition rules.</i></p> <p><i>From an institutional standpoint, the most relevant change is the creation of a single competition authority that will replace the traditional two-tier system. The enforcement tools of the new authority are enhanced with the introduction, for the first time in Spanish competition law, of leniency provisions, as well as the power to conduct inspections in private homes.</i></p> <p><i>Regarding merger control, the Government will see its powers decrease whereas those of the new competition authority will be extended.</i></p>			
9.3.1. Structure/ organization (What this row should learn is whether there is a problem for media pluralism because NCA does not function properly; it should not contain an in-depth analysis of functioning of NCA!)			
9.3.1.1. Guarantees for independence	Art. 14 Competition Act		The Council of Ministers may intervene in the economic concentration control procedure in accordance with Article 60 of this Act If that concentration could be against the general interest.
	Art. 60 Competition Act		<p>1. The Minister of Economy and Finance may refer the decision on the concentration to the Council of Ministers for reasons of general interest when, in the second phase, the Council of the National Competition Commission:</p> <p>a) Has resolved to prohibit the concentration.</p> <p>b) Has resolved to subordinate its authorisation to the fulfillment of certain commitments proposed by the notifying parties or conditions.</p> <p>2. The resolution of the Minister of Economy and Finance shall be communicated to the National Competition Commission at the same time as its notification to the interested parties.</p> <p>3. The Council of Ministers may:</p> <p>a) Confirm the resolution issued by the Council of the National Competition Commission.</p> <p>b) Decide to authorise the concentration, with or without conditions. This decision must be duly justified on reasons of general interest other than protecting competition, in accordance with the provisions of Article 10.</p> <p>Before adopting the corresponding Decision, the National Competition Commission may be requested to issue a report.</p>

			<p>38</p> <p>4. After the periods indicated in Article 36 have elapsed and neither the Minister of Economy and Finance nor the Council of Ministers have adopted a decision, the express resolution of the Council of the National Competition Commission in the second phase shall be effective, immediately executive and shall bring the administrative procedure to an end, with the understanding that it has decided to:</p> <p>a) Subordinate the authorisation of the concentration to the commitments or conditions set out in the aforementioned resolution.</p> <p>b) Prohibit the concentration, and in such circumstances the Council of the National Competition Commission may:</p> <p>1. Order that the concentration is not carried through, when it has not already been executed.</p> <p>2. Order that the necessary measures be taken to restore effective competition, including deconcentration, when the concentration has already been executed.</p> <p>5. The Decision of the Council of Ministers shall be communicated to the National Competition Commission at the same time as its notification to the parties.</p>
<p><i>Note: Is this a balanced system (insofar it is already possible to evaluate)? The NCA impact on the audiovisual sector has been reduced to two sport rights cases (according to the 2007 annual report), and therefore it is too early to assess a judgement on the Spanish NCA.</i></p>			
	Art. 19 Competition Act		<p>1. The National Competition Commission is a Public Law institution with its own legal personality and full public and private capacity, attached to the Ministry of Economy and Finance, which shall exercise efficacy control over its activity. The National Competition Commission shall develop its activity and fulfil its aims with organic and functional autonomy, fully independent of the Public Administrations, and subject to this Act and the rest of the legal system.</p>
	Art. 29 Competition Act		<p>Appointment of organs by the Government on the proposal of the Ministry of Economy and Finance.</p>
	Art. 31 Competition Act		<p>Incompatibilities:</p> <p>1. The Chairman, the Council Members and the Director of Investigation of the National Competition Commission, in their capacity as senior posts of the General State Administration, shall perform their function with absolute dedication and shall be subject to the system of incompatibility of activities established in general for senior posts of the General State Administration in Act 5/2006, of 10 April, on regulation of conflicts of interests of the members of the Government and of the Senior Posts of the General State Administration and in their developing provisions, and in the Decision of the Council of Ministers of 18 February 2005, approving the Code of Good Governance of the members of the Government and of the Senior Posts of the General State Administration.</p> <p>2. On ceasing their employment and during the following two years, the Chairman and the Council Members of the National Competition</p>

			Commission may not exercise any professional activity related to the activity of this Commission.
9.3.1.2. Representation requirements			
9.3.2. Credibility and efficiency			
9.3.2.1. Sufficient resources	Art. 22 Competition Act		<p>1. The National Competition Commission shall have the following assets and economic means with which to fulfil its aims:</p> <p>a) The allocations established every year charged to the National Budget.</p> <p>b) The assets and rights that constitute its equity, and the products and income from the equity.</p> <p>c) Income obtained from the liquidation of rates accrued through the activities of service provision derived from exercising the competences and functions attributed by this Act. In particular, the rates regulated in Article 23 of this Act shall constitute income of the National Competition Commission.</p> <p>d) Any others that may be legally attributed to it.</p>
	Art.23 Competition Act		<p>1. The rate for analysis and study of concentration operations shall be governed by the provisions of this Act and by the general regulations regarding rates. Rate management shall be carried out by the National Competition Commission under the terms established by regulations.</p> <p>2. Conducting analysis of concentrations subject to control in accordance with Article 8 of this Act constitutes the taxable event of the rate.</p> <p>3. Persons who are obliged to notify in accordance with Article 9 of this Act shall be the taxpayers of the rate.</p> <p>4. The rate shall be accrued when the taxpayer submits the notification set out in Article 9 of this Act. If, at the time of the notification, self settlement without income is submitted, its levying shall be by the attachment procedure, without prejudice to the National Competition Commission handling the corresponding proceedings.</p> <p>5. The rate quota shall be:</p> <p>a) 3,000 euros when the global turnover in Spain for all the participants in the concentration operation is equal to or less than 240,000,000 euros.</p> <p>18</p> <p>b) 6,000 euros when the global turnover in Spain of the participating undertakings is in excess of 240,000,000 euros and equal to or less than 480,000,000 euros.</p> <p>c) 12,000 euros when the global turnover in Spain of the participating undertakings is in excess of 480,000,000 euros and equal to or less than 3,000,000,000 euros.</p> <p>d) A fixed sum of 24,000 euros when the turnover in Spain for all the participants is in excess of 3,000,000,000 euros, plus an additional 6,000 euros for every 3,000,000,000 euros in which the aforementioned turnover exceeds the above sum, up to a maximum limit of 60,000 euros.</p> <p>6. For concentrations notified through the abbreviated form set out in Article 56 of this Act, a reduced rate of 1,500 euros shall apply. In the event that the National Competition Commission, in accordance with Article 56, decides that the parties should submit the ordinary form, they must pay off the corresponding additional settlement.</p>

9.3.2.2. <i>Tasks and duties</i>	Art. 24 – 26 Competition Act		<p>-Handling, resolution and arbitration regarding the provisions of the Act - consultation on matters regarding competition -promotion of competition, consistent applicator of competition rules and supporting body for the Ministry of Economy and Finance.</p>
9.3.2.3. <i>Effective sanctioning powers</i>	Art. 63 Competition Act		<p>1. The competent bodies may impose the following fines on the economic agents, undertakings, associations, unions or groupings of them that, intentionally or by negligence, infringe the provisions of this Act: a) Minor infringements with a fine of up to 1% of the total turnover of the infringing undertaking in the business year immediately preceding to that of the imposition of the fine. b) Serious infringements with a fine of up to 5% of the total turnover of the infringing undertaking in the business year immediately preceding to that of the imposition of the fine. c) Very serious infringements with a fine of up to 10% of the total turnover of the infringing undertaking in the business year immediately preceding to that of the imposition of the fine. The total turnover of associations, unions or groupings of undertakings shall be determined taking into consideration the turnover of their members. 2. Besides the sanction set out in the previous section, when the offender is a legal person, a fine of up to 60,000 euros may be imposed on each of its legal representatives or on the persons that comprise the management bodies that have participated in the agreement or decision. Excluded from the sanction are those persons who, forming part of the collegiate administrative bodies, have not attended the meetings or who have voted against or saved their vote. 3. In the event that it is not possible to delimit the turnover referred to in Section 1 of this article, the infringements typified in this Act shall be sanctioned on the following terms: a) Minor infringements with a fine of between 100,000 and 500,000 euros. b) Serious infringements with a fine of between 500,001 and 10 million euros. c) Very serious infringements with a fine of more than 10 million euros.</p>
9.3.3. Cooperation with other regulators	Art. 48 General Telecom Act		CMT informs the competition authority of the practices that may involve an infringement of the competition law
	Title II, Chapter II Competition Act j. art. 17 Competition Act		<p>Sets out the rules for collaboration and cooperation of the National Competition Commission. Art. 17 provides general rules for coordination with sectorial regulators (cooperation in matters of public interest, mutual exchange of information, annual meetings</p>



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