

# An inventory of EU 'must-carry' regulations

**A report to the European Commission, Information Society  
Directorate**

**February 2001**

*The report does not necessarily reflect the views of the Commission, nor does the Commission accept responsibility for the accuracy of the information contained herein*

The logo for Ovum, featuring the word "Ovum" in a serif font with a red swoosh above the letter "v".

*in association with*

The logo for Squire Sanders, featuring the words "SQUIRE SANDERS" in a serif font, with "LEGAL COUNSEL WORLDWIDE" in a smaller sans-serif font to the right, separated by a vertical line.

**Contents**

<b>1</b>	<b>Introduction.....</b>	<b>2</b>
<b>2</b>	<b>Austria .....</b>	<b>3</b>
<b>3</b>	<b>Belgium – Flemish Community .....</b>	<b>6</b>
<b>4</b>	<b>Belgium - French Community.....</b>	<b>9</b>
<b>5</b>	<b>Belgium - Region of the Capital Brussels .....</b>	<b>11</b>
<b>6</b>	<b>Denmark .....</b>	<b>13</b>
<b>7</b>	<b>Finland.....</b>	<b>16</b>
<b>8</b>	<b>France.....</b>	<b>18</b>
<b>9</b>	<b>Germany .....</b>	<b>23</b>
<b>10</b>	<b>Greece .....</b>	<b>27</b>
<b>11</b>	<b>Ireland.....</b>	<b>28</b>
<b>12</b>	<b>Italy .....</b>	<b>31</b>
<b>13</b>	<b>Luxembourg.....</b>	<b>32</b>
<b>14</b>	<b>The Netherlands .....</b>	<b>33</b>
<b>15</b>	<b>Portugal.....</b>	<b>36</b>
<b>16</b>	<b>Spain.....</b>	<b>39</b>
<b>17</b>	<b>Sweden.....</b>	<b>42</b>
<b>18</b>	<b>United Kingdom.....</b>	<b>45</b>

The 'must carry' rules for each Member State within the EU are outlined in the following pages. The "must carry" concept referred to in each case is that used in the relevant Member State; no attempt has been made to compare or harmonise the differing approaches. National legislation is presented in a common format, based on the questions which we addressed in this study.

Ovum and SSD prepared this report as follows:

- We drew upon our existing knowledge and internal resources to compile a first draft of this report
- We filled in the gaps as far as possible through desk research
- We circulated each chapter in the draft report to the relevant broadcasting regulator and asked that they read it and advise us of any corrections, updates or changes of which they were aware. We received responses from three regulators – in Austria, Belgium and Sweden.

## **2.1 Who has “must carry” rights (e.g., public service broadcasters, community channels, commercial broadcasters)?**

Under Article 11 of the Cable and Satellite Broadcasting Act<sup>1</sup>, cable network operators (Kabelnetzbetreiber) are obliged to retransmit the television programmes transmitted by the television channels of the public service broadcasting company (ORF). This obligation currently covers two channels: ORF 1 and ORF 2.

The programme of the tourism and weather channel TW1 is produced by a company in which the ORF holds a 50% share. The programme is broadcast within the responsibility of the ORF, so it is covered by the regime of Article 11 of the Cable and Satellite Broadcasting Act.

In addition there is also a must carry obligation for local programme services transmitting not more than two hours daily. This provision can be found in Article 11 (2) of the Cable and Satellite Broadcasting Act and the authority responsible for administering these ‘must carry’ rules is the Regional Radio and Cable Authority.

## **2.2 How are the “must carry” rights holders defined?**

Article 11 (4) of the Cable and Satellite Act No 42/1997 provides:

“The cable network operator shall retransmit the signal of Österreichischen Rundfunks (ORF) insofar this is possible without disproportionately large expenditures.”

## **2.3 On which network operators or service providers are “must carry” obligations currently imposed? Is the obligation imposed on the entity or the network/service?**

According to Article 11 (4) of the Cable and Satellite Broadcasting Act No 42/1997, “must carry” obligations are imposed on all cable network operators. “Must carry” obligations are imposed on the entity operating the network.

There is no definition in the legislation for the term “cable network operator”. Under Article 2 (1) of the Cable and Satellite Broadcasting Act, a cable network is cable infrastructure used for transmission and retransmission. Under Article 2 (2) of the Cable and Satellite Broadcasting Act defines transmission as the transfer of programmes over cable network or satellite, where those programmes are addressed to the public.

Under Article 2 (3) of the Cable and Satellite Broadcasting Act, retransmission means the receipt and the simultaneous, complete and unchanged transfer of Public radio or television programs addressed to the public over cable networks or satellite.

## **2.4 Are other variants of “must carry” significant, e.g., “may carry if”?**

Article 11 (4) of the Cable and Satellite Act requires that cable network operators retransmit the signal of ORF insofar this is possible without

---

<sup>1</sup> BGBl. I Nr. 42/1997,

disproportionately large expenditure (*i.e.*, it amounts to be “must carry” obligation).

Furthermore, a decision by the Austrian Media Authority<sup>2</sup> provides that a cable operator can be obliged to retransmit the television programmes transmitted over the channels of a private broadcasting company (where there was a conflict between the broadcasting company and the cable operator over the retransmission of the former’s television programmes).

## **2.5 Does the regulatory framework allow “must carry” obligations to be imposed on other networks; if so which ones? Is the obligation technology neutral or technology specific?**

“Must carry” obligations only apply to cable networks. As such, the obligation is technology specific. “Must carry” obligations cover both analogue and digital cable networks.

## **2.6 How are “must carry” obligations imposed (*i.e.*, primary legislation, secondary legislation such as decrees; regulators’ decisions)?**

The must carry obligation is contained in Paragraph 11 (4) of the Cable and Satellite Act, No 42/1997; primary legislation.

## **2.7 At what level are they imposed (national, regional, local etc)?**

“Must carry” legislation is national.

## **2.8 What links are there between broadcasting and telecommunications regulations in relation to must carry rules?**

There are no formal links between the respective regulatory instruments.

## **2.9 What links are there between broadcasting and telecommunications network regulators (in the implementation of must carry rules)?**

Telecom-Control GmbH must perform all the telecommunications regulatory functions assigned to it under the 1997 Telecommunication Law<sup>3</sup> and its implementing legislation. In addition, the independent authority Telecom-Control-Commission is also responsible for the regulation of telecommunication.

Article 43 of the Cable and Satellite Broadcast Act provides that the independent Commission for the Observance of the Regional Radio Act is competent for the legal supervision of cable and satellite broadcasters. The Commission takes decisions regarding violations of the provisions of the Cable and Satellite Broadcasting Act, on complaints being lodged.

There are no formal rules providing for co-operation or exchange of information between regulators, however, under the Austrian constitution, authorities are obliged to provide one another with information and support.

---

<sup>2</sup>

<sup>3</sup> BGBl. I Nr. 100/1997

## **2.10 What monitoring/supervising powers are conferred?**

Article 43 of the Cable and Satellite Broadcast Act provides that the Independent Commission for the Observance of the Regional Radio Act is competent for the legal supervision of cable and satellite broadcasters.

There are no specific monitoring or supervising powers are conferred in the legislation for the Commission for the Observance of the Regional Radio Act.

## **2.11 What sanctions are imposed for failure to meet “must carry” obligations?**

Article 47 of the Cable and Satellite Act No 42/1997 provides that failure to meet the obligations discussed in Article 11 of the Act (see above) renders the offering cable network operator liable to a maximum penalty not exceeding oS 30.000 can be imposed by the independent Commission for the Observance of the Cable and Satellite Broadcast Act.

### 3.1 Who has “must carry” rights (e.g., public service broadcasters, community channels, commercial broadcasters)?

Under Article 112(1) of the Co-ordinated Decrees on Radio and Television of 25 January 1995 of the Flemish Government (the “Media Decree”), a cable distributor is obliged to transmit, simultaneously and in their entirety:

- all of the radio and television programmes of the Flemish public broadcaster (VRT – Vlaamse Radio en Televisie) destined for an audience located in the operational area of the cable distributor, provided that they are partly in the Dutch language;
- all of the television programmes of authorised private broadcasters destined for the entire Flemish Community, provided that they are partly in the Dutch language;
- the television programmes of authorised regional broadcasters, provided that they are, in particular, in the Dutch language and take account of their broadcasting area;
- two radio programmes and two television programmes of the French public broadcaster (RTBF) and the radio programme of the public broadcaster of the German Community; and
- two radio programmes and three television programmes of the Dutch public broadcaster.

Furthermore, according to Article 112(3) of the Media Decree, the Flemish Media Commission has the right, if it considers that new licensed programmes have a certain importance, to impose on a cable operator the obligation to transmit them or to prescribe conditions under which they must be re-transmitted. However, it should be noted that the criteria on the basis of which the FMC can impose this must carry obligations are not imposed.

### 3.2 How are the “must carry” rights holders defined?

See above.

### 3.3 On which network operators or service providers are “must carry” obligations currently imposed? Is the obligation imposed on the entity or the network/service?

“Must carry” obligations are imposed the cable distributor, i.e., they are imposed on the entity.

### 3.4 Are other variants of “must carry” significant, e.g., “may carry if”?

Under Article 112(2) of the Media Decree, aside from its “must carry” obligations, a cable operator may also carry the following programmes over its cable network (note: only the defined programmes are covered, unless a new programme is authorised by the Flemish Media Commission, see below):<sup>4</sup>

---

<sup>4</sup> Furthermore, a cable operator may use a channel to provide exclusively information on the radio and television programmes that he transmits and the services it offers.

- the television programmes of the private authorised broadcasters which are not covered by Article 112(1);
- the radio programmes of the local authorised radio broadcasters which conform to the requirements of the relevant authorisations;
- the radio programmes and the television programmes of the public broadcasters of the French and German Communities which are directed towards all of the relevant Communities and which are not covered by Article 112(1);
- the television programmes of the private television broadcasters of the French and German Communities which are directed towards all of the relevant Community;
- the pay-television programmes of the French and German Communities provided that it has been determined by the Flemish Media Commission that the pay-television programmes of the Flemish Community are available on the cable networks located in the French and German Communities;
- the radio and television programmes of broadcasters falling under the jurisdiction of another EU Member State;
- the radio and television programmes of broadcasters falling under the jurisdiction of a third country, provided that the Flemish Media Commission has given prior consent (the authority may also impose specific conditions in this respect);
- a maximum of two self-generated radio programmes provided that they are exclusively made of music; and
- the cable radio broadcasters which address the entire Flemish Community.

Article 112(2) of the Media Decree provides that the broadcasting of a new radio or television programme and of new television services must be notified in advance to the Flemish Media Commission.

### **3.5 Does the regulatory framework allow “must carry” obligations to be imposed on other networks; if so which ones? Is the obligation technology neutral or technology specific?**

“Must carry” obligations are imposed on cable distributors only; accordingly, the obligation is technology specific.

### **3.6 How are “must carry” obligations imposed (i.e., primary legislation, secondary legislation such as decrees; regulators’ decisions)?**

The “must carry” obligation in the Flemish Community is imposed by Article 112 of the Media Decree; this is primary legislation. Furthermore, the Flemish Media Commission has the right, if it considers that new programmes have a certain importance, to impose on a cable operator the obligation to transmit them or to prescribe conditions under which they must be re-transmitted.

### **3.7 At what level are they imposed (national, regional, local etc)?**

“Must carry” obligations are imposed at regional level. Regional governments take the decision to grant must carry status to programmes or to broadcasting services.

### **3.8 What links are there between broadcasting and telecommunications regulations in relation to must carry rules?**

There are no formal links between regulatory instruments.

### **3.9 What links are there between broadcasting and telecommunications network regulators (in the implementation of must carry rules)?**

The Belgian Institute for Postal Services and Telecommunications (the 'BIPT') is the telecommunications regulatory body. Since it is subject to the supervision of the Minister of Telecommunications, the BIPT is not totally independent.

The Flemish Media Commission (Le "FMC") ("Commissariat voor de Media") has broadcasting regulatory powers.

There are no formal rules or practices regarding co-operation between the regulatory institutions.

### **3.10 What monitoring/supervising powers are conferred?**

Under Article 116(1), the FMC has the responsibility to ensure implementation of and compliance with the Media Decree. Article 112(2) of the Media Decree enables the FMC to obtain information on programmes and services prior to approving them for broadcast.

### **3.11 What sanctions are imposed for failure to meet "must carry" obligations?**

Article 112(2) of the Media Decree provides that the broadcasting of a new radio or television program and of new television services must be notified in advance to the FMC. This requirement enables the FMC to obtain information on the programmes and services that are offered within its jurisdiction.

Article 116 of the Media Decree authorises the FMC to impose on broadcasters and cable distributors a variety of sanctions, including: (i) cessation of any infringement; (ii) the obligation to broadcast any decision of the FMC (in a form and at a time determined by the FMC); (iii) the obligation to publish the decision of the FMC in relevant newspapers; (iv) administrative fines of between BEF 50,000 and 5,000,000 BEF; and (v) the suspension and/or withdrawal of the authorisation granted. The FMC has a general duty to apply sanctions that are commensurate with the gravity of infringements.

#### **4.1 Who has “must carry” rights (e.g., public service broadcasters, community channels, commercial broadcasters)?**

Article 22(1) of the Media Decree of 17 July 1987 of the French Community, last modified by Decree of 4 January 1999, provides that the following channels enjoy “must carry” rights in the French Community of Belgium:

- a) the television programmes of the public service broadcasting company of the French Community (RTBF);
- b) the television programmes of authorised local and regional television channels in their own authorised area;
- c) the television programmes of international organisations in which the public service broadcaster of the French Community participates;
- d) the television programmes of any authorised private broadcasting company whose programmes are directed towards the whole of the French Community;
- e) two television programmes transmitted by the television channels of the public service broadcasting company of the Flemish Community;
- f) one of the television programmes of the public service broadcasting company of the German-speaking Community if reciprocity;
- g) the television programmes of authorised pay-TV broadcasters;
- h) the television programmes of broadcasters established in the European Union and which have concluded an agreement with the French Community on the promotion of audio-visual productions in the French Community or in the European Union, in particular with regard the financing of these productions
- i) other authorised services (thematic channels) which have concluded an agreement with the French Community on the promotion of audio-visual production in the French Community.

Currently, aside from the public service broadcasters of the French and Flemish Communities, only the television programmes of one local television broadcaster, one private broadcaster, one pay-TV broadcaster and TV5 enjoy “must carry” status.

#### **4.2 How are the “must carry” rights holders defined?**

See above.

#### **4.3 On which network operators or service providers are “must carry” obligations currently imposed? Is the obligation imposed on the entity or the network/service?**

Under Article 22(1) of the Media decree of 17 July 1987 (lastly modified by Decree of 4 January 1999), “must carry” obligations are currently imposed on the distributor authorised to exploit a cable TV network has “must carry rights”; they are imposed on the entity operating the network.

#### **4.4 Are other variants of “must carry” significant, e.g., “may carry if”?**

Yes.

**4.5 Does the regulatory framework allow “must carry” obligations to be imposed on other networks; if so which ones? Is the obligation technology neutral or technology specific?**

"Must carry" obligation only apply to cable networks. As such, the obligation is technology specific.

Must carry obligations apply to both digital and analogue cable networks.

**4.6 How are “must carry” obligations imposed (i.e., primary legislation, secondary legislation such as decrees; regulators’ decisions)?**

The must carry obligation applying to the French Community is imposed by Article 22(1) of the Media Decree of 17 July 1987, as amended; the Decree is primary legislation.

**4.7 At what level are they imposed (national, regional, local etc)?**

Must carry obligations are imposed at regional level.

**4.8 What links are there between broadcasting and telecommunications regulations in relation to must carry rules?**

There are no links between the regulatory measures.

**4.9 What links are there between broadcasting and telecommunications network regulators (in the implementation of must carry rules)?**

The Belgian Institute for Postal Services and Telecommunications (the 'BIPT') is the telecommunications regulatory body. Being subject to the supervision of the Minister of Telecommunications, the BIPT is not totally independent.

The Conseil Supérieur de l' Audiovisuel is the audio-visual regulatory body in the French Community. It is an independent authority.

There are no formal rules or practices regarding the means of co-operation between the respective regulatory institutions.

**4.10 What monitoring/supervising powers are conferred?**

Under the Decree of the French Community of 24 July 1997, the Conseil Supérieur de l' Audiovisuel monitors infringements of legislation and contractual obligations, and imposes sanctions.

**4.11 What sanctions are imposed for failure to meet “must carry” obligations?**

Under Article 22 of the Decree of the French Community of 24 July 1997, the Conseil Supérieur de l' Audiovisuel may impose sanctions on the cable operator. Possible sanctions include: the withdrawal of the authorisation, the suspension of the authorisation for a maximum of six months, a fine of between 10,000 BEF and 50,000,000 BEF.

### **5.1 Who has “must carry” rights (e.g., public service broadcasters, community channels, commercial broadcasters)?**

Under Articles 13, 16 and 19 of the Federal Law of 30 March 1995 concerning cable distribution and broadcasting activities in Brussels, the scope of the “must carry” obligations is as follows:

- the television programmes transmitted by the television channels of public service broadcasters of the Flemish (VRT) and the French Community (the RTBF); and
- the television programmes of any other broadcasting company falling within the jurisdiction of the Flemish or French Community, on whom the Minister confers "must carry" rights.

Article 1 of the Ministerial Decree of 17 January 2001 concerning the designation of broadcasting companies on the basis of the second paragraph of the Federal Law of 30 March 1995 (cited above as (b)), confers "must carry" status to the following broadcasters: (1) Vlaamse Media Maatschappij (“VTM”) n.v.; (2) TV Brussel v.z.w.; (3) Belgian business television n.v.; (4) Media ad infinitum n.v.; (5) TVi s.a.; (6) A.b.s.l. Télé Bruxelles; (7) Canal+ Belgique s.a.; and (8) Satellimages s.a. This includes : two commercial Belgian broadcasters (VTM (2 programs) and Tvi (2 programs)); one regional broadcaster (Télé Bruxelles); one non Belgian EU broadcaster (TV5) and one pay-TV broadcaster (Canal+).

As regards Canal+, the must-carry obligation currently extends to the analogue carriage of 1 program with Canal+’s analogue conditional access platform, and, based on court decisions, the digital carriage of 3 programs with Canal+’s digital conditional access platforms and Canal+’s service of Electronic Program Guide.

- Radio programs broadcast on FM by public broadcasters of the Flemish and French Communities.

### **The cable operator has to reserve at least 10 channels for radio programs broadcast by non-public broadcasters which have been designated by the Federal State.**

See above.

### **5.2 How are the “must carry” rights holders defined?**

### **5.3 On which network operators or service providers are “must carry” obligations currently imposed? Is the obligation imposed on the entity or the network/service?**

“Must carry” obligations are imposed on the cable distributor, i.e., they are imposed on the entity and not on the network or service.

### **5.4 Are other variants of “must carry” significant, e.g., “may carry if”?**

No.

**5.5 Does the regulatory framework allow “must carry” obligations to be imposed on other networks; if so which ones? Is the obligation technology neutral or technology specific?**

“Must carry” obligations are imposed on cable distributors only; accordingly, the obligation is technology specific. Must carry obligations currently extend to digital carriage.

**5.6 How are “must carry” obligations imposed (i.e., primary legislation, secondary legislation such as decrees; regulators’ decisions)?**

The must carry obligations for the Region of Capital Brussels are imposed by (i) Articles 13, 16 and 19 of the Federal Act of 30 March 1995 concerning cable distribution and broadcasting activities in Brussels and (ii) Article 1 of the Ministerial Decree of 17 January 2001. Must-carry obligations pursuant to Article 19 of the Federal Act of 30 March 1995 can be imposed by Decree. Accordingly, they are imposed by both primary and secondary legislation.

**5.7 At what level are they imposed (national, regional, local etc)?**

Must carry obligations are imposed by the Federal State.

**5.8 What links are there between broadcasting and telecommunications regulations in relation to must carry rules?**

There are no formal rules or practices regarding interaction between the respective regulations.

**5.9 What links are there between broadcasting and telecommunications network regulators (in the implementation of must carry rules)?**

The Belgian Institute for Postal Services and Telecommunications (the ‘BIPT’) is the telecommunications regulatory body. Being the subject to the supervision of the Minister of Telecommunications, the BIPT is not totally independent.

There are no formal rules provided for co-operation between the regulators.

**5.10 What monitoring/supervising powers are conferred?**

Article 4 of the Law of 30 March 1995 provides that a distributor must obtain an authorisation from the competent Minister in order to distribute television programs. The authorisation is deemed to be granted if the Minister does not decide within 4 months.

**5.11 What sanctions are imposed for failure to meet “must carry” obligations?**

Article 24 of the Law of 30 March 1995 sets out that an authorisation granted to a distributor who infringes relevant requirements might be suspended and, in case of relapse, might be revoked by the competent Minister. Any suspension and/or withdrawal can only be implemented following a notice to remedy the infringement within a period of 30 days. Infringements under the Law of 30 March 1995 are a criminal offence and

punishable by a fine of between BEF 200,000 to 20,000,000 BEF according to Article 41 of the Law of 30 March 1995.

### **6.1 Who has “must carry” rights (e.g., public service broadcasters, community channels, commercial broadcasters)?**

In Denmark, owners of cable systems are obliged to transmit the programmes of the public service broadcasters (Danmarks Radio and TV2), including the regional programmes aimed at the area concerned, and a local channel (in the latter case, only if the capacity of the cable network so allows, i.e., if its capacity is superior to 8 channels).

### **6.2 How are the “must carry” rights holders defined?**

Must carry rights holders are, for two of them, named in Article 4 of the Danish Broadcasting Act<sup>5</sup> (Danmarks Radio and TV2) and for the others, defined by reference to the fact that they are local broadcasters, authorised in accordance with Chapter 6 of the Broadcasting Act.

### **6.3 On which network operators or service providers are “must carry” obligations currently imposed? Is the obligation imposed on the entity or the network/service?**

According to Article 4 of the Danish Broadcasting Act, “must carry” obligations are imposed on the owners of the cable TV networks, i.e., the entity.

### **6.4 Are other variants of “must carry” significant, e.g., “may carry if”?**

According to Article 4(3) of the Danish Broadcasting Act, if a cable system has more than eight channels, one channel must also be available for local television programmes broadcast in the area concerned under a licence granted in pursuance of the provisions of Chapter 6.

According to Article 4(5), in the event that the owner of the cable system distributes programmes in programme packages, all such packages shall contain the programmes covered by Article 4 (1) (i.e., Danmarks Radio and TV2, including their regional programmes for the area concerned, in total three TV channels (soon four) and five radio programmes) and Article (3) (i.e., a channel dedicated to local programmes, provided that the cable TV network has a capacity of more than 8 channels).

Furthermore, the Broadcasting Act (Article 5) foresees that the Ministry of Research lays down rules relative to cable networks and the use of public networks for the distribution of programmes. Such rules may include provisions regarding the influence of end-users in relation to the programme selection. A Ministerial Order<sup>6</sup> imposes the conduction of polls by the owners of cable TV systems in order to decide of the composition of the cable TV offer.

---

<sup>5</sup> Lovbekendtgørelse nr. 551 af 20 juni 2000 af lov om radio- og fjernsynsvirksomhed (*Consolidated Broadcasting Act*).

<sup>6</sup> Bekendtgørelse nr. 605 af 19. Juli 1999 om programudbud i fællesantenneanlæg m.v.

**6.5 Does the regulatory framework allow “must carry” obligations to be imposed on other networks; if so which ones? Is the obligation technology neutral or technology specific?**

Must carry obligations only apply to the owners of cable systems.

The owners of cable systems have the obligation to distribute the digital programmes of Danmarks Radio and TV2 only where the cable network is already used for the distribution of other digital programmes (Article 4).

**6.6 How are “must carry” obligations imposed (i.e., primary legislation, secondary legislation such as decrees; regulators’ decisions)?**

Must carry obligations are imposed by primary legislation.

**6.7 At what level are they imposed (national, regional, local etc)?**

National. The must carry obligations laid down in the Broadcasting Act apply to all owners of cable systems. Local channels may enjoy must carry rights only in respect of the local area concerned.

**6.8 What links are there between broadcasting and telecommunications regulations in relation to must carry rules?**

None.

**6.9 What links are there between broadcasting and telecommunications network regulators (in the implementation of must carry rules)?**

The same body, the National Telecommunications Agency (the Telestyrelsen), oversees telecommunications and broadcasting regulations with regard to the implementation of must carry rules.

**6.10 What monitoring/supervising powers are conferred?**

The National Telecom Agency (Telestyrelsen) oversees must carry obligations pursuant to Article 5b of the Broadcasting Act. It may, in that respect, impose obligations on the owners of the cable networks. The decisions of the Agency, taken with respect to must carry obligations, may not be appealed.

The National Telecom Agency also oversees compliance with the rules related to:

- the influence of end-users in the composition of the offer; and
- the transmission of local programmes via the public telecommunications network (which is permitted only in the area covered by the broadcasting licence).

Other regulatory agencies involved in cable and satellite broadcasting include:

*The Satellite and Cable Board* - A company wishing to broadcast services via satellite or cable in an area larger than one local area must apply for a licence to the Satellite and Cable Board, an independent body whose members are appointed by the Minister for Culture. It is composed of five members, appointed for five years. The Satellite and Cable Board has supervisory powers in relation to infringements concerning identification, programming and advertisements. It may withdraw licences and decides

on the action to be taken in case of infringement of the Broadcasting Act. It also advises the Minister on the programmes services broadcast via satellite and cable in areas exceeding one local area.

Local Radio and Television Board - The provision of programme services by way of radio equipment or cable systems within a local area is subject to a licence granted by a Local Radio and Television Board, to be set up, if required, by the local council. (If warranted by the circumstances one Board for radio programme services and one for television programme services may be set up.) The Board shall issue licences to provide programme services. The Board oversees the services, and protests against any infringement of the Act of any rules laid down in pursuance of the Act and of the terms and conditions for licences granted; it may revoke a licence. In the case where the Board become aware of matters falling under the competence of the Local Radio and Television Committee, the Board shall inform the Committee.

The Local Radio and Television Committee is set up by the Minister for Culture. The Committee may direct local Boards and licensees to submit any information of significance to the matters considered by the Committee. It decides on any complaints concerning a local Board's decisions concerning (1) the rejection of applications for licences to provide local programme services; and (2) the revocation of a licence to provide local programme services. The Committee decides on complaints concerning licensees' independent provision of programme services, where such services (1) cover several local areas; or (2) concern radio or television broadcasters which provide programme services on another basis than a licence for local radio or television programme services. The Committee may furthermore at its own initiative take up a case for consideration. In that connection the Committee may (1) direct a local Board to decide in a case not previously considered; (2) direct a local Board to reconsider a case previously considered; and (3) in special cases itself reach a decision in a case. Lastly, the Committee advises the Minister on local radio and television services.

After negotiation with the National Telecom Agency, the Committee also takes decisions regarding the cases concerning the distribution of transmission stations in local areas with due regard for the frequencies available.

### **6.11 What sanctions are imposed for failure to meet “must carry” obligations?**

Penal sanctions (fines) can be imposed for failure to meet “must carry” obligations.

### **7.1 Who has “must carry” rights in each Member State (e.g., public service broadcasters, community channels, commercial broadcasters)?**

Under Article 42 of the 1998 *Act on Television and Radio Operations (the “Act”)*<sup>7</sup>, the “must carry” obligation includes:

- broadcasts receivable in all Finnish households with standard receiving equipment in the area of the network and produced by television and radio companies operating under terrestrial licences granted by the Finnish Government; and
- broadcasts from the Finnish Broadcasting Company (YLE)

The must carry rules concern both public service channels and commercial channels. The two national public service channels (TV1 and TV2) have “must carry” rights. Commercial channels benefit from must carry rights when their licences cover the whole of the territory of Finland. Currently, two commercial television channels (MTV3 and Channel 4) have must carry rights. Furthermore, since in South Finland the broadcasts from the Finnish Public Broadcasting Company YLE include Swedish SVT as well, in that particular region this program also has “must carry” rights.

### **7.2 How are the “must carry” rights holders defined?**

See above.

### **7.3 On which network operators or service providers are “must carry” obligations currently imposed? Is the obligation imposed on the entity or the network/service?**

Section 42 of the Broadcasting Act imposes “must carry” obligations on a telecommunications operator<sup>8</sup> that owns and controls a telecommunications network reserved mainly for the distribution of television and radio programmes. Therefore, “must carry” obligations are imposed on the entity.

### **7.4 Are other variants of “must carry” significant, e.g., “may carry if”?**

No.

### **7.5 Does the regulatory framework in the Member State allow “must carry” obligations to be imposed on other networks; if so which ones? Is the obligation technology neutral or technology specific?**

“Must carry” obligations are imposed on telecommunications operators. As such, the obligation is technology neutral.<sup>9</sup>

---

<sup>7</sup> Act 744/1998.

<sup>8</sup> According to Section 4 (11) of the Telecommunications Market Act (Act 396/97), a telecommunications operator means a legal person that offers for public use services belonging to telecommunications that it provides itself.

<sup>9</sup> According to the Finnish Broadcasting Company, “must carry obligations apply to both analogue and digital cable networks.

Under Section 8(4) of the Telecommunications Market Act, telecommunication operators have the obligation to lease (on request) to other telecommunications operators any free segments of cable channels constructed by it and any free antenna places on radio masts belonging to a public telecommunications network (for the operation of public telecommunications) if the construction of parallel cables or radio masts is not expedient for reasons relating to environmental protection, zoning or regional planning and if the cables and antennas are no longer necessary for the present and reasonable future needs of the telecommunications operator. Section 18(2) of the Act provides that telecommunication operators must agree on the fees for leasing activities.

**7.6 How are “must carry” obligations imposed (i.e., primary legislation, secondary legislation such as decrees; regulators’ decisions)?**

Must carry obligations are imposed in Paragraph 42 of the Broadcasting Act, which is primary legislation.

**7.7 At what level are they imposed (national, regional, local etc)?**

Must carry obligations are imposed at national level.

**7.8 What links are there between broadcasting and telecommunications regulations in relation to must carry rules?**

There are no such links.

**7.9 What links are there between broadcasting and telecommunications network regulators (in the implementation of must carry rules)?**

Section 35 of the Act on Television and Radio Operations provides that the Telecommunication Administration Centre (the TAC) supervises compliance with the Act and the provisions and regulations issued thereunder with the exception of issues of compliance with provision under the supervision of the Consumer Ombudsman. The TAC is also the regulatory body for telecommunication.

**7.10 What monitoring/supervising powers are conferred?**

Section 41 of the Act on Television and Radio Operations confers on the TAC the right to obtain from a television and radio broadcaster information necessary for to allow it to perform its duties prescribed in the Act.

**7.11 What sanctions are imposed for failure to meet “must carry” obligations?**

The general sanctions in the Broadcasting Act apply. The TAC can give any operator not complying with its “must carry” obligations a warning and summons to meet its obligations. Furthermore, the TAC can also impose fines.

## 8.1 Who has “must carry” rights (e.g., public service broadcasters, community channels, commercial broadcasters).

### *Cable operators*

Article 34-I of the French Law of 30 September 1986 on freedom of communication, as amended by the Law of 1 August 2000<sup>10</sup> provides that the establishment of cable networks is authorised, or undertaken, by the communal authorities upon which territory the cable networks are established. The operation of such cable networks is authorised by the High Council for Audio-visual ("Conseil Supérieur de l'Audiovisuel", hereafter "the CSA") upon proposals from the communal authorities. The grant of such authorisations respects the conditions set out by a government decree adopted after consultation of the Council of State.

Article 34-II provides that the authorisation "may contain obligations". These obligations deal with:

- the retransmission of the services which are broadcast via hertzian means and normally received in the area concerned and the retransmission of the international service which has been the object of a convention pursuant to Article 33-1 of the Law and which is part of the external audio-visual action of France, the influence of French-speaking communities and French language, and in which at least one of the public channel takes part (i.e., TV5).
- the composition and the structure of the services offered, and notably, the proportions of the channels in the French languages which are independent from the service distributor(s).<sup>11</sup>

The authorisation may also include further must carry provisions related to the following points:

- the allocation, of a channel, either on a full, or on a shared basis, to the communal authorities, reserved for communal information;
- the allocation of a channel, either on a full or on a shared basis, to non-for-profit associations, the aim of which is to distribute programmes related to local life;
- the distribution of a minimal number of own programmes; and
- the payment by the operator of a fee to the communal authorities concerned.

In practice, cable operators submit, through the communal authorities, a proposal to the CSA which states whether all terrestrial channels and the local channels which are available in the area concerned are included in the cable operator's offer.

As a result, cable network operators currently all have must-carry obligations with regard to a large range of channels, covering both public and commercial channels:

<sup>10</sup> Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication, amended by Loi n° 2000-719 du 1 août 2000.

<sup>11</sup> "Service distributor" is defined in Article 2-1 of the Law as any person which enters into contractual relationships with a service editor in view of making available to the public audio-visual services by terrestrial hertzian transmission, cable or satellite.

- national public channels: France 2 (generalist), France 3 (regional and generalist), Arte (generalist and cultural), La Cinquième (educational)
- private (commercial) national channels: TF1 (generalist) and M6 (generalist and musical)
- private pay-TV channels: Canal + (cinema, sport and entertainment).<sup>12</sup>

Moreover, in areas close to borders, cable networks distribute foreign channels which are able to be received via terrestrial Hertzian waves in the area concerned (ARD, ZDF, RTL, SW3 and Rai) (this may be imposed by the CSA).

Following the amendment of the Law, cable operators will also have to distribute TV5 (which is already largely available on cable networks).

### **Satellite operators**

Contrary to cable operators, satellite operators are only subject to the obligation to declare their services to the CSA, indicating, *inter alia*, the composition and structure of their offers. Any change must be notified to the CSA.

Article 34-2 of the Law on freedom of communication provides that satellite operators must provide to their subscribers, on a free basis, the international service which has been the object of a convention pursuant to Article 33-1 of the Law and which is part of the external audio-visual action of France, the influence of French-speaking communities and French language, and to which at least one of the public channels takes part (i.e., TV5).

Moreover, Article 34-3 of the Law provides that, in the French metropolitan territory, satellite operators must provide to their subscribers, on a free basis, the retransmission of the public channels and the European cultural channel issued from the Treaty of 2 October 1990, which are broadcast by hertzian terrestrial analogue means, unless the latter channels consider that the service offer is manifestly incompatible with the respect of their public service missions.

As far as the overseas departments, territories and collectivities as well as New Caledonia are concerned, satellite operators must provide to their subscribers, on a free basis, the retransmission of the programmes of Radio France Outre-mer, which are broadcast by hertzian terrestrial analogue means, unless Radio France Outre-mer considers that the service offer is manifestly incompatible with the respect of its public service missions.

The transport and broadcasting costs associated to the retransmission are borne by the satellite operators, except in regard of the overseas departments, territories and collectivities and New Caledonia, where

---

<sup>12</sup> The must-carry obligations which benefit these channels have been imposed on the cable operators in the authorisations delivered by the CSA in the law relative to the freedom of communication before the latter was amended in 1 August 2000. Before the amendment, Article 34 read:

*The authorisation "may contain obligations... which may only concern one or more of the following points: (1) the retransmission of services which are broadcast via Hertzian waves and normally received in the area concerned; (2) the distribution of a minimal number of own programmes; (3) the allocation of a channel, either on a full, or on a shared basis, to the communal authorities, reserved for communal information; (4) the distribution of a minimal number of programmes which are edited by legal persons independent of the actual operator; and (5) the payment by the operator of a fee to the communal authorities concerned."*

those costs may be shared between the satellite operators and Radio France Outre-mer.

## **8.2 How are the “must carry” rights holders defined?**

As it appears from above, there is, with regard to cable operators, no specific definition of "must carry" right holders under the French system, only a definition of "potential" must carry right holders in the sense that the regulator decides whether to impose or not must carry obligations on cable TV operators. Must carry rights may be extended to any channel which is received in the area concerned via Hertzian waves. Must carry rights have been granted, in practice, to all types of channels, including French and foreign channels, private and public, generalist and specialised, and even pay-TV channels (*see above*).

Must carry right holders are, however, with regard to satellite operators, enumerated in the text of the Law. They include France 2, France 3, La Cinquième, Arte and TV5.

## **8.3 On which network operators or service providers are “must carry” obligations currently imposed? Is the obligation imposed on the entity or the network/service?**

Must carry obligations are imposed on the cable TV operator by the CSA in the authorisation to operate the network. The obligation is, therefore, imposed on the entity to which the authorisation is granted.

As far as the satellite is concerned, must carry obligations are imposed on any distributor of service by satellite.

## **8.4 Are other variants of “must carry” significant, e.g., “may carry if”?**

As mentioned above, the French legislative framework defines only "potential" must carry right holders in relation to retransmission on cable networks. The CSA may impose carry obligations on cable TV operations. But once these carry obligations are defined in the authorisation, they are "must carry" obligations in all circumstances.

The rights granted by the Law to must carry rights holders in relation to retransmission by satellite are unconditional. Must carry rights include the possibility for their holders to oppose to the retransmission of their programmes where they consider that the presence of the latter in a specific satellite offer is incompatible with their public service missions.

Consequently, the French system does not provide for "may carry if" obligations.

## **8.5 Does the regulatory framework allow “must carry” obligations to be imposed on other networks; if so which ones? Is the obligation technology neutral or technology specific?**

In addition to the must carry obligations which may be imposed by the CSA on cable operators, satellite operators are subject to must carry obligations set out in the Law.

The law does not indicate, in relation to must carry obligations for cable operators, whether these obligations are limited to analogue transmission or include digital transmission as well. In practice, not all cable operators include must carry channels in their digital offer. Moreover, the Law does not indicate whether must carry obligations are limited to terrestrial

channels; they could therefore also include other hertzian programmes, i.e., satellite.

The Law is more precise with the regard of must carry obligations for satellite operators, which only cover the retransmission of the analogue terrestrial service offers of public broadcasters.

#### **8.6 How are “must carry” obligations imposed (i.e., primary legislation, secondary legislation such as decrees; regulators’ decisions)?**

“Must carry” obligations are imposed by individual decisions (in the authorisations) of the regulator (the CSA) within the framework of the law and government decrees. They are imposed by primary legislation upon satellite operators.

#### **8.7 At what level are they imposed (national, regional, local etc)?**

“Must carry” obligations are imposed by the national regulator with regard to the operation of cable networks established on the basis of authorisations from local authorities.

Must carry obligations imposed on satellite operators are imposed at national level with a distinction being drawn between the metropolitan territory of France and the various overseas entities.

#### **8.8 What links are there between broadcasting and telecommunications regulations in relation to must carry rules?**

There are no links between regulatory measures.

#### **8.9 What links are there between broadcasting and telecommunications network regulators (in the implementation of must carry rules)?**

The 1986 Law relating to the freedom of communication provides for the co-operation of the CSA with the Competition Council (similar provisions exist in the Law on Telecommunications with regard to co-operation of the telecoms regulator with the Competition Council) and, in the event of disputes related to terrestrial digital audio-visual services which may restrict the scope of the offer of telecommunications services, for consultation by the CSA with the Authority for the Regulation of Telecommunications.

#### **8.10 What monitoring/supervising powers are conferred?**

The CSA is an independent authority with extensive powers over audiovisuals matters.

The monitoring/supervising powers conferred on the CSA include the enforcement of obligations imposed on private broadcasters, including the respect of the obligations set out in their authorisations and the respect of decency standards. The CSA also enforces the rules relating to advertising. The CSA may suspend the transmission of a programme, suspend, limit or withdraw the authorisation to use a given frequency, and impose fines for illegal broadcasting.

The communal authorities only authorise the physical establishment of networks or establish such networks in their own right.

### **8.11 What sanctions are imposed for failure to meet “must carry” obligations?**

The CSA may impose administrative sanctions on public and private broadcasters for failure to comply with their obligations, including pecuniary sanctions of a maximum amount of 3% of the turnover (5% in the case of second and subsequent offences). However, the CSA must consult with and warn the broadcaster before it takes action against it.

Moreover, the CSA submits any infraction of the law to the State Prosecutor. The operation of a cable TV network without authorisation, or in violation of the provisions of an authorisation, may be punished with a fine of up to FFR 500 000. In the case of subsequent offences, the maximum amount of the fine is FFR 1,000,000 and the offender may be sentenced to one year imprisonment.

### 9.1 Who has “must carry” rights in each Member State (e.g., public service broadcasters, community channels, commercial broadcasters).

Must-carry rules are, in principle, governed by the Inter-State Agreement on Broadcasting Services (or “RStV” as per its German initials). Its fifth amendment came into force on 1 January 2001. The RStV distinguishes between must-carry rules for (1) analogue cable networks and (2) digital cable networks.

#### **Analogue Cable Networks**

Pursuant to section 51 (1) of the RStV, the details of retransmission, in particular the order of priority in allocating cable channels, are governed by the law of the Länder. Accordingly, rules on the allocation of programmes to scarce channel capacity are addressed under the broadcasting acts of the Länder. Although there are some differences between the Länder with respect to must carry rules, the rules follow a similar pattern in most of the Länder. Taking the Land of Northrhine – Westphalia (“NRW”) as an example, the following system of priority is applied:

- Public broadcasters and broadcasting programmes transmitted throughout NRW by broadcasters who have a licence from the Land and local broadcasting programmes (within their dissemination area);
- If the capacity of a cable network is not sufficient to transmit all other retransmitted programmes, licensed programmes and television programmes that can be received terrestrially in the area concerned (the Media Agency of NRW decides on the priority according to detailed criteria which predominantly relate to diversity);
- In regions close to the border, at least one programme which can be received terrestrially across the border by an ordinary antenna must be re-transmitted over cable; and
- The Media agency may determine up to two additional foreign language programmes designed for foreign citizens to be transmitted on the cable network in regions where such foreign citizens constitute a significant proportion of the population.

With regard to the remaining capacity, again taking North Rhine-Westphalia as an example, channels are allocated by the Media Agency using criteria including:

- Plurality of programmes, special interests and opinion;
- The extent to which events in the political, economic, social and cultural domain are presented and the programme contributes to the plurality of opinion;
- Contribution of the programme to the cultural and language diversity in the entire programme offer on the cable;
- Minority and target group interests; and
- Proportion of own productions or productions from the German speaking or European environment.

The selection of the Media Agency of programmes to be re-transmitted is reviewed at least every eighteen months.

## Digital Cable Networks

The fourth amendment of the RStV, which entered into force 1 April 2000 introduced a common set of rules for the regulation of digital cable networks. The fifth amendment introduced the regulation of digital terrestrial broadcasting.<sup>13</sup>

In introducing a common regime for digital cable networks, the Länder expressly abandoned their policy for analogue cable networks, which has been and continues to be governed by state law. The analogue approach was considered to be likely to restrict the development of digital cable television, since such limits on economic freedom in relation to the choice of services hampers private investment in network architecture. The rationale of the digital regulation is to enhance the discretion of cable network operators and allow them to adjust their services to commercial needs and thus encourage investment in cable infrastructure. However, in order to comply with constitutional requirements, the new rules use a must-carry approach to protect diversity of opinion. Accordingly, the RStV provides, in section 52(3) to (5), that the operator of a digitised cable network must ensure that:

- Necessary transmission capacity is available for the dissemination of broadcasters established under public law including their programme bouquets<sup>14</sup>;
- Transmission capacity is available for regional and local television stations and for “open channels” licensed in the particular Länder to the extend of one analogue channel<sup>15</sup>; and
- Transmission capacity made available for the purposes set forth above is technically equivalent to the transmission capacity devoted to other digital channels.

In allocating the use of one third of the total capacity available for digital distribution (in addition to meeting the must carry obligations), cable network operators are obliged to take into account factors such as

- The interests of the connected subscriber;
- A multitude of programme providers;
- A diverse programme offering consisting of full-covering programmes<sup>16</sup>, free TV programmes, specialized programme<sup>17</sup> and foreign language programmes; and
- Media services.

Cable operators may freely allocate the remaining digital transmission capacity in accordance with general law. However, the Media authorities may intervene in order to safeguard the compliance with regard to the above mentioned can-carry obligations. Under section 52 (5) of the RStV the Media authorities may set a time limit in which the operator has to

---

<sup>13</sup> The detailed regulation of digital terrestrial television is delegated to the Länder. However, the RStV states that, as a general rule, broadcasters have to be allocated transmission capacities preferentially for broadcasts that are already disseminated in a given territory in analogue form.

<sup>14</sup> Please note that, according to section 19 (4) of the RStV, digital channels of public broadcasters and hence respective must-carry obligations, are limited to the bandwidth of 3 analogue channels. In this respect, an “analogue channel” is used simply as a technical measurement unit (=8 MHz).

<sup>15</sup> Again, “analogue channel” is used simply as a technical measurement unit (=8 MHz).

<sup>16</sup> Full-covering programmes being defined as a programme service of varied content in which information, education, advice and entertainment constitute a major part of the overall output; section 2 (2) Nr. 1 RStV.

<sup>17</sup> Specialized programmes being defined as a programme service whose contents are basically of the same kind; s. 2 (2) Nr. 2 RStV.

fulfil the requirements of diversity. If the operator does not comply, the Media authority may determine the order of priority in allocating cable channels in accordance with state law. We are, however, not aware of any special rules with regard to must-carry rules in the digital cable networks in any of the Länder. The Media authorities of the Länder are currently discussing a common approach to the must-carry and can-carry obligations under section 52 of the RStV in the common forum for digital access (Gemeinsame Stelle digitaler Zugang), since basic programmes are being distributed on a national basis. They believe that capacity management (as for the analogue channels) is not yet necessary for digital transmission. However, the media authorities will ensure that access remains possible for new entrants.

Although the inter – relationship between “must carry rules under the RStV and the rules on programme allocation under the Broadcasting Act is far from being clear, it is commonly understood that in principle the rules on programme allocation refer to analogue transmission capacity.

## **9.2 How are the “must carry” rights holders defined?**

No particular definition applies. Must carry rules are phrased as an obligation on the operator of the cable network. Broadcasters benefiting from “must carry” rules or from legislation on programme allocation are referred to in general terms as appear from item (1.) above.

## **9.3 On which network operators or service providers are “must carry” obligations currently imposed? Is the obligation imposed on the entity or the network/service?**

Must carry obligations and programme allocations are imposed on the operator of the network.

## **9.4 Are other variants of “must carry” significant, e.g., “may carry if”?**

Variants exist with respect to must carry rules applying to digitised networks. In allocating the use of one third of the total capacity available for digital distribution (further to meeting the must carry obligations set out in item one above), cable network operators are also under an obligation to take into account factors such as the need to ensure the diversity of programs being transmitted on the network. Cable operators may freely allocate the remaining digital transmission capacity in accordance with the general laws.

## **9.5 Does the regulatory framework allow “must carry” obligations to be imposed on other networks; if so which ones? Is the obligation technology neutral or technology specific?**

“Must carry” obligations and rules on programme allocation are applicable both for analogue and digital networks (See above, item (1.).

## **9.6 How are “must carry” obligations imposed (i.e., primary legislation, secondary legislation such as decrees; regulators’ decisions)?**

The Broadcasting Acts of the 16 different Länder set forth principles of programme allocation in a detailed manner. Principles on the allocation of programmes are confirmed and specified in bylaws of the Media Agencies. In case of scarcity of transmission capacity, the Media Agency determines

priority rankings by way of administrative decision on the basis of the relevant Broadcasting Act.

The Interstate Agreement on broadcasting concluded between the Länder set out principles on must carry rules for digitised networks.

Both, the RStV and the Broadcasting Acts are primary legislation.

### **9.7 At what level are they imposed (national, regional, local etc)?**

Must carry obligations are imposed at the level of the 16 German "Länder".

### **9.8 What links are there between broadcasting and telecommunications regulations in relation to must carry rules?**

Certain powers under the Telecommunications Act relating to frequency allocation exist on the federal level. However, they do not directly relate to must carry rules.

### **9.9 What links are there between broadcasting and telecommunications network regulators (in the implementation of must carry rules)?**

As regards must carry rules, the relevant laws do not provide for links between the Regulatory Authority for Telecommunications and Post and the Media Agencies of the Länder. Länder authorities consider this to be a problem, for example in assessing to which extent analogue cable networks may be digitised.

### **9.10 What monitoring/supervising powers are conferred?**

Taking NRW as an example, the Media Agency can state that the cable operator does not comply with must carry obligations or programme allocations. Irrespective of whether or not the Media Agency makes such a statement, administrative fines may be set out.

### **9.11 What sanctions are imposed for failure to meet "must carry" obligations?**

Non-compliance with must carry rules on digitised networks constitute an administrative offence which may trigger an administrative fine of up to one million DM. Non-compliance with programme allocations decided upon by the Media agency due to scarce transmission capacities constitute an administrative offence; in NRW, the level of fines is currently under discussion.

There is no must carry legislation in Greece.

### 11.1 Who has “must carry” rights (e.g., public service broadcasters, community channels, commercial broadcasters)?

Under the “must carry” legislation (Wireless Telegraphy (Wired Broadcast relay Licence) Regulations, 1974 (S.I. No 67 of 1974), amended by S.I. No 82 of 1988; Wireless Telegraphy (Television Programme Retransmission) Regulations, 1989 (S.I. No 39 of 1989); and Radio and Television Act 1988), a cable operator is obliged to transmit:

- the television programme services of the national public service broadcasting company (RTE); and
- the television programmes of the independent television station TV 3.

The must carry rules cover 4 out of 30 television channels available for cable transmission.

### 11.2 How are the “must carry” rights holders defined?

Section 3 of the Wireless Telegraphy (Wired Broadcast Relay Licence) Regulations<sup>18</sup> provides as follows:

“The licensee

a) shall relay as part of the basic service to each service point the national television programmes of Radio Telefis Eireann at the times at which they are being broadcast,

... ..

e) shall relay as part of the basic service to each service point such approved local programmes as may be required by the Minister under Regulation 12 (a) of the Wireless Telegraphy (Wired Broadcast relay Licence) Regulations, 1974, to be relayed, and shall not relay any other programmes or matter save with the consent in writing of the Minister. Should such consent in writing be given the licence shall be regarded as amended accordingly”.

In addition, Section 3 of the Wireless Telegraphy (Television Programme Retransmission) Regulations<sup>19</sup> provides as follows:

“The licensee –

...

b) shall retransmit to each subscriber station such television programme services designated by the Minister under the Wireless Telegraphy (Television Programme Retransmission) Regulations, 1989, for retransmission, and shall not retransmit any other programme or matter save with the consent in writing of the Minister. If the Minister consents in writing as aforesaid to the retransmission of any such other programme or item, this licence shall be deemed to be amended in accordance with such consent.”

Finally, Section 17 of the Radio and Television Act<sup>20</sup> provides as follows:

“The Commission shall, on being directed to do so by the Minister, invite applications for a television programme service contract for the provision

<sup>18</sup> S.I. No 67 of 1974 (amended by S.I. No 82 of 1988)

<sup>19</sup> S.I. No 39 of 1989

<sup>20</sup>

of a television programme service which shall be distributed using channel capacity on wired broadcast relay systems and television programme retransmission systems licensed under regulations made under section 6 of the Wireless Telegraphy Act, 1926.”

It should be noted, that the Director of Telecommunications is currently preparing a new regulatory framework for cable and MMDS networks, which will authorise the carriage of digital television services.

**11.3 On which network operators or service providers are “must carry” obligations currently imposed? Is the obligation imposed on the entity or the network/service?**

“Must carry” obligations are currently imposed on “licensees”. Therefore, they are imposed on entities, not the network or service. A licensee is defined by the Wireless Telegraphy Regulations as the holder of a license.

**11.4 Are other variants of “must carry” significant, e.g., “may carry if”?**

No.

**11.5 Does the regulatory framework allow “must carry” obligations to be imposed on other networks; if so which ones? Is the obligation technology neutral or technology specific?**

"Must carry" obligations apply only to cable networks. Must carry obligations currently only apply to analogue networks.

**11.6 How are “must carry” obligations imposed (i.e., primary legislation, secondary legislation such as decrees; regulators’ decisions)?**

Must carry obligations are imposed by the following instruments:

- Wireless Telegraphy (Wired Broadcast Relay Licence) Regulations, 1974 (S.I. No 67 of 1974), amended by S.I. No 82 of 1998;
- Wireless Telegraphy (Television Programme Retransmissions) Regulations, 1989 (S.I. No 39 of 1989) and
- Radio and Television Act 1998.

Therefore, must carry obligations are imposed both by primary (Radio and Broadcast Act) and secondary legislation (Wireless Telegraphy Regulations).

**11.7 At what level are they imposed (national, regional, local etc)?**

“Must carry” obligations are imposed at national level.

**11.8 What links are there between broadcasting and telecommunications regulations in relation to must carry rules?**

There are no links between broadcasting and telecommunications regulations in relation to "must carry" rules.

### **11.9 What links are there between broadcasting and telecommunications network regulators (in the implementation of must carry rules)?**

There are no formal rules or practices regarding co-operation between the relevant regulatory institutions.

### **11.10 What monitoring/supervising powers are conferred?**

The Independent Radio and Television Commission (“IRTC”) is responsible for developing commercial independent services at national, local and community levels. The members of the IRTC are appointed by the Minister of Arts, Heritage, Gaeltacht & the Islands. The IRTC awards commercial licences by competitive tender pursuant to the 1988 Television and Radio Act. The National Regulatory Authority actually grants the licence to the IRTC, which then enters into a “Service Contract” with the private operator conveying the benefits of the licence. The IRTC has the power to levy a fee on the successful applicant and the duration of the licence will be as specified in the Service Contract.

The IRTC has power to:

- enter into contracts for sound broadcasting services (including a national sound broadcasting service);
- enter into a contract for one commercial TV broadcasting service;
- investigate the affairs of broadcasters;
- ensure that a television broadcaster is responsive to the interests/concerns of the community and to uphold democratic values enshrined in the constitution; and
- have regard to the need for public awareness/understanding of the values and traditions of countries other than the State (including in particular other EC Member States).

### **11.11 What sanctions are imposed for failure to meet “must carry” obligations?**

The sanctions provided by the law for not respecting a condition of a licence, such as the must carry rules, are set out in clause 18 of the 1999 Regulations. These sanctions are as follows:

- Suspension of the licence
- Reduction of the licence term
- Amendment of the licensed area
- Revocation of the licence.

12 Italy

---

There is no must carry legislation in Italy.

13 Luxembourg

---

There is no must carry legislation in Luxembourg.

### 14.1 Who has “must carry” rights (e.g., public service broadcasters, community channels, commercial broadcasters)?

Under the Media Act,<sup>21</sup> broadcasting network providers are obliged to retransmit:

- the television programmes transmitted by the three television channels of the Dutch public service broadcasting companies (NL1, NL2 and NL3);
- the television programmes transmitted by the television channel of two local public service broadcasting companies; and
- the television programmes transmitted by the two channels of the Flemish public service broadcasting company (VRT).

In addition, a cable operator is also obliged to retransmit the television programmes of eight broadcasting companies (another eight different channels). However, the Media Act does not specify which additional channels are to be carried.<sup>22</sup>

In summary, a cable operator is obliged to retransmit a basic package of 15 channels. The first seven channels benefit from a statutory must carry. The other eight channels only benefit on a temporary basis from must carry, since local councils decide each year which channels a cable operator has to retransmit.

The must carry rules cover 50% of all television channels transmitted by cable. Most cable companies offer around 30 television channels; a small number offer up to 40 channels.

### 14.2 How are the “must carry” rights holders defined?

Article 82 of the Media Act provides:

“1. Broadcasting network providers shall be required to transmit - in full, unaltered and at the same time as the original transmission - to all those connected to the broadcasting network, at least 15 television programme services for general broadcasting purposes and at least 25 radio programme services for general broadcasting purposes, including in any event:

- the programme services of the establishments which have obtained national broadcasting time;
- the programme services of the establishment which has obtained regional broadcasting time, aimed at the province in which the broadcasting network is located;
- the programme services of the establishment which has obtained local broadcasting time, aimed at the municipality in which the network broadcasting is located;
- the Dutch-language television programme services of the national Belgian public broadcasting service; and
- two Dutch-language radio programme services of the national Belgian public broadcasting service.

<sup>21</sup> Act 1987/249, as amended.

<sup>22</sup> The system is currently under review.

2. If different programme services for general broadcasting purposes are transmitted on the same broadcasting network channel at different times, these programme services shall be regarded as one programme service for the purposes of paragraph 1.”

**14.3 On which network operators or service providers are “must carry” obligations currently imposed? Is the obligation imposed on the entity or the network/service?**

“Must carry” obligations are imposed on the provider of the broadcasting network (i.e., on the entity). There is no definition in the Media Act for the term “provider of broadcasting network”. Broadcasting network is defined by Article 1.1 (of the Telecommunications Act)<sup>23</sup> as follows:

“technical installations, or parts thereof, that are used to broadcast programmes by means of cable or radio connections between points, to one or more pieces of land, dwellings or non-residential buildings.”

**14.4 Are other variants of “must carry” significant, e.g., “may carry if”?**

No.

**14.5 Does the regulatory framework allow “must carry” obligations to be imposed on other networks; if so which ones? Is the obligation technology neutral or technology specific?**

As “must carry” obligations are imposed on providers of broadcasting networks, the obligation is technology neutral. “Must carry” obligations apply to both analogue and digital cable networks.

**14.6 How are “must carry” obligations imposed (i.e., primary legislation, secondary legislation such as decrees; regulators’ decisions)?**

As the must carry obligations are imposed by Article 82 of the Media Act, they are imposed by primary legislation.

**14.7 At what level are they imposed (national, regional, local etc)?**

Must carry obligations are imposed at national level. Both national and local must carry channels are defined by law. The National Government takes the decision to grant must carry status to television channels or to national television broadcasting services.

Article 82k of the Media Act reads as follows:

“In municipalities where a broadcasting network is located, the Municipal Council shall establish a Programming Council which shall advise the provider of the broadcasting network as to which general programmes must, at least, be broadcast to all network subscribers pursuant to Article 82i.”

**14.8 What links are there between broadcasting and telecommunications regulations in relation to must carry rules?**

There are no links provided.

---

<sup>23</sup> Act of 7 April 1998

**14.9 What links are there between broadcasting and telecommunications network regulators (in the implementation of must carry rules)?**

There are no specific rules provided in either the Media Act nor in the Telecommunications Act concerning co-operation between the Dutch regulatory institutions.

**14.10 What monitoring/supervising powers are conferred?**

There are no specific monitoring/supervising powers for the Media Commission conferred by the Media Act.

**14.11 What sanctions are imposed for failure to meet “must carry” obligations?**

Under Article 135 (1) of the Media Act, the Media Authority may impose an administrative fine on the provider of a programme service broadcast by means of a broadcasting transmitter or broadcasting network, or on the provider of a broadcasting transmitter or broadcasting network.

### **15.1 Who has “must carry” rights (e.g., public service broadcasters, community channels, commercial broadcasters)?**

Under Article 12 of Decree No 241/91 of 18 September 1997 concerning the activities of cable operators, the two television channels of the public service broadcaster (RTP) have “must carry” rights.

### **15.2 How are the “must carry” rights holders defined?**

Article 12 of Decree No 241/91 of 18 September 1997 provides as follows:

“A cable network operator is obliged to distribute the public television channels, as defined in the Law of 58/90 of 7 September 1999”.

Law of 58/90 of 7 September 1999 defined the public television channels as follows:

### **15.3 On which network operators or service providers are “must carry” obligations currently imposed? Is the obligation imposed on the entity or the network/service?**

Article 12 of the Decree of law n° 241/91 of September 18, 1997 imposes “must carry” obligations cable network operators.

Consequently, “must carry” obligations are imposed on the entity operating the cable network.

### **15.4 Are other variants of “must carry” significant, e.g., “may carry if”?**

No.

### **15.5 Does the regulatory framework allow “must carry” obligations to be imposed on other networks; if so which ones? Is the obligation technology neutral or technology specific?**

“Must carry” obligations only apply to cable networks. As such, the obligation is technology specific. “Must carry” obligations are imposed on both digital and analogue networks.

### **15.6 How are “must carry” obligations imposed (i.e., primary legislation, secondary legislation such as decrees; regulators’ decisions)?**

Must carry obligations are imposed by Article 12 of Decree No 241/91 of 18 September 1997; the Decree is secondary legislation.

### **15.7 At what level are they imposed (national, regional, local etc)?**

The national Government takes the decision to grant “must carry” status to television channels or to television broadcasting services.

### **15.8 What links are there between broadcasting and telecommunications regulations in relation to must carry rules?**

There are no such links.

### **15.9 What links are there between broadcasting and telecommunications network regulators (in the implementation of must carry rules)?**

Article 8 of the new law on the High Authority for the Media requires any public entity to reply to the requests of the High Authority for information, where such requests for information are made in connection with the High Authority's exercise of competencies.

### **15.10 What monitoring/supervising powers are conferred?**

The Law of 7 September 1990 created the High Authority for the Media, an independent constitutional body which operates alongside the Parliament.

According to the new Act on the High Authority of 6 August 1998,<sup>24</sup> the High Authority has 11 members which cannot be removed from office and are appointed for four year terms. The key responsibilities of the High Authority include:

- to ensure freedom of information and freedom of the press;
- to ensure the independence of the media from those with political and economic power;
- safeguard the possibility for different currents of opinion to be expressed and discussed;
- guarantee the right to reply of individuals and collective persons;
- guarantee the right to broadcasting time, the right of reply and the right of political argument; and
- control television broadcast activities.

The High Authority holds ordinary and extraordinary meetings, and examines complaints and requests for intervention, upon which it reaches decisions by an absolute majority of its members. It may also take the following measures:

- draw up recommendations which are compulsorily published in or broadcast by the medium to which they refer;
- draw up directives in the field of broadcasting;
- give opinions on the licensing of radio and television operators;
- oversees compliance with broadcasting regulations; and
- receive complaints relating to infringements of broadcasting legislation.

Furthermore, according to Article 27 of the Act, any public entity and courts have to reply to the requests for information from the High Authority.

### **15.11 What sanctions are imposed for failure to meet “must carry” obligations?**

Both administrative and penal sanctions can be imposed for failure to meet “must carry” obligations. A cable operator can be required to pay a penalty of between one and nine million escudos, if he does not transmit the public broadcasting channels. If it does not reserve three channels for the transmission of regional or local television channels, the penalty will be between half and three million escudos.

---

<sup>24</sup>

Act 43/98.



### 16.1 Who has “must carry” rights (e.g., public service broadcasters, community channels, commercial broadcasters)?

Under Article 11 of the Cable Telecommunications Act and Article 26 of Royal Decree 2066/1996, cable operators are obliged to retransmit the following channels:

- the television programmes transmitted by the two channels of the public service broadcasting company RTVE;
- the television programmes transmitted by the three channels of private broadcasting companies;
- the television programmes transmitted by the channels of public service broadcasting companies of the autonomous regions; and
- eventually, the television programmes transmitted by local television channels, if they so request.

The must carry rules cover 60% of television programmes retransmitted by cable.

### 16.2 How are the “must carry” rights holders defined?

Relevant subsections of Article 11 of the Cable Telecommunication Act provide as follows:

“Obligations of the licensee

1.- The cable operator shall have the following obligations:

[... .]

e) To distribute to all subscribers connected to the network, the series of television broadcasting services through waves regulated by Act 4/1980 of 10 January 1980 and Act 10/1988 of 3 May 1988.

f) To distribute to all subscribers connected to the network the television broadcasting services managed by the Autonomous Community or Communities to which the territorial district belongs.

g) To distribute to all subscribers connected to the network in each Municipality, the local television service of that Municipality, if its holders so request. This mandate shall not impose upon the cable operator the obligation to supply the programs for this service, if its manager so requests.”

### 16.3 On which network operators or service providers are “must carry” obligations currently imposed? Is the obligation imposed on the entity or the network/service?

The Cable Telecommunications Act<sup>25</sup> imposes “must carry” obligations on the cable operator (licensee). Article 4 of the Cable Telecommunications Act requires that cable operators be public companies whose object is the provision of telecommunications services via cable, in one or more areas. Furthermore, they must possess a minimum share capital (to be set by regulation taking into account of the size and the population of the area/areas where the service will be provided).

<sup>25</sup> Act 42/1995 of 22 December 1995

#### **16.4 Are other variants of “must carry” significant, e.g., “may carry if”?**

Under Article 11 (g) of the Cable Telecommunications Act, cable operators must distribute to all subscribers connected to their network in each Municipality the local television service of that Municipality, if its broadcaster so requests.

#### **16.5 Does the regulatory framework allow “must carry” obligations to be imposed on other networks; if so which ones? Is the obligation technology neutral or technology specific?**

As “must carry” obligations are only imposed on cable operators, the obligation is technology specific. “Must carry” obligations cover both digital and analogue networks.

#### **16.6 How are “must carry” obligations imposed (i.e., primary legislation, secondary legislation such as decrees; regulators’ decisions)?**

The key “must carry” legislation in Spain is found in Article 11 of the Cable Telecommunications Act and Article 26 of Royal Decree 2066/1996. Accordingly, “must carry” obligations are imposed by both primary and secondary legislation.

#### **16.7 At what level are they imposed (national, regional, local etc)?**

Must carry obligations are imposed both at national, regional and local level.

#### **16.8 What links are there between broadcasting and telecommunications regulations in relation to must carry rules?**

There are no such links.

#### **16.9 What links are there between broadcasting and telecommunications network regulators (in the implementation of must carry rules)?**

Articles 4 to 10 of Law 30/1992 on the Legal Status of the Public Administration and Common Administrative Procedure contain the general rules of co-operation within the State Administration, and between the State Administration and Autonomous Communities, Local Administration and the European Community.

Law 16/1989 on the Defence of Competition grants to both the Competition Service and Competition Court the general power to establish relationships and co-operate with other regulatory bodies and with their counterparts in other countries. In fact, both the Service and the Court have specific departments responsible for such relationships.

Article 28 of the Regulation of the CMT regulates the relationship between the CMT and the competition authorities. The CMT may request the Competition Service to open a competition proceeding or inform the Service of mergers in the telecommunications sector. In all competition proceedings in the telecommunications sector, the CMT must be heard by the Service (for anti-competitive practices and exemptions) and by the Court (for mergers and public aid).

**16.10 What monitoring/supervising powers are conferred?**

There are no specific monitoring/supervising powers conferred by the Act.

**16.11 What sanctions are imposed for failure to meet “must carry” obligations?**

Article 13 of the Spanish Cable Telecommunications Act authorises the Secretariat for Communication to impose sanctions in cases of infringement of the Act. The sanctions to be imposed include the revocation of licences.

### 17.1 Who has “must carry” rights (e.g., public service broadcasters, community channels, commercial broadcasters).

Chapter 8, Section 1 of the Radio and Television Act, provides that a maximum of three television channels financed from the TV licence fee and a maximum of one other channel can benefit from must carry. This implies for analogue channels:

- the television programmes transmitted by the two television channels of the public service broadcasting company SVT i.e. SVT1 and SVT2; and
- the television programmes transmitted by the television channel of the private broadcaster TV4.

The cable operators transmitting digital channels must transmit a maximum of three television channels financed from the TV licence fee. They then have a free choice of which other channel they want to run as a ‘must carry’ channel.

### 17.2 How are the “must carry” rights holders defined?

Chapter 3, Article 1 of the Fundamental Law on Freedom of Expression provides as follows:

“On transmission, production and distribution

Radio programmes

Art. 1. All Swedish citizens and Swedish juridical persons have the right to transmit radio programmes by land-line.

The freedom which follows from paragraph one does not preclude the publication in an act of law of provisions obliging network owners to make time available for certain programmes insofar as this is necessary having regard to the public interest in comprehensive information or of provisions concerning interventions against continued transmission of a programme range directed towards representations of violence, pornographic pictures or incitement against population groups.”

Chapter 8, Section 1 of the Radio and Television Act provides as follows:

“Everyone who owns or otherwise has at his or her disposal an installation for wire transmission where television programmes are retransmitted to the public and from which the transmissions reach more than ten dwellings, shall ensure that the residents in the properties connected to the installation can receive such television transmissions as take place by virtue of a licence from the Government and which are intended to be received by each and everyone in the area. The transmissions shall be receivable in a satisfactory manner and without cost for actual reception. The obligation to transmit also applies to transmissions which a licence holder transmits in order to satisfy an obligation to transmit throughout Sweden or parts of Sweden, but where the means to transmit do not require a Government licence”.

The provision in Chapter 8, Section 2 of the Radio and Television Act to make available free of charge a specially decided capacity for the transmission of programmes for one or more of the firms appointed by the Swedish Radio and Television Authority (local cable transmission firms) is actually a ‘must carry’ obligation.

**17.3 On which network operators or service providers are “must carry” obligations currently imposed? Is the obligation imposed on the entity or the network/service?**

As noted above, Chapter 8, Section 1 of the Radio and Television Act imposes “must carry” obligations on the entity who owns or otherwise has at its disposal an installation for wire transmissions.

**17.4 Are other variants of “must carry” significant, e.g., “may carry if”?**

No.

**17.5 Does the regulatory framework allow “must carry” obligations to be imposed on other networks; if so which ones? Is the obligation technology neutral or technology specific?**

“Must carry” obligation only apply to cable networks.

“Must carry” obligation apply to both digital and analogue networks.

**17.6 How are “must carry” obligations imposed (i.e., primary legislation, secondary legislation such as decrees; regulators’ decisions)?**

Since the must carry legislation in Sweden is contained in the Freedom of Expression Act, and Chapter 8, Section 1 of the Radio and Television Act, must carry obligations are imposed by primary legislation.

**17.7 At what level are they imposed (national, regional, local etc)?**

Must carry obligations are imposed at national level.

**17.8 What links are there between broadcasting and telecommunications regulations in relation to must carry rules?**

There are no such links.

**17.9 What links are there between broadcasting and telecommunications network regulators (in the implementation of must carry rules)?**

There are no formal rules for co-operation or exchange of information between regulators.

**17.10 What monitoring/supervising powers are conferred?**

Under Chapter 9, Section 2 of the Radio and Television Act, the Broadcasting Commission retrospectively monitors whether programmes transmitted have complied with the Act and reviews the conditions that applied to the transmissions.

**17.11 What sanctions are imposed for failure to meet “must carry” obligations?**

Both administrative and penal sanctions can be imposed for failure to meet “must carry” obligations.

Under Chapter 10, Section 9 of the radio and Television Act, anyone who fails to comply with its “must carry” obligations may be ordered to observe

the relevant provision. Furthermore, an order may be made subject to a conditional fine. Compliance is enforced by the Swedish Radio and Television authority.

### 18.1 Who has “must carry” rights (e.g., public service broadcasters, community channels, commercial broadcasters).

Schedule 12, Part III, paragraph 4 of the Broadcasting Act 1990 (the “1990 Act”), as amended, and Section 78A of the 1990 Act, as inserted by Section 91 of the Broadcasting Act 1996 (the “1996 Act”) provide for the imposition of must carry obligations as follows:

#### Analogue services

All persons operating a prescribed diffusion service under a licence granted pursuant to the Cable and Broadcasting Act 1984 (“PDSL”)<sup>26</sup> have analogue must carry requirements in relation to channels which have significant public service obligations, provided the channel is broadcast terrestrially for reception in the area covered by the PDSL. The channels covered by analogue must carry obligations are BBC1, BBC2, ITV, Channel 4 (SC4 in Wales), the Public Teletext Service, and Ceefax (teletext) on BBC1 and BBC2.

Persons operating a local delivery service under a licence granted pursuant to the Broadcasting Act 1990 (“LDSL”) do not have must carry obligations for analogue delivery services.

#### Digital Services

Both PDSL licensees and LDSL licensees who are found to operate a digital transmission or local delivery service, as applicable, where any one service carried on the licensee’s network (not necessarily a must carry service) is delivered in digital form, will have digital must carry obligations if the Independent Television Commission (“ITC”) designates the service a digital service. Digital must carry services cover all BBC broadcast services, including teletext, ITV, Channel 4, Channel 5, and the Public Teletext Service (specifically the analogue version). The must carry obligation only arises where the service is broadcast for reception in the area covered by the PDSL or LDSL. Widescreen services, whether must carry or not, must be redistributed in at least the widescreen 16:9 format.

To date, the ITC has not designated any service provided by existing PDSL or LDSL licensees to be a digital service. Consequently, at the time of writing, no UK operator is subject to digital must carry obligations. Current ITC policy appears to be that the imposition of digital must carry obligations is unlikely to occur until the transition to fully digital operation is completed in any particular franchise area.

The Secretary of State may, by Order, make exceptions to the must carry requirements, having consulted with the ITC, BBC and S4C. Moreover, the ITC has a discretionary power to waive must carry obligations in a particular case if the relevant service is not capable of being received at a level which satisfies the technical standards determined by the ITC. To date, there has been no requests for any such exemptions.

<sup>26</sup> The PDSL provided for in the Cable and Broadcasting Act 1984 (“CBA”) was replaced by the Local Delivery Services Licence under the 1990 Act. However, PDSLs in force on the date of entry into force of the 1990 Act remained in effect following repeal of the CBA by the 1990 Act. Each PDSL has a maximum term of twenty three years (fifteen year initial term extendible by eight years with the approval of the ITC), and are not renewable.

## 18.2 How are the “must carry” rights holders defined?

### Prescribed Diffusion Service

A ‘prescribed delivery service’ was one of three types of cable television service specified in section 2 of the Cable and Broadcasting Act 1984 which consisted wholly or mainly of the sending of sounds or visual images, or both, by any person by means of a telecommunications system either:

- for reception, other than by wireless telegraphy, at two or more places in the United Kingdom, whether sent for simultaneous reception or at different times in response to requests made by different users of the service; or
- for reception, by whatever means, at a place in the United Kingdom for the purpose of being presented there either to members of the public or to any group of persons (CBA, s 2).

A detailed description of what constituted a prescribed diffusion service was set out in the Cable (Prescribed Diffusion Services) Order 1990, SI 1990/1309.

### Local Delivery Service

A ‘local delivery service’ is defined in section 72(1) of the Broadcasting Act 1990 as a service provided by any person which:

- consists in the use of a telecommunications system (whether run by that or any other person) for the purpose of the delivery of one or more specified services for the simultaneous reception in two or more dwelling houses in the United Kingdom; and
- is a person of a class or description specified in an order made by the Secretary of State.

A detailed description of what constitutes a local delivery service is set out in the Broadcasting (Local Delivery Services) Order 1998.

## 18.3 On which network operators or service providers are “must carry” obligations currently imposed? Is the obligation imposed on the entity or the network/service?

“Must carry” obligations are currently imposed on the licensee, i.e., the entity, not the service/network.

## 18.4 Are other variants of “must carry” significant, e.g., “may carry if”?

No.

## 18.5 Does the regulatory framework allow “must carry” obligations to be imposed on other networks; if so which ones? Is the obligation technology neutral or technology specific?

Must carry obligations for analogue services are imposed on cable operators only.

The LDSL for digital services is technology neutral, with the result that any operator running a system which is licensable as a local delivery service, namely cable networks, ADSL networks and MMDS networks, and which satisfies the criteria set out in Section 91 of the 1996 Act is subject to must carry obligations. The provision of services by terrestrial

and satellite means falls outside the scope of a 'local delivery service' as defined in the Broadcasting (Local Delivery Services) Order 1998.

Services which operates under a Telecommunications Act licence only (i.e. SMATV and other services to less than 1,000 homes) are not subject to any must carry obligations.

**18.6 How are “must carry” obligations imposed (i.e., primary legislation, secondary legislation such as decrees; regulators’ decisions)?**

Must carry obligations are imposed by primary legislation, i.e. the 1990 and 1996 Acts.

**18.7 At what level are they imposed (national, regional, local etc)?**

Must carry obligations are imposed at national level.

**18.8 What links are there between broadcasting and telecommunications regulations in relation to must carry rules?**

There are no such links.

**18.9 What links are there between broadcasting and telecommunications network regulators (in the implementation of must carry rules)?**

There are no formal rules or practices for co-operation between the relevant regulatory institutions.

**18.10 What monitoring/supervising powers are conferred?**

Must carry obligations constitute a condition in the relevant licence, compliance with which is enforced by the ITC.

**18.11 What sanctions are imposed for failure to meet “must carry” obligations?**

Failure to meet “must carry” obligations constitutes a breach of the relevant licence condition and as such may result in revocation of the licence by the ITC pursuant to section 42 of the 1990 Act. Section 42 provides that prior to revoking a licence, the ITC must provide the licensee with reasonable time and opportunity to remedy the breach.