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Transnational media concentrations in Europe

report prepared by the AP-MD

*(Advisory Panel to the CDMM
on media concentrations, pluralism
and diversity questions)*

**Media Division
Directorate General of Human Rights**

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Report on

Transnational media concentrations in Europe

by

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A. Executive summary

This report deals with the trends and effects of transnational media concentrations in Europe and states the need for the Council of Europe, its member states and the media to act in order to ensure that political freedom and cultural diversity may prosper.

Transnational media concentration is usually understood as meaning the holding of ownership in media companies in different countries. However, this report takes a broader perspective and considers the following phenomena as part of transnational media concentrations:

- Media companies/conglomerates distributing their products in many countries, including broadcasts targeted specifically at countries others than the country of residence;
- Companies operating directly or through subsidiaries, joint ventures or shareholdings in other companies on the media market of more than one country;
- Companies or individuals or groups of individuals owning media companies in several countries.

In addition, other factors may contribute to the development of transnational media concentrations, such as overspill and/or retransmission or the ownership of Internet portals.

As a result, fewer media companies exist, market access is hindered for new entrants and editorial freedoms are interfered with, thus limiting the number of independent voices which can make themselves heard and diminishing the diversity of cultural and social life.

On the other hand, it is also important for Europe to have economically strong media companies. These have the economic power and critical mass to withstand external pressures, they can act as public watchdog on the European scene, promote European standards, content and diversity and create a European alternative to cultural imports.

Problems occur when transnational media companies become too dominant. The European Parliament is one of many voices who have pointed out the potential negative effects that transnational media concentration has on media pluralism and cultural and linguistic diversity in Europe.

In order to understand the process of transnational media concentrations, different aspects are highlighted in this report, including economic, legal, technological aspects and those relating to audience and content aspects.

Important aspects of transnational media concentrations elude regulation, which is national in origin and enforcement. Most European countries have specific regulation of media ownership, although the range of such regulation varies considerably. No European legal instruments regulate transnational media concentrations specifically.

Transnational media concentrations raise two main concerns: one is the concern about the diminishing diversity of production, and the other is the possible impact that this may have on the ability of the media contributing to the public sphere. This role of the media is most directly linked with their function in democracy.

The new media environment at the European and global level has led to a wider choice for the viewers and consumers in the number of channels and other media products available, but has not so far led to the same diversity regarding content. As an example, in broadcasting, cheap programmes and formulaic series tend to dominate many channels and are offered in similar ways in more than one European country.

With digitisation, actions by the gatekeepers who control the bottlenecks can actually lead to a reduction of pluralism and diversity depending on how access is guaranteed and who can decide on content of cable networks, terrestrial capacity and satellite dissemination.

Unchallenged, content in a media environment dominated by transnational media owners will most likely become less local, less controversial, less investigative and less informative. The public watchdog function of the media will be reduced, the knowledge and attention towards local issues likewise. Competition in relation to advertising and exclusive rights moves from the national to the European level.

The challenge is to ensure that freedom of expression and information and pluralism of voices will be an integral part of the future European media environment, and that the European media will reflect and promote Europe's cultural and linguistic diversity.

Therefore, the AP-MD recommends the following actions:

- The Council of Europe should initiate ongoing monitoring of transnational media concentrations, paying attention to the evolution of the media landscape and the way the public uses the media. The conclusions of this monitoring should be published in a yearly report and made easily accessible to the public.
- In view of the rapid development of transnational media concentrations, action at the international level is necessary. The Council of Europe should urgently study the appropriate means, including a convention, to prevent the negative impact that this phenomenon may have on freedom of expression, pluralism and diversity.
- Member States of the Council of Europe should support public service broadcasters, as specific providers of diverse content, also as content producers on new technological platforms.
- Member States should encourage the development and strengthening of the contribution of community media in a pluralistic media landscape.
- Member States should include the contribution to freedom of expression and information and pluralism of opinions as an obligatory objective when granting broadcasting licences.
- Member States should enforce a clear separation between political authorities and the media and ensure that all decisions taken by public authorities regarding the media are transparent.
- Member States should strengthen their action to secure media pluralism and the editorial independence of the media through legislation or other means.
- In addition, media organisations should adopt functioning self-regulatory mechanisms to safeguard editorial independence.

B. Introduction

Traditionally, European media companies focused their activities on their national markets. However, in the last 10-15 years a number of media have grown significant business outside their primary markets. At the same time, a concentration of ownership has taken place. In that way a process of transnational media concentration has appeared. It has given rise to concerns that it will damage the freedom of expression and information in Europe that are vital both from a democratic and a cultural perspective. In some media sectors both the diversity of production and the access to markets for smaller or independent producers is threatened.

In view of the European Ministerial Conference on Mass Media Policy, which is to take place in Ukraine in March 2005, the Steering Committee on the Mass Media (CDMM) has asked the Advisory Panel to contribute to the sub-theme of the Conference regarding media pluralism. The Advisory Panel hopes that this report can be of value to the CDMM in the preparation of the Conference.

The report takes a broad perspective and assumes that transnational media concentrations include several phenomena such as media conglomerates distributing their products in many countries, including broadcasts targeted specifically at other countries than the country of residence, companies operating directly or indirectly on the media market of more than one country and legal entities owning media companies in several countries.

Economic, regulatory and technological developments regarding transnational media concentrations are examined, as well as developments affecting European audiences and media content. The impact of Internet on transnational media concentration raises specific issues which are not dealt with in this report.

Finally, the report points to a number of measures which should be considered by the Council of Europe, by its member States and by the media themselves to ensure that transnational media concentrations do not have a negative impact on freedom of expression, pluralism and diversity.

During the preparation of this report, the AP-MD undertook, with the assistance of the Secretariat of the Media Division of the Council of Europe, a consultation process in order to appreciate better the issue of transnational media concentrations from different viewpoints.

A hearing was organised with European experts in this field (Mrs Sandra BASIC HRVATIN, Mr Ad VAN LOON, Dr Jens CAVALLIN, Mr Eugene MURRAY) in February 2004. Subsequently, NGOs with observer status on the CDMM were invited to give their opinion on issues concerning transnational media concentrations on the basis of a questionnaire prepared by the Secretariat. National regulatory authorities were also invited to express their views on the situation in their respective countries and on possible actions at the national and Council of Europe levels. The European Audiovisual Observatory contributed to the collection of data included in the report.

The AP-MD acknowledges the contributions made during the preparation of the report. However, the report reflects only the opinion of the AP-MD and not necessarily the views expressed during the consultation process.

C. Key developments

a. Economic developments

1. Evolution of the European media landscape

In the last ten years, media concentration has been on the rise in all parts of Europe. It is reaching new levels of concern particularly in relationship to the domination of a number of markets by transnational companies. As a result, national media regulations do no longer apply and economic competition rules are difficult to enforce.

1.1 Development of a transnational media activity in Europe

In Europe, media concentration was, for a long time, a phenomenon staying clearly within national borders. There were several reasons for this:

- linguistic and cultural barriers for cultural products to be exported;
- sufficient growth possibilities inside a country, reducing the incentive to expand beyond national borders;
- high costs or lack of available distribution channels or broadcasting frequencies;
- leading position of public service broadcasters in the national markets;
- governmental regulation, slow and often only partial liberalisation, taxes and custom fees;
- advertising campaigns tailored mainly to the national and linguistic markets.

In recent years, these factors have altered radically:

- National markets have become saturated or concentrated to a degree where media regulation does not permit further growth or mergers. The control of mergers at the national level increases this trend.
- Broadcasting markets have been liberalised, making it possible to launch private television channels at the national, regional and local levels. Broadcasters have been allowed to operate abroad, sometimes subject to certain restrictions. Economic integration has eliminated custom fees and excise taxes. The opportunities for a free flow of goods have created new incentives for companies to expand aggressively in all sectors of print media.
- Advances in skills and the localisation of cultural products in sectors such as magazines or newspapers and the increasing acceptance of generic formats such as in “reality TV” programmes have reduced cultural barriers.
- Considerable advertising, strategies, subjects and media plans are done in transnational campaigns.

Moreover, digitisation has simplified the broadcasting of products and components and has increased broadcasting frequencies. Satellite, digital cable and terrestrial digital allow a larger number of channels to be broadcast. The use of broadband for television and Internet offers media enterprises new perspectives for development. These enterprises will modify their strategies accordingly, which could modify the European media landscape in the short term.

Finally, the changes in the political and economic systems in the Central and Eastern European countries have eliminated state and party media. In newly competitive markets, economically weak media companies are ripe for take-overs or bankruptcy.

1.2 Overview of large media companies having a transnational activity

A number of actors have pushed this development during the last decade¹:

- the German Bertelsmann group has been active in a number of European countries for several years, particularly in the audiovisual sector (RTL/M6) and in publishing, and is particularly expanding into Eastern Europe;
- the Springer and Ringier groups, from Germany and Switzerland respectively, have launched several high-circulation publications in the countries of Central and Eastern Europe, modelled on successful publications in their own countries;
- WAZ has gained a significant position in the Central and Eastern European press markets, dominant in some of them;
- Rupert Murdoch's press and pay-television empire now extends from Australia to the United States and the United Kingdom. Besides expanding its activities in Asia, the group has just penetrated the Italian market;
- American media magnate Haim Saban has purchased the financially troubled German Kirch group's television channels in summer 2003 and will expand to pay TV;
- the American SBS broadcasting group now owns several channels in Northern Europe and is expanding into South-Eastern Europe;
- CME owns 8 television stations in five Central and Eastern European countries.

1.3 Comments on the analysis and use of media

In order to paint a realistic picture of transnational concentration, it is necessary to take all media into account, including the Internet, which complicates matters. It is also necessary to take into account the differences in the economic situation of the media from one Council of Europe member State to another, as well as the size and the political and social, cultural and linguistic features of each country. Finally, priority must be given to the plurality of the content available to the public.

Media consumption in Europe remains high and is increasing in all sectors of new media. In European Union Member states (prior to enlargement), 97 % of citizens watched television, 60 % listened to the radio and 46 % read a newspaper, all on a daily basis.

The creation and availability of new media increases total media use, but television remains the medium that takes up most of the time. Europeans watch television between 2.5 and 4 hours a day, many use the Internet to a similar extent. A large part of the time is spent on content produced in one's own language and country.

Commercial offerings which are part of transnational media groups have nevertheless significant audiences in many European countries. The RTL Group, owned by Bertelsmann, has profitable television stations in ten European countries with audiences reaching 23-35 % in the four top countries. The Swedish MTG runs television stations in seven countries with

¹ See also the listing in Appendix 1

national audience shares up to 23 %. CME is present in four countries with large audiences (from 20 to 48 %), SBS is active in four countries with audience shares of between 6 and 13 %, and News Corp. International is present in four countries, with the largest audiences in Bulgaria and the UK. Programmes from neighbouring countries also have significant audiences in spill-over areas.

In the newspaper sector, national publishers are dominant in most Western European countries (apart from Denmark, the UK and the French-speaking part of Belgium). In Eastern Europe, the situation is the opposite because almost all daily press markets are dominated by companies with foreign ownership.

1.4 Forms of transnational ownership

The predominance of foreign ownership in different media sector markets across Europe shows different patterns in Western Europe (i.e. the 15 EU Member states) and in Eastern Europe, including the 10 new Member states. Sánchez-Tabernero and Carvajal (2002) show that different media delivery systems exhibit different patterns in foreign or transnational media ownership. In the European Union, new communication technology platforms show the highest rate of penetration of foreign capital or international multimedia companies and their joint ventures. This is evidenced in the Pay-TV market, which is dominated across Europe by a small number of operators

In cable delivery, the three major groups are NTL Inc., UPC/ UGC Europe, and Callahan Associates / Cable Partners, all with US ownership.

Radio is still the mass medium with the least foreign or commercial ownership, i.e. the largest audience market shares are obtained by public radio stations.

Although the press sector in Western Europe still remains predominantly national, in Central and Eastern Europe it is largely dominated by foreign media owners. Companies from Western Europe (e.g. WAZ, Axel Springer, etc.) expanded their operations in the 1990's, mainly by investing in existing media companies (the WAZ model usually includes a 50% share and the "golden vote" giving them decision making power in commercial matters), and then expanding the number and type of publications. In Croatia, WAZ invested in this way at the end of the 1990's in the Croatian media company, Europa Press Holding, publisher of the daily *Jutarnji list* (around 30% daily newspaper audiences) and *Globus*, the leader on the market of political weeklies. In the weekly magazine press, EPH holds some 50 per cent of the audience market. The first-ranked by circulation among the daily papers, *Večernji list*, was acquired by Austrian Styria, with the result that around 70% of the daily newspaper market goes to the media products owned by foreign companies. In Hungary, in 2001, 83% of the daily newspaper market was owned by foreign investors. The Estonian daily newspaper market is wholly dominated by foreign companies (54% by the Norwegian company Schibsted ASA, 46% the Swedish Bonnier Group)².

In commercial radio and television broadcasting in Central and Eastern Europe, it is American, and not European (in the publishing sector it is mainly German, Austrian, and Scandinavian companies) capital that predominates. Companies that have spread furthest in

² The Impact of Media Concentration on Professional Journalism, OSCE, 2003.

this part of Europe are Central European Media Enterprises (CME), Scandinavian Broadcasting Corporation, and News Corp, owned by Rupert Murdoch, with a smaller number of stations (but public plans for expanding). The largest West European commercial broadcasting company – RTL (89% owned by the global media company Bertelsmann, and 7 % by WAZ), has recently expanded in Central Europe (in partnership with Croatian companies, it was awarded the second Croatian national commercial television concession in 2003).

2. Economic analysis of concentration

2.1 Causes of concentration

Concentration of ownership is a general economic trend which is also found in the media sector. Media firms move into other countries when their home market is saturated, to attain critical mass, to pool resources and to share risks. In several cases firms have turned to other countries because the competition authorities refused to let them go ahead with a national merger for fear that it would create a dominant position or a monopoly.

2.2 Forms of transnational concentration

Transnational media concentration (TMC) is established when someone has obtained a substantial ownership position within the media sector in more than one country. TMC can be structured into three main categories, at least where traditional media is concerned:

- Ownership of media companies in many countries (broadcasters, newspapers etc). The ownership can be obtained by acquisitions, establishment of new companies or by being granted broadcasting licences or by internal growth.
- Overspill of broadcasting from broadcasters operating in one country into neighbouring countries. It is not technologically possible to stop broadcasting signals at national borders. A certain overspill is therefore unavoidable. In many cases such broadcasting signals are retransmitted to make them accessible to a wider audience than those who are covered by the natural overspill.
- Pan-European broadcasting (mainly television). Broadcasting directed towards all or most European countries. Such broadcasting can have many language versions.

Dominant positions can also be obtained on the Internet. However, whether such positions should be evaluated in a regional, national, transnational within Europe or global context needs careful consideration which is outside the scope of this report.

2.2.1 Economic involvement abroad

In the media this involvement usually consists in the acquisition of all or part of a national media enterprise. It is worth noting that even a minority share can give control of the firm, for example when the other partner is a financial concern or a providence fund, which is often the case in Europe. Working with a partner in the country concerned helps to learn the national regulations and what the public expects.

Economic involvement abroad also concerns firms providing services to the media, such as press distribution (Hachette), advertising and cable networks.

2.2.2 Cross-border or transfrontier services

These are services produced in one country and broadcast or disseminated in one or more other countries where the producing company is not established. It is a form of export activity. In the printed press, these exports reflect the editors' desires to expand their sales by selling their publications abroad. The situation is less clear-cut where traditional broadcasting is concerned, as broadcasts can often be received abroad because radio waves do not stop at national boundaries. Direct broadcasting to other countries, which used to be fairly limited, has now grown with satellite broadcasting and cable networks. The specificity of this kind of broadcasting lies in the fact that the scope for interference by national authorities is often limited, having regard in particular to the principle of the free circulation of television services across frontiers enshrined in the Council of Europe Convention on Transfrontier Television and the EU "Television Without Frontiers" Directive. One example is the commercials broadcast in Switzerland by the German and French broadcasters Sat1 and M6; their purpose is to bring in higher revenues without having to provide any special content for this market. The Internet also offers a form of transfrontier service where national sites are consulted by large numbers of people in other countries.

These transfrontier services are usually targeting those countries which share the same language: the United Kingdom exporting to Ireland, France to Belgium and Switzerland, Germany to Austria and Switzerland. Exchanges are also possible between Scandinavian countries with similar languages. Generally speaking publications and programmes in foreign languages are less widely disseminated.

2.2.3 Acquisition of broadcasting rights

When broadcasters in different countries acquire the rights to the same films, series and documentaries, the result is a form of "upstream" concentration. Acquiring the rights to make or broadcast certain types of programme, such as "Big Brother", for example, falls into this category, as do licences to publish free daily newspapers which have managed to make their mark on the market ("Metro" and "240 Minutes", for example).

2.3 Consequences of transnational concentration

2.3.1 The risk of distorting competition to the detriment of small national publishers and broadcasters

Measures taken by large firms can undermine their rivals' activities and even force them out of business, in various ways, especially much smaller firms. The danger is all the greater when the firm is vertically integrated and has a transnational activity. It can deny access to platforms or offer unfavourable rates or slots to its competitors. The acquisition of exclusive broadcasting rights for several countries can hurt broadcasters in the countries concerned by depriving them of attractive content that might otherwise boost their ratings on their home market.

2.3.2 Weakening of public service broadcasters

Their status prevents public service broadcasters from expanding their activities abroad, placing them at the mercy of major foreign broadcasters active in several countries. Where foreign broadcasters acquire exclusive broadcasting or advertising rights for several countries, national authorities are not always able to defend the interests of their public service broadcasters, making it more difficult for them to fulfil their public service mission. It should not be forgotten that public broadcasters in small countries have to face competition from major foreign channels with budgets ten times larger than theirs.

2.3.3 The particular situation in central and eastern Europe

The shift from a planned to a liberal economy has deeply affected the media in these countries. American and European groups have swiftly taken over from the state-run media, launching western-style publications and television channels. These firms are now so well established that the new businessmen in these countries who have been prepared for the free market economy are finding it difficult to carve out a place for themselves on their own markets. The situation in these countries is so unusual that it merits a separate study.

2.3.4 An increasingly commercial approach to programmes

Transnational concentration mainly involves large groups competing fiercely for their share of markets where business potential still exists. In order to win the confidence of advertisers, their sole source of income, they have to have good ratings, so they show programmes that appeal to the largest possible audience, sometimes pandering to poor taste, which is perhaps not what one expects of a broadcaster.

It should be noted, however, that in addition to the major commercial channels, a large number of theme channels exist today which make a valuable contribution to opinion forming and culture in general. The main drawback is that, for technical reasons, these channels are not yet available. With the development of digital broadcasting, audiences thirsting for politics and culture will have a wider choice alongside the purely commercial programmes.

2.4 Thoughts on the effects of media concentration on competition

2.4.1 Assessing power on the market

The notion of “power on the market” must be distinguished from that of “dominant position”. One feature of transnational concentration is that a firm can win power at the European level thanks to its power to negotiate broadcasting and advertising rights, but without becoming dominant in its market. Furthermore, legislation governing competition does not condemn power as such but only its abuse. The authorities are often powerless against dominant positions that are the result of internal growth in dynamic businesses (Microsoft is an example), or when firms are left in a dominant position because their competitors go out of business. In a market economy, we must not penalise firms that have become powerful because they are more dynamic than their competitors.

When measuring media concentration at the European level, we observe that monopoly situations arise more frequently in smaller countries, at least regarding national television.

This is because on such small markets there is often not enough room for two operators large enough to be commercially viable because of insufficient advertising resources.

2.4.2 Economic competition and journalistic competition

Economic competition is waged between firms which are economically and legally independent of one another. Journalistic competition can occur not only between different firms but also between independent editorial teams within the same group, provided that they have been granted editorial status. The competition authorities are interested only in economic competition, whereas journalistic competition is very important in assessing pluralism. Journalistic competition depends on media owners' good will.

b. Regulatory aspects**1. National regulatory trends**

The liberalisation and globalisation of markets, the rules governing digital technology and the licensing system in telecommunications seem to make legislators inclined to consider that, given the expected unlimited access to the market of many operators, there will be no further need to establish rules for safeguarding pluralism, and to underestimate the importance of the criteria of evaluation (resources, networks, audiences) used until now in legislation. This happens despite the fact that, on the one hand, operators are more and more frequently private companies and the media tend to concentrate, and that, on the other hand, the shortage of content suggests that the same sources, instead of a diverse range of them, will be used.

A specific element of media concentration is that it is very difficult to reverse an established dominant position. Regulation of media concentration should therefore be adopted before such dominant positions are established. However, in situations where media concentrations do not represent an immediate danger towards freedom of expression and information, many policy-makers and media companies maintain that since there are no problems, consequently there is no need for any regulation. Where this point of view prevails, regulation of media concentration is not adopted until it is too late.

On the basis of the analysis of European national legislations, it is evident that in many countries the safeguarding of media pluralism is exclusively delegated to anti-concentration law and to measures intended to promote free market competition. Even in those countries where there is a specific media regulation, the relevant legislation is often insufficiently comprehensive in protecting the freedom of expression and information. Sometimes the issue is regulated by means of declarations of principles or general framework regulations, or is included in statutes or rules dealing with general conditions in awarding licences to broadcasters.

Measures adopted in most European countries in order to prevent monopolies or situations where companies exercise a significant market power appear to be heterogeneous, even taking into consideration the existing differences between national markets. Moreover, these measures have not always been adopted with specific reference to the media field.

Even in Western European countries where concentration is regulated in the media sector and where the legislation sets out criteria to avoid the establishment of a dominant position in the media sector (relevant market, dominant position, significant market power, etc.), it is still necessary to evaluate whether those parameters are really intended to strictly limit monopolies and concentrations, or if, on the contrary, they allow a larger margin of tolerance.

As far as Central and Eastern Europe is concerned, a consistent policy to regulate media concentrations has been politically difficult, having regard to the concern not to restrict freedom of the press. Some legal provisions to limit media concentrations have been introduced into certain broadcasting or other laws and were later amended and improved, especially in EU candidate countries, but their enforcement has been less than effective because anti-monopoly regulation is of limited value to address market dominance by large media groups and sometimes also because the authorities entrusted to monitor and regulate media concentrations lack the necessary tools and powers.

When looking at the issue of transnational media concentration, the question of ownership (as one criterion for controlling or limiting market domination at the national level) becomes cast in the modified aspect as foreign ownership.

Traditionally, in the media sector (and especially in television), the European experience of ownership was national. The concept and the fact of foreign ownership in the media is linked with general trade liberalisation policies at the world level (WTO), and the process of European integration at the continent level. European Union policies for the creation of a common market drive the legislative changes at both the national and regional level which facilitate foreign ownership, including in the media. Since the media have a special status as a cultural industry, some European countries have maintained specific rules to prohibit or limit foreign ownership in the media.

National laws tending to treat the media just as an economic sector among others fail to provide guidance to define criteria for preventing dominant positions on the media market. The current legislative trends at the national level show a reduction of the legal restrictions concerning ownership in several countries both on provisions concerning media concentrations and specific provisions concerning the holding of media interests by foreign entities.

The lack of legislation at the national level dealing with, if not indirectly, transnational concentrations and the incapability of national authorities to deal efficiently with cross-national developments is increasingly evident. National regulators in the small European countries have been often confronted with spillovers of cross-border broadcasting and are having difficulties in maintaining pluralism in their domestic markets, especially when they deal with international media conglomerates whose national affiliations are weak. Even if, as now, analogue commercial television is dominated by home-grown companies, this is not the case for digital pay-television, the film or music industries, the advertising market or the Internet, that have seen their capital pass into regional or international ownership. Programme rights are no longer sold in a fragmentary way for each national market, but often on a European scale.

2. Pluralism safeguard at the European level

a) The Council of Europe

Two instruments of the Council of Europe deal with the issue of pluralism in a transnational context. On the one hand, Article 10bis of the European Convention on Transfrontier Television provides for a general engagement of the Parties to “endeavour to avoid that programme services transmitted or retransmitted by a broadcaster or any other legal or natural persons within their jurisdiction (...) endanger media pluralism”. On the other hand, Recommendation No. R(94) 13 of the Committee of Ministers to Member States on measures to promote media transparency, recalls that “media concentrations at the national and international levels can have not only positive but also harmful effects on media pluralism and diversity which may justify actions by governments and recommends that “the governments of member States consider the inclusion in their domestic legislation of provisions intended to guarantee or promote media transparency as well as to facilitate exchanges of information between member states on this topic”.

b) The European Union

Cultural diversity and pluralism (including media pluralism) appear to be among the objectives of the European Union as set out in the Treaty establishing a Constitution for Europe. However, culture falls within the areas where the Community has only a power of supporting, coordination or complementary action. In these areas, the competence of the member States cannot be superseded (Art I-11 (5)), and legally binding acts adopted by the Union must not entail harmonisation of Member States' laws or regulations (Art. I-16 (3)).

In the context of Article III-181 of the Constitutional Treaty, the Union should take cultural aspects into account in its action under other provisions of the Constitution, in particular in order to respect and promote the diversity of its cultures. This means that the Union should take into account the concept of media pluralism when, for example, competition law is applied to the media sector. However, no complementary competence has been conferred to the Union.

An attempt to intervene at the Community level took place in the 1990s. At that time, a proposal for a Directive was presented by the European Commission at the invitation of the Parliament (Resolution of 1990) and following the Green Paper on Pluralism and Media Concentration (1992) and a Communication by the Commission (1994). This draft did not succeed, following the opposition of Member states which claimed to have full competence in this area and because of the lack of harmonisation at the EU level of the criteria used in the different countries to "measure" concentrations. In particular, the different countries did not accept that the criterion proposed, namely that of the audience, could be adjusted to the requirements of each country.

Recently, a number of initiatives with reference to concentrations and media pluralism have been taken by the EU :

1. White paper of the European Commission on services of general interest COM (2004) 374 final (12 May 2004);
2. Report by the European Parliament on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights) (April 2004);
3. Resolution of the European Parliament on the "Television without Frontiers" Directive (provisional, September 2003);
4. Communication of the Commission to the Council and the European Parliament – Towards an international instrument on cultural diversity (August 2003);
5. Resolution of the European Parliament on media concentrations (November 2002).

However, EC competition law continues to be the main tool for EU intervention in the media field. The Merger Regulation, in particular, plays an important role in keeping markets open to competition. So far, the European Commission has considered that threats to pluralism, arising as a consequence of large media companies extending their activity in other States, would not raise competition concerns at the EU level because, being in different national markets, the media companies would not be considered to have a dominant position.

In any case, since EC competition law can take into account non-economic factors only to a very limited extent, it seems insufficient to deal with the threats to pluralism which cross-country and cross-ownership consolidation of sources of opinion could pose.

At the same time, one must not overlook the potential consequences that the economic policy pursued by the European Union through its new regulatory initiatives at the Community level may have on national legislative initiatives aiming at protecting cultural diversity and media pluralism (as required by Article 10 of the European Convention on Human Rights).

In this respect, one can mention the proposal for a horizontal Directive on services presented by the European Commission in January 2004 (in order to oblige Member states to remove obstacles to the operation of the internal market), which would prohibit Member states to fix any quantitative or territorial limitations such as those concerning the holding of the capital of a company or the content of programmes by making them subject to a mutual evaluation procedure at the Community level. In the absence of an exception or cultural specificity clause, this kind of regulation could undermine the ability of States to maintain or introduce regulations or sector oriented policies in order to promote cultural and linguistic diversity and media pluralism, by questioning the European audiovisual model.

c. Media audiences in Europe

One of the criteria used in assessing and controlling media concentration at the national level is the audience market share, i.e. the percent of the audience attracted by specific media outlets. With regard to assessing the degree of transnational media concentration in Europe, it is important to assess what audiences are attracted to, and to evaluate the position of transnational media in this respect.

Media types: new media change the look of audiences

New media technologies are changing the patterns of media use across Europe. The process of audience fragmentation is the consequence of the multi-channel media market. In spite of fears (always present when new media are introduced) that Internet publications would have a negative effect on printed editions, data shows that the circulations have hardly felt any negative impact (M&A Trends in the European Publishing Industry 2001, Andersen). On-line reading of newspapers shows different patterns of media use by audiences than in their off-line choices. Readers are more likely to consult on-line editions of papers than they would not buy the paper version of (UK: Tabloid most popular news site. <http://www.netimperative.com/>, July 11 2003).

New media platforms highlight the relationship between individual patterns of media use and the education level. New media technologies (Internet) are also gender differentiated: women use them much less than men. New technologies require audiences to have specific capacities, influencing the actual use of available media. The economic aspect also matters here, especially regarding pay-TV and other subscription services. The use of the web differs across Europe, with Sweden leading with 29% of consumers who read newspapers on-line.

Television: still the most used media in Europe

The creation and availability of new media increases total media use, but television remains the medium that takes most of our time. Europeans tend to watch television between 2.5 and 4 hours a day (Yearbook 2003, European Audiovisual Observatory, Vol. 2, Table 8.1. ³).

97% of European Union citizens watch television; 88.9% watch news and current affairs programmes, 84.3 % films, 61.6% documentaries and 50.3 % sports. Radio is used every day by 60%: 86.3 % of those listen to music; news and current affairs (52.9%), and sports (17.4 %). In the EU, 46% of the citizens read a newspaper on a daily basis. The newspaper audiences are greatest in the north of Europe – Finland and Sweden (77 %) and Germany and Luxembourg around 65%, while the lowest numbers are found in the south – in Greece, Spain and Portugal where the daily audiences are around 20%. ⁴

Public television channels still command important audiences at the national level, in the majority of countries around (20)30-45 %, while some countries show a much larger market

³ The statistics in this are not unified by age of the public, some countries show data for 3+, some for 4+, 6+, 10, 12 or 15+. Other country specific research shows that different age groups have different patterns of media use – a recent UK study found that children under 6 watch 6 hours of television a day. (<http://www.guardian.co.uk/> «Under-6s watch up to six hours of TV daily» Colin Blakstock, 3 September 2003).

⁴ “Europeans’ participation in cultural activities”. A Eurobarometer survey carried out at the request of the European Commission, EUROSTAT. Executive summary. Rosario Spadaro, The European Opinion Research Group, EEIG. April 2002.

share of audiences in public television (i.e. Croatia at 87 %, Denmark at 70%), and some much smaller (Turkey at 8%, Greece at 10% and Lithuania at 12%) (2003 Yearbook EAO Vol. 2 table 8.2.).

Commercial television channels have significant audiences in both Western and Eastern and Central Europe – and a significant number of these channels are parts of transnational media companies. The penetration of transnational television companies in Europe shows marked regional characteristics and groupings. The largest European transnational operator is RTL from the Bertelsmann Group, with television stations in 10 European countries (Austria, Croatia, Germany, Switzerland, Belgium, France, United Kingdom, Luxembourg, Netherlands and Hungary). The audiences they command differ, and reach significant percentages in Hungary (30%), Luxembourg (35%), Belgium (23%) and the Netherlands (25%) (European Audiovisual Observatory⁵).

The second largest group with television stations in seven European countries is MTG, focusing on the Scandinavian and Baltic countries and Russia. The audiences they command are smaller than those of RTL, ranging from 1% in Russia, 6% in Norway, 9 % in Sweden, 10% in Denmark, 14% in Latvia, and 21 and 23 % in Estonia and Lithuania, respectively.

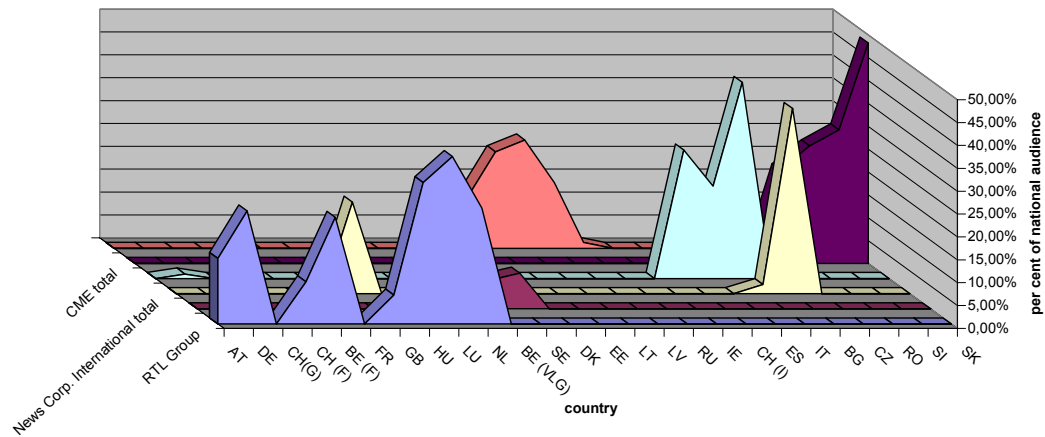
CME is present in four Central and Eastern European countries, with an audience ranging from 20% in the Czech Republic, 25% in Romania, 29% in Slovenia to a very high 48% in Slovakia.

News Corp. International is present in four countries as well, where its satellite service BSkyB commands around 20% in the United Kingdom and around 5% in Ireland, with a very high audience of 40% in Bulgaria, and a very small 2% in Italy. The Italian audience is mainly captured by the Mediaset channels, which together bring an audience of 42 %. The Italian speaking part of Switzerland also watches these channels (28%), and the Spanish audiences of Telecinco rise to 20%. The Mediaset Tele5 in Denmark only interests less than one per cent of the Danish audience.

SBS is today present in only three countries (after selling its Slovenian interest to CME), with audiences at 6% in the Flemish-speaking Community of Belgium, 10% in Norway, 7% in Sweden and 13% in the Netherlands.

⁵ The data on audiences are collected in each country, and the methodology is not unified. These data must be taken as indications only. We wish to thank the European Audiovisual Observatory for providing us with the breakdown of audiences for main European commercial channels.

Total national television audiences of transnational media companies in Europe (2002)



6

Foreign television⁷ channels also have significant audience market shares in a number of European countries. Foreign public service channels have significant audiences in some countries – for instance, 10% in Austria, 18% in the French-speaking Community of Belgium, between 16 and 24 per cent in different linguistic regions in Switzerland, 19 % in Estonia, 17% in Ireland and 20% in Luxembourg. The data in this field are fragmented, but the largest audience shares seem to be not from foreign channels that directly target a country (their share is from 6% in Norway and 12% in Denmark, to around 20% in Switzerland, the Netherlands, Sweden, and 16% in Austria), but from other foreign commercial channels. Their audience market shares range from very high 63% in Luxembourg, 50% in Cyprus and Switzerland, or nearing 20% in Belgium, Austria and Lithuania.⁸ Reasons of common language and proximity (i.e. spill-over) seem naturally responsible for this result.

Audiences as publics

There are two main concerns about transnational media concentration: one is the concern about the diminishing diversity of production (including aspects of market, content, ideas and culture), and the other is the possible impact that this may have on the role of the media in enabling the public sphere. This role of the media is most directly linked with their function in democracy.

The public space is shared by all, a place of the creation of an “imagined community”. The public sphere is also meant as the place where the commonness of identity, in terms of the common democratic government and shared responsibility, can be constructed, and a place where change is negotiated and conflict is played out.

⁶ The table has been provided by the European Audiovisual Observatory.

⁷ Foreign television channels in this respect are defined as broadcasts originating in other countries, and not as foreign-owned company/television channels established within the country in question.

⁸ Table 8.4. 2003 Yearbook Vol. 2 European Audiovisual Observatory.

In the traditional understanding the idea of the public sphere was linked to the notion of State as its framework. In this respect, the media were generally presumed to operate at the national level as facilitators and creators of the public sphere.

With the European integration and globalisation, which are perhaps most strongly visible in this area, and certainly assisted by the technologies and economics of media internationalisation, the fact of the global media enterprise is a reality. In Europe, the transnationalisation of media ownership and transnational media networks are also a reality. This has an impact on national public spheres and the creation of a transnational public sphere (at the European or global level).

When talking about the role of the media in the creation of a public sphere, the main type of media content which is of interest is news and current affairs programmes. In order to assess the possible basis for a negative influence of the foreign ownership in the media for the maintenance of a national public sphere, we need to look at the patterns of audience use in this programme segment.

In the daily newspapers sector (which is arguably and traditionally the main basis for the development of the public sphere), national publishers dominate in almost all EU member states (except the United Kingdom, where News Corporation, which owns both the Sun and the Times, leads the market; Denmark and the French-speaking Community of Belgium).⁹ In Eastern Europe, the situation is opposite: almost all daily press markets are dominated by foreign companies.¹⁰

In spite of the significant audience market shares of foreign television channels in Europe, national television news programmes are the source of information about international affairs for 82 % of the citizens of EU, while 59 % use national newspapers and magazines, and 40% national radio (Eurobarometer 59, July 2003, p. 6-7). The same public opinion pool shows that 11% of the citizens obtain their international news from other countries' TV programmes, 5% from other countries' newspapers and magazines; 3 % from other countries' radio. 20% find this information on the 24-hour news channels, and 12% on the Internet. This data indicates that national media still have the greatest impact on the shaping of public spheres in the EU, but the influence of the media from other countries and different media types should not be discounted.

Public service radio and television is naturally expected to fulfil the social role of broadcasting. This can only be done if the programming policies are continually geared towards public service and not purely governed by commercial guidelines. Public broadcasting can only maintain its role if it reaches significant national audiences. The drive to change its programming in order to compete better with commercial channels should therefore not result in the reduction of the public service generalist character of its programming. A balance is necessary, and is not easily found in an environment which is increasingly open to competition not only from commercial broadcasters but from other new media platforms.

⁹ Sánchez-Tabernero and Carvajal, 2002, *ibid.*

¹⁰ Zrinjka Peruško, *Medijska koncentracija: izazov pluralizmu medija u novim demokracijama Srednje i Istočne Europe*. *Medijska istraživanja* 2003 Vol. 9/ br, 1, str. 39-59. 2003 EFJ Eastern Empires. *Foreign Ownership in Central and Eastern European Media: Ownership, Policy Issues and Strategies*. Brussels: European Federation of Journalists.

The fragmentation of audiences goes hand in hand with the creation of different public spheres, created around different media types and levels. Minority and alternative media (usually found on-line, as community radio or press) can create additional public spheres – “where communities communicate and negotiate the questions of diversity, identity and difference” (Ellmeier & Rasky, 2003)¹¹.

Another aspect of transnational media ownership in relation to the aspect of the audience is the possible creation of a European public sphere. More insight is needed into the possible positive impact by different programme genres (fiction, documentary, news, sports). Does foreign chain ownership foster a common European outlook?

¹¹ Anrea Ellmeier, Bella Rasky. «Differing Diversities: East Central and Eastern European Perspectives. Cultural Policy and Cultural Diversity, Phase 2. Osterreichische Kulturedokumentation. Internationales Archiv fur Kulturanalysen. Vienna, August 2003.

d. Developments concerning content

Content is the media product. It is one of the most important factors which form our political views, our tastes and our outlook on society. It is therefore of utmost importance that content includes a diversity of opinions and information. The media provide a crucial contribution to this diversity through their role as a public watchdog, relaying or producing critical or investigative reports on matters of public interest, including misuse of power, corruption or other behaviour which are contrary to public interest and democratic standards. Only by producing a diversity of opinions and information are the media able to fulfil their role as contributors to democratic development.

The effects of transnational media concentrations on content vary between different media. Magazines represent the media area where transnational media concentration has become dominant. Media companies from Western European countries have expanded into the new democracies in Central and Eastern Europe. There has been little or no adaptation of content with regard to the new national markets. Regarding the newspaper sector, no clear trends of change in content are evident.

The European Audiovisual Observatory has, in its 2003 Yearbook, examined the television market. It states that within the 35 countries examined, up to January 2004 there were:

- 73 public service and 101 private national analogue terrestrial TV channels,
- 265 foreign channels targeting a country
 - either because their programming schedule are specially conceived for the market (RTL4 and RTL5 in Luxembourg targeting the Dutch market), or
 - because they provide a special language version of a pan-European channel (Cartoon Networks, Fox Kids, TV3) (each different language version counts as one channel).
- 232 channels targeting foreign countries:
 - channels specifically intended for export (BBC Worldwide, TV5),
 - “reduced” versions of national channels (MTV Europe),
 - channels targeting the national markets of other countries (RTL4, RTL5, TV3).

The content of TV channels varies considerably. Public service channels practice internal diversity, carrying programmes both for special interest groups and the general public. Other channels specialise in news, sports, films, children’s programmes, etc. The latter channels are usually broadcasted into many countries. However, such pan-European broadcasting also includes channels which have programming schedules of a general nature, including news, sports, entertainment, etc (BBC World and TV5).

Content is usually divided into different programme categories. In the Yearbook 2003 of the European Audiovisual Observatory, TV content is divided into 12 categories (fiction, entertainment, music, sport, news, information, arts/humanities/sciences, education, children’s programmes, religion, advertising and others). In general, news and information are the most important categories in relation to freedom of expression and information. However, the other categories also to some extent express ideologies or opinions and influence a person’s view on society, although often in an indirect way.

News and information programmes have quality standards attached to them (news shall for example be impartial and accurate). But on the whole, programmes do not have such

standards. It should nevertheless be noted that in many countries, the public service broadcasting remit has a general quality demand included, and that there are special restrictions against violence etc in children's programmes. However, introducing quality standards in concrete programme categories will easily trespass freedom of expression and become unacceptable censorship.

It is often maintained that commercial channels and channels targeting many countries do not take their democratic functions as seriously as the public service broadcasters. An evaluation of that statement requires examination of a mass of concrete data which has not been possible within the framework of this report. However, the amount of time dedicated to news and information compared to the time dedicated to fiction and entertainment indicates editorial preferences which also have a bearing on the democratic function of the media.

The survey in the European Audiovisual Observatory's 2003 Yearbook shows that public service channels in Europe have on average 30 % broadcasting time devoted to news and information and 33.5 % broadcasting time devoted to fiction and entertainment. Similar figures regarding private channels, especially pan-European channels, are not available. However, the Yearbook includes information which makes it possible to compare public service channels with private channels in France, Iceland, Italy and Poland:

	Fiction and Entertainment		News and Information	
	PS	PR	PS	PR
France	38%	69.3 %	42,5%	13.7 %
Iceland	39 %	55 %	24 %	15 %
Italy	43 %	75.1 %	26 %	16.8 %
Poland	43.1 %	74.8 %	22.9 %	8.8 %
average	39 %	68.5 %	25.3 %	13.8 %

PS companies in France are France 2 and France 3, PR company are TF1 and Canal+

PS company in Iceland is RUV, PR company is Stöð2

PS company in Italy is RAI, PR company is Mediaset

PS company in Poland is TVP, PR companies are Polsat, TVN, TV4 and Canal+.

The material indicates that a reduction of public service broadcasting will lead to a weakening of the democratic functions of broadcasting. It could also lead to a concern that if transnational broadcasting becomes too strong compared to national broadcasting structures where public service broadcasting is an integral part, freedom of expression and information will be negatively affected.

The media offer a wide variety of information and entertainment. The number of radio and television channels has increased dramatically in recent years. Satellite and cable broadcasting have made it possible to reach more people. The number of magazines and specialised publications has soared to such an extent that newsagents can barely fit them all onto their shelves. The situation is not satisfactory, however, because of the increasingly uniform face of general purpose television and the so far limited impact of theme channels (which are not available everywhere, often show old documentaries, etc.).

The Internet has opened up a new information highway. Anybody can open a personal web site at little cost. However, most of such sites have few or no visitors. The most frequently

consulted sites at present are those run by large newspapers, telecommunications firms and search engines.

Users should gain easier access to customised information thanks to the digital technologies currently being developed.

Opinions differ as to the effects of concentration on pluralism of content. Some fear that concentration will limit the sources of information available to the public and, in so doing, hinder the free formation of public opinion, which is at the very foundation of democratic societies. Others point out that there is no correlation between concentration and plurality of content. Financially powerful firms should be able to invest in dynamic editorial teams capable of investigative reporting. This type of reporting differs from that of smaller editorial teams which often confine themselves to reproducing agency news or television sequences supplied by foreign firms, without any in-depth analysis or commentary.

In this analysis, one needs to differentiate between foreign ownership of media outlets and foreign media content in general (in its different aspects, including imports of audiovisual products). It should be remembered that the international exchange of media content (television programmes, newspapers, magazines, film, video and music) has been a positive goal of European policies in the media field, both in the Council of Europe and the EU. Thus, the sole criterion that programme content is of foreign origin should not be a matter of concern in itself, as long as there is a reasonable range of domestic programmes.

Media companies operating in many countries usually have a critical mass which makes it easier to resist external pressure from groups in the area where one subsidiary is situated, be it a newspaper or a TV-station. There is, however, no evidence that broadcasters or newspapers owned by foreign companies are more critical in relation to the authorities than those owned by nationals. On the contrary, the Financial Times reported that journalists in two Romanian newspapers owned by foreign companies recently demonstrated against alleged instructions from their owners that they should take a positive view of the government and its policies. These instructions were issued in the middle of the national election campaign.

Such media companies may also easily establish an exchange of programmes between subsidiary companies, or co-productions between them. These large companies have the economic basis to produce ambitious programme series about themes or issues that are important to audiences in many European countries. British, French and German public service broadcasters produce such series from time to time, often in co-operation with public service broadcasters in other European countries. However, we have seen little or no evidence of such ventures from the private media companies so far. A change of content in this direction has not been brought about by European transnational media concentrations.

A common trend among transnational European TV companies seems, on the contrary, a stronger emphasis on cheaply bought productions and often productions that have made profit in the US or other large markets. Such productions are often carried by all television channels owned by the same company. Another feature is that programme formats (like Big Brother) are developed or bought and that the same programme type is produced locally. These productions are usually cheap and they often attract considerable audiences. In addition, many pan-European TV channels belong to media groups which control or have acquired access to large film archives and film producers. "Ordinary" local productions usually form a small percentage of the total programme offer. It is probable that this trend will continue in the

years to come. This programme policy reduces costs and as long as the revenues and the audience figures are satisfactory there is no economic reason to change the programme policies. Demands for cost reductions also often lead to much less investigating journalism, a form of journalism which is important with regard to the public watchdog function.

Another important pressure on content which originates from the owners' demands for higher profits relates to the sale of advertising. Controversial or very specialised programme content might reduce sales or audience figures. Commercial TV channels are therefore reluctant to carry such programmes because they may have a negative effect on advertising incomes. Content which might provoke large advertisers, for instance critical investigating journalism directed towards certain commercial companies or their products, will inevitably reduce advertising incomes, and are rarely seen. Many large industry companies in Europe seem to focus on markets which include more than only one country (especially regarding "smaller" countries) and broadcasters which can offer several countries as one market, such as TV3 in the Scandinavian countries are favoured above national broadcasters, even though the latter may have a larger audience share in one country than the transnational broadcasting channel. This tendency has a negative economic effect on national commercial broadcasters and may lead to reductions in their programming costs.

There are, on the other hand, owners who want to promote certain political or ideological views. Mr Murdoch and Mr Berlusconi are examples of such media owners. They may interfere directly into the editorial work, but it is difficult to know if, and to what extent, that happens. If an editor raises an issue, takes side in a political conflict or refuses to cover certain events or views, it is almost impossible for an outsider to know if that is done after pressure from the owner or on his own initiative. Although a cause for concern, direct intervention from the owners into editorial work seems to be the exception in many countries, although lack of transparency makes it difficult to make any firm statements. The same applies to the so-called self-imposed censorship from editors and journalists, which may be described as a reluctance to raise issues which are in conflict with the owner's expressed or implied views or economic interests. In general, the media set themselves an editorial line which is known to the public. Those who want to reach the widest possible audience are not advised to take too rigid a stance on political issues if they wish to keep their clients and their credibility. Management generally steps in only when the profitability of a publication or channel is in jeopardy.

Since the lack of transparency makes it so difficult to assess the situation regarding editorial independence, it should be made clear that media owners will respect the editorial independence and refrain from any editorial influence. Such declaration could be given the form of self-regulation and should be made public. In principle, the same should apply to influence exerted by governments or other political bodies. A clear separation between political authorities and the media should be stated in an appropriate way, for instance in legislation. There will necessarily exist contacts between the authorities and media companies in a number of areas, from taxation to labour market regulation. All such contacts should be transparent, to ensure that they are not used to influence the editorial work of media companies.

Community media exist in a number of countries. It often represents channels for themes, views and opinions which are not always present in other media outlets. As such, community media contributes to strengthening freedom of expression and information. The establishment

of community media is especially important in this respect, since the opinions they advocate almost never reach transnational media channels.

A general feature in transnational media is that the owner in general is not present within the markets where the broadcasting channels are received or the magazines or newspapers are sold. The traditional link between the owner of the media and the audience served created transparency (the audience knew who the owner was) and responsibility (the owner lived “among” the audience, and could also be approached personally). This link does not exist in the transnational media, or only to a very limited extent. The traditional responsibility to serve the audience and enlighten or educate the public, especially in relation to democratic processes, has suffered accordingly. The focus on profits and the corresponding focus on the audience not as the public but as consumers have direct consequences on the programming schedules, as described above.

e. Technical developments

The ongoing process of digitisation of communication channels has a significant impact on the plurality of the media and cultural diversity. This can greatly increase the negative effects of transnational media concentration. On the one hand, there will be a much larger number of communication channels. It is expected that this will lead to numerous new offers in the field of traditional broadcasting as including a range of new services. Whether this increase in the absolute number of offers will also lead to more diversity, i.e. *different* offers, or simply to “more of the same”, remains open. Therefore, the technological promise of more channels that could potentially carry more and more diverse content and thereby lead to an increase in pluralism is not necessarily fulfilled.

On the other hand, changes resulting from the process of digitisation raise new questions concerning access to communication channels. It needs to be asked how in future access which works like a bottleneck on the way to the user for the service supplier and the content offered, can be guaranteed. Challenges to media pluralism are manifold and the mere multiplication of communication channels enabled by technical advancement in no way guarantees a positive outcome for the content-related question of diversity.

1. Digitisation of communication channels

The process of digitisation is considerably reshaping the media landscape. The use of digital technology is influencing the dissemination of television programmes via cable, satellite and terrestrial means and will replace the traditional analogue technology. This analogue switch-off is not only a demand by the media industry but is also political consensus in nearly all European states. In some states there are fixed switch-over dates such as in the year 2010.¹² In other countries, this will happen even earlier and the switch-over process has already begun with the establishment of digital broadcasting.¹³ Although the EU is not recommending a general switch-over date, it is only a matter of years before the traditional form of receiving broadcasts will be obsolete.

One technical achievement needed for enabling digitisation is the source codification and data compression. As most picture and sound signals are still delivered in analogue form the source code needs to be converted for digital signal processing. Internationally the MPEG-2 standard for codification of the source signal for digital processing has evolved as the leader because it enables the reduction of the amount of data by means of compression and thereby needs far less transmission capacity.¹⁴ Source codification with the DVB/MPEG-2 standard also includes the so-called multiplexing which is realised in a digital transmission centre (play-out-centre), where the coded audio and video information is “packed” into a joint

¹² In Germany for example, the government has decided that the allocation of frequencies for analogue broadcasting dissemination shall be revoked no later than 2010 for television and 2015 for FM-radio broadcasting, cf. epd medien 26/2001, p. 15.

¹³ In the E.U., at the end of 2002, approximately 18% of the households could already receive digital television, mainly by means of satellite. Digital terrestrial television is active only in few countries such as the United Kingdom, Germany, Spain, Sweden and Finland. (Cf. Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the regions: The Future of European Regulatory Audiovisual Policy, COM(2003) 784 final, p. 4).

¹⁴ Digital transmission of a conventional analogue television programme with a picture quality known from the PAL standard (625 lines per single picture) would require a data stream of approximately 270 Mbit/s. The MPEG-2 standard allows an efficient reduction of the data of such programmes so that these can be transmitted with a stream of only 4 to 9 Mbit/s.

transmittable data flow. After having been multiplexed, the data containers are transmitted to the recipients. This transmission can go via different channels, namely cable, satellite and terrestrial dissemination. In the case of cable, the data is initially transmitted to a cable head-end where the signal is fed into the cable network.

Digitisation also requires the supply of digital access technology for the recipients. Digital signals are not visible on conventional TV sets because of their analogue technology. Therefore, the digital data stream has to be converted back into an analogue video signal, which requires analogue/digital (A/D) converters available to everyone. They are either built into the terminal (TV with IRD or so-called iDTV) or connected to it as external add-ons (set-top-box).¹⁵ This substitution of the conventional hardware of analogous terminals to a more computer-style set-up that includes components such as memory, operating system, application software, add-ons and display until now came mainly in form of set-top-boxes, because with this solution the viewer can keep his conventional TV set. Another way of receiving digital signals is a TV set that has already a fixed decoder installed (iDTV)¹⁶ or PCs if they have a modem and TV card, which additionally allows for the running of multimedia applications.

However, the hardware adaptations alone are not sufficient. A further very important area in view of pluralism safeguard is the system software with which the hardware components are controlled. It must be suited to the individual hardware components which can be a problem if the components origin are from different producers and use their own specific technology. To make the components match the system software must supply an interface (Application Programming Interface, API). The aim to define a common open-source interface was realised by the DVB pool with the Multimedia-Home-Platform (MHP) which is a technology working independently of specific manufacturers and is a freely accessible open-source standard based on Java¹⁷ that does not require any licensing. Set-top-boxes using MHP are capable of fully presenting all digital television broadcasts and electronic programme guides (EPGs) as much as a variety of multimedia applications. MHP gives specifications for the system software but does not require any specific set-up of the receiving terminal.¹⁸ Digitisation allows the protection of certain programme content against unauthorised access by using systems that control access, so-called Conditional Access (CA) Systems. These programmes are transmitted encrypted only for those recipients that are authorised by their relevant smart-card the content of which is made accessible by decryption. It should also be briefly mentioned that CA-systems can function as a means to control market access.

A final very important aspect of the process of digitisation that needs to be carefully observed because of its potentially negative impact on the programmes actually viewed is the navigator technology. Recipients of digital television need reliable navigation assistance without which the success of broadband communication and especially digital television including multimedia is uncertain. Such navigators do not only lead the viewer to the different television programmes but also give him the opportunity to access interactive services. In doing so they change the viewer's conventional role of a recipient to an active "user" or customer that gains more autonomy by being able to decide at what time he would like to

¹⁵ Cf. *Ziemer*, *Digitales Fernsehen*, p. 310 ff.; *Grünwald*, *Analoger Switch-Off*, p. 14.

¹⁶ iDTV-Terminals are very expensive and have only recently entered the market.

¹⁷ Java is a programming language developed by Sun Microsystems that enables interactive programmes. Programmes written with Java have the benefit that they can be used independent of the system software and therefore compatibility problems (e.g. between Apple and Windows) do not occur.

¹⁸ This system software can be integrated not only in set-top-boxes, but also in TV sets (iDTV) and PCs.

regard which content. General assistance with access to all transmitted services and programmes is given by the basic navigator that is installed in the set-top-box by the manufacturers.¹⁹ On the next level, programmes are presented sorted by the bouquets and their Electronic Programme Guides (EPGs).²⁰ Only with the following step the recipient chooses a specific EPG as new user interface in order to select the desired programme on the basis of an overview of the programme content. Additionally, the user profile can be saved and subsequently his preferences are always offered first. This bottleneck, in the hand of transnationally concentrated media operators, could further limit access to diverse content.

2. Different means for dissemination in the age of digitisation

The digitisation of broadcasting also has effects on the different delivery platforms. Until now the broadband cable network is based on a tree-structure that allows a point-to-multipoint-communication and is used only as a distribution network.²¹ Digital upgrading of cable networks open up new utilisation possibilities and value-added potential: via the broadband cable network high-speed-Internet access²², telephone communication and a range of information and entertainment services can be offered. In order to substitute the conventional tree-structure of the cable network by a point-to-point communication structure the upgrading and extension of the conventional coaxial cable is necessary and means, for exemple, the construction of wide area fibre glass backbone networks. This upgrade necessitates the investment of large sums of money.²³

The conventional way of terrestrial broadcasting has been of minor importance for the last several years, but that is expected to change. Due to the limited frequency spectrum that is allocated to broadcasting until now, only a selection of all programmes could be transmitted terrestrially. The more efficient use of the spectrum by digital technology will allow the dissemination of many programmes that could only be received via cable or satellite conventionally. Because of this, digitisation of the terrestrial dissemination is also a necessity for the development and spreading of new services. It has started and provides many television programmes and potentially further services with a technology that can be bought relatively cheaply.

In the field of digital broadcasting, satellite is the most wide spread transmission medium within Europe and in future will become even more dominant.²⁴ Satellites provide broader transmission capacity than cable and thereby more programmes.²⁵ Internet services can be transmitted with high data rates resulting in short downloading, which is essential for the success of video-on-demand. However, it is difficult to equip satellites with a feedback channel which is why in practice, full interactivity is realised by a feedback via the telephone

¹⁹ Cf. *Wagner*, Rechtliche Aspekte elektronischer Programmführer, MMR 1998, 243.

²⁰ Cf. *König*, Die Einführung des digitalen Fernsehens, p. 42.

²¹ Cf. *Möschel*, Die Öffnung der Breitbandkabelnetze für den Wettbewerb, MMR Beilage 2/2001, 13.

²² It is expected that this method achieves an effective downstream rate of more than 1,5 Mbit/sec which means an up to 25 times faster data transmission than with conventional ISDN solutions.

²³ Estimates showed a figure of approximately 50 billion Euros only for Germany; this applies also to the other European countries, cf. *Schraps*, Digitales Fernsehen, p. 238.

²⁴ Cf. Statistik TV Verbreitung in Europa 1999/2004, Swisscable 2000, can be viewed under <http://www.anga.de/statistik/t7/t7.html>.

²⁵ The satellite has approximately 120 transponders, to each of which 6 to 10 programmes can be allocated. The upgraded broadband cable only contains approximately 90 channels, to which also 6-10 programmes can be allocated; cf. Fortschreitende Medienkonzentration im Zeichen der Konvergenz, Konzentrationsbericht der Kommission zur Ermittlung der Konzentration im Medienbereich (KEK), p. 211.

cable. The leading providers SES/ASTRA and Eutelsat have therefore been intensively searching for methods to construct a fully interactive multimedia service via satellite.

3. “Bottlenecks” as a danger to pluralism

With digitisation, the question of bottlenecks in channels to the consumer for the services offered will gain great importance as it occurs in several different contexts. Firstly, access to the communication channels, especially digitised cable networks, is essential for providers because otherwise a whole potential communication channel is missed out. Therefore, a decision on access to bandwidth is a possible source for exclusion of certain offers. Furthermore, another key factor is the A/D conversion of the signals. Finally, the question of the supply of modern television sets, or more likely of the necessary equipment for conversion, such as a set-top-box, and the software used is again decisive in the outcome whether or not a service provider and his content actually reaches potential customers. The question of reaching the customer on a technical level is not the only bottleneck issue that can lead to an actual reduction of pluralism and diversity. An additional problem is created by the existence of EPGs, needed to supply the consumer with an instrument to be able to actually use huge amounts of information. The consumer, once applying a certain EPG, will continue to use this as an entry point, as he will usually return to the same Internet portal when surfing the web. The way the EPG is configured can decide on whether or not the consumer is aware of certain services or offers that he actually has access to on a technical level. Depending on the software used, the consumer’s receiver or television might not be able to show and handle the EPG which means the programmes offered remain disguised.

Finally, the political framework in the process of digitisation needs to ensure that there is no “digital divide” between “have and have-nots” as far as access to digitised offers and services is concerned. Analogue switch-off may not lead to consumers suddenly losing their access. Parallel analogue and digitised transmission leads to unresolved problems and is technically and economically not a sensible solution. Therefore, terrestrial analogue dissemination usually is switched to digital from one moment to the next after adequate preparation time. It is crucial that everyone has the same possibility of access to information, offers and services, also particularly as regards new media. In this context, public service broadcasters play a crucial role. Ensuring a strong position for these broadcasters is essential also in the “Digital Age” and on all new media platforms. By providing this, states can guarantee that the broadest possible access to information for the public is maintained. At a time when technological development will add to the transnational concentration of media companies, public service broadcasters are the only safe way of continuously providing an environment of diverse and balanced information on broadcasting and new media platforms.

One can expect that the digitisation process will increase concentration in the area of the media significantly. The switch-off of analogue dissemination gives strong internationally operating media companies, that have the possibility to invest largely in new and multiple channels and to feed enough content to fill these channels, an even better starting-point. Once a strong position is established, competitors working on a smaller scale will have even more difficulties to be heard and viewed by broad audiences. This phenomenon is even more exacerbated when the companies involved are vertically integrated and can thereby cross-promote their content and channels. If a transnationally operating media company, that is vertically integrated, produces content and, at the same time, is the provider of services channels, such as broadcasting channels, Internet sites or even mobile phone G3-technology it can focus its customers by using only self-produced content. It does not have any

commercial interest in providing the widest possible access to other content. The same applies if the media company provides an EPG.

As the advancing technology does not only make Internet, but also mobile phones, an ever more regularly used media channel, the strong which usually means transnationally operating media companies have better opportunities of acquiring a dominant position in the consumers' households, for example, by buying premium content such as international sports events rights and then presenting them on all channels available to them and in all countries where they are active on an exclusive basis.

Therefore, the flood of new channels not only in digitised broadcasting but also by means of other technologies such as Internet and mobile telephony will not result in a flood of new content. New technologies and commercial demands will increase the transnational distribution of contents and the concentration of media companies, which will necessitate a careful observation of the effects on media pluralism in order to ensure that every citizen profits from the technological advancement.

D. Conclusions and Recommendations

Transnational media concentrations in Europe, taken in their widest sense, are an ongoing process facilitated by technological developments and an increased need for profitable European media outlets.

The main concerns raised by transnational media concentrations are the negative effects on freedom of expression and information in Europe, especially by the diminishing diversity of content production and the reduced contribution of commercial European media outlets to the public sphere. In small countries, national broadcasters and publishers have difficulties in competing with transnational conglomerates in the production or acquisition of attractive content. The traditional link between media owners and their public does not exist when media owners come from foreign countries. As a consequence, the degree of transparency and responsibility of the media may become weaker.

Digitisation, in particular, gives strong transnational media companies, especially those which are vertically integrated, a greater advantage over smaller companies in terms of production and distribution of content.

Impact varies from country to country depending on the way in which their media are organised. However, national and European competition laws are in general insufficient to deal with the impact that transnational media concentration has on freedom of expression, pluralism and cultural diversity in a specific country.

Experience shows that when a dominant position in the media is established, it is very difficult to reverse. Therefore, it is of the utmost importance that media ownership regulation is adopted before transnational media concentration has reached an unacceptable level.

The AP-MD considers that at the European level several actions specifically aimed at the protection of pluralism are needed in order to prevent the negative impact that transnational media concentrations may have on media pluralism.

The AP-MD recommends the following actions:

- The Council of Europe should initiate ongoing monitoring of transnational media concentrations, paying attention to the evolution of the media landscape and the way the public uses the media. The conclusions of this monitoring should be published in a yearly report and made easily accessible to the public.
- In view of the rapid development of transnational media concentrations, action at the international level is necessary. The Council of Europe should urgently study the appropriate means, including a convention, to prevent the negative impact that this phenomenon may have on freedom of expression, pluralism and diversity.
- Member States of the Council of Europe should support public service broadcasters, as specific providers of diverse content, also as content producers on new technological platforms.
- Member States should encourage the development and strengthening of the contribution of community media in a pluralistic media landscape.
- Member States should include the contribution to freedom of expression and information and pluralism of opinions as an obligatory objective when granting broadcasting licences.

- Member States should enforce a clear separation between political authorities and the media and ensure that all decisions taken by public authorities regarding the media are transparent.
- Member States should strengthen their action to secure media pluralism and the editorial independence of the media through legislation or other means.
- In addition, media organisations should adopt functioning self-regulatory mechanisms to safeguard editorial independence.

Appendix A

The largest media companies in Europe by turnover in 2002

Company	Domicile	Media turnover (mill euro)	Newspapers	Periodicals	Books	Radio	TV	Film	Music
Vivendi Universal	France	19 558		X	X		X	X	X
Bertelsmann	Germany	14 612	X	X	X	X	X	X	X
Reed Elsevier	UK/Ned.	7 982		X	X				
Pearson	UK	6 874	X		X				
ARD	Germany	6 100				X	X		
BBC ²⁶	UK	5 383		X		X	X		
RTL Group	Germany	4 342				X	X		
Wolters Kluwer	The Ned.	3 895		X	X				
EMI Group ²⁷	UK	3 892							X
Lagardère	France	3 746		X	X	X	X		
BSkyB ²⁸	UK	3 622					X		
Daily Mail ²⁹	UK	3 095	X	X		X	X		
Springer	Germany	2 777	X	X	X	X	X		
RAI	Italy	2 700				X	X		
Holtzbrinck ³⁰	Germany	2 384	X	X	X				
TF1	France	2 325					X	X	
Mediaset	Italy	2 316		X			X		
Bonnier	Sweden	1 910	X	X	X	X	X	X	X
Emap ³¹	UK	1 637		X		X	X		
Sanoma	Finland	1 631	X	X	X		X	X	

Source: Nordicom's "The Nordic Media Market 2003"

Vivendi Universal is the third largest media company in the world by turnover in 2002. The interests of the company include³²:

- Canal+ (100% VU subsidiary), Pay TV operator

²⁶ Fiscal year 2001/2002.

²⁷ Fiscal year 2001/2002.

²⁸ Fiscal year 2001/2002.

²⁹ Fiscal year 2001/2002.

³⁰ Verlagsgruppe Georg von Holtzbrinck sold their TV and radio assets to RTL Group in August 2002.

³¹ Fiscal year 2001/2002.

³² source <http://www.vivendiuniversal.com/vu/en/group/default.cfm?idR=6>.

- Universal Music Group (92% VU subsidiary), the world's largest music company, including the world's largest catalogue of recorded music
- Vivendi Universal Games (99% VU subsidiary), a publisher of interactive entertainment software products for all major platforms
- NBC Universal (20% ownership)
- Major telecom operators in France and Morocco.

Bertelsmann is the sixth largest media company in the world by turnover in 2002. The interests of the company include³³:

- RTL Group (91% subsidiary), Europe's largest private broadcasting group, also owning several programme production companies
- Random House (100% subsidiary), book publishing
- Gruner + Jahr (75% subsidiary) and Prisma Presse (75% subsidiary), magazines and newspapers
- BMG (100% subsidiary), music publishing and distribution
- Arvato (100% subsidiary), printing companies, multimedia/IT services
- Direct Group (100% subsidiary) direct-to-home services.

Reed Elsevier is the eighth largest media company in the world by turnover in 2002. It is a world leading publisher of information for professional users. The company has the following four divisions, working globally: Science and Medical, Education, Legal and Business.

Pearson is the tenth largest media company in the world by turnover in 2002. It has three divisions:

- Pearson Education (books and other material)
- Financial Times Group (newspapers)
- Penguin Group (books)

ARD (Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland) is the largest public service broadcaster in Germany. It is an association made up of the public service broadcasters in the Länder.

BBC is the public service broadcaster in the United Kingdom.

RTL Group is a subsidiary of Bertelsmann. It is the largest private broadcasting group in Europe, with broadcasting activities in ten European countries.

Wolters Kluwer was originally a publishing company, serving professionals in the Health, Corporate & Financial Services, Tax, Accounting, Legal, Regulatory and Education markets. The company now presents itself as a multi-media publisher, serving the same markets.

EMI Group is a global music publisher.

Lagardère has interests in the aerospace industry in addition to the media field. The media interests are the following:

- Hachette Livre (books)
- Hachette Filipacci (magazines)

³³ source: <http://www.bertelsmann.com/bag/profile/profile.cfm>

- Hachette Distribution Services (press distribution etc)
- Lagardère active (audiovisual : television, radio and new media).

BSkyB is a subsidiary of News Corporation, the fourth largest media company in the world by turnover in 2002, controlled by Mr. Murdoch. It operates satellite digital television primarily in Ireland and the United Kingdom.

Daily Mail & General Trust has in addition to newspaper publishing in the UK interests in television (teletext), local radio, exhibitions and information publishing.

Springer Verlag has primary interests in the publishing of books, magazines and newspapers.

RAI is the public service broadcaster in Italy.

Verlagsgruppe Georg von Holtzbrinck has interests in the publishing of books, magazines and newspapers

TF1 is the largest free-to-air broadcaster in France. In addition to the French channel TF1 it controls a number of thematic channels, Eurosport being the most well known. Bouygues, an industrial group, is the biggest shareholder with 41 %.

Mediaset is the largest Italian private broadcasting group. In addition to the three national private TV channels in Italy it also controls Telecinco, a Spanish TV Channel. Mediaset is controlled by Italian Prime Minister Silvio Berlusconi, who also controls publishing houses and newspapers in Italy.

Bonnier is the largest Swedish media group, having interests in the whole field of media activities.

Emap publishes consumer magazines and has interests in radio stations and interactive digital music television.

Sanoma is the largest media company in the Nordic region by turnover 2002. It is the fifth largest publisher of magazines in Europe and owns a number of newspapers in addition to having interests in publishing houses, TV and film/video distribution.

Appendix B

Media companies with broadcasting activities in more than one European country

The European broadcasting landscape shows a large number of TV channels and radio stations. The majority of the broadcasters serve local, regional or national audiences and they have traditionally had owners from the country in which they broadcast. The last years have witnessed a growing number of foreign owners of “national” broadcasters. In addition to the broadcasters operating primarily within one country, satellite distribution has made a large number of foreign channels accessible throughout Europe. The goal of most of these channels is to assemble the largest audience possible. Even though most channels of this kind are pan-European, they have a domicile in a country. The domicile is usually decided upon in accordance with the rules in the Transfrontier Television Convention or the TWF Directive.

The overview below is an attempt to identify the most important companies owning broadcasters which serve audiences throughout Europe. The list is definitely not complete and should be read with a critical eye. It does not contain economic/audience figures or content information; that is deliberate. The overview has therefore to be read together with other information texts.

- **RTL Group**, the Luxembourg-based broadcasting group, is Europe’s largest private broadcasting company, with interests in 26 TV channels and 24 radio stations in nine European countries. It was created in 2000 following the merger of CLT-UFA, the TV and radio group owned by Bertelsmann (+ WAZ 20%) and the Belgian-Canadian Groupe Bruxelles Lambert (GBL), with the British production company Pearson TV (owned by Pearson, UK). In July 2001 Bertelsmann became majority shareholder of the group (90,4%). RTL Group controls among others:
 - TV-channels (more than 170 mill. viewers each day)
 - Germany: RTL, RTL II, Super RTL, VOX, n-tv
 - France: M6, RTL9
 - UK: Five
 - The Netherlands: RTL 4, RTL 5, Yorin
 - Belgium: RTL TV1, Club RTL, Plug TV
 - Hungary: RTL CLUB
 - Spain: Antena 3
 - Croatia: RTL Televizija
 - Luxembourg: RTL Télé Lëtzebuerg, Den 2. RTL International
 - Radio stations
 - Germany: 104,6 RTL, Radio Hamburg, RTL RADIO, Antenne Bayern
 - France: RTL, RTL2, Fun Radio ..
 - The Netherlands: Yorin FM, rtl fm
 - Belgium: Bel RTL, Radio Contact
 - Luxembourg: RTL Radio Lëtzebuerg International
 - Programme production
 - FreemantleMedia, the largest television production company in Europe, producing more than 260 programmes in 39 countries a year. FreemantleMedia also controls Thames Television Holdings in the UK.

- **Modern Times Group**, a Swedish media company with international activities in broadcasting:

- TV-channels
 - Sweden: TV3, ZTV, TV1000, Cinema, TV8, Viasat Sport (1, 2, 3), Viasat Explorer, Viasat Nature/Action
 - Norway: TV3, ZTV, TV1000, Cinema, Viasat Sport (1, 2, 3), Viasat Explorer, Viasat Nature/Action
 - Denmark: TV3, ZTV, TV1000, Cinema, Viasat Sport (1, 2, 3), Viasat Explorer, Viasat Nature/Action
 - Finland: TV3, ZTV, TV1000, Cinema, Viasat Sport (1, 2, 3), Viasat Explorer, Viasat Nature/Action
 - Estonia: TV3, TV1000, Viasat Explorer
 - Lithuania: TV1000, Viasat Explorer
 - Latvia: TV3
 - Hungary: Viasat 3
 - Russia: DTV, CTC
- Radio stations
 - Sweden: Rix Radio, Lugna Favoriter, Power Hit Radio, Svenska Favoriter Metro FM
 - Estonia: Star FM
 - Latvia: Star FM
 - Lithuania: Power Hit Radio?
 - Norway: P4 Radio Hele Norge
 - Finland: Radio Nova
- **SBS Broadcasting** has ownership interests in ten TV channels in seven countries and 53 radio stations in five countries
 - TV-channels:
 - The Netherlands: SBS6, Net5, Veronica
 - Hungary: TV 2
 - Sweden: Kanal 5
 - Norway: TVNorge
 - Denmark: Kanal 5, tv danmark
 - Belgium: VT4 (announced new channel in Flemish Belgium October 2004)
 - Romania: Prima TV
 - Radio stations:
 - Sweden: many stations
 - Finland: many stations
 - Norway: many stations
 - Denmark: many stations
 - Greece: Lamps FM
- **Central European Media Enterprises (CME)** is incorporated in Bermuda, and was launched in 1994 by Ronald Lauder. CME and partners operate eight television stations in five countries in Central and Eastern Europe - [Nova TV](#) in [Croatia](#), [PRO TV](#) and [Acasa](#) in [Romania](#), [Markiza TV](#) in the [Slovak Republic](#), [POP TV](#) and [Kanal A](#) in [Slovenia](#) and [Studio 1+1](#) in [Ukraine](#).

- **Canal+ Group** is a subsidiary of Vivendi Universal. Its core operations are Pay-TV services in France covering a broad offer. In addition to the premium channel, Canal+, its theme channels are shown in 16 countries.
 - TV channels:
 - France: a number of channels
 - Belgium: Canal+Belgique, Canal+Vlaanderen, le Bouquet
 - The Netherlands : Canal+Nederland
 - Sweden : Canal+Nordic
 - Finland : Canal+Nordic
 - Denmark : Canal+Nordic
 - Norway : Canal+Nordic
 - Spain. Canal Satellite Digital, Sogecable (21% share)
 - Poland : TKP

- **News Corporation**, the 4th largest media company in the world by turnover 2002, has three subsidiaries which are active in Europe: BskyB Group, Stream and Balkan News Corporation. They are all distributing TV channels via satellite, including their own premium channels (which are listed below) and a number of thematic channels (like Sky Travel, Nickelodeon UK, The History Channel, Granada Sky Broadcasting and Music Choice Europe)
 - TV channels:
 - United Kingdom: Sky One, Sky News, Sky Sport, Sky Movies
 - Ireland: Sky One, Sky News, Sky Sport, Sky Movies
 - Italy: Sky One, Sky Sport, Sky Movies, Calcio Sky (Italian football)
 - Bulgaria: BTV.

- **Fox Entertainment Group** is also a subsidiary of The News Corporation (82%). The Group produces films and TV programmes and distributes films and TV channels, primarily thematic channels. National Geographic Channel, Fox News and Fox Kids are examples.

- **Lagardère Active**, a subsidiary of Lagardère, is engaged in broadcasting activities. The Company owns a number of thematic TV channels (Maison H, Nature TV, TV Météo, Canal J, etc). In the radio field, the main stations are Europe1 and Europe2. The radio station LARI (Lagardère Active Radio International) broadcasts in seven Eastern European countries.

- **Groupe AB** offers 20 Pay TV channels on cable in France, primarily thematic channels (AB Moteurs, AB1 (fiction and TV series), RKF.TV (music) etc). The group also controls Capital Media Group, the operator of Onyx Television, a German music channel.

- **NRJ Group** is a French company specialising in radio music stations in eight European countries (Austria, Belgium, Denmark, Finland, Germany, Norway, Sweden and Switzerland) in addition to France.

- **TF1** is the largest French broadcaster by turnover 2002. It owns Eurosport, which is reaching around 250 mill. viewers in 54 countries. 96% of the viewers can watch the programmes in their native language.

- **BBC** world service (radio and TV) provides international news, information and current affairs in English and 42 other languages, including 15 European languages (primarily belonging to Central/Eastern European countries).
- **Viacom** is the second largest media company in the world by turnover 2002. It owns the US network CBS and Paramount Pictures, in addition to a number of TV channels and radio stations in the USA. It has a number of thematic TV-channels also available to European viewers, the most well-known being MTV, Nickelodeon and The Movie Channel.
- **AOL Time Warner** is the largest media company in the world by turnover 2002. It owns Warner Bros. and the Atlantic Group. It has a number of TV channels also available to European viewers, the most well-known being CNN, HBO and Cartoon Networks.
- **Disney** is the 5th largest media company in the world by turnover 2002. It owns the ABC network and a number of TV channels, radio stations and film/tv-programme production companies (like Buena Vista and Touchstone) in the USA. In Europe their most well-known TV channels are the Disney Channel (with special editions in many European countries) and The History Channel (with Hearst and General Electric). It also has ownership interests in SBS Broadcasting, RTL-2 and Tele-München in Germany, Hamster Productions and Sport of France in France and Tesauro of Spain.
- **Liberty Media** is a US media company, controlled by John Malone. It own a number of TV channels, the most well-known being Discovery Channel, Travel Channel and Animal Planet. It also has interests in a number of companies and media activities with relevance to the European media situation:
 - Media companies:
 - News Corporation (18%)
 - AOL Time Warner (4%)
 - Viacom (<1%)
 - Vivendi Universal (3,4%)
 - UnitedGlobalCom (74%)
 - UPC Distribution (cable TV network) with operations in 13 European countries
 - Chello Broadband
 - TPK, Poland (25%)
 - SBS Broadcasting (21%)
 - Chorus Communication, Ireland (50%)

Appendix C

Overview of national legislation concerning media concentrations

General provisions concerning media concentrations

In the Czech and Slovak Republics, a "dominant position" in the media is inadmissible. The Czech Broadcasting Act of 2001 provides for limitations as to the number of licences for nation-wide television broadcasting and radio broadcasting (one licence for any single legal entity or natural person). As regards radio and television broadcasting other than nation-wide ones, no single entity is allowed to hold a number of licences which permits to cover more than 70% of the population.

In 2003, the Polish Government withdrew the amendments to the Broadcasting Law which included provisions limiting media concentrations and cross-media ownership of newspapers and broadcasting stations.

Croatian media legislation regulates both mono-media and cross-media concentration (i.e. press and broadcasting). A dominant position and concentration threshold in the press media is 40 per cent of the circulation in a relevant market. In broadcasting, different thresholds for the second concession are found at the national and local/regional level, as well as in relation to press holdings (i.e. 25 %, 30 %, 10 %, etc). There are no special restrictions for foreign owners in the media.

In Bulgaria, under the law, an enterprise with more than a 35 % share of a given market is considered to have a dominant position, but the laws fail to provide guidance to define criteria for establishing dominant positions on the market, thus preventing effective action to control media concentrations.

In Hungary, the broadcasting rights secured by means of a broadcasting contract or a notification are limited to one national broadcasting channel, or two regional and four local broadcasting channels concurrently, or twelve local broadcast stations concurrently. Limits on media concentration and cross-media ownership apply.

In Romania, no one can be directly or indirectly a majority shareholder in one audiovisual communication company and own more than 20 % of the stock in another.

In Ukraine, a single broadcaster shall not own or co-own more than two television channels or three radio channels in the same licence area. Organisations and enterprises specialising in communications and operating TV/radio networks shall not be founders or co-founders of TV/radio companies.

In "the former Yugoslav Republic of Macedonia", no one can own more than one station and more than 25% of the founding capital of another station. A press publication may not own a broadcasting station and vice-versa.

In Armenia, no physical or legal entity can hold more than one broadcasting license for operation of a TVR company in the same broadcasting area.

In Malta an amendment of the Broadcasting Act made on 2003 relaxed media ownership rules to allow a single company to own (additionally to a radio station, a television station, a daily newspaper, a weekly newspaper and an Internet page) a tele-shopping channel.

Under German law (broadcasting-specific control of concentration under the Interstate Broadcasting Treaty), any enterprise, alone or in association with other enterprises, may broadcast nationwide an unlimited number of television programmes, unless it gains a predominant opinion-making power. This power is presumed if a programme attributable to one company on a one-year average reaches a number of viewers which constitutes 25 % of the entire viewer market (with the option up to 30 % if it broadcasts regional programmes and programme windows from independent third companies). This system, which does not prevent any acquisition of associated participation in broadcasting, has allowed groups like the former Kirch group and RTL to continually grow, since they kept holding only 25% share of the viewers. The absence of preventive control can make it difficult to change undesirable developments under competition law at a later stage. The operators in this sector ask for more flexible regulation.

The Italian law covering the media sector (no. 122 of 3 May 2004) shows a trend to remove (by introducing the “integrated communication system”) the barriers which traditionally exist between the different media sectors. In fact, the notion of “relevant market” used to evaluate the limits to the resources collected by a single telecommunication operator includes a heterogeneous range of activities: broadcasting companies, companies producing and distributing radio and television contents, newspapers, magazines and book sold with newspapers, electronic publishers, advertising agencies, cinema and phonograms distributors (in any form). The calculation of the threshold (lowered from 30% to 20 %) based on economic revenues is made taking into account the “integrated communication system. This system allows for the reduction of “significant market power” in the media field by making it practically impossible for a single operator to exceed the limits set forth by the draft law (even for those who are already in a dominant position) and preventing access to the market by new operators, with great damage for competition and pluralism. It also limits the independence of the printed press by legitimating concentrations between and radio/tv channels and dominant positions in the collection of advertising resource.

The recent UK Communications Act of 17 July 2003 has changed the regulation of mass media and telecommunications. It has liberalised the mass media market in order to attract new investment and develop the sector, reducing ownership limits on broadcasting licences, and cross-media ownerships. In addition, all qualifying media mergers or acquisitions are, in principle, subject to a media public interest test, as introduced by the Communications Act 2003.

Specific provisions concerning the holding of interests by foreigner entities in the media

As regards foreign ownership of media outlets, in certain countries such as Italy, Spain and France, legislative provisions impose special restrictions (subject to international obligations and the principle of reciprocity) on holdings in the capital of television companies by foreign nationals who are not from EEA countries.

Under Italian law (Article 17 of Law no. 223 of 6 August 1990), foreign legal entities, which are not registered in EU countries, are not allowed to hold shares in private radio and television operators exceeding 50 % of the capital, unless there is reciprocity.

In Spain, the Act on Private Television (Section 19) provides that individuals or legal entities that are not nationals of, or registered in, EU countries are only allowed to hold shares in private television operators on the basis of the principle of reciprocity. In any event, they must comply with the media ownership restrictions applicable to private television operators/In the case of terrestrial local TV, direct or indirect holdings by non-EU nationals may not exceed 25% of the capital.

In France, the 30 September 1986 Act on Freedom of Audiovisual Communication, as amended in August 2000, provides that, subject to the international undertakings entered into by France, no foreigners outside the EEA area may make acquisitions that have the effect of increasing to over 20% the holdings by foreigners in the registered capital or voting rights at the annual general meetings of firms that hold licences for operating terrestrial television services in the French language. Breaches of this provision are subject to heavy fines.

In the United Kingdom, under the 1990 Broadcasting Act (as amended by the Communications Act 2003), Ofcom must do all that it can to ensure that operating licences are not granted to “disqualified persons” (i.e. persons deemed unsuitable for holding licences). A list of disqualified bodies and persons is set out in a schedule to the 1990 Act (as amended by the Communications Act 2003). However, the restrictions on foreign ownership have been abolished.

In Germany, the Interstate Broadcasting Treaty does not make any distinction between national and foreign citizens, without prejudice to the specific provisions contained in the regional laws (for example headquarters located in an EU member State or a State Party to the European Economic Area).

Switzerland also imposes restrictions, unless there is reciprocity.

As regards central and eastern European countries, the requirements concerning the free provision of services on the market seem to impose no restrictions on investments from the European Union. Where a debate on concentrations and the presence of foreign media has developed in the EU applicant countries, this debate has been motivated by the fact that the free provision of services on the market was provoking commercial tensions between local and foreign entrepreneurs in the media sector.

Other countries which limit foreign ownership are the following: Czech Republic, Cyprus (only for television and radio companies), Malta, Romania, Slovenia, the Slovak Republic and Turkey.

Countries which do not impose restrictions on foreign ownership are: Belgium, Latvia, “the former Yugoslav Republic of Macedonia”, the Netherlands, Norway and Sweden (source: EPRA – Paris 2000, Workshop on ownership).

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