



Advertisement in TV Media

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This study involves the monitoring of advertisements in TV media to identify whether the length of commercial breaks conform to the requirements of the law. A similar study was conducted earlier this year (please, see www.mdfgeorgia.ge). The aim of this repeat study is to find out whether the violations of the law detected during the first study have been eliminated or broadcasters continue to run TV commercials in breach of limits established under the law.

At nearly the same time as the report on the previous study was published, the Georgian Parliament approved a number of amendments to the Law of Georgia on Broadcasting. These amendments made the Law more liberal toward the length of TV commercial breaks, significantly increasing the set time limits.

Initiators of those legislative amendments were members of parliament from the ruling party. They explained this move by the need to approximate the Law on Broadcasting with the EU directive for TV advertising. Whether or not these amendments served the declared aim and whether or not they harmed interests of TV audience, can be learned from our previous study.

Legislative regulations

A framework document regulating advertising in Georgia is the Law of Georgia on Advertising adopted in 1998. According to this Law, one of the forms of advertising is broadcast advertising which is defined as follows:

“Broadcast advertising - commercial, social or election advertising distributed (broadcast) by a broadcaster, except statements made by a broadcaster concerning its own or independent programme, which is the information, promoted through any means and in whatever form, about a natural and legal person, goods, service, activity, idea and undertaking that targets an unlimited circle of people and is designated to generate and perpetuate interest towards natural and legal persons, product, idea and undertaking as well as promotes sales of the product, service, activity, idea and undertaking”.

Broadcast advertising is governed by two laws – Law on Broadcasting and Law on Advertising. The former is a general document whereas the latter was specifically drafted for broadcasters. The Law on Advertising specifies that *“Broadcast advertising and sponsorship issues are regulated by the Law on Broadcasting.”* Chapter VIII of the Law on Broadcasting regulates TV commercials. It sets forth rules of airing ads, limits for the duration of and interruptions of programmes by commercial breaks.

As said above, the Law on Broadcasting has been modified, providing for more liberal rules of advertising. Main rules on the duration of TV commercials, as amended on 19 April 2011, are the following:

1. Pursuant to subparagraph d), paragraph 4, article 64 of the Law on Broadcasting, teleshopping and advertisements shall not interrupt several programs. These programs are: *“news, current affairs, religious, election debate programs and documentary films with a duration less than 15 minutes.”*
2. According to paragraph 6, article 64 of the same Law, *“Duration of the breaks assigned for advertisement and/or teleshopping shall be no less than 15 minutes.”*
3. According to paragraph 9, article 64, *“News, current affairs and political debate programs may be interrupted with advertisements or teleshopping no more than every 15 minutes and no more than for 300 seconds”.*

Regulatory Body

Pursuant to article 17¹ of the Law on Advertising, control in the sphere of broadcast advertising is carried out solely by the Georgian National Communications Commission (GNCC): *“The sole institution responsible for controlling the timing, placement and means of broadcast advertising as well as the compliance of broadcast advertisement distributor with the restrictions in broadcast advertising specified in the Laws of Georgia On Broadcasting and On Advertising and other legislative acts, is the Georgian National Communications Commission which within the scope of its competence.”*

The GNCC started operation on 1 July 2000. As of now, it consists of five members appointed by the President for the term of six years. The GNCC consists of eight departments. Its annual budget is nearly GEL 4 million of which GEL 3 million is used for wages and bonuses of its employees. If proper policy were pursued, a body of such resources, must represent an effective mechanism of regulating the sphere of broadcasting.

Monitoring and Findings

Similarly to the first study on advertising, this study also involved a selective monitoring of five TV channels Rustavi 2, Imedi, Kavkasia, Maestri and Georgian Public Broadcaster’s 1st Channel. The monitoring lasted for five weeks - from 10 October to 10 November, 2011. We were focused on commercial breaks interrupting news programmes in prime time (from 19:00 to 24:00, as defined in the law) and on the compliance of these breaks with the requirements of the Law on Broadcasting.

Imedi TV company was monitored from 10 to 17 October. During this week we identified up to 10 violations of the law in a news programme, “Qronika at 8 p.m.”. As a rule, Qronika at 8 p.m.” is interrupted by two commercial breaks.

On 10 October, the first commercial break in Qronika lasted for 450 seconds (which totals 6 minutes and 30 seconds), instead of legally established limit of 300 seconds (5 minutes). Both commercial breaks well exceeded the five-minute limit required under the law.

On 11 October, the first commercial break in Qronika lasted for 7 minutes and 50 seconds, instead of permitted 5 minutes. **On 12 October**, commercial breaks in Qronika reached 8 minutes and 8 seconds and 8 minutes and 10 seconds. Each of the two breaks exceeded the maximum permitted limit of 5 minutes by 3 minutes.

Similar violations were observed in the remaining days of the week. It can be said that the Imedi TV company regularly violates the Law on Broadcasting. Let me recall that facts of violation were detected during the first similar monitoring conducted six months ago and was reflected in the report of that monitoring.

The following week – from 17 to 24 October, we monitored Kavkasia TV company. The prime time news programme of this TV channel, “Dges”, is broadcast daily at 08:30 p.m. It usually has only one commercial break. The one-week monitoring of Kavkasia did not reveal any instance of the violation of a five-minute limit. No commercial break exceeded three minutes.

The week from 24 to 31 October involved the monitoring of Rustavi 2 TV company. The TV company’s news programme - “Kurier” at 9 p.m.” is aired every working day. Kurier has two commercial breaks. It should be noted that during the first monitoring, time-limits for commercial breaks were violated in news programmes. This time, however, no violation was detected and breaks in Kurier never exceeded five minutes.

The fourth week, from 1 to 7 November, was dedicated to Maestro TV company. The news programme of this TV channel, “Akhali Ambebi,” is aired at 9 p.m. The programme has two commercial breaks. The monitoring did not reveal any instance of violation. A commercial break on Maestro did not even continue for 4 minutes. No violations were detected on Maestro during the first monitoring either.

The fifth and last week of 7 – 13 November involved the monitoring of 1st Channel of Georgian Public Broadcaster’s (GPB). The law provides for a totally different regulation of the GPB. Commercials have always been prohibited during the news and current affairs programmes. Nevertheless, our first monitoring detected facts of running commercials during current affairs programmes, which we then qualified as violation of the Law on Broadcasting and reflected it in the report of that monitoring. The Law on Broadcasting sets different requirements for the GPB as compared to other broadcasters. Even though the amendments adopted in April 2011, enabled broadcasters to have longer ad breaks, with regard to the GPB (excluding its cable and satellite channel used by Kanal PIK) they restricted the right to run ads save exceptional cases. The Law on Broadcasting reads:

“Article 64. Commercial Advertisement and Teleshopping

1. The Public Service Broadcaster shall not broadcast teleshopping and commercial advertisements except for start and finish times of, and the natural intervals during, sports programs, international festivals and competitions.”

In any other case, commercial advertisement is prohibited. Yet, between 7 and 13 November, several facts of advertising were detected on the 1st Channel from 7 p.m. to 8 p.m. In particular, when identifying sponsors of its programmes, 1st Channel aired short videos of commercial content about concrete companies. For example: computer equipment store, “psshop.ge;” restaurant “Ananuri;” bakery “Ipkli 1;” medical centre “Shai;” financial company “Sakartvelo;”

Ahmad tea. 1st Channel was involved in promoting these companies by means of sponsorship credits.

What does sponsorship mean and whether it contains elements of commercial advertising can be checked in the definition of these terms by the Law of Broadcasting:

Sponsorship – direct or indirect financing or co-financing of program by a person, in order to **promote** his name, trademark, image, production or activity.

Commercial Advertisement – an advertisement that promotes an entrepreneur or enterprise, goods, rights, obligations, service or work, a person, idea or initiative or aids the trade of goods, rights, obligations, service or work, the implementation of an idea or initiative in exchange for remuneration or any other economic profit.

Thus, both sponsorship and commercial advertisement serve one and the same aim of promoting advertiser's and/or sponsor's goods or activity and introducing it to wider public. It can be said that short videos detected by us on the 1st Channel are commercial in nature and violate the Law on broadcasting.

Complaint procedure

Pursuant to subparagraph e), paragraph 3, article 5, and article 14 of the Law on Broadcasting, the GNCC shall, on the basis of complaint filed by a citizen, consider and deliberate on violations of the Law on Broadcasting by broadcast license holders and impose appropriate sanctions set out in the same Law. Moreover, according to article 2 of the Law of Georgia on Consumers' Rights Protection, "All Georgian consumers have the right to demand: the conformity of goods, work, trade or other kind of service to the appropriate quality standard;... the protection of own rights in court and by an appropriately authorized governmental agency."

A complaint shall be filed with the GNCC and considered by it within three months. Disputes arising in relation to violations of advertising rules are normally considered by means of public hearings under administrative proceedings. A hearing is attended by a complainant and defender; a relevant department of the GNCC examines evidences submitted by the complainant and provides an explanatory note to the GNCC. The note describes the content and evaluates evidences provided by the complainant.

The GNCC takes a decision on whether or not the law was violated by a majority of votes.

Sanctions

Only the GNCC is empowered to react to violations of the Law on Broadcasting and apply sanctions as determined in article 71 of the Law. The Law envisages three types of sanctions:

1. Written notification
2. Fine
3. Suspension of license

Sanctions are applied in a sequence as shown above. If within a year of imposing the first sanction – written notification – the Law is breached again, the GNCC is entitled to impose a

tougher sanction - fine. The amount of fine is specified in the Law – it shall not exceed 0.5% of the broadcaster's annual income, but shall not be less than GEL 2,500. If, within a year after imposing a fine, the broadcaster breaches the law over again, the GNCC has the right to impose a fine not exceeding 3% of the annual income of the broadcaster and no less than 5000 GEL. In case of yet another breach, the GNCC has the right to suspend a license.

Practice

Since 2005 (from the date the Law on Broadcasting was enacted), the GNCC has received only two complaints against the breach of Chapter VIII (*Advertisement, Teleshopping and Sponsorship*). Both of them were filed by the non-governmental organization Studio Monitor.

Studio Monitor demanded that sanctions be applied for the violation of advertising rules in accordance with the Law on Broadcasting. The GNCC issued written notifications to Imedi and Rustavi 2 TV companies and later, fined them with GEL 2,500 each. (For detailed information about these complaints, please, see the first report on advertising).

Recommendations

Recommendations are similar to those provided in the first report: the main reason why broadcasters breach advertising rules is the lack of control on the part of the GNCC. According to paragraph 5, article 5 of the GNCC Charter, the Broadcasting Regulation Department of GNCC is in charge of monitoring the compliance of broadcasters with the Law and must draw up acts on violations. According to the GNCC data, however, the Department has not recorded any breach of advertising rules.

First recommendation concerns the need for stepping up the activity. If the Broadcasting Regulation Department conducts monitoring properly, it will easily detect violations. The law enables the GNCC to react to violations on the basis of acts drawn up by the Department.

Second recommendation is addressed to civil society. Given that citizens are reluctant to fight for the protection of their rights, NGOs and the entire civil sector must actively engage in the fight for the reinstatement of infringed rights of consumers. The activity of civil sector can bear fruit: the complaints filed with the GNCC during the previous monitoring, has proved to be effective - Rustavi 2 which regularly violated limits set for the duration of commercial breaks in the past, has not breached the law during this monitoring.

It is worth noting that legally, the GNCC is an absolutely independent body and is not subject to a direct control from any state agency. The only agency that can legally influence the GNCC is the Parliament of Georgia. The parliament (MPs) has the right to demand that financial audit of the GNCC be conducted, or to dismiss a commissioner. So far, Georgian MPs have not exercised any of these rights.