

**Institut für Rundfunkökonomie
an der Universität zu Köln**

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**Quality Management:
Untapped Economic Potential of German Broadcasting Services**

Working Papers
of the Institute for Broadcasting Economics
at the University of Cologne

No. 214

Cologne, June 2006

**Arbeitspapiere des Instituts für Rundfunkökonomie
Working Papers of the Institute for Broadcasting Economics**

ISSN der Arbeitspapiere: 0945-8999
ISSN of the Working Papers: 0945-8999

ISBN des vorliegenden Arbeitspapiers 214: 3-938933-13-5
ISBN of the Working Paper at hand 214: 3-938933-13-5

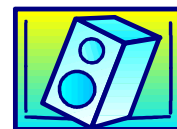
Schutzgebühr 6,- €
Price 6,- €

Die Arbeitspapiere können im Internet eingesehen
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Ernst Elitz

Quality Management: Untapped Economic Potential of German Broadcasting Services

1. Introduction

The monthly German TV and radio fee of € 17.03 is more than a financing instrument. It is a quality assurance charge. Socio-political responsibilities, public interest, and public value must be benchmarks and the unique features of the public broadcasting service, in light of the empty campaigns which commercial television runs with inexhaustible enthusiasm. Simply, private broadcasting companies do what consumers want; public broadcasting corporations do what matters. The distinction in the regulation of Germany's dual broadcasting system can be described as neatly as that. Public broadcasting services do not produce radio and television programmes to make a profit but to offer the fee-payer diverse and sophisticated information, educational and cultural programmes and entertainment. A fee fixed for a period of four years makes public broadcasting services largely independent of economic cycles, facilitates medium-term planning, and enables the public broadcasting service to steadily pursue its programme objectives.

To fulfil its mandate, for organisational purposes, and to develop its technical broadcasting systems, the public broadcasting service needs clear statutory requirements. Such legal requirements must facilitate economic action. They must allow public broadcasting services to follow the successful example of private enterprises. A broadcasting service that produces critical programmes, which deal with the "inescapable bureaucratisation" of our political system claimed by Max Weber, must also reflect upon its own disbelief in out-dated procedures and structures when it comes to its own actions. The organisational sociologist Dirk Baecker coined the term of "post-heroic management" to describe this phenomenon. While the "heroic manager" tries to stand his or her ground, caught in the tentacles of an established and continuously growing set of rules, the post-heroic person takes his or her creativity from doubt and contradiction. Resignation may be masked as contemplative serenity and makes it easier to survive, but it is counterproductive when it comes to the dynamic development of the economy and society.

The Commission for Determining the Financial Needs of Public Broadcasting Corporations (KEF, Kommission zur Ermittlung des Finanzbedarfs der öffentlich-rechtlichen Rundfunkanstalten) continuously assesses the funds needed and applied for by broadcasting companies. As a result of these assessments and the rationalisation adjustments implemented by KEF, rationalisation potentials at public broadcasting corporations have largely been exploited. Even if



there are still opportunities for further rationalisation, they will not result in fundamental savings. Therefore, this paper focuses on strategic options and identifies significant potential for savings and rationalisation that broadcasting services cannot make happen without support from German legislature or other public institutions.

Let me typify the need for changes by exploring five areas of our daily work:

1. control mechanisms to which the public broadcasting service is subject,
2. labour law,
3. the use of existing programme content,
4. public procurement law, and
5. the economy of frequency usage.

2. The Control Mechanisms for Public Service Broadcasters

After my daily work had left me with the impression that my administrative workload had nearly doubled in the more than 12 years I had been working as the director of German national public radio founded in 1994, I identified reliable evidence for my hypothesis. During the first few years, we were obliged to get the administrative board's approval for projects exceeding a value of DM 250,000 (ca. € 125,000) and to submit our applications to determine fees to the Commission for Determining the Financial Needs of Public Broadcasting Corporations (KEF). The first KEF report we received (11th report) comprised 237 pages, plus a number of appendices. The recently published 15th report has 326 pages, not counting its large number of appendices. Like that of ARD and ZDF, Germany's public (television) broadcasting agencies, DeutschlandRadio's administrative, technical and programme management is required to complete comprehensive questionnaires for the five work groups of KEF in several steps and sometimes on short notice within a period of two years. On average, our staff spend at least 1.5 man-years on it. I have the impression that some people at our financial and HR department spend more time on dealing with the requirements of KEF during the critical phases of applying for funds than on their responsibilities to ensure normal operations.

Public administration is a daily struggle for both the people concerned and administrators. Article 30 of the Interstate Broadcasting Treaty concerning DeutschlandRadio provides that its budgeting and business management are subject to assessment by two state courts of auditors and its annual accounts are audited by an auditing firm in accordance with the provisions of the Commercial Code for consolidated groups. The same applies to other public broadcasting agencies. Since 1998, public broadcasting corporations have basically also been obliged to undergo an audit of their proper management pursuant to Article 53 of the Law on Budget Principles (HGrG, Haushaltsgrundsätzegesetz) as part of their annual accounts audit. Auditors are requested to outline in their report the development of the corporation's assets and earnings as well as its liquidity and cost-effectiveness, business transactions involving losses and the

reasons for such losses if these transactions and reasons are important with regard to the corporation's assets and earnings. Furthermore, the auditors are expected to state the reasons for any annual deficit shown in the profit and loss statement. The public broadcasting corporations are then required to send the audit report, and if the corporation must prepare consolidated annual accounts, the audit report by the consolidated auditors, immediately after its receipt to the courts of auditors.

These additional responsibilities require considerable staff capacities. The list of questions pertaining to HGrG Article 53 is composed of 21 subjects with more than one hundred individual items and comprises 36 pages in the audit report of DeutschlandRadio's annual accounts of December 31, 2004. It requires 10 percent of the auditors' auditing time and expenditure to complete, which corresponds to the increase in administrative work required for support work and follow-up discussions by DeutschlandRadio.

As of 2006, DeutschlandRadio, employing 710 people, will be required by the 8th amendment to the Interstate Broadcasting Treaty to practice group accounting just like a large company, although there is no need to do so from a trade-law perspective because it lacks a group structure. Nevertheless, German broadcasting law stipulates group accounting. Increased personnel costs also result from the fact that KEF, the courts of auditors, and the auditors are required to some extent to ask and process the same facts following different systematic approaches.

Having become effective in 2002, the 6th amendment to the Interstate Broadcasting Treaty obliges public broadcasting corporations to report elaborately to the 16 German state parliaments. Every other year, DeutschlandRadio is required to submit a report to the state parliaments of the Länder (federal states) to inform them about the economic and financial situation of the corporation. The reports must contain an outline of the fields of business of subsidiaries and associated companies, including key data on those organisations to the extent that they must be published, and a description of structural changes and prospective developments of DeutschlandRadio. Its director and head of administration must then present the report personally to the parliamentary committees and discuss it. It makes sense to inform state parliaments about the state and future of public broadcasting since the Länder ensure the existence of DeutschlandRadio.

It would be inappropriate to accuse the public broadcasting service of too much red tape and hypertrophic bureaucracy because administrative duties have evidently increased due to external legislative requirements.

The further expansion of administrative work is foreseeable. It is very likely that the courts of auditors will also extend their auditing rights to such affiliated companies of public broadcasting corporations which are largely governed by private-sector companies. In September 2005, the presidents of the state courts of auditors welcomed the states' intention to consistently regulate the court of auditors' right to audit. The courts of auditors recommend that new investments



by public broadcasting corporations only be approved if the articles of incorporation or the by-laws stipulate auditing rights. If private-sector companies, like T-Systems, that hold an interest in various DAB (Digital Audio Broadcasting) companies, object to such an audit, the courts of auditors would demand to stop such investment in affiliated companies as a precaution. DeutschlandRadio practiced such a separation from a private shareholder with regard to its facility management corporation in 2001.

Additionally, ARD and ZDF are required to report extensively to EU institutions. The latest request for information on financing public broadcasting in Germany (State aid No. E 3/2005) comprised a 17-page long detailed list of questions. Characteristic of Brussels' principle of bureaucratic redundancy, the list contains a number of questions which have been asked and answered in detail in other contexts.

In summary, let me state that public broadcasting services are subject to an increasing number of parallel controls by different controlling entities – from the federal government, by means of courts of auditors, KEF, and state parliaments, as well as by accounting firms with regard to common private sector procedures. Due to this double control (courts of auditors and accountants) and their reporting duties to KEF, state parliaments, and the EU, the public broadcasting service is the most thoroughly audited organisation in Germany. The large number of audits and parallel checks tie up an increasing number of staff members while human resources are cut at the same time (at DeutschlandRadio by more than a quarter between 1994 and 2005). These employees are no longer available for the corporation's internal organisation and its true purpose – the production of radio programmes.

3. The German Labour Law

Opportunities to tap economic potential so that public broadcasting services can fulfil their actual responsibilities include condensing auditing projects, agreeing on coordinated auditing schemes, abstaining from meaningless audits (consolidated accounts), as well as adjusting the costs of and the use of human resources for individual audits to be economically efficient and to account for actual corporate risks. The courts of auditors probably know best the problems of the German law and regulation system. They should see it as their social and political duty to insist on having out-dated, complicated and costly regulations repealed. Among others, it was the now-retired president of the State Court of Auditors of Berlin, Horst Grysczyk, who demanded such repeal without much success. But his failure should not discourage us.

I speak to you as the representative of a broadcasting corporation that merged three very different groups of personnel from West Berlin, East Berlin, and Cologne in 1994. Even prior to the founding of DeutschlandRadio, entire divisions of the company were outsourced, hundreds of employees were sent into early retirement, and qualified staff adopted a "save yourself" mentality in view of their uncertain future. Legislation then obliged us to cut the remaining staff of

980 people by more than 25 percent to 710 by 1996, irrespective of their qualifications, skills, and workplace.

However, one should keep in mind that opportunities for rationalisation used in industry largely do not apply to a broadcasting company committed to the production of journalistic and artistic content. You cannot replace creative minds with robots. Nevertheless, we reduced our staff by another five percent within the past three years to provide opportunities for creating new structures and a new focus within the scope of the organisation's job plan. This took considerable effort. Now there is nothing left to feed on. Our legal mandate to produce 24 hours of cultural programmes for DeutschlandRadio Kultur and 24 hours of information programmes for Deutschlandfunk is manpower-intensive. Since we at DeutschlandRadio mainly produce our own programmes, this work is much more labour-intensive and expensive than the business models of broadcasting music programmes or recycling material previously broadcast.

After founding German national public radio, legislation explicitly required us to pick our staff exclusively on the basis of social criteria instead of business-related criteria such as competence, qualifications, and performance. All employees 55 years or older at the time, had to go into early retirement. Ten years ago, this was considered the best political solution available on the labour market. Today, the government wants to increase retirement age – so much for the government's consistent labour market policy.

A broadcasting company with minimal staff must economise on its capacities and needs a great deal of flexibility. In such a case, the employer's executive rights soon face limits. Type and scope of employment, the amount of remuneration, the place of employment – basically everything that labour law defines as a "significant change of the employee-employer relationship" defies a modern, straightforward approach to change organisational and journalistic practice. That means, in the end, the company must adjust its organisation to the established rights of the employees and not to the new demands of the media landscape or its listeners. In labour court it does not matter whether an issue has been detailed in writing in an employee's employment contract or whether it has become an established right protected by law as a result of long-lasting practice. If the employee concerned does not agree, any change to his or her working conditions will always require dismissal with the option of altered conditions of employment, the requirements of which are basically the same as for terminating the contract. German labour court rulings updated the definition of 'dismissal' to include the possibility of altered conditions of employment and have thus made it more difficult for companies to adapt flexibly to the market.

From a political perspective, judicial rulings are the most critical aspect of labour law. Accordingly, the Berlin law professor Uwe Wesel states that, although labour law now comprises a large number of acts, large sections remain unregulated by legislation leaving room for court decisions, the free interpretation of the law, or an absence of law. Constantly augmented by current jurisdiction, such a specific labour law composed of three instances (labour court, state and federal labour court) is typical of Germany. The German Civil Code contained



just 20 articles dealing with the employment contract (§ 611 to § 630). They lacked a “drop of socialist oil” as Otto von Guericke put it. Now there is plenty. But close up, it is not socialist oil but rather concrete. It is not socialism either, but the best way to foster a sense of entitlement to established rights.

Let me give you a few examples of everyday practice. If on-call duty is abolished thanks to improved technology, the employee concerned does not automatically lose his or her right to claim extra pay. If employees are expected to take on other or additional responsibilities as a result of technology changes, they usually must agree and representatives of the personnel committee normally participate in the decision-making process – a very time-consuming and complicated process for all people involved.

In critical cases, statutory regulations which restrict the right of dismissal make it difficult to dismiss an employee because his or her performance is unsatisfactory. Giving notice of termination for operational reasons is basically impossible in an entity governed by public law. Consequently, employees enjoy a great deal of job security. Due to the fact that since 1 January 2006, the law no longer grants tax exemptions on compensation, this road to terminate employment has basically been closed, too. Even when employees are burned out and the position no longer presents any perspective for either side, there is virtually no solution. Employer and employee are attached to each other like Siamese twins – inseparable but also incapable of performing.

By definition, labour law deals with “labour”. Therefore, it is all the more surprising that labour law has ascribed no importance to the term “performance”. It is all about something being “socially justified”. The term “performance”, or “Leistung”, has already undergone some curious changes in the German language. In the past, people performed or rendered services and were paid for their performance. Today, we speak of “performance” in German when the government pays a recipient of benefits when he or she does not perform. Take it as a linguistic-philosophical musing by a philologist who, due to his training, likes to use precise, unambiguous terminology.

No media company can make do without a multitude of freelancers working in various fields and on different production levels. They must compensate for peak loads and ensure flexibility. This would be impossible with our traditional and constantly decreasing amount of employed staff. Yet again, largely unrealistic criteria regulate the use of freelancers, too. In this regard, labour courts follow so-called “job plan” jurisdiction. Accordingly, only those persons who can freely avail themselves of their time are considered freelancers. Subsequently, labour courts demand that each assignment must be agreed upon individually. That does not make much sense for a broadcasting company that must keep up 24-hour operations in one or several broadcasting centres according to precise schedules. If a freelancer is integrated in the employee schedule (shift plan), she or he has a chance to gain permanent employment if suing the corporation for his or her employment status. If a freelancer informs the company on which days she or he prefers not to work, labour courts could interpret this as an indication of the freelancer’s dependency on the shift plan, which would provide

grounds for permanent employment. At broadcasting companies, entire teams of heads of departments, shift plan managers, and staff members of the Fee and Licence Department are busy planning the use of freelancers in such a way that the company would not need to expand its number of permanent positions if sued for a person's employment status.

Furthermore, broadcasting corporations must protect themselves against such rigid labour jurisdiction by limiting the number of days freelancers work for them. At DeutschlandRadio, freelancers producing programmes (e.g. authors) may work a maximum of 108 days per annum whereas freelancers not responsible for programme content (e.g. production assistants) may only work 60 days per year. Once a freelancer has worked 70 percent of his or her approved time, a special electronic data processing system sends a yellow light warning. From then on, each job must be registered precisely. Because locations and departments commissioning jobs vary, this is a very complicated undertaking.

Since the critical phase always starts at the end of the year before Christmas, editorial staff came up with the term "Bethlehem terror" because the forecasting rule used for protection purposes before the labour courts forces broadcasting corporations to some silly behaviour. An editor always wants to work with the best. But as the period of "Bethlehem terror" approaches, she or he will have to depart from this quality principle because it is always the best people who come close to exceeding the forecast. Absurdly, the editor is then forced to commission the second or third best person. That means that the forecast results in a loss of quality and reduces the income of qualified freelancers. In the end, it is a redistribution of work and income qua labour law.

For employees with temporary employment contracts the broadcasting company is required to prescribe a compulsory break after a certain amount of time, otherwise labour law judges may again tend to deduce the right to permanent employment from a permanently limited employment contract. In the light of political requirements to reduce the number of permanent positions and the limitation of personnel costs stipulated by KEF, we will not be able to increase the number of permanent positions, however useful that would be.

If labour law and uncontrollably expanding judicial rulings were oriented towards performance as the base of the employee-employer relationship and the company's objective of producing quality work instead of pursuing the idea that permanent employees and freelancers be subjected to Manchester-like exploitation, public broadcasting services would be able to tap quality potential. Staff at broadcasting stations would be able to focus on their core responsibilities and be freed from useless bureaucratic chores. It is time that public broadcasting corporations publicly insist on their demands for cost-saving labour laws based on performance and programme quality. They owe it to the fee-payer.

However, there is not only bad news, but also good. There are indications that administrators are currently rethinking outsourcing. It would certainly make sense if broadcasting companies employed specialised production companies instead of maintaining in-house production capacities irrespective of their size



and production volume, which changes from year to year. Against the background of Germany's rigid labour law, long-standing collective agreements based on seniority, and excessive retirement commitments, it would appear economically feasible to outsource certain services. In the 15th KEF report, the latest of its kind, Radio Bremen explained that it hopes to lower costs in the long term by outsourcing production and technology. Radio Bremen assumes that in the long run it can employ people in a new company on more favourable terms than at the broadcasting corporation itself. A limited liability company (Ltd.) could negotiate a new, more favourable company agreement than a public broadcasting corporation.

For a long time, outsourcing was seen as an unsurpassed instrument for optimising costs. At its core, however, outsourcing services from the public or public-law sector is an admission of our inability to organise our own company in such a way that it can compete successfully. The longer applicable collective agreements continue in force and the more labour laws limit our room to manoeuvre, the more services can be rendered more efficiently outside the company. That is also true from the fee-payer's perspective. An internal reform and relaxation of rules applied to public administration could result in less expensive services provided by the companies themselves and help limit outsourcing.

An important step was taken in 2005. In terms of company retirement schemes, the public broadcasting service succeeded in changing the system from a net-based to a gross-based one. If broadcasting services would have had to continue compensating for the decrease in pension benefits provided by Germany's statutory old-age pension scheme as stipulated by the former collective agreement, the company could not have continued financing its own company retirement scheme or it would have been paralysed.

4. The Use of Existing Programme Content

On the other hand, we might ask ourselves if, by raising VAT to 19 percent for now and to an even higher rate in the future, outsourcing will always be a profitable option. Synergetic effects within the system are always preferable, such as an administrative cooperation agreed on by DeutschlandRadio and ZDF or the cross-advertising of programmes by DeutschlandRadio and ARD und ZDF as stipulated by the 8th amendment of the Interstate Broadcasting Treaty to optimise marketing costs. By merging training institutions – the School of Broadcasting Technology (SRT) and the Central Training Centre for Programme Content (ZFP), operated jointly by ARD, ZDF, und DeutschlandRadio – to create a comprehensive media academy, the public broadcasting service demonstrates its will to tap more economic potential through joint action.

In other cases, the ideological focus of parts of the media-political establishment on commercial broadcasting opposes the tapping of economic potential. Private broadcasting companies organised within the Association of Private Broadcasting and Telecommunications (Verband Privater Rundfunk und Telekommunikation e. V., VPRT) would like to prohibit public broadcasting companies from

using any of the new communication media. Although media policy-makers have principally disapproved of these intentions, they nevertheless obliged public broadcasting services to orient their websites strictly towards their programme duties. Public broadcasting companies had to agree to spend merely 0.75 percent of their overall expenditure on their websites. Like any radical decision, this one has its pitfalls. For programmes using 80 to 90 percent of their programme volume to play music, 0.75 percent is a considerable amount. However, for programmes with a high percentage of self-produced spoken language – at DeutschlandRadio some 60 percent – 0.75 percent is minimal, enabling the company to publish or cover only 50 percent of its programmes on the Internet or to provide them as audio on demand or podcasts. By easing the 0.75 percent limit for web presentations, the funds used for company productions of language-based programmes would pay off sooner than through the previously stipulated limitation.

The decision to prohibit the public television channels ARD and ZDF from operating their own news channel was taken at the end of the 1980s under a similar ideological paradigm. This field was to be developed by private television. Thanks to decades of quality programmes provided by German public broadcasting services, news channel standards have been set so high that no private channel – n-tv or N24 – can meet them. Both programmes hover at the bottom or below profitability and have cut back their news programmes in recent years. On the other hand, the public broadcasting service possesses large amounts of content, and impressive national and international news correspondent structures. Additionally, it collaborates within the European Broadcasting Union (EBU) and associated institutions on other continents – making it the ideal operator of a news channel, in terms of both programme content and costs. Programme and personnel resources remain untapped while commercial providers are not able to shoulder the job. Consequently, Germany continues without a national news channel worthy to be considered premiere in the country, which could be accessed internationally.

5. Applicable Public Procurement Law

Applicable public procurement law presents another obvious competitive disadvantage for public broadcasting services. By extending this bureaucratic scheme to public broadcasting corporations, procedures become increasingly complicated, expensive and inefficient and they limit flexibility considerably. Amendments that have been planned for years but not yet been submitted to the German Parliament (Bundestag) could remedy the situation. The successful practice of private-sector enterprises contradicts the assumption that public calls for bids present the only way to conclude contracts within economic bounds. Contract-awarding guidelines intended to inhibit corruption are not the only means to fight it. Other measures such as continuously rotating employees in charge of procurement can serve the same purpose.



Out-dated procedures are a burden, especially when it comes to taking decisions on IT-technology essential for broadcasting. Let me quote a general remark published in *Computerwoche* (3/2006), an expert computer magazine: “In most cases, the trouble starts with an invitation to bid. Regulatory requirements and the need to prepare specifications, which are often the size of dictionaries, make IT projects never-ending Sisyphian tasks from the very beginning. Once you have mastered the first obstacles and the project has finally been awarded, technological progress has often outrun the original project. By then it’s too late. Public procurement law forbids any changes – a losing bidder may go to court and everything would start all over again. At this point, legislation is required to simplify the awarding process and make it more flexible. At a time when the entire sector preaches speed and adaptability, statutory requirements and regulations cannot be allowed to bind IT commissions for authorities.”

When applying the Contracting Regulations for Services (*Verdingungsordnung für Leistungen, VOL*) and the General Regulations for Awarding Construction Work and the Construction Contract Regulations (*Vergabe- und Vertragsordnung für Bauleistungen, VOB*), bidders do not have a chance to amend information on the specifications submitted or renegotiate with the contractor, as all bidders must be treated equally in order to guarantee an absolute basis for comparison. In the end, this procedure leads to a situation where a bidder’s specific strengths and his or her creativity cannot be used and keep up with the speed of technological progress. For example, the procurement of new technology for a studio at the Cologne broadcasting centre started with a public call for bids within the bounds of procurement requirements of public authorities. In the end, all bidders had to be disqualified because they had updated individual items in their specifications – according to their special strengths and creativity – in order to keep up with technological developments that had occurred in the meantime. Such economically sensible behaviour had to lead to their disqualification from the bidding process. In exceptional cases it is now possible to directly award a project, enabling bidders to negotiate with contractors and consequently, to update their specifications if necessary. Valuable time was lost in that case. In order to keep up with technological process, exceptions (deviations from regulations) would need to become the rule.

Public broadcasting services reject the compulsory practice of EU-wide calls for bids although they are often obligatory, because said invitations to bid supposedly prolong the process further and tie up more human resources. In many award procedures, it has become the norm that losing bidders object, which makes it impossible to plan procedures and schedules as everything gets delayed. The rate of companies’ bankruptcies and failures to perform, “pre-selected” for restricted calls for bids by special departments for their expertise and references, is far below the number of negative experiences with companies that won a public contract. Increasingly, broadcasting companies want to follow the example of the private sector and its efficient practice of bidding and to free themselves from public procurement law.

6. The Economy of Frequency Usage

Despite being the fifth and last issue in terms of untapped economic potential in broadcasting, the economy of frequency usage plays a key role. I am not referring to the attempt to introduce the new digital audio broadcasting system (DAB) to Germany, which, so far, has been a failure. It was supposed to replace the analogue VHF system. Within the scope of the decision on broadcasting fees, KEF has granted some € 113 million for the technical set-up of the system to the broadcasting corporations. The states' media corporations use additional fees and charges to fund private DAB programmes. The industry received additional government funds amounting to some € 40 million. Nonetheless, DAB has not yet succeeded. Broadcasting corporations and the appliance industry need a reliable political decision to introduce DAB in all states, in addition to the allocation of funds.

The states take different positions. Officially, the date to switch from analogue VHF to digital DAB has been scheduled for 2015, but no one believes that this deadline will be observed. Various interest groups have introduced parallel systems for digital distribution. However, these are neither radio-specific nor as technically mature as the DAB process which has been sufficiently tested. In Germany, more than 250 million FM devices are in use. Ninety percent of all listeners receive FM/VHF radio broadcasts. To replace all these devices with digital receivers would be an enormous and extremely profitable endeavour for the industry. Quite understandably, the appliance industry does not see itself fit to produce millions of inexpensive devices at its own risk without a fixed switch-off date. In a federal system, it is difficult to make such techno-political decisions. Otherwise, the Transrapid train would travel between Hamburg and Munich and not in the suburbs of Shanghai. A lack of redundancy is a condition for using funds efficiently. Instead, more and more political decisions made at the states' level are preventing national coordination. Time is often overlooked as an economic resource in the scope of such processes.

Consequently, future generations will continue to receive predominately FM/VHF radio broadcasts. FM frequency space was allocated 50 years ago and is treated as a sacrosanct good by state media corporations. Private broadcasters who were assigned certain frequencies for their programmes for an unlimited amount of time in the 1980s behave in similar ways.

Demand for new broadcasting space has increased in recent decades, both as a result of the founding of Germany's national public radio, which pursuant to the Interstate Treaty has to ensure that people in all parts of Germany receive one information programme and one cultural programme, and also as a result of the dynamics of the commercial radio scene. However, rigid adherence to old traditions dating back to the last century hinders the meaningful redistribution of capacities. Long-standing programmes can often be received at certain places or in certain regions on several different frequencies. They are often broadcast far beyond their legally defined broadcasting area, and enable frequency owners



to compile new frequency packets for broadcasting additional programmes based on their stock of frequencies.

Grotesquely, despite the scarcity of frequencies in Germany, considerable frequency capacities remain unused. For instance, 199 kW has been allocated to local radio stations in the state of North Rhine-Westphalia. However, to avoid competition with neighbouring local stations, only 9.5 percent, or 19 kW is actually used. Neither DeutschlandRadio nor other commercial providers can use the remaining 180 kW.

As measured by the broadcasting power that the ARD broadcasting corporations use for the frequency chains of their average number of five programmes, Deutschlandfunk and DeutschlandRadio Kultur have only a fraction of the capacity at their disposal, in spite of their duty to cover the entire area. Let me give you an extreme example. Within the broadcasting area of Saarländischer Rundfunk (Saarland Broadcasting Corporation), each of the programmes of the state's broadcasting corporation has a broadcasting power of more than 100 kW, whereas Deutschlandfunk has a mere 0.4 kW and DeutschlandRadio Kultur more than 10.3 kW. In the state of Hesse, there are some 400 kW for the individual transmitter networks of the state broadcasting corporation, but just 55 kW is allocated to Deutschlandfunk and some 2 kW to DeutschlandRadio Kultur. In Berlin, Germany's capital, the ratio is balanced. Nevertheless, nearly a third of all listeners of sophisticated programmes listen to German national public radio programmes. At a broadcasting power that would nearly equal that of ARD programmes, we would be able to double the number of listeners according to a media research study. Where programmes are not broadcast, people cannot listen to them.

In the light of these extreme imbalances in terms of broadcasting capacities, both DeutschlandRadio and the Association of Private Broadcasting and Telecommunications call for the fundamental restructuring of FM/VHF broadcasting in Germany based on economic criteria. That entails reducing multiple transmissions, improving the technology and the use of the available frequency spectrum by decreasing channel spacing and by reallocating frequencies to all existing public and private radio broadcasters as needed (VPRT, 2 Sep. 2005). In a position paper on the "demand-oriented provision of transmission capacities" published on 11 January 2006, the Federal Network Agency (Bundesnetzagentur), i.e. the former regulatory authority for telecommunications and postal services, criticised the common unconditional allocation of frequencies to state broadcasting corporations and their tendency to stock-pile them. Because of the existing practice, the paper claims that there is „no way to interfere if individual programmes are broadcast on multiple frequencies or if there is an oversupply of frequencies for one programme. It is also not possible to intervene when stations give up existing multiple transmission capacities to transmit new programmes.“ Since regional supplements broadcast by both state broadcasting corporations and a number of private radio companies have capacities reaching far beyond their target region, the Federal Network Agency criticise "that a completely independent resource is needed, in any case, even if used

only for a short time for different content. This poses the question of efficiency with regard to this type of frequency usage.“

Citing the example of ZDF, the Federal Network Agency points out that nationwide networks designed to broadcast programmes throughout the country and planned across state borders, present enormous economic advantages. A state-based DVB-T network for ZDF requires 60 frequency allocation areas; if planned irrespective of state borders, 40 frequency allocation areas would suffice. The expensive solution accounting for existing state borders requires investments and operating costs for nine area-wide multiplexes; a country-wide solution across state borders would be less expensive, getting by with six multiplexes.

Calculations by DeutschlandRadio also indicate that a restructuring of the frequency landscape holds untapped economic potential. At present, Germany's national public radio broadcasts its programmes on 283 transmitters mostly at lower capacity which amounts to some € 10.6 million annually. To completely cover Germany based on yet to be determined weak transmitters as stipulated in the DeutschlandRadio Interstate Treaty, we would need € 16.3 million per year for the 435 transmitters required. If the frequency landscape were to be restructured in view of cost-benefit aspects, both the information programme and the cultural programme of German national public radio could be broadcast by 70 transmitters nationally in compliance with the Interstate Treaty at a cost of € 7.6 million per year. Therefore, by optimising frequency use we would halve costs. Given the arguments that tend to flare up about the last penny when it comes to discussing fees, this would be a substantial amount worth fighting for, if for nothing else.

Other stakeholders would also save costs if we succeeded in improving the frequency spectrum. If programmes could do without overlapping, multiple transmission and were to limit their broadcasts to their specific service areas, reduced kilowatt power would result in lower operating costs. No listener would be disadvantaged if the frequency landscape were restructured in a way that local stations were assigned local capacities only, regional stations region-wide capacities and stations broadcasting nation-wide had interstate capacities. On the contrary, programme diversity would increase and fee-payers would pay less. But a sense of entitlement to what used to be the norm is the reason for some folly when it comes to broadcast politics and organisation. In an era when established rules are put to the test in all field of politics, broadcast and media politics will not be able to defy restructuring for long. It won't be possible to keep up the habit of being unassailable in the future.

Surely, the conflict between prescribed authority-like behaviour and orientation on successful private-sector practices cannot be solved by broadcasting services alone. However they could set an example. As a dynamic factor in society, the services could push for less red tape and a reform of labour law, which tends to be far removed from today's economic reality. At a time when all distribution and transport networks, from railways to energy transmission and telecommunications, are tailored to the needs of new providers, broadcasting services cannot rely on the assumption that their old broadcasting network is the



only one which can resist change in the long-term. There is every indication of it adapting to the needs of current providers.

7. Conclusion

For our foreign guests, this paper probably opened an unimagined abyss with regard to the German sense of order. There is a high untapped economic potential for German Broadcasting Services to improve its quality management. This was illustrated by some examples: the excess of control mechanisms for public Service Broadcasters, the German Labour Law, the restrictions to use the existing programme content, the lacking applicability of public procurement law and the restraints to economize the usage of frequencies. Many of these issues have been solved abroad. In Germany we are still on a long and difficult road to establish economically best practices. Life is a great practice of absurdity as the philosopher Peter Sloterdijk claimed. Many areas lack a sense of economic thinking. But we will try hard. Please wish us the strength to assert ourselves, as well as luck and success.

ISSN 0945-8999
ISBN 3-938933-13-5