Media concentration policy in the European Union and the public interest .

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MEDIA CONCENTRATION POLICY IN THE EUROPEAN UNION AND THE PUBLIC INTEREST

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To my parents

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ABSTRACT

This work examines the public interest in relation to concentration in the media sector and addresses the question of how to measure concentration with a view to safeguarding and promoting media pluralism. It is based on extensive literature research, official publications and interviews.

Although the pertinent US situation is reviewed, the thesis focuses primarily on the European media field. It presents an historical background of the European media pluralism and concentration regulatory environment, its earlier and current shaping, its past and present developments. It uncovers the technological, economic, political, socio-cultural and legal forces influencing media concentration regulatory policies and action. The work attempts to find out both what counts as being in the public interest in the light of new developments in the media and whether regulatory intervention in a free market can be justified on public interest grounds.

By doing so, it pinpoints the different methods of regulating and measuring media concentration for the purposes of safeguarding pluralism in the market. The findings highlight a number of problems: none of the proposed methodologies can effectively establish 'impact'; different indicators of assessing concentration are likely to lead to disparate conclusions as to its level in a given market; a system that is applicable to all information services with different characteristics is hardly conceivable.

The contribution of this study rests on the development of better strategies that will protect the public interest. Its originality reposes on the fact that while accepting the urgent need for new standards to measure media concentration and pluralism in the media market, it concludes that the proposed units are not sufficient on their own due to capture 'influence'. In the absence of a direct measure of influence, it is necessary to develop an approach combining the various sets of methods and use it as an alternative technique to establish impact indirectly. Alternative proposals are thus put forward in an attempt to develop a better measure which takes into account a large number of public interest issues.

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Introduction

Recent technological advances such as cable, satellite and digital compression together with liberalised regulation are reshaping the European media landscape. During the course of history, most European states have created a politically and culturally sensitised media (particularly broadcasting) regulatory environment, by referring to media's opinion-forming power, and by emphasising the scarcity of available frequencies as well as the requisite investment of enormous funds. This is all changing at the moment. On the one hand, we are witnessing a determination by governments to encourage new competitive enterprises to operate in a media environment transformed by deregulation. On the other hand, we are seeing the politics of deregulation (or light touch regulation), commercialisation and globalisation being pursued further by technological developments. Digital technology, in particular, can change the number, type and the relationship of the players in the media sector and is expected to bring about a proliferation of new networks and channels. Satellite improvements stimulate firms to expand beyond their national boundaries while cable, an important form of television distribution, provides the potential of local programming. Advertiser-supported radio and newspaper publishing are also burgeoning in most countries.

The expanded media market-place not only has attracted the entry of new companies in the media industry but also stimulated established broadcasting station and newspaper firms to expand their businesses. In addition, it allowed and, sometimes, forced companies to link up with each other, thereby raising levels of media market concentration. The progressive economic integration across Europe is encouraged by the European Union (EU) which perceives it as a significant objective. In the light of the large foreseen increase in the modes and means of delivery, the EU tries to create favourable conditions for trans-national investments. In order to establish such a favourable institutional framework, the Commission seeks the harmonisation of media ownership rules by eliminating national differences concerning restrictions on media ownership.

However, the Commission and the European Parliament, in particular, while encouraging the restructuring of the European media industry, are also concerned with the implications this restructuring might have on the public interest. Concerns have been expressed that some media firms may become too powerful in their ability to 'influence' public opinion. Therefore the growth of the new media environment raises the issue of how to ensure that cultural and political pluralism and diversity will be preserved. The concern is threefold: a) ensure that there is sufficient programme diversity (variety of programme content); b) ensure that there is sufficient access to information; and c) ensure that there is reasonable balance in the reporting and presentation of information programmes. Economic integration and technological development, to the extent that they increase concentration in the media sector, are perceived as threats to the above objectives.

The current thinking at national as well as at European levels is to construct a workable and feasible model for regulating media concentration that will be capable of both measuring accurately levels of media concentration in a given market and capturing an operator's ability to influence public opinion in that market. This task is extremely difficult as we are moving into an era in which the distinction between the corporations and institutions that own and manage different media entities is becoming almost impossible to draw. Mergers, acquisitions, alliances and other tendencies towards amalgamation among previously competing firms jeopardise the task of measuring the exact level of local, regional, national or even international concentration. Further, the convergence of technologies makes it difficult to apply a single standard capable of evaluating correctly multi-media concentration and assessing its impact on the public interest.

Changes in the ownership and control of the media, media integration and the deregulatory process raise a large number of questions about the notion of the public interest. Thus Chapter one, after an initial attempt to define that vague term, tries to find out what counts as being in the public interest in the light of the new developments in the media field. The issue that is tackled there is both whether a state-owned or a free market media environment can best deliver the public interest, and whether regulatory intervention in a free market can be justified on public interest grounds. The main focus though is on the diversity principle which is discussed in relation to media market concentration.

The second Chapter looks at the process of media concentration in detail and provides an economic analysis of this phenomenon. The analysis of market structure includes the determination of the number of players and the degree of competition in a given market, the identification of barriers to entry for potential new competitors, the isolation of horizontal and vertical ownership patterns, and a study of the processes and consequences of conglomerate control. The chapter also attempts to make a connection between economic analysis and policy implications by giving concrete examples of different types of policy intervention.

Chapter three explores the media competition, concentration and merger control policies at European level. It firstly tries to evaluate the relevance of competition law and merger control provisions for the purposes of safeguarding diversity in the media industry. An historical background of the European media concentration policy is then presented, followed by an outline of the main points of the 1992 Commission's Green Paper on 'Pluralism and Media Concentration in the Internal Market' (the paper that initiated the discussion of forming media-specific ownership rules). The interested parties' reaction in the context of the two consultation rounds that followed the publication of the Green Paper is then described. Finally, an attempt is made to point out the factors that prevent the enforcement of effective European regulation in the field of media concentration.

No doubt, one of these factors has to do with the content of a possible initiative on media concentration, particularly the selection of the appropriate standard for measuring concentration. Thus Chapter four outlines the problems of the different methodologies of measuring media concentration for the purposes of guaranteeing diversity in the mass media. Traditional criteria such as the number of channels or franchises that one single company or individual can hold are critically analysed, followed by an examination of the proposed audience and revenue-based criteria. At the end of this chapter alternative proposals are put forward in an attempt to develop a better measure which takes into account a large number of public interest issues.

The fifth Chapter consists of a summary and conclusion of this work and includes its contribution to the body of knowledge.

Chapter 1

Public Interest And Diversity in the Media

1.1 INTRODUCTION

In the past, in both Europe and the United States, there was a general consensus surrounding the concepts of telecommunications and broadcasting. The technologies were regarded as 'public good' - good held in common, accessed by all, and benefiting everyone. The social organisation of both technologies has been along the lines of national boundaries. Telecommunications has been regarded as a natural monopoly,[1] while broadcasting has been regulated and protected by the perception of spectrum scarcity.[2] Because of the limited entry in the latter sector, governments have directly or indirectly controlled it. Broadcasting has also been linked to the concept of cultural defence - defining and proclaiming a view of what holds one nation of people together as against others. Hills and Papathanassopoulos (1991: 4) state that 'so fierce has been the view of broadcasting as a forum for the expression of national solidarity and as the national information source for citizens, that for the last 70 years or so, governments have retained public service broadcasting organisations to fulfil these roles'. In contrast, the press, the only supplier of information and entertainment

[1] Natural monopoly is a product or service market in which one supplier can always supply the home market more cheaply than two or more suppliers. This notion mainly applies to infrastructures such as telecommunications, electricity, etc.

[2] Until the late 1970s there was the practical matter of the initial limitation of spectrum availability that primarily made state regulation in broadcasting acceptable. However, the development of new media technology has undermined the notion of spectrum scarcity as a rationale for regulation. New areas of spectrum are now open to use (notably the centimetric band by satellites) and in some markets broadband cable distribution of television is pervasive, whereas in others video-cassette recorders have displaced or re-ordered consumption of broadcast TV (see Collins et al., 1988: 124). The expected digital compression technology, with its capacity to pack information into a fraction of the original volume for storage and transmission, will further broaden the radio spectrum. However, so long as allocative scarcity exists, that is, that demand for broadcasting frequencies exceeds supply, then government regulation still applies. States must continue to license broadcasters, oversee the spectrum, decide who should lead the new stations and consider how these should be financed.

to the public until the end of the last century, has almost always been free from state control in providing such material.[3]

Significant changes that took place in the audio-visual media during the past two decades established a new media reality. The once non-competitive businesses of broadcasting and telecommunications have become dynamic and highly competitive. New players have been allowed to enter these markets in both Europe and the United States. These changes are due most directly to technological advances in the means of electronic distribution and handling of information. The 'new media' of cable, video and satellites have changed the number, type and the relationship of the players in the media sector. The latest digital transformation and compression advances (or information superhighway)[4] are expected to lead to an unprecedented proliferation of the means by which the general public are informed and entertained. An abundance of new channels and networks and a further internationalisation of the media, stimulated by the intrusive nature of the new distribution technologies, is about to lead to the creation of a global media system characterised by international activity at the production, distribution and consumption levels. The trend towards the globalisation and commercialisation of the electronic and print media is thus bringing together distinct technologies, different media enterprises, and divergent economies and cultures. 'International

[3] Although in the sixteenth and seventeenth centuries the state, church and the professional class enjoyed a monopoly over public information, the press soon won the battle against that monopoly and became independent from potential restrictions.

[4] 'Digital technology' is about to change media production, to the point where audio and video production, editing and storage equipment increasingly become similar, and sometimes are indistinguishable from computers. 'Digital compression' is expected to lower dramatically the storage and transmission costs in CD-ROM, cable and satellite TV, and terrestrial broadcasting. The notion 'information superhighway' relates specifically to telecommunications infrastructures which can deliver all kinds of electronic information and communication services. (for more information, see European Publishers Council, 1993: 1-8; US Department of Commerce, 1993, esp. chp.3; PICT Policy Research Forum, 1994: 2-3).

transactions are constantly eroding national barriers and enlarge our vision to embrace a wider horizon of economic, political and regulatory issues than previously prompted by the 'old media' of press, radio and television (Ferguson, 1986: viii)'. The term most often used to describe the emerging social order of the developed states is that of an 'information economy' or 'information society'. As most briefly put by Melody (1990: 26-7) this refers to a form of society which 'has become dependent upon complex electronic information and communication networks, and which allocates a major portion of its resources to information and communication activities'.

The on-going technological innovation in the media field and its application to information and entertainment services has far-reaching consequences for the media environment and raises a broad spectrum of policy and research issues. New media technology has firstly removed the notion of spectrum scarcity as a rationale for broadcasting regulation. The increasing internationalisation of the media, driven by the satellite and cable technologies in particular, has also undermined the regulatory powers of individual nation states.[5] Governments face increasing difficulties in regulating cross-border flows and often cannot

[5] This can be shown by the following example. In its original form the satellite transmission of television (and later radio) was thought to happen by way of DBS (Direct Broadcast Satellites), which in the WARC 77 Plan were meant for national areas of coverage, and where the satellite position had been carefully selected, so that neighbour states would bother each other as little as possible. The thought was that it was the single national state which had sovereign power over its five frequencies, and the state's public authorities were thus meant to have controlling influence on the access to and use of these frequencies. As is well known, the entire European DBS project failed, partly because of technical difficulties in developing the transmission technology, partly because of the linking of the DBS and the MAC standard, and partly because of transmission problems with the first German TV-Sat. But especially because of the parallel development of the FSS (Fixed Satellite Services). These were originally intended as communication satellites which were to transmit telephony and data, but by way of a decision in the Interim Eutelsat Council in Paris in June 1982, they were put to use as television satellites, that is, as satellites which have as their principal task the transmission of TV channels to cable systems and later to individual dishes (Direct to Home dishes). The control of access to the frequencies which these satellites used and still use, was not given to national governments but to Eutelsat. In reality thus the national authorities lost the control over access to their national TV markets. This was further intensified by the European acceptance of the privately owned and run SES's Astra Project, which acquired access to satellite positions and frequencies able to reach largely all the member states of the Council of Europe.

prevent capital flowing from one country into another. Moreover, market expansion has undermined the notion that dominant public monopolies serve best the 'public interest'. The view that has emerged is that free market competition among a plethora of new services delivers more efficiently public interest goals such as pluralism, diversity in content and accessibility. While the public policy model is based on the assumption that government intervention is a necessary condition for people in order to have equal chances of media access and fair representation, the market system assumes that the free operation of supply and demand provides better access for all 'voices' (provided that they can afford to pay for it) and content that satisfies all interests.

Indeed, since the market model encourages the proliferation of channels and new audience markets, it can lead to increased numerical diversity, that is, more channels and theoretically more consumer choice. Cable television, in particular, with its capacity to carry enormous amounts of information and its potential for two-way communication and local programming, is regarded as a revolutionary technology that could create a 'wired democracy'. However, this model has been criticised on several grounds. Some have put forth the argument that quantitative diversity of variety of channels does not necessarily provide qualitative diversity of the media content (LeDuc, 1982; Hoffmann-Riem, 1987; Melody, 1990). The pure market model, the argument runs, does not really produce representative social, political and cultural diversity including critical and controversial views; rather, the predominant trend will be either in favour of the production of bland programmes with a universal appeal to an undifferentiated, mass audience (Curran, 1991a, 1991b), or in favour of the superficially variety of the same politically safe content ('corporate speech') (Keane, 1991). Hotelling, who originally discussed the potential danger to welfare in terms of the variety of products offered by the market, talked of 'an undue tendency for competitors to imitate each other...' (Hotelling, 1929: 41). Apart from the critics that the free market approach promotes cultural uniformity and excludes social interests from expressing their views, this model is said to lead to private media monopolies and concentration of media ownership. Garnham (1990) mentioned that in recent years a small number of groups have dominated the film and music production industries, while Murdock (1982, 1990a, 1990b) and Bagdikian (1992) pointed out that media privatisation policies have enabled firms to merge and therefore produce multi-media conglomerates which, according to Negrine and Papathanassopoulos (1990) and Sepstrup (1990), have expanded on a global scale.

The greater linkage between media companies brings forward serious questions on positive freedoms, such as the citizens' right to have equal access to the new technologies and receive a wide range of opinions and information at affordable prices. Potential conflicts between private profit motivations and social goals like diversity of views and political pluralism - that have been present since the opening of media markets to private capital - now more than ever need to be considered and resolved. The problem remains one of designing media regulation in the public interest. We will add that one of the crucial issues nowadays is whether the public and its interest is best served within this new concentrated high-tech era, or whether the beneficiaries are only those who stimulate these changes. In other words, are the developments 'public-interest friendly'?

In the media politics of Western societies during the past two decades, debates about the public interest in mass media have focused on the central issue of whether they should be based on the functioning of the free market. Many analysts have looked at the performance, policy and change of the mass media system from a variety of perspectives. McLuhan (1967), Enzensberger (1970) and Forester (1985) advanced the technological determinist argument, while Owen et. al (1974), Noam (1985), Hendon et. al (1986), Collins et. al (1988) and Garnham and Locksley (1991) examined media market economics. Ideology as a decisive influence on mass media performance was studied by Negrine (1988). Dyson and Humphreys (1990) looked at the politics of neo-pluralism, whereas Murdock (1990a, 1990b) examined the influence of private ownership patterns from the point of view of neo-Marxism. The political and cultural influence of the media was tackled by Seymour-Ure (1991) and the sociology of media industry organisation by Tunstall (1970, 1972, 1991). Blumler (1992) identified the social values at stake as far as the organisation of broadcasting is concerned. Finally, an assessment of mass media performance in economic, social, aesthetic and moral aspects was carried out by McQuail (1992a). Most of these works dealt with the main challenges that modern media policy faces, namely the problem of regulating the private media sector, the issue of whether to offer a comprehensive or more shrunk public service broadcasting service, and the problem of how to make the media accountable to the populace in the high technology era.

The crucial issue has been (and still is) whether regulatory intervention in a free market can be justified on public interest grounds. This chapter tries to find out what counts as being in the public interest in the light of new developments in the media field. A definition of the term 'public interest' is firstly provided, followed by a debate on media regulation on 'public interest' grounds. The main focus though is on the 'diversity' principle which is discussed in relation to media market concentration.

1.2 DEFINITION OF 'PUBLIC INTEREST'

The term 'public interest' is a maddeningly vague and loosely constructed one and therefore difficult to define. Sills (1968), in the *International Encyclopaedia of the Social Sciences,* states that the term is 'elastic and relative...[and]...has no a priori content waiting to be revealed...[It] serves to remind parties immediately concerned that there are considerations extending beyond their goals...' (cited in McQuail, 1992a: 20). Moreover, 'it assumes the existence of a common interest, although specific manifestations cannot be agreed upon'. Even if it presupposes the existence of a common interest, there is no consensus on what is in the common good and on the particular policies that are required to achieve it. The precise content and meaning given to the 'public interest' notion and the means proposed for achieving it vary widely within different contexts (countries) and time segments. Since it assumes the development of common interests, we may provisionally use the idea of public interest to refer to the collective cultural, political, social and informational benefits to the society which serve both the democratic processes of political participation and the cultural, social and economic well-being. Individual claims then are not included in the concept.

There are contradictory versions of what 'public interest' is. Downs (1962) mentioned three main schools of thought about how the public interest can be identified and argued that each of them has some validity. The first originates from 'the will of the people': the public interest is what the majority wants. Such a definition of the public interest has been adapted in the USA by the Federal Communications Commission (FCC) which, through its Chairman Fowler, argued in 1982 that the public interest is the collection of private choices. According to this point of view, 'the public's interest defines the public interest' (Fowler, 1982). The weakness of this theory, according to Held (1970), is that there is a conflict between a particular means of identifying the public interest (for example, a majority vote or mass consumer demand) and the broader notion that public interest means something more than the sum of individual preferences. As Dewey (1983 [1927]) argued on this point, the public and its interest is not necessarily synonymous with the consumers and their interests, nor is it the sum total of individual opinions on the events of the day. The public is that field of activity that shares in common the consequences of private and state action and performs effectively in its own defence. For instance, when citizens of a municipality suffer the consequences of polluted water and act to cope with the problem (perhaps through an environmental or parents coalition) they function as the public. On the contrary, when they cannot group together to solve their common problem, then they constitute a weak public (Aufderheide, 1993: 53).

The second school of thought described by Downs states that the public interest is decided according to some absolute standard of value regardless of what citizens want. McQuail (1992a) pointed out that the defect of this theory is twofold: firstly, it may have a weakness of insensitivity to popular wants; secondly, its frequently authoritarian, paternalistic or ideologically contestable character makes it problematic. The third 'realist' or 'pragmatic' class of theory states that the public interest is what political institutions arrive at by their decision-making.

A similar classification scheme was suggested by Held (1970) who also identified three main variants of public interest theory: 'preponderance' theories, 'unitary' theories and 'common interest' theories. These correspond with Downs' versions of the public interest described above. McQuail (1992a), in an attempt to define a public interest in public communication, advocated Held's 'common interest' variant (similar to Downs' 'realist' theory). He ruled out those versions which depend heavily on the voice of the people expressed in opinion polls or market research because, in his view, one cannot rely on majority votes to settle complex issues when public communication has to serve many and divergent purposes. He also challenged those versions which rely on some absolute value commitment on the grounds that there is no longer a unitary value system to which one can appeal in order to settle broad issues. He thus focused on the third type of theory (the 'middle way' as he called it) because in that context specific objectives and mechanisms of achievement can be named and deployed in argument. The principle of freedom of speech and publication, for example, may itself have to be supported on grounds of long-term benefits to society which are not immediately apparent or clear to many individuals.

Various theories of public interest have thus been advanced. Their very presence justify the elasticity and abstract notion of the term. In relation to the mass media though we might initially argue that something counts as being in the public interest only if it serves the aims of all those who participate in public communication and not just those of a minority. Public communication is central in the democratic process. As Garnham (1990: 104) argued, 'citizens require ... equal access to sources of information and equal opportunities to participate in the debates from which political decisions rightly flow'. A definition of the term 'public communication', with reference to the mass media, has been suggested by Ferguson (1990: ix) as 'those processes of information and cultural exchange between media institutions, products and publics which are socially shared, widely available and communal in character'. The context in which these transactions take place is the so-called 'public sphere'- that is, as articulated in particular by the political theorist Habermas (1979, 1989), a space for rational and universalistic politics distinct from both the state and the economy, a scene of activity in which people are addressed as citizens, as rational political beings, and not merely as consumers.

Habermas stated that in the late eighteenth century a new political class (the bourgeoisie) came to the fore in Britain in particular and formed a public body which, in sharp contrast to the old authorities (namely the state and the church), provided the conditions for reason-based, public opinion. The creation of a network of institutions by the bourgeoisie within the civil society, and the launch of a number of newspapers in particular, provided the means through which private thoughts could become public. Libraries and universities became the places for public debate, while publishing enterprises formed the means by which government was criticised. That new public sphere was in principle open to all and protected from the power of both the church and the state. However, Habermas also pointed out that the above described space for rational and universalistic politics created by the capitalist market was historically damaged by both the extension of the state and the evolution of monopoly capitalism. The formation of large private institutions (i.e. advertising agencies, public relations) and the deals they made with each other and with the state while excluding the public, led to the replacement of rational public discourse by power politics. The role of the media was central to the replacement of the ideal speech situation by conditions of 'distorted communication'. Whereas the independent press at the turn of the nineteenth century had led to the formation of rational public debate and public decision-making on political and judicial matters, it later functioned as a manipulative agency controlling public opinion.

Habermas's theory merits consideration because he carefully conceptualised the nature of the 'public sphere', viewing it as an achievement of the new bourgeois (or capitalist) class in Europe, and an outcome of its successful struggle against feudalism and church or state oppression. However, his theory has been questioned on historical grounds. Many argued that he idealised the early period of history he referred to and particularly the notion of the 'independent' eighteenth century press (Mortensen, 1977; Hohendahl, 1979; Curran, 1991a, 1991b). Koss (1981, 1984), in his analysis of the British political press, pointed out that political control by proprietary interests was exercised in a large part of the press as early as the eighteenth century. Thus Koss's careful analysis showed that the early British press was not so independent as Habermas described and therefore, we would argue, did not contribute to rational discourse to the degree Habermas wanted. He has also been criticised for his rationality argument. Curran (1991a) mentioned that 'the newspapers celebrated by Habermas were engines of propaganda for the bourgeoisie rather than the embodiment of disinterested rationality'.

Although the historical status of Habermas's theory may be questionable, he nevertheless offered a starting point for understanding the media's role in public communication.[6] The media should facilitate the process of rational argumentation by providing a context of public discourse which is essential for the formation of free and reason-based public opinion. The media should tend to maximise debates over political ideas and contribute to public information and argumentation which are essential to the maintenance of democracy. Public information is essential both for expressing the common interest and for taking part in the debate about that common interest. The public interest arguments are not just political arguments though. Habermas's theory is limited to the political question. However, there are countless versions of meanings for 'public interest' in the context of a society. There are arguments about cultural heritage, environmental preservation, public health and universal education, to mention but a few. Over the course of time, these desirable objectives have been interpreted and characterised as 'public good'. One version of the public interest argument has found its fulfilment in the provision of universal education in most Western European countries since the nineteenth century (Smith, 1989). Another has valued the right to authentic cultural expression and the right to participate in defining the historical development of a given culture (White, 1994). Provision for the arts, in particular, has often been rested on states' hands both because cultural heritage was regarded as a service that needs to be preserved for future generations and to ensure that all social classes had access to them. The notion of public interest has thus been spread to

[6] Garnham (1986), for example, although questioning Habermas's historical assumptions, adopted his central analysis and used it as a justification of public service broadcasting.

include important public services at zero or low cost for the interests concerned.

Nevertheless, one definition of the public interest these days is free market competition - i.e. regulation to ensure free market competition. The discussions of economic control of competition are also public interest arguments. As we shall see below, the argument is that the market produces the best outcome for the largest number of people (see for example the 1986 Report of the Committee on Financing the BBC, henceforth The Peacock Report). One of the questions is how in the capitalist era of mass politics, mass communications and the dominance of deregulatory philosophy collective goods can be best safeguarded. Another is whether they will survive at all. Therefore, the divestiture of telecommunications monopolies, the multiplication of channels of communication, and the relaxation of regulatory controls over broadcasting in particular, pose important questions about the nature of the modern public sphere. Are the attempts to move the emphasis from public to private sector in the 'public interest'? The free market competition philosophy declares that it can deliver diversity and a free market place of ideas, essential as these goals are for the creation and maintenance of a public sphere of communication. But are public argumentation, freedom of speech and other desirable objectives guaranteed in an age of information abundance?

1.3 MEDIA REGULATION IN THE PUBLIC INTEREST

The growth of a complex system of regulation of various industries, including the mass media, on grounds of a supposed public interest, has been evident. As already indicated, historically societies have extended the concept of public interest to cover free or inexpensive public services such as universal education, preservation of public amenities, environmental policy, state or municipally-run transportation, to name but a few. Melody's (1990) account of the public interest in the emerging information society refers to the historical notion of certain industries being recognised in law and custom as 'business affected with a public interest'. These were often connected with transport and other public utilities, in which monopoly conditions were likely to arise and where needs for service were likely to be pressing. In these circumstances, public regulation was often applied in order to ensure equity, efficiency, fair and adequate provision to all at reasonable prices. In certain countries and regions, for example, there has long been a public interest argument in favour of municipally-run buses in order to ensure that people at all levels of income enjoy cheap and reliable transport (Smith, 1989). Certain types of industries thus appear historically to have been inspired with a public function or 'affected with a public interest' and have been regulated to serve that purpose. Horwitz (1989) pointed out that the industries considered to be imbued with a public function are *transportation*, *telecommunications*, *energy utilities* and the *system of currency exchange*. He labelled them infrastructures for they are the channels for trade and discourse which bind together a community, society, or nation. They are central to the circulation of capital and literally constitute both the foundation and the limit for the overall economic functioning of a society.

In the media domain, universal telephone service was adopted as a policy objective in both the United States and Europe to encourage economic and social interaction within the country as a way of promoting national unity (Melody, 1990). State support, together with the imposition of regulatory controls, helped the establishment and successful operation of the American telecommunications system. The telegraph industry received in its infancy federal and state subsidies, while telephony was established as a 'natural monopoly' and regulated in order to facilitate the expansion of the nation-wide telephone network (Horwitz, 1989; Smith, 1989; Melody, 1990). The telephone system was united by the giant American Telephone and Telegraph Company (AT&T). The Federal Communications Commission (FCC), set up in 1934, was given the role to supervise telecommunications and to protect the existing structures and corporate interests involved. But it was not only a commerce-based public interest which underlay the US traditional system of telecommunications regulation. At the same time, the FCC had the mandate to secure broader public interest goals such as universality, fairness and equity. Telephone and telegraph enterprises were legally obliged to provide service to all citizens at fair and reasonable rates. In part due to such obligations, according to Horwitz (1989), the US telephone network was universal and efficient and the service was comparatively inexpensive for the customer.

Telecommunications networks in Europe were run by nationally based, mainly publicly owned, telecommunications authorities (the so-called PTTs). Each national PTT held a monopoly over the whole network - transmission, switching and equipment - and was itself in charge of the introduction of new services, acting both as supplier and regulator (Hills and Papathanassopoulos, 1991). The technology, as in the USA, was regarded as natural monopoly and as a public good. Governments emphasised the importance of the penetration of the technology in assuring access to all citizens at low costs. The difference from the United States was that the domestic PTTs were state-run, whereas at the other side of the Atlantic AT&T was a privately owned network operator controlled through an independent agency (the FCC).

Despite the fact that it was based on different structural models, the technology of broadcasting in both the United States and Europe was regulated by the state in terms of access and content. The broadcasting model thus involved content regulation, as opposed to the 'common carrier' model for telecommunications which called for regulation of infrastructure but not of content.[7] But as was the case in telecommunications, broadcasting was also regarded as 'public good' in both continents. Private broadcasters in the USA were given licenses to monopolise a given radio frequency but those licenses were not regarded as a property right. Broadcast regulation was founded upon the public domain argument that the airwaves were a natural resource held in common and consequently the state acted to protect that resource. The public domain rationale or, put it another way, the rationale for regulation, was based on the concept of spectrum scarcity - the limited nature of the electromagnetic resource. The FCC allocated access to limited airwaves and obliged successful operators to fulfil certain aims. In return for the grant of a license to operate, broadcasters were placed in a position of public *trustees*, that is, they had the duty to serve the public interest by fulfilling the tastes, needs

[7] The main principle of common carrier law was that a carrier must allow non-discriminatory (i.e. fair and equitable) access to its service at reasonable prices (Horwitz, 1989: 13). For the three different types of regulatory regimes that have appeared in the USA throughout the years, namely the *press freedom model*, the *common carrier model* and the *broadcasting model*, see Kalven, 1967: 15-30 and Geller, 1985: 283-310.

and desires of all people within the service area (Rutkus, 1982). The 1934 Communications Act, clearly mandated that 'broadcasting be treated as public good that serves goals of benefit to the public and therefore be subject to government regulation' (Kellner, 1990: 185)'.

The FCC's 1946 statement on 'Public Service Responsibility of Broadcast Licensees', commonly known as the 'Blue Book', emphasised the public nature of broadcasting and attempted to give a concrete meaning to the term 'public interest'. It identified four public interest issues in terms of programme policy: the carrying of sustaining programmes, the carrying of local live programmes, the carrying of programmes devoted to public discussion, and the elimination of commercial advertising excesses (Hoynes, 1994). Krugman and Reid (1980), in their own assessment of the public interest criteria used by the FCC when considering broadcast license applications, identified the criteria of *balance, heterogeneity, dynamism, localism* and *diversity.* These were supplemented by other principles such as the 'Fairness Doctrine'. At the heart of the 'public trusteeship' model of broadcasting, the Fairness Doctrine (deriving from the 1934 Communications Act) obliged broadcasters to cover issues of public importance or controversy and to provide a reasonable opportunity for the presentation of contrasting viewpoints on such issues (Brennan, 1989; Horwitz, 1991). The FCC may have not always acted in accordance with its own rhetoric on the importance of the public interest. Many argued that it simply served the interests of those it was supposed to regulate (Kahn, 1978) and others emphasised the inherent weakness of the FCC as a regulatory body (Baughman, 1985). No matter how effective the FCC has been throughout the years, it nevertheless contributed positively to an understanding of broadcasting as a kind of public utility.

Most European countries have imposed similar public service obligations on their broadcast media. In contrast to the US broadcasting model though, the Western European model developed outside the market. The European broadcasting model, the so-called public service broadcasting model, in its ideal typical form consisted of a nation-wide public monopoly which could best serve the public interest by its commitment to quality in return for a basic, initial payment, usually in the form of an annual license fee. There is indeed overlap between the idea of the public interest in communication and public service broadcasting, since the latter is defined by Garnham (1983: 13-14) as 'a means of providing all citizens, whatever their wealth or geographical location, equal access to a wide range of high quality entertainment, information and education, and as a means of ensuring that the aim of the programme producer is the satisfaction of a range of audience tastes rather than only those tastes that show the largest profit'. Therefore, public service broadcasting is often defined in terms of benefits which it is supposed to deliver to society: universal provision and wide-ranging appeal; services to regions and minorities; attention to national interest, identity and culture; the provision of informational and educational services beyond what the market would require, etc.

The first national monopoly broadcaster, the BBC, was established in the United Kingdom in 1922 and a similar model was adopted by other European countries shortly afterwards.[8] The historic justifications for

[8] National broadcasting monopolies were set up in Italy in 1924, in Sweden in 1925 and in Ireland, Denmark and Finland in 1926. This model was not applicable only in countries with linguistic and cultural differences such as Belgium and Switzerland. In those countries, each linguistic, religious or cultural community had its own public broadcasting service (McQuail and Sinue, 1986).

establishing public service broadcasting were many and varied. Firstly, there was the practical matter of the initial limitation on spectrum availability. It was always argued that broadcasting could not be a free market due to spectrum scarcity and to a consequent limited access to that sector. This scarcity of the radio spectrum provided the basis for both government regulation of broadcasting and the imposition of special obligations of balance and impartiality upon it. Secondly, governments wanted to preserve the public service values of universal service and give access to those who had limited or no voice in the social proceedings namely the young, weak and poor. Furthermore, the establishment of public service broadcasting institutions ensured that the service was provided to all citizens irrespective of their location (for example, to those living in rural as well as densely populated urban areas). 'The pursuit of a programming mission that gives a higher priority to national, cultural, political and educational/informal aims, rather than to entertainment' (Garnham, 1989: 1), was another reason for government involvement in broadcasting. Broadcasting was thus heavily linked to the concept of cultural defence. One of the arguments that culture, in particular, should not be left simply to the market (i.e. needs to be regulated) was that it could benefit future generations, and therefore one generation does not have the right to deny this to future generations.

In short, both the broadcasting and telecommunications industries were regarded as 'public good' - good held in common, accessed by all, and benefiting everyone. The dominant idea in both Europe and the United States was that the above industries should be treated like air, water and other elements that belong to everyone, or like parks and highways that can be used by all people (Hills and Papathanassopoulos, 1991: 3).

There was thus a recognition that these sectors should not be treated as any other economic business. The prevailing idea was that some aspects of public communication were of wide concern to the society and should be looked after by government or by other public agencies. For instance, as regards broadcasting in the USA, Johnson (1987: 31) stated: 'reference to the public interest at least contemplates a public purpose, public ownership, public impact of consequence, and a declaration of public policy that, whatever else it may be, broadcasting is not just any other business'. The Report of the Committee on Financing the BBC (The Peacock Report), although attacking the broadcasting status quo on the grounds both that it did not enlarge consumer choice and it did not enable programme makers to offer alternative wares to people, it nevertheless endorsed the importance of public service broadcasting in providing for this: 'The fulfilment of this goal, so far from being incompatible with public service activities positively requires them in a sense of "public service"... (The Peacock Report, 1986: para. 547)'.

In contrast to the electronic media, the print media were protected from any governmental interference. As soon as the battles of the emerging middle class against the church and the state were won, freedom of the press became established either in constitutions (in the United States) or in special press laws (in Western Europe). In the USA, the press freedom model applied to the press and constitutionally forbade regulatory intervention - the print model was not subject to licensing, a fairness doctrine or access requirements. The First Amendment to the Constitution of the United States (1791) states that 'Congress shall make no law...abridging freedom of speech, or press...' (quoted in McQuail, 1992a: 36). For historical and political reasons the authorities in the Member States of the European Union have been very restrained concerning regulation of access and content to the written press market. In Europe, 'press laws are usually formulated tersely and are limited to an ordering framework which accepts the market as the mechanism to control content diversity... [They] are normally limited to the creation of a legal framework of unrestricted press organisations... (Hoffmann-Riem, 1992b: 148)'.

Although the state legislatures' attention has focused on the electronic media, there has not been such a clear divergence between the press and broadcasting. Because there is a link between public interest in press diversity and democracy, there have been various subsidy forms of government intervention in the sector. Positive policy instruments and support measures such as tax and postal concessions gave some economic protection to the press, and therefore some privilege which was justified according to 'public interest' principles concerning the quality, independence, diversity and volume of information available in the society (McQuail, 1992a). Table 1.1 summarises the various support measures for the print media in a number of Western European countries. As can be seen, support schemes may take the form of direct subsidies (according to the circumstances, automatic and/or selective), indirect incentives (i.e. fiscal incentives: reduced VAT rate, loans on preferential terms, fiscal incentive mechanisms for investment in production, etc.), or even support for training. All these press support schemes have been designed both to allow publications to weather the crisis which the sector is experiencing from competition from the other media (mainly television) and to maintain diversity of publications vis- a-vis the strengthening of concentrations.

Table 1.1
Support Measures for the Media in Selected EU Countries

COUNTRY	The written press
Belgium	The French Community's written press is supported by the fund for assisting the development of the press and which is maintained by contributions from the public broadcasting body (RTBF) and private TV stations. Further, the daily opinion-forming Belgian press receives, subject to a number of conditions, direct aid under a royal decree on the advice of the Belgian Association of Newspaper Publishers.
France	Press enterprises benefit from support measures of a general nature (aid for national, regional, departmental and local dailies devoted to political and general news, which have low advertising receipts) as well as from specific assistance (training, postal and tax advantages, a 50% reduction in rail transport charges and telephone and telefax charges).
Germany	The basic principle is that direct support measures leading to any State influence on the media are prohibited. Preferential postal rates are granted to news periodicals on certain conditions. Investment credits (investment loans to improve firms' competitiveness) are granted on certain conditions to newspapers and magazines mainly devoted to political education and the citizens' development.
Italy	Press companies benefit from indirect support measures (tariff and tax reductions) as well as direct measures such as special credit rates for technical development. Direct grants are made to the non-profit and community press, journalists' co-operatives, linguistic minorities and political parties' press.
Sweden	The press receives support of a general nature (exemption from VAT, preferential tax rates for publicity income for newspapers and similar publications, preferential postal rates) as well as specific assistance (direct assistance for production, for the creation of new publications, for development and modernisation of press companies, for the creation of joint distribution networks and for co-operation in printing).
The Netherlands	A Press Fund provides loans and subsidies to press organs in order to overcome financial difficulties and/or restructure their operations. This support is only given on a temporary basis. The Fund may also assist in the financing of new daily newspapers. General support is also provided by the application of a low VAT rate to paper subscriptions.
United Kingdom	Newspapers benefit from a zero VAT rate.

Source: Committee of Experts on Media Concentration and Pluralism (MM-CM (93) 6); Gustaffson (1993); Media Ownership: The Government's Proposals (Cm 2872, 1995); The Guardian (16-12-1995); Financial Times (16-12-1995)

The trend towards concentration in the press sector has been seen over a considerable period of time (see Chapter 2). The rapid commercial growth and the strong trend to monopoly that the press has experienced since the early part of the twentieth century in both Europe and the USA have raised questions over the public task and public responsibility of the medium. The 1947 Report by the Commission on Freedom of the Press in America (Chafee, 1947) as well as the three Royal Commissions on the Press[9] in Britain made specific recommendations for standards of press performance based on the 'public interest' criteria of accuracy, fairness, ethics, access, truthfulness and diversity. Because concentration in the written press has become more marked in the Western World in recent years, there has also been regulation of press ownership in most countries.[10] There has thus been a certain degree of government intervention concerning the structure of the press sector. Nevertheless, the 1990 report of the Calcutt Committee[11] in Britain, which dealt with press behaviour in matters of sensational reporting and invasion of privacy, is a sign that governments also intend to intervene in the content of the press.

1.4 DEREGULATION OF THE ELECTRONIC MEDIA

A complex mosaic of technological, economic, political, cultural and even legal forces have undermined the traditional regulation of the electronic media and led in the 1980s to the process of deregulation, that is, the dismantling of regulatory controls and the introduction of competition and of market forces in the media industry. In the United States, the structure of regulated telecommunications was massively transformed by the break-up of AT&T in 1982. In the United Kingdom, British Telecom (BT) was privatised in 1984 when operation and regulation were separated. The then French Socialist government

9 Royal Commission on the Press (1949) Report: Sir W.D. Ross (Chairman), Cmnd 7700, HMSO, London; Royal Commission on the Press (1962) Report: Lord Shawcross (Chairman), HMSO, London; Royal Commission on the Press (1977) Report: O.R. McGregor (Chairman), Cmnd 6810, HMSO, London.

10 Media ownership rules in selected European countries are stated in Appendixes I to VI.

11 Committee on Privacy and Related Matters (1990) Report: D. Calcutt (Chairman), HMSO, London.

emphasised profit making for public utilities in the mid-1980s, whereas in Germany the national PTT Deutsche Bundespost was partly privatised in the late 1980s. Due to pressures from the European Commission, steps towards restructuring of their telecommunications industries are expected within this decade in other European Union countries.[12] The safeguarding of free circulation of services across internal frontiers and the guaranteeing of a 'level playing field' are seen of central importance by the Commission to the development of the European information society. Council Resolution of July 1993 laid down a timetable for full liberalisation of public voice telephony service in most member states by 1998 at the latest.[13] The Bangemann group's report recommended that Member States accelerate the on-going liberalisation of the telecommunication sector, and the Commission responded by an Action Plan which identified the importance of infrastructure liberalisation and of interconnection and interoperability of networks for the establishment of a European information infrastructure.[14] Efforts are currently being put at European level firstly to seek agreement on the principle of

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[12] In Greece, for example, where for the time being competition is very sparse in the Greek services sector and practically non-existent in infrastructure, two partial privatisation schemes of the Hellenic Telecommunications Organisation (OTE) were introduced in 1993 and 1994 respectively. The first, known as the 'strategic investor' initiative, was aimed at selling 35% of OTE's shares together with management control to an internationally active telecommunications operator, and selling another 14% through an undefined flotation scheme. The second attempt, known as the 'flotation' initiative, had as its goal the sale of 20% of OTE's shares through an initial public offer scheme in the Athens stock market after a global book-building procedure (Caloghirou and Constantelou, 1995). Both attempts failed because the policy-making process became ensnared with inter-party antagonisms. However, another privatisation scheme (the terms of which have not been specified yet) is under way now, opting for introduction of infrastructure competition in the country.

[13] The Resolution took into account the different economic conditions of the member states and made proper adjustments to the proposed timetables for adoption by the less favoured regions. Thus additional transition periods have been granted to Spain, Ireland, Greece and Portugal in order to allow their public telecommunications operators to achieve the necessary restructuring and tariff rebalancing measures in the light of competitive market pressures [Council Resolution of 22 July 1993 on the review of the situation in the telecommunications sector and the need for further development in that market (93/C213/01; OJ C213/01, 06-08-1993)].

[14] High-level Group on the Information Society (1994) 'Europe and the Global Information Society: Recommendations to the European Council', Brussels, 26-05-1994. The report was followed by 'Europe's way to the information society: an Action Plan', Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, COM(94) 347, 19-07-1994.

infrastructure liberalisation in telecoms and secondly to keep to the timetable for its implementation.

The previously evident monopoly in the telecommunications sector has thus become more competitive and new players have been allowed to enter the industry and compete with incumbents. Similar trends have occurred in the broadcasting market and they are still in process. According to Horwitz (1989), broadcast deregulation in the USA has taken two forms: entry liberalisation and structural/content deregulation. As mentioned above, the FCC protected in the past conventional broadcasters and conventional broadcast technologies. Its orientation though has shifted since the mid-1970s when, in the light of new technological developments such as direct broadcast satellites, multi-point distribution service and low power television, it rejected protectionism and pursued an expansion of broadcast technologies and services. In 1977, the then FCC Chairman Ferris (a Carter appointee) deregulated cable TV and encouraged the entry of new distribution services in the industry. Since 1981, the FCC has moved even further to relax both indirect controls over programme content and direct controls over the structure of broadcasting. Under ex-FCC Chairman Fowler (a Reagan appointee), the Commission loosened, among other things, guidelines that required non-entertainment programmes, 'informative' children's programmes and coverage of community issues (McKean and Stone, 1992). It also eliminated various structural rules. The new multiple ownership rules which became effective on April, 2, 1985 retained the 1943 'duopoly rule' and the cross-media ownership rule of 1975, but raised the number of TV channels and AM or FM radio stations a single firm may hold from seven to twelve.[15]

The development of new communications technologies then has revolutionised the broadcasting industry and was central to the deregulation of broadcasting in the USA. Historically, consumer access to television and radio programming depended on terrestrial broadcast stations. The development of new distribution systems has greatly expanded the potential sources of supply for all types of media products. Media firms nowadays, for example, can deliver TV programming to viewers through distribution systems that include terrestrial broadcasting, cable systems, multi-channel multi-point distribution systems (MMDS) and direct broadcast satellite (DBS) service.[16] It was primarily that abundance of choice that undermined the traditional rationale for regulation and led to demands for relaxation of FCC regulatory controls, particularly around cable TV. Indeed, cable was seen as the medium through which minorities, non-profit organisations and other groups normally left out by conventional TV could have access to citizens. FCC's cable rules were fiercely criticised and finally relaxed in 1984 but re-regulated[17] in 1992 when it

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[15] The 'duopoly rule', adopted in 1943, prohibits common ownership of more than one station of each type (AM, FM, or TV) in a given market area. The 1975 cross-media ownership rule prohibits the formation of new media combinations involving television stations, daily newspapers and radio outlets in the same community. The rule allowed for an increase in ownership of stations from 7 to 12, also provided that a group may acquire up to 14 AM, 14 FM and 14 TV stations provided that at least two of the stations in each service are minority-controlled. For purposes of the multiple ownership rules, *minority ownership* is defined as 'more than 50% owned by one or more members of a minority group' (for more information and an update of media ownership rules in the USA see Howard, 1989; McKean and Stone, 1992; US Department of Commerce, 1993; Hoynes, 1994).

[16] A cable system receives video and audio signals either of-the-air, via microwave, or via satellite. These signals are subsequently transmitted via coaxial cable or fibre optic to the home. MMDS systems use microwave radio frequencies to deliver audio, voice, data, or video signals to roof-top antennas located on homes or apartment buildings. DBS service uses more powerful transponders than conventional satellites to transmit signals directly to home receivers without the aid of a community or ground transmitter (US Department of Commerce, 1993).

[17] For debates relating to the re-regulation of TV in the USA, see Porter, 1989: 5-27.

became clear that unregulated cable monopolies had not produced the optimal pricing or viewpoint diversity.[18]

Technology was also the driving force for the dismantling of the European broadcasting industry. During the last decade the European public service broadcasting model was perceived to be in varying degrees of crisis. The pressure of the new media technologies has led more governments to change their broadcasting systems and open up the market. The development of trans-national distribution media for audio-visual programming such as satellites, cable and video cassettes have reduced the potential of regulation by the nation state upon which public service broadcasting has rested. In addition, the development of new media technology has undermined the notion of spectrum scarcity as a rationale for regulation. 'New areas of spectrum are open to use (notably the centimentric band by satellites) and in some markets broadband cable distribution of television is pervasive, while in others video-cassette recorders (VCRs) have displaced or reordered consumption of broadcast television' (Collins at al., 1988: 124).

However, the tendency towards liberalisation/commercialisation of broadcasting could not be solely attributed to the pressure from the new sophisticated technology. Pressure also came from commercial interests, notably potential proprietors and advertisers who envisaged financial gains in the new era. Advertisers, in particular, argued that the European advertising market was under-exploited. And, indeed, Europe spent less on advertising than the United States. 'Whereas in the USA, in 1983, 1.5 percent of the gross domestic product (GDP) was

[18] The deregulatory Cable Act of 1984 led to the creation of unresponsive cable monopolies (Streeter, 1987; LeDuc, 1987; Aufterheide, 1992), and consequently revised by the 1992 Cable Act. The latter thus can be seen as a legislative 'correction' to the failed 1984 Act's experiment with 'pure' deregulation (for more information see Atkin, 1994).

spent on advertising, with the exception of Britain, the rest of Europe spent less than 1 percent' (Hills and Papathanassopoulos, 1991: 83). Advertisers and proprietors thus believed that if broadcasting was to be commercialised and more channels were available this underspend on advertising would be liberated. Politicians have also supported broadcasting deregulation and especially the abolition of the license fee as a method of funding broadcasting for a number of reasons. 'Since television ownership had been a near universal condition during the 1980s, the license fee was regarded as equivalent to a poll tax and had unfortunate regressive elements' (Collins et al., 1988: 102). In addition, the revenue generated by the license fee was impossible to increase unless annual increases took place. Politicians, however, were reluctant to incur further public expenditure fearing that they would lose votes. As a consequence, broadcasters have faced financial problems that have been exacerbated by inflation (Baumol's cost disease[19]).

Pressure for restructuring of the European broadcasting scene has also come from transnational political institutions that have become increasingly important forces throughout Europe and undermined, to a certain extent, the regulatory powers exercised by national governments. Undoubtedly, the most important transnational political institution is the European Community (EC) which, through its 1984 Green Paper, *Television Without Frontiers*, has played a significant

[19] The appearance of the Baumol-Bowen (1966) volume on the economics of the performing arts, the central hypothesis of which was the cost disease of live performance, has led most media economists to the conclusion that the performing arts (cultural industries) are predestined to be victims of a cost disease which condemns their cost (say, per performance) to rise persistently faster than the economy's rate of inflation. Baumol's model rested on the basic assumption that live performance is inherently labour-intensive due to the need for a constant production of prototypes. There is thus a limitation in exploiting the productivity advantages of capital investment in labour-saving technology. Since the level of prices is dependent on increases in productivity in the capital-intensive sectors, the production costs of performing arts are bound to rise (for supporting data see Baumol and Bowen, 1966). The cost disease analysis was offered by Hendon et al. (1986) and Garnham and Locksley (1991) as an explanation of the behaviour of the costs and prices of the broadcasting industries.

part in shaping the new broadcasting order. The EC assumed that 'with the further development of cable and satellite, the legal barriers to free broadcasting will hamper the development of cross-frontier systems, discourage investment and distort competition' (EEC's Green Paper, 1984: 254). Hence, the breakdown of national monopolies and the presentation of broadcasting mainly as a commercial commodity are the main elements in EC's philosophy.

Above all however, the demand for greater competition and elimination of state involvement in the broadcasting industry emanated from neo-conservative regimes which came into power in most Western industrialised nations during the 1980s. The neo-liberals assumed that the market would provide appropriate institutions and processes of public communication. Their philosophy is based on the premise that the free operation of supply and demand provides access to the media for all 'voices' which can pay for it. In their view, the profusion of channels created by the new technologies, and the multiplication of thematic, narrow-cast and specialised channels in particular, not only ensure a supply of content to all consumers but also allow them to select content precisely attuned to their needs, tastes and interests. In its strongest form, the market model took the view that deregulation could ensure freedom from state control and coercion. Just as in the USA claims for deregulation came partly from the belief that regulatory agencies (notably the FCC) failed to do their task efficiently, so too broadcasting deregulation philosophy in Europe partly originated from those who saw in governments vast bureaucracies whose arbitrariness caused economic inefficiency. Indeed, as has been put by Garnham (1986: 29-30) 'the growth of the state's role as a co-ordinator and infrastructural provider for monopoly capitalism has led to the massive development of state power as an independent administrative and bureaucratic interest, distinct from the rationalist determination of social ends'.

The status of the traditional state-run broadcast systems has been called into question by other social and media analysts who mentioned that public service media are not always a bulwark of democratic freedom and equality and that they fail to reflect the pluralism of tastes and interests of a modern society. Those critics did not put forward proposals for abolition of public service broadcasting; rather, they wanted a more accountable system that would respond to changing social conditions. Kuhn, for instance, argued in 1985 that public broadcasters are unable to respond to the new cultural diversity. Shaw (1991: 12), criticising the British broadcasting model, pointed out that 'public service broadcasting in Britain has been remote from its audience, indifferent to whatever opinions the audiences might have and uncaring for the most part in its dealing with complaints'. Keane (1992: 117) indicated that 'the repertoire of programmes channelled through existing public service media cannot exhaust the multitude of opinions in a complex ... society in motion'. Keane's intention, apparent from his main 1991 work *The Media and Democracy,* was to offer a revised interpretation of the public service model of communications. In his view, 'the market liberal ideology of freedom of individual choice in the market place of opinions is in fact a justification of the privileging of corporate speech and of giving more choice to investors rather than to citizens' (Keane, 1991: 89). So he argued that public service broadcasting must maintain and promote the 'public interest' by making it possible for people to participate in the socio-cultural process and therefore enabling them to form an opinion about the world events.

A revised public service model should, as he put it, 'aim to facilitate a genuine commonwealth of forms of life, tastes and opinions, to empower a plurality of citizens who are governed neither by despotic states nor by market systems' (ibid: 126). The achievement of the above aims, according to Keane, requires efforts to 'de-concentrate' and publicly regulate privately owned media and to restrict the scope and intensity of corporate speech. He proposed the creation of politically accountable, supra-national regulatory bodies, skilled at supporting media 'freedoms', abandonment of political censorship, and public support for new enterprises. Freedom and equality of information will then be guaranteed (Keane, 1991, 1992).

1.5 THE NOTION OF MEDIA DIVERSITY

It should be obvious by now that there has been a thorny division in positions on media policy. This division reflects differences in faith concerning the capability of market against governmental processes for achieving crucial communications policy objectives. To simplify, the social or public school of thought assumes that government intervention is a necessary condition for people's exposure to the widest range of views and opinions, whereas the market model asserts that the free operation of supply and demand provides for this more efficiently. The latter even asserts that conditions of free competition outweigh the dangers of government control of information. Perhaps the appropriate way for someone to face these policy and regulatory challenges would be to identify and clarify the most important values at stake in the Western societies and to assess which philosophy best provides for them. This task is extremely difficult at a time when media technologies and distribution systems are multiplying and when there is less consensus about basic values than in the past, not to mention the different levels of significance given to a particular value in different societies.

Blumler (1992), editor of *Television and the Public Interest: Vulnerable Values in West European Broadcasting,* set the scene in the opening chapters by describing current confrontations, reviewing public service broadcasting before the commercialisation trend, and noting values at stake. He identified these 'vulnerable values' as *programme quality, diversity, cultural identity, independence of programme sources from commercial influences, integrity of civic communication, welfare of children and juveniles,* and *maintenance of standards.* His book was an effort to examine what these values have meant to European broadcasting systems and how they can be retained in the face of deregulation and American-style commercial TV. The author, in collaboration with Hoffman-Riem, concludes the book by arguing that a public response, and not a call for a variety of competing voices in the market place, seems to be the appropriate European way for safeguarding the identified values being risked.

We will focus on one of the values identified by Blumler, *diversity,* for three reasons. Firstly, media diversity is a broad concept with many dimensions: plurality of contents, access to different points of view, offering of a wide range of choice, geographical diversity, etc. It thus encompasses pluralism of many kinds: regional, linguistic, political, cultural and in taste levels. Therefore, by concentrating on this notion, we will be able to cover a wide spectrum of social benefits that need to be preserved if the media are to support democratic life. Secondly, diversity is said to be the most vulnerable value at stake in view of concentration processes that have intensified since the liberalisation of the media industry. A large number of studies that have been carried out to evaluate whether diversity is threatened or strengthened by media concentration justify this assumption.[20] Thirdly, media diversity has not only been a long-standing goal of all democratic states[21] but the belief in it has certainly united all schools of thought. Indeed, where the social and the market schools of thought come together is in their shared assumption that diversity should be a primary goal of communications policy. Although they disagree on what diversity should be and on the means of achieving that desirable goal, they both argue initially that societies must allow citizens to have access to a wide range of information, which is seen as a precondition for free expression of alternative opinions on any potential problems. By doing so, the argument runs, they increase the prospects for individual and collective welfare. From this viewpoint, the freedom of media, a multiplicity of opinions and the good of society are closely linked. As McQuail and Cuilenburg (1983: 146) remind us, 'free press theory is essentially a theory of media diversity and one of its fundamental principles is that you establish and preserve conditions under which as many alternative voices, regardless of intrinsic merit or truth, find a

20 For studies dealing with media concentration and diversity see Owen (1977), Compaine (1982), LeDuc (1982), McQuail and Guilenburg (1983), Wildman and Owen (1985), Bagdikian (1985, 1992), Ferguson (1986, 1994), Hoffman-Riem (1987), Busterna (1989), Porter (1989), Garnham (1991), Entman and Steven (1992), McQuail (1992), COM (92) 480 final. For studies on *access diversity* specifically see Geller (1985), Aufderheide (1992), Negrine (1994). For empirical studies on the measuring of *programme content diversity*, see Levin (1971), Litman (1979), Grant (1994), Studies of Broadcasting nos. 28 (1992), 29 (1993), 30 (1994). For works focused on measuring content diversity in the press see Chaffee and Wilson (1977), Donohue and Glasser (1978), Busterna (1988), Demers (1988).

21 National courts have asserted in many cases that diversity is an essential criterion that should be born in mind when governments legislate in broadcasting. This view was taken in 1969 by the US Supreme Court in *Red Lion Broadcasting Co. versus FCC*, in 1961 and 1986 by the West German Federal Constitutional Court in their Deutschlandfernsehen and Lower Saxony Judgements, and in 1986 by the French Constitutional Council in its decision on the constitutionality of the 1986 law on the freedom of communication. Even in the UK, where there is no written constitution, there is a rhetoric of diversity (for more information see Porter, 1989).

hearing, provided that they emerge from those whom society is supposed to benefit - its individual members and constituent groups'.

Media diversity is a concept which belongs to the sphere of ideas. McQuail, examining the media performance in democratic societies, argued that the notion of media diversity extends beyond political theory: 'It is a broad principle to which appeal can be made on behalf both of neglected minorities and of consumer choice, or against monopoly and other restrictions' (McQuail, 1992a: 142). He pointed out though that national media systems place different emphasis on these policy aims. Indeed, as Brennan's (1989) work revealed, FCC policy in the USA attempted to encourage diversity both by increasing consumer choice and by ensuring, through the 'Fairness Doctrine', that a wide range of views have access to the media. Referring to the European public service broadcasting model, Hoffmann-Riem (1987: 60-61) argued that 'the public service philosophy of broadcasting ... is oriented toward the accessibility of pluralistic information for citizens and society rather than the freedom of expression of communicators. Diversity of programme content, accessible to all segments of the audience, must be established and safeguarded'. This definition makes it clear that media diversity is not simply a matter of the number of information channels, but also of who controls these channels, of media content, and of accessibility of the media.

In recent years in Europe, the notion of diversity has come to refer not only to political and socio-cultural differences but it has been extended so as to include the market-place concept of diversity of products available to viewers/listeners (The Peacock Report, 1986; Veljanovski, 1989). The causes of such shift of emphasis is the relative channel abundance together with the trends towards liberalisation and commercialisation. As Wildman and Owen (1985) argued there are, among others, two distinct definitions of diversity, and label them *idea diversity* and *product diversity.* The former, as already indicated, means that the more distinct thoughts, analyses, criticisms etc. that are available on issues of social and political importance, the better off society is. Diversity of ideas thus is measured on an underlying dimension of political and socio-cultural concerns. The latter is defined as the 'range of variation in product attributes that are available (or potentially available) in a particular product or service' (ibid). Most economic analyses of diversity focus on firms' competitive strategies, as reflected in the variety of products they offer, and on the implications of those offerings for economic efficiency (Entman and Steven, 1992). Product diversity is believed by market-oriented analysts to accomplish idea diversity and create the climate for alternative viewpoints in the media (Compaine, 1982). Analysts who press the social value case though argue that effective competition (economic efficiency) does not necessarily perform well with respect to social objectives and therefore product diversity does not always produce sufficient idea diversity (Bagdikian, 1992).

A broader definition of media diversity has been provided by Hoffmann-Riem (1987) who, referring to the broadcasting scene, has distinguished four dimensions of diversity. He argued that there must be *diversity of formats and issues,* meaning that all the various fields and topics (e.g. entertainment, information, education and culture) have to be taken into account. Secondly, this should be complemented by a *diversity or plurality of contents.* This means that programmes should provide comprehensive and factual coverage of the different opinions expressed in a society. Thirdly, *person and group diversity* must exist. Programmes have to cater for the interests of all parts of the community. The main point here thus is access, but also representation. Finally, Hoffmann-Riem pointed out that broadcasters should include local, regional, national and supranational content. According to Hoffmann-Riem therefore, a programme has to ensure that *issue, content, person* and *geographical diversity* is provided.

A more or less similar identification of the dimensions of diversity has been provided by McQuail (1992a: 144-5) who argued that the media can contribute to diversity a) by *reflecting* differences in society b) by giving *access* to different points of view and c) by offering a wide range of *choice.* Diversity as reflection means that pluralistic mass media are expected to represent or reflect the prevailing differences of culture, opinion and social conditions of the population. Diversity as access refers to the channels through which the separate 'voices', groups and interests which make up the society can speak to the wider society, and also express and keep alive their own cultural identity. McQuail mentioned the most essential conditions for effective access, namely freedom to speak out, effective opportunity to speak (a prerequisite is the existence of many and different channels) and autonomy or adequate self-control over media access opportunities. Finally, diversity as more channels and choice for the audience represents a great deal of variety or range of products or services available to consumers, thereby giving them greater freedom.

In order to assess diversity in relation to media concentrations one also needs to distinguish between *external* and *internal* diversity. The former, according to McQuail (1992a: 145-7) refers to media structure because it is related to the idea of access. It relates to the degree of variation between separate media sources in a given sector, according to dimensions such as politics, religion, social class, etc. In a given society, there are many separate and autonomous media channels, each having a high degree of homogeneity of content, expressing a particular point of view, and catering only for its own 'followers'. The latter, McQuail adds, refers to the media content and connects with the idea of representation or reflection mentioned above. It relates to the condition where a wide range of social, political and cultural values, opinions, information and interests find expression within one media organisation, which usually aims at reaching a large and heterogeneous audience. A particular channel might be assessed according to the degree of attention given to alternative positions on topics such as politics, ethnicity and language and so on.

Complete external diversity is difficult to be found in today's media systems. Only in societies with cultural and linguistic differences (in Belgium, for example, the Flemish and French speaking communities have their own broadcasting and press media), and also in societies where there still exists a strong partisan press system (e.g. Greece) does external diversity apply.[22] However, since new delivery systems such as cable and satellite proliferate, thereby increasing the number of channels available, one might argue that the trend towards external media diversity increases rather than decreases. LeDuc (1982) for example, argued that in the USA, cable TV, multi-point distribution systems, subscription TV, DBS and VCRs all offered the possibility for serving the communication needs of communities and minority interest

[22]McQuail (1992a) points out that while external political diversity of the press has declined, some media sectors do show an increase in external diversity according to dimensions other than politics, for example, magazine press which has developed along specialised lines.

audiences. Therefore, instead of having to turn to some national network service for their programming needs, people could have specialised content channels at their disposal. Nevertheless, LeDuc concluded that technological advances in the field of broadcasting have not offered the public a wide enough range of alternative services to meet all essential needs and that the US legal system must develop the capacity to distinguish between channels and content as the source of communications competition.

Internal diversity, on the other hand, is more likely to be found in media systems. It has been encouraged partly by the trends towards concentration and monopoly and partly by economic (particularly advertising) interests. The underlying logic has been that media have to appeal to many interests and needs and to avoid exclusiveness in order to maximise their audiences and consequently to attract advertisers. Internal diversity, particularly in the field of broadcasting, has also been encouraged by government regulation. Because of the initial limitation of channels, diversity and balance were usually required as conditions for the granting of operating licences, as a matter of equity in allocating a scarce public resource (McQuail, 1992a). In the future though, instead of a number of general channels, the trend will be towards a growing number of thematic channels dedicated to news, films, sport and many other genres of programming (COM(92) 480 final). Interactive channels, where the viewer can communicate directly with the broadcaster, will be the norm rather than the exception. And audiences will be targeted on the basis of tastes and not on numbers.

Finally, one has to assess diversity of media content from the point of view of consumer choice. Here, a distinction between *vertical* and *horizontal* diversity must be made. Litman (1979) argued that vertical diversity refers to the diversity within a single network (or across the networks) according to the number of different program types. This vertical diversity is the standard which the FCC uses in judging whether a single network or all the networks together are presenting a balanced schedule of programmes. However, Litman pointed out that vertical diversity does not really reflect the options available to the viewers at any point of time. If, for example, a new documentary programme that a network decides to offer coincides with another new documentary programme that another network decides to broadcast at the same time, then the viewer has no choice at that point of time. Therefore, changes in vertical network diversity may not fully translate into increased viewer options. To solve this problem, Litman mentioned that it is necessary to measure horizontal diversity, that is, the number of viewing options available to the viewer at any given time.

In short, there have been made various conceptual distinctions of the term 'media diversity', including diversity of access, diversity of choice, balance in the presentation of news, linguistic and geographical diversity, internal and external diversity, horizontal and vertical diversity. However, two sub-concepts of diversity, that of access and choice for the audience, are the two notions that have been put high on the agenda of regulators and policy makers when considering media concentrations. As regards diversity of access (freedom of speech), the key question is whether the possibility of establishing new media companies leads to the situation where all legitimate interests in a given society have an equal (or proportional) share of access to media channels. As regards diversity as choice, the key question is whether an increase in channels actually leads to more choice for the audience.

1.6 MEDIA DIVERSITY, CONCENTRATION AND THE FREE MARKET

Having conceptualised the term 'media diversity', we now turn to the question of which kind of media structure mostly encourages this desirable goal. As concerns the delivering of media diversity, two models claim to promote best the diversity principle, that of public policy and that of market. The former views state regulation as an essential means of ensuring equality of information access and expression, while the proponents of the latter assume that an unregulated market in communication goods and services can provide for this. As indicated by Negrine (1994a: 54-5), what gave the assertions and hopes of the market school a degree of currency and relevance was a combination of technological and political change. On the political side, there has long been a debate questioning the ways in which broadcasting systems are organised and run. On the technological side, the development and availability of satellite TV as well as local and interactive cable television systems have created alternative structures and processes of communication. Together, Negrine stated, these forces created a desire and an opportunity for change and experimentation.

Undoubtedly, the new technologies of VCRs (video-cassette recorders), cable and satellite TV (now boosted by signal compression) has widened viewers choice and enabled them to watch their preferred programmes as many times as they want and at any time they want. New distribution systems have also encouraged senders to seek profitability by identifying market niches and serving audiences neglected by other media. The proliferation of thematic, narrow-cast, specialised channels has been said to promote the birth of 'personal media', allowing viewers to select content precisely attuned to their needs. This market segmentation, with different media seeking to appeal to various groups, has been partly encouraged by advertisers, who wanted their messages tailor-made for a given audience. Advertisers' desire is to promote their messages in order to reach diversified target groups in a way that suits their own needs. Thus media distribution and content patterns are inclined to follow lines of income and locality. Since socio-economic variation often correlates with political differentiation, the advertising market variant has some potential for meeting the main requirements of political diversity (Jakubowicz, 1994).

Therefore the new advertising-financed media systems are able, in theory at least, to increase consumer choice and to target audiences on the basis of tastes. However, the growing number of new delivery systems and the competition with each other had as a consequence a fall in advertising revenue. The search for other source of funding has led to the development of pay television, both subscription and pay-per-view. Subscription television (that is, TV programmes sold directly to viewers for a monthly payment to the broadcaster) is said to create a direct contractual link between the viewers and the broadcasters and therefore the former can express their preferences for the type of programmes they want in a way that will be noticed and acted on by the latter (The Peacock Report, 1986; Veljanovski, 1990). Increasingly, the consumer now has a direct link with the supplier of media services either through the price system or through the computing power of interactive systems. However, since not everyone would be able or willing to subscribe to pay-TV services, the increase in the number of pay-TV channels will in no way reduce the need for traditional off-the-air commercial or public channels. Public broadcasters, in particular, with their internal pluralistic structure and their availability for the entire public, are a key factor for ensuring diversity of opinions and accessibility to all in return usually for a licence fee.

On the contrary, the model described above is basically the model of external diversity in which diversity of content is provided by separate media. For this reason, this model is exceptionally good at providing numerical diversity (i.e. a large number of newspapers, radio and TV stations, satellite and cable channels, etc.), provided of course that the market can sustain them. The problem is that this situation naturally favours concentration of capital and ownership in the media (see chapter 2 for a definition and a list of types of such concentrations). Concentration of control of media ownership is not necessarily a threat to the diversity of information. At a time of free trade and free movement of capital (as within the European Community, for example) and globalisation of media operations, it is argued that media concentration may be needed to ensure the emergence of financially strong companies able to take part in international competition and prevent the domestic market from being taken over by foreign media. The development of European groups operating on an international level, for instance, both can be beneficial for the dissemination of ideas and can enable European undertakings to face international competition from big non-European units which benefit from economies of scale due to their market and size. In certain circumstances, concentration enables economies of scale to be achieved and production costs to be amortised through access to a wider audience and the possibility of having access to know-how and expertise, which place undertakings in a better position to face competition from other media.

Big, highly-concentrated units normally have the capital, management and R&D (research and development) capabilities allowing them to overcome high barriers to market entry and establish new media outlets. Big media groups may promote diversity simply as a business strategy, for example, by diversifying their media outlets and establishing new titles, and radio and TV channels. By doing so, they may facilitate the introduction of new technologies and new services. They may also support diversity by launching newspapers representing quite different orientations in order to achieve greater profits by serving diverse publics. There is the possibility here for the publication of newspapers or new projects intended for minorities, or even projects which are not directly profitable but which contribute to political/cultural diversity. Large groups may also encourage diversity by cross-subsidising low-profit media. By saving certain newspapers in danger of closing down they both maintain a diversified supply and safeguard employment. A last positive aspect of media concentration is that it can guarantee the autonomy of editorial groups vis-a-vis advertisers and political power.[23]

All these are appealing theoretical arguments but the simple fact is that so far concentration of media ownership (the reduction in the number of companies controlling the media in a given sector) as such has not resulted in a more critical media serving the public interest. Concentration of media ownership combined with the trends towards

23 For additional information of positive aspects of media concentration see 3rd European Ministerial Conference on Mass Media Policy, Nicosia (Cyprus), 9-10 October 1991.

internationalisation and commercialisation has resulted in proprietors putting more emphasis on profitability rather than on the cultural quality. This is not surprising nor is it an unnatural response from market-driven institutions. However, as a result of greater demands on profitability, advertising-financed media are increasingly aimed at mass public audience and at generating advertising income. Media receiving direct consumer payments are more sensitive to intensities of consumer preference. But the practice so far has been that these services are delivered in the form of a 'package' (Murdoch's strategy in Britain, for example) in order to generate profit and therefore the consumer has to purchase the whole package and not just a particular service. In addition, with the multiplication of pay-TV channels, the accessibility and control over encryption and conditional access systems becomes crucial. New channels will not normally be able to introduce a new system but they will have to utilise the existing one which has the greatest market penetration. Potential monopoly control of conditional access systems and other 'gateways' represents one of the newest threats to diversity.

The question that has been long with us however is whether the new media structures actually translate into more choice for people, disseminate more cultural and political ideas, and therefore strengthen democracy. Venturelli (1993) argued that multi-media empires tend to minimise debates over political and cultural ideas and neglect the creative application of media technology to explore multiple representations of social reality. In fact, in a purely market-driven system more media outlets does not necessarily mean more public argumentation and rational discourse. On the contrary, it means more ways to address people as consumers. As Garnham (1986: 31) has put the matter convincingly, 'the economy and the polity have different values. Within the economic realm the individual is defined as producer and consumer exercising private rights through purchasing power on the market in the pursuit of private interests. Within the political realm the individual is defined as a citizen exercising public rights of debate within a communally agreed structure of rules and toward communally defined ends. But political communication that is forced to channel itself via commercial media becomes a politics of consumerism'.

In this respect, there is some reason to believe that media commercialisation and more media outlets may not upgrade or strengthen the space for political and social discussion. Empirical evidence[24] from the United States, which was the first country that reduced public control over mass media, may justify this assumption. Lessons from the USA clearly show that commercial media firms do not bring new creative options to the public; instead, they are oriented towards 'mass appeal' programming. One cannot of course argue that the current plethora of talk shows, initially introduced in the USA and now part of almost every European commercial channel's programme schedule, actually provide a broad spectrum of critical political debate. Media analyst Ben Bagdikian (1992) used the trend to 'infotainment' - the presentation of news as bland light entertainment designed to sensationalise - as an evidence to show that there is little room for artistic expression and risk-taking when cost saving and commercial viability are the prime considerations.

[24] An influential joint research project, initiated by NHK, the Japanese public broadcaster, in 1992 to study the world-wide diversity of TV programming found that the three networks in the USA have low programme diversity as compared with the leading broadcasters of other countries. The analysis verified the uniformity of TV programmes in the USA (Studies of Broadcasting, nos. 28, 29, 30). London Economics 1995 study reached the same conclusions (London Economics, *Pluralism and Concentration in the Media Sector*, April 1995).

Market incentives are not adequate to provide the optimal level of cultural and political diversity. They do not lead to the provision of a wide range of products to satisfy heterogeneous consumer tastes. This is partly because of the high cost levels of domestic audio-visual production, which has led broadcasters especially in small countries to the solution of importing cheap and often of low quality programmes.[25] The high costs of producing original programming has also led to the situation where products are constantly reproduced, in the sense that a broadcast programme can be seen as a story or feature in a newspaper, magazine or even book.[26] This however does not really increase choice since the product offered is the same but in a different format. Finally, due to the near-absence of price competition throughout the cultural industries,[27] companies tend to locate themselves as close as possible to one another, they tend to locate 'where demand is', and therefore to offer similar products.[28] There is an undue tendency then for competitors to imitate each other (Hotelling, 1929) and to converge on tried-and-tested formulae. This poses a potential danger to welfare in terms of the variety of products offered by a given market, because

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25 The two small highly-cabled countries Holland and Belgium cannot support a wide range of domestically-produced choice and found a solution in importing cheap programmes from neighbouring states. In Greece, where liberalisation of the broadcasting sector took place in December 1989, the programming schedule of the two leading commercial channels *Mega Channel* and *Antenna TV* consists mostly of imports from the USA (mostly soap operas and game shows) due to the high costs of producing domestic drama.

26 Garnham and Locksley (1991), in *The Economics of Broadcasting*, explained that cultural industries are very much dependent on product innovation and therefore spend huge amounts of money for R&D. But because the launching on the market of a new product for which demand is uncertain involves high risks, a strategy that has been adopted to realise value is economies of scope, that is, the controlling of a range of products for a range of market segments or audiences.

27 Garnham and Locksley (1991: 15) remind us that non-price competition is especially strong in broadcasting for two reasons. Firstly, there is no direct price relationship between the cost of production and either the size or intensity of audience demand. Secondly, unit costs of consumption are very low and therefore it is difficult to create effective price discrimination between programmes.

28 If, say, there are only two firms competing on price in a given market, they will have an incentive to locate themselves as far as possible from each other on the product line, and thus to offer as diverse a product as possible, both in terms of product variety and quality. Proximity of location would mean that prices are gradually eroded as the firms compete for each other's business. But in situations of non-price competition, where there is no interdependence of the two firms' pricing decisions, the firms are bound to locate 'in the centre of the market', because there is no incentive for product differentiation.

some segments of tastes and preferences will not be catered for. One could argue that as barriers to entry in broadcasting gradually decline due to digitalisation/ compression of the signal, new players enter the market, and price competition in broadcasting intensifies due to the expansion of pay-TV, there will be less of an incentive for firms to locate themselves in the 'centre of the market'. There will be instead an incentive to locate further away from each other as such location becomes 'saturated', and satisfy 'niche' markets, which means that a range of differentiated products will be supplied. Nevertheless, with the technology of pay-TV is difficult, if not impossible, to create effective price discrimination between programmes (Garnham and Locksley, 1991). As for digitalisation, which greatly expands the bandwidth, it remains to be seen whether it will lead to the situation where a wider range of individual preferences are satisfied.

But even in cable, once described as the 'technology of abundance', one cannot find a certain level of programme diversity. As mentioned above, cable's capacity to carry huge amounts of information and potential of two-way broadcast communication were cited as 'revolutionary' because both neglected voices could find expression through that new medium and interactive communication could alter the nature of broadcast communication itself. However, there are severe limitations on the current cable industry's ability to provide diversity of sources and viewpoints on issues of public concern. Those limitations lie in the conditions of commercial TV programming and in the current structure of the cable industry. The logic of commercial production has shaped most cable operators and ownership has increasingly centralised in fewer hands (LeDuc, 1982, 1987; Horwitz, 1989; Aufterheide, 1992). It could not be otherwise since, for local cable channels to survive in an extremely competitive environment, they had to make alliances. But cable's current industry structure discourages diversity of sources and perspectives and leaves almost no opening for use of the system as a public space (Aufterheide, 1992). A few multiple system operators (MSOs) control the US market and acceptance of new services (particularly narrowcasting) depends on them. Power is heavily concentrated to the extent that the two leading MSOs, TeleCommunications Inc (TCI) and Time Warner, account between them for over 30 per cent of all basic cable subscribers. The top 20 MSOs control 75 per cent of the market and only 14 can boast a roster of more than one million basic cable subscribers (see Table 1.2).

Yet Negrine (1994a: 57) argued that only on the local communication system, be it cable or radio, can participatory forms of communication exist. The more national, international and concentrated the technology of communication, the less the potential for local, participatory or access communication; similarly, the more commercial and concentrated the organisation of the medium, the less the likelihood that forms of local, participatory or access TV will play an important part in increasing diversity of opinions. Today, Negrine adds, local and even national cable systems are part of international systems of communication in an increasingly international setting.

Table 1.2
US TOP 20 MSOs (end 1993)

CABLE MULTIPLE SYSTEM OPERATORS	BASIC SUBSSHARE *000s*	BASIC SUBSSHARE %
TeleCommunications Inc	10,400	18.7
Time Warner Cable	6,900	12.4
Continental Cablevision	2,940	5.3
Comcast	2,895	5.2
Cablevision Systems	2,120	3.8
Cox Cable	1,770	3.2
Jones Intercable/Spacelink	1,585	2.9
Newhouse Broadcasting	1,437	2.6
Cablevision Industries	1,310	2.4
Adelphia Communications	1,240	2.2
Times Mirror Cable TV	1,215	2.2
Viacom Cable	1,095	2.0
Falcon Cable	1,095	2.0
Sammons Communication	1,045	1.9
Century Communications	939	1.7
Paragon Communications	849	1.5
Crown Media	832	1.5
Colony Communications	770	1.4
TeleCable	690	1.2
Scripps Howard	688	1.2
Total	**41,815**	**75.3**

Source: Screen Digest, February 1994

In Britain, for instance, North American companies have poured huge resources into cabling the country and now own four of the most promising cable channels.[29] However, cable's growth has been a painful affair. 'Beset by squabbling between rival companies, inept marketing and vast tranches of resistible programming, it has found it difficult to get a hold in Britain (The Guardian, Monday November 6 1995: 18)'. In France the 'Plan Cable', launched in 1982 by the then socialist government as a first step to expand high technology and provide new services, proved to be a utopian dream (Serge, 1992). Alternative

[29] 'Landmark Communications' owns *Travel Channel*, 'Video Jukebox and Ticket-master' owns *The Box*, 'Black Entertainment Television' owns *Bet International* and 'TV Company Graff' owns *The Adult Channel*. Other promising channels such as *Live TV*, and *Channel One* and *Performance Channel* are owned by 'Mirror Group', 'Daily Mail and General Trust' respectively.

forms of communication thus seem not to have been expanded in such a scale so as to contribute to the access to a choice of programmes.

Finally, it should be noted that the availability of a wide range of opinions and access to information, as important they are, will not by themselves be enough for serving the public interest. As Negrine (1994a: 62) reminds us, it is also important 'when and how that information is made available and the contextualisation of that information'. Impartial and accurate information as well as balance in the news reporting are at stake here. Editorial independence and investigative journalism are preconditions for the safeguarding of these standards. Concerns are often expressed that where journalists work in an environment of 'sell the paper, please the advertiser', or when they work in a highly concentrated media market with less options of changing employers, they become more cautious in their approach to the concern for which they work, to the detriment of professional integrity. The 'corporate journalist', self-censoring what he/she writes, might be the result. The fact that freelance journalism is the fastest growing sector in European journalism has already made the employment conditions of journalists increasingly insecure and uncertain.[30] Unless editorial statutes safeguarding editorial independence vis-a-vis interests of the company and the advertising industry established in all countries, the public interest in the reception of accurate and impartial news is not completely satisfied.

30 See the response of the European Group of the International Federation of Journalists to the Commission Green Paper *Pluralism and Media Concentration in the Internal Market: An Assessment of the Need for Community Action*, Consultation Vol. I, April 1993, item 9: 1-14.

1.7 CONCLUSION

This chapter started by offering a definition of the loosely-constructed term 'public interest' in communication and by providing a discussion over media - particularly broadcasting - regulation on public interest grounds. The central question that was attempted to tackle is whether regulatory intervention in a 'free market' can be justified on 'public interest' grounds. The arguments pointing out that the public interest can be achieved either under state interference or free-market conditions were explored. Government intervention was seen as a necessary condition for people in order to have equal chances of media access and fair representation. Such intervention was said to guarantee a representative media supply and benefit most weak political and social groups whose voice would otherwise not be heard. But this model has been criticised on the grounds that it limits audience choice, that it manipulates public opinion, and that it does not respond to changing social conditions.

However, the market system, which is based on the free operation of supply and demand, has not provided either better access for all 'voices' or content that satisfies all interests. Since the market model encourages the proliferation of channels and new audience markets, it can lead to increased numerical diversity, that is, more channels and theoretically more consumer choice. The quantitative diversity of variety of channels though does not necessarily provides qualitative diversity of the media content (Hoffmann-Riem, 1987). Or, as Donohue and Glasser (1978: 596) mentioned, 'there is a big difference between media pluralism and message pluralism and we must be careful not to confuse media abundance with media diversity'. McQuail (1992a: 153) stated that 'adequate "reflection" of consumer interests is not always met under conditions of market freedom'. Advertisers for example, who usually finance the private broadcasting sector, aim at reaching many but of high income groups and thus do not cater for all consumers.

But the most significant disadvantage of the market system is that it encourages concentration of ownership, partly due to high basic costs of access to the media. In the United States, where a small number of companies control the national broadcasting market and where press monopolies are the norm rather than the exception, we find the fiercest critics over media concentration (see Bagdikian, 1985, 1992, for example). These critics stress that the oligopoly control and 'depoliticisation' of content we witness within private broadcasting institutions, are far from the liberal ideal of a free market-place for ideas. And according to Hills and Papathanassopoulos (1991: 84) such results simply show that 'the liberalisers are concerned with liberalising ownership, and not in increasing the plurality of content or with broadcasting's social role'. Clearly, the traditional conception of public service broadcasting has been superseded by events. But the public interest responsibilities remain and must be met by establishing workable institutional arrangements.

The current trends in media structure and organisation though are said to lead to the loss of diversity. Concentration of media industries is increasing at the same time as the scope for public service broadcasting is being reduced. A process of global vertical integration leads to large software media industries being taken over by large electronic hardware companies or sometimes by trading companies which have no prior media history at all (Murdock, 1990a; see also Murdock, 1990b). These media software firms have already grown by horizontal integration, absorbing other firms as they grow, crossing the boundaries of existing media. Often the most vulnerable to takeover are successful local or specialised media which are the most innovative and responsive to their publics (McQuail, 1992a; see also McQuail, 1992b).

These trends may have a negative effect on diversity and on political depth. As the different media are converging on each other, as they compete for much the same market, it becomes harder for them to give attention to world affairs or domestic politics. The economic logic of the media has been linked with a potential 'decline of democracy' as defined by Curran (1991b) and Keane (1991) and especially with low levels of popular knowledge and understanding. There is also the problem of *access* on equal terms to the main channels of communication for minority and opposition voices. In theory, the equality problem, that of access to media channels as senders, should be solved via the multiplication of channels and the proliferation of new kinds of media. But these trends have led to a higher commercial price and value being placed on media access, especially where these reach larger audiences. Finally, both media integration and the competition between many channels for the same more or less constant audience raise the question of diversity in cultural output. It seems thus that so far the so-called 'information society' has not proved to be a more culturally diverse one.

The next chapter looks at the process of media concentration in more detail. It provides an economic analysis of media concentration and identifies its level in both Europe and the USA. It also attempts to link the problem in defining different types of concentration with the problem in defining different types of policy intervention.

Chapter 2

Competition, Concentration and Efficiency in the Media

Chapter 2

Competition, Concentration and Efficiency in the Media

2.1 INTRODUCTION

At a time when the media are becoming major actors in world businesses, and cable, satellite and the digital revolution are increasingly providing the conditions for a global media market, questions are raised about the possible effects of media concentration on the traditional role of broadcasting and the press in democratic societies. The media concentration phenomenon is not a new one. Tunstall and Palmer (1991) remind us that Charles Havas' press agency founded in Paris in 1835, and Reuters news agency founded by Paul Julius Reuter in London in 1851 dominated the international flow of information from the second half of the nineteenth century. The phonographic and cinematographic industries have experienced the phenomenon of oligopolistic competition[1] from the beginning of the twentieth century, while concentration in the field of broadcasting may be observed in the United States from the inter-war years. However, concentration of control over mass media has intensified recently in both the United States and Europe. According to Bagdikian (1992), for instance, ownership of most of the major American media has been consolidated in fewer and fewer corporate hands, from fifty national and multinational corporations in 1983 to twenty in 1992, owning most of the output of daily newspapers and most of the sales and audience in

[1] Gomery (1993) mentioned that market structure and conduct in the media world fall into three categories: a) *Monopoly,* that is, when a single firm dominates. The basic cable TV franchise and the single community daily newspaper provide two examples of media monopoly; b) *Oligopoly*, a situation where a handful of firms dominate. A typical example is the dominance of the four TV networks (NBC, ABC, CBS and Fox) in the US television industry; and c) *Competition,* where there are many companies in a particular product market. The notion of competition can be split into two parts: 'perfect competition' and 'workable' or 'effective' competition. The former is said to exist where firms are too small to influence price through changes in output; where there is no product differentiation; where resources are perfectly mobile; and where there is a perfect flow of information between market participants. Such a model is useful in order to demonstrate price policy, but is unrelated to real markets where intractable imperfections are all but universal (Frazer, 1992: 5). The latter, according to Stocking (1961), 'is a term economists give to that rather ill-defined market situation that is socially acceptable (cited in Frazer, 1992: 6).

magazines, broadcasting, books and movies. The emergence of multimedia conglomerates with international ambitions is putting the subject high on the agenda of legislators, governments and regulatory bodies at both national and European levels. The European Commission, for example, has issued in 1992 a Green Paper on *Pluralism and Media Concentration in the Internal Market*, proposing measures aiming to safeguard diversity in view of mergers and acquisitions taking place within the media sectors (COM (92) 480 final). All these are signs of a concern about media concentration and its potential impact on diversity and pluralism of the media to which the citizens have access. Some media companies, it is thought, may be growing so powerful that they can influence public opinion. Focusing on issues of concentration, media critics such as Schiller (1981) and Bagdikian (1985, 1992) have argued that market structures in information industries have become less competitive in recent years granting both economic and political power to those in the industries through their control of the means of modern communications.

When one tries to deal with the problem of media concentration, he/she faces a dual problem: on the one hand, there is pressure to restructure the sector. There is the widespread argument saying that big media entities are better able than small ones to survive and generate profit in highly competitive world markets. In Europe, in particular, there is also a tendency to create a mega-industry able to compete in the global village dominated by US and Japanese companies; on the other hand, there is concern about the effects of concentration on diversity and pluralism. The question of cultural, political and of taste levels diversity in the context of the deregulation, internationalisation and concentration of the media is high on the agenda of legislators and policy makers. Here the argument is that free market competition could lead to the creation of monopolies, so that some form of anti-trust law is required. This has led to a constant activity to control this process, particularly at a national level. In most Western European states the media are subject to competition law and/or merger control provisions (see Appendix VIII). However, there is also activity to control media concentrations at Europe-wide level. There has been an on-going debate initiated by the European Commission through its 1992 Green Paper on *Pluralism and Media Concentration in the Internal Market* on whether a specific regulatory framework concerning media concentrations is needed. These policy issues will be the subject of the next chapter.

The focus here is on the definition of the media concentration phenomenon and the identification of the different forms it may take. It seems to us that a clear understanding of the term 'concentration' is necessary before proceeding to explore the regulatory framework. This is because concentration in the media field can take various forms which may need different types of policy intervention. There might be concentration in individual sectors or concentration in cross-media sectors pursued by economic and technological innovations. There might also be concentration of producers or concentration of reception. Concentration at the distribution stage and concentration at the production level are two additional forms of this phenomenon. None of these concerns are new, but they have been reinforced by recent technological and economic developments. All these different forms of media concentration usually need different policy interventions. Thus the purpose of this chapter will be to look at the various forms of concentration, to provide an economic analysis of market structure, and to make a connection between economic analysis and policy implications.

The reason why we are focusing on economic issues is that concentration is a concept that belongs to the sphere of economics and it is not unique to the media industry. Standard tools of economic analysis can clarify the functioning of media markets and the behaviour of media companies. Concentration (including media concentration), together with conglomeration and internationalisation, are elements of the market, that is, a grouping of buyers and sellers exchanging a single product that is distinct from all others.[2] Therefore the media economist should first establish and define the basic conditions of an industry and then seek to establish its major players (structure). He/she then should define the behaviour dictated by this structure (conduct) and finally evaluate the core questions of industry performance.[3] The analysis of market structure, in particular, should seek to establish: a) the number of players and sellers and the degree of concentration in a market; b) to identify barriers to entry for potential new competitors. This is an important element of market structure since at the edge of the market, that is, at the end of the array of firms there may be barriers to entry which keep out whatever potential competitors there might be thereby raising the degree of concentration; c) to isolate effects of horizontal and vertical ownership patterns; and d) to study the processes and consequences of conglomerate control. Conglomerates, which grew enormously through diversification into allied businesses also affect market behaviour and performance.

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[2] For a thorough definition of the market see Shepherd (1979).

[3] According to Busterna's (1988a) Industrial Organisation Model, market structure determines market conduct thereby affecting market performance. This model is derived from microeconomic theory and it is useful in evaluating how the market forces affect firms and entire markets function.

2.2 DEFINITION OF MEDIA CONCENTRATION

Let us first try to arrive at a definition of the term concentration. Put simply, concentration in the media field means the reduction of the number of companies controlling the media in a given sector or across sectors. The European Institute for the Media (EIM, 1993: 6) defined concentration in the media market as 'an increase in the presence of one or a handful of firms as a result of various possible processes: mergers, acquisitions and deals with other companies'. Thus concentration (or oligopolistic competition) is interpreted as integration - horizontal and vertical, across media types and national boundaries. However, concentration can be caused by phenomena other than media integration such as the disappearance of TV stations or newspapers which leaves those that remain in the market with less competition or even in monopolistic situations. On the other hand, the launch of new media products (i.e. a TV company which widens its activities into new geographical areas) results in industry integration but not in market concentration - the market often becomes more pluralistic and consequently less concentrated. It is necessary thus to draw a distinction between industry integration and market concentration. In practice though, the buying up and/or taking over of existing media firms is the commonest procedure leading to media market concentration.

Media concentration is linked with technological, political and economic issues. Research on media concentration, ownership and control in the past tended to be conducted within nation states. The reasons were threefold: a) broadcasting and newspaper organisations were primarily national or state-owned; b) media systems were heavily regulated thereby preventing capital flowing from one country to another; and c) media entrepreneurs were primarily involved in specific fields of interest (television, newspaper publishing, and so on). Therefore, in those days we had a clear picture of who owned the electronic media (in most cases, the state) and how the industry was operating (under state-guaranteed monopoly) (Papathanassopoulos, 1990). However, these arenas became meaningless once technological (mainly satellite, cable and digital advances) and political forces (the trends towards deregulation and liberalisation) brought television into the international market-place. As Dyson and Humphreys (1988) pointed out, the need to stimulate new international media investment has led to powerful pressures on governments to introduce 'light touch' regulation and also to encourage a process of 'international gamesmanship'. Nowadays, one can notice a greater linkage between media enterprises. Deregulation in Europe, for instance, has allowed companies to move into new arenas - the Italian Fininvest (owned by magnate Berlusconi) into France and Spain, News International (owned by Australian Murdoch) into the UK, the USA, Spain and China... to name but a few. The result of this procedure is the creation of larger and fewer dominant media groups controlled by fewer hands (Negrine and Papathanassopoulos, 1990).

2.3 DEFINITION OF MARKETS[4]

Therefore the level of concentration in the media industry is quite high (see below). Regarding Europe, for example, the 1992 Commission Green Paper stated: 'The media sector is characterised by a fairly high level of concentration compared with other sectors and by a complex

[4] A thorough market share definition is provided in Chapter 4, where the measurement of media concentration is tackled. However, because market definition is a central aspect of concentration, a preliminary argument laying out why the question of market definition is difficult is necessary at this point.

web of shareholders and media ownership networks centred around a few large national operators (GP, 1992: 27)'. The argument is whether the level of concentration is acceptable, how much more media concentration we can afford, and what effects this phenomenon actually has firstly on company performance and secondly on diversity of opinion and democracy. When focusing on levels of concentration, one has to define the relevant market for which market shares would be calculated. A concept of the market is necessary to make use of measures of concentration. According to Frazer (1992: 13-16), in order to assess whether monopolistic situations exist, one must define both the geographical scope of the market and the product market. Defining relevant geographical and product markets should be the first step in order to consider whether media enterprises can exercise market power, that is, whether they have the ability to control price and output.

The geographical dimension of market definition determines the scope of the market. In other words, it determines whether markets are defined as being local, regional, national, or even international. The issue of the relevant geographic market being examined is particularly important, as the adaptation of either narrow or wide market definitions may lead to totally different results in measuring levels of concentration. Some suppliers may operate nationally offering programming of national interest, so that a broad market definition is needed to cover the whole country in question. The growing internationalisation of broadcasting, in particular, may mean that some relevant markets are larger than individual countries. Competitive suppliers of services may thus operate in multiple geographical markets, so that levels of concentration and the potential of exercising market power should be considered in the context of an even broader market definition. Sometimes, however, the same services may not be available to consumers throughout a country because they are distributed regionally or locally. In such cases, narrower geographic market definitions are needed.

Measures of concentration are meaningless unless they are calculated for markets whose definition is grounded in the extent of the geographical area being covered. For example, local cable systems often carry programming of local interest in a defined geographical area. This programming is not readily available to people living in other parts of the country in question. Measures on national concentration of ownership of cable systems must thus be drawn carefully, taking into account that cable systems in different localities are not available to all consumers. The question on whether they exercise market power and the related issue on whether they can influence public opinion should be discussed in the context of the particular market in where they operate. In some cases though, local cable may well compete in the national market (i.e. as buyers of services) with other delivered broadcast services. As Brenner (1993: 108) puts the matter convincingly, 'data on the national concentration of ownership of cable systems often are cited without discriminating among the issues for which it is or is not relevant. National concentration may be relevant for evaluating whether cable systems exercise market power as buyers of programme services, since this is likely to be a national market, although only if there are not other competing buyers in the same market. On the other hand, national concentration data are unlikely to be relevant for evaluating the ability of cable systems to exercise market power as sellers of services. Geographically the implicit market is too wide'.

Regarding the print industry, there have been various economic studies concerning media concentrations that have adopted either narrow or wide definitions of markets. US mass communication researchers have investigated newspaper concentration for decades assuming that the *city* was the appropriate territory. Nixon (1968) talked about competition as a city phenomenon while Busterna (1988b, 1988c) analysed levels of concentration in cities. Picard (1988) moved away from the traditional way of describing markets and examined daily competition in *metropolitan* areas. After considering the national newspaper market and thirty markets from the largest 100 metropolitan areas, he reached the conclusion that newspaper concentration increased as the geographical size of the market decreased. Lacy and Davenport (1994) examined the degree of concentration and competition in the US newspaper industry based on the *county*. They argued that although daily newspaper markets showed higher concentration and lower competition than other US industries, these markets were less concentrated and had a greater potential for competition in 1983 to 1988 than suggested by other studies using cities as the geographic market.

It is obvious then that using the city as the geographic market yields different descriptions of market structure than using the county as the geographic market. The same could be said about national and regional markets. The Arthur Andersen study (1994), for instance, adopted a national perspective in examining UK media concentration. As we shall see in greater detail in Chapter 4, the study attempted to assess the level of national concentration by using the *time* that people spent watching television, listening to the radio, or reading newspapers. It is easily understood that, under such interpretation, regional channel Carlton's share will be smaller in relation to media with national coverage (i.e. BBC). In fact, the above analysis found that BBC's share in the national market is 44.1% while Carlton's share in the same market is just 6.9%. However, it is meaningless to calculate Carlton's national market share since people living outside the London area do not have access to that channel.

Product markets also have to be defined. In the past, the definition of media product markets was relatively easy, as consumers were exposed to a small range of homogeneous media services that were clearly distinguished from one another. The difference, for example, between a TV service and a cinema film release was obvious. However, new broadcast delivery methods such as cable and satellite as well as the development of new programme services have increased the substitutes available for any particular service and have thus complicated the definition of product markets. The convergence of technologies has added to the confusion. As the distinction between both electronic and non-electronic media and terrestrial broadcast TV and telecommunications services becomes more and more blurred, so does the definition of the relevant product market. It is now extremely difficult to determine which products or services are sufficiently close substitutes to be in the same product market. The fact that different media are seen as substitutes is shown if someone looks at local news which could be found on television, radio and local papers, and at national news which could be found in all these and also in cable TV, regional radio outlets, and so on. The same or similar information can be delivered via print, on-line, teletext or audiotext and there are products and services which combine different communication modes: images, text and audio. What is the definition of the broadcasting market then? If we take as an example the release of a film which can be viewed firstly in a cinema, then as a TV programme and lastly in a home video, then the market for this product should include all these sub-markets. A soap opera, on the other hand, may only be used as a TV programme and therefore the market for this product is television. Thus the market for soap operas and films is defined differently.

Depending on how substitutable consumers consider different services, the proper product market definition could be either narrow or wide. Consumers may (or may not) consider watching a regional TV station and reading newspapers close substitutes. But the media are also supplying advertising messages. There is thus a need to determine the substitutability of the different media advertising vehicles and define advertising markets. The advertising airtime or space sold by broadcast and print media may be sufficiently good substitutes to be in the same product market. Consumers, for instance, may not consider reading newspapers and listening to the radio good substitutes, but advertisers nonetheless may consider advertising in the two media good substitutes. Advertising airtime or space in broadcast and non-broadcast media will be differentiated, but the degree of substitutability and whether they should be considered in the same product market depends to a great extent on institutional arrangements in particular countries. For example, advertising space in newspaper distributed regionally or locally might be in the same product market as some broadcast advertising where the broadcast industry is organised to allow radio or TV broadcasts to sell airtime for local distribution of advertising.

Broadcast and newspaper advertising would be less substitutable if all broadcast advertising must be distributed nationally and newspapers have primarily regional or local distribution (Brenner, 1993: 105-7).

These distinctions suggest that considerations of the print and broadcast market structure need to be based on multiple definitions of markets, with separate considerations of local, regional and national markets, of audience and advertising markets and of potential substitutes. Using principles of market definition helps to see whether concentration increases or decreases in any relevant market. However, defining relevant geographic and product markets is only a first step in analysing the issue of media concentration. An economic analysis of concentration should also consider whether a particular pattern of common ownership or control of media interests reduces the substitutable alternatives available and increases horizontal concentration such that it allows an increased exercise of market power. Vertical ties between programme production and programme networking, between programme networks and video distributors, linkages between print media and programme producers... to name but a few, also have to be discussed. Before discussing the routes towards horizontal, vertical, multisectoral and other types of integration in detail though, it is necessary to look at the barriers that prevent companies from entering the market. Market structure involves barriers to entry and it is necessary to explore them in full before examining the forms of concentration. The possibility of entry depends both on economic factors [usually on the activities of the dominant firm and the potential entrant(s)], and on the influence of public policy (law or regulation), which frequently affects the prospects for entry by new competitors. In cases where firms are able to enter markets easily, there is little probability that incumbent operators will be able to exercise substantial market power.

2.4 BARRIERS TO ENTRY

The barriers against entrants include mainly economies of scale, capital and advertising requirements, distribution networks, key resource inputs, and any other factor which an outsider must have in order to enter a market (Bain, 1956). Shepherd (1970) defined 'entry' as a substantial move into the market, not the mere gaining of a toehold or market niche, which is usually possible in any industry. He also argued that some utilities have high or absolute barriers based on publicly granted franchises. This is the case in television broadcasting. In fact, the TV broadcasting industry is similar to other oligopolistic industries in that, in the absence of high barriers to entry, high profits among existing firms should stimulate new companies to enter the industry. Nevertheless, it is different from oligopolistic manufacturing industries in that, under current regulation by the Federal Communications Commission (in the USA) or by most Member States (in the European Union) new firms cannot enter the market without a license from government bodies. The lack of such a license is an absolute (legal) barrier to entry in any television market.

The policies of the authorities concerning access to the media have principally concerned themselves with the electronic mass media. Governments in the Western world have not regulated access to the newspaper market.[5] Because there are no state limitations anyone can,

[5] Government policies may act either as barriers to entry or as a means to decrease some of the other main sources of barriers to entry. The latter has been the case in the press industry. As argued in the previous chapter, there have been various subsidy forms of government intervention in the sector. Most European countries have support measures for the press, with Sweden being the most quotable

in theory at least, start his/her own title. In practice though it is difficult to do so partly due to the resistance they face from established newspaper firms. Old participants in a given media market have used many ways to make it difficult or even prevent new ones from entering it. The lowering of the price of the product for the consumers, possibly until the danger of competition has blown over is one of them. The price cut war in the UK initiated by Rupert Murdoch is an obvious example. Discounts depending on quantity in terms of distribution, which put old large players in a favourable position compared to (often) small new participants, is another one. Increased marketing efforts used by established newspaper companies at times when new entrants are suspected to willing to launch their businesses, is an additional way of making entry of the latter rather troublesome. Finally, the expansion of old firms into a new segment of the market constitutes an indirect but not of less importance barrier to entry. In respect of the newspaper industry Gustaffson (1993) mentions four types of such segments: a) time segments (morning, noon, afternoon, weekends, or Sunday newspapers); b) frequency segments (low and high-periocidy); c) demographic segments (general versus special papers); and d) geographic segments (local-regional-national-international).

The phenomenon of established media companies providing obstacles for market entry is not unique to the newspaper industry. Regarding the television market, there have been cases of an enterprise buying programme packages or entire libraries or even buying production companies, thereby making it difficult for new channels to acquire

example. Gustaffson (1993) mentioned that the Swedish press policy was developed in the 1970s to design a selective, automatically allocating subsidy system which provided yearly, operational subsidies to newspapers in a weak market position. It also stimulated the establishment of newspapers through an establishment aid. Finally, it promoted co-operation besides joint distribution.

programmes (News Corporation's purchase of 20th Century Fox and Viacom's acquisition of the Hollywood major Paramount Pictures are two examples). Murdoch's satellite channel BSkyB constantly launches new services in addition to acquiring exclusive use of the entire supply of high-quality inputs (mainly sporting events), leaving potential rivals to rely on substitute inputs that are less popular. Thus although public policy (i.e. deregulation) in most parts of the globe helped encourage the growth of private TV, broadcast companies have used their existing 'capacity' of distribution facilities or programme expertise to deliver a different type of programming that would be a good substitute for a new service trying to enter the market (Brenner, 1993). Increased salaries for central employees is an additional technique used. In Greece, for example, the two dominant commercial channels *Mega Channel* and *Antenna TV* increased three-fold the salaries of key personnel in mid-1992, at the time that new channels were suspected to start broadcasting. Regarding the pay-TV sector, with the proliferation of pay-TV channels the accessibility and control of a widespread coding system becomes crucial. New channels will not normally be able to introduce a new encryption system but will have to utilise the existing system which has the greatest market penetration and therefore will be placed in a disadvantageous position. Regarding all media, the buying up of potential competitors and the high establishment costs (which are often kept high by existing participants) are two additional barriers to entry.

In fact, the most significant barriers to entry in the media industry are the cost barriers. Capital requirements that are needed to cover start-up losses are obviously difficult to overcome. Veljanovski (1990) regarded the launches of two newspapers (*The Independent* and *Today*) in

Britain in the 1980s as a proof of the fact that there were no longer any barriers to entry in the press industry. At the time his book was published in 1990, it was believed that the introduction of the new technology could change the entry prospects for the press industry due to lower production costs.[6] In fact, the launches of the two titles could be attributed to the advertising boom of the 1980s which led to the prosperity of the newspaper industry (Curran and Seaton, 1991; Negrine, 1994b; Sparks, 1995). The prediction that the technical revolution would remove barriers to enter the mass publishing did not come true. The change of the production technology has led to an increase in the number of pages, to bigger newspapers, to multi-sectoral papers and to the colour supplements added. Therefore, the new computerised production has not led to a significant increase in the number of titles but to the expansion of existing ones. It has also led to the increase of concentration of newspaper ownership. *Today,* owned initially by Eddie Shah, faced financial problems and sold to Murdoch's News International. It finally ceased publication in November 1995. The other new entrant, *The Independent,* set up by a group of prominent journalists with the backing of merchant banks, has only survived as part of the much larger and long-established Mirror Group (Sparks, 1995). As stated by Murdock (1990a), as paper production became more sophisticated both technologically and operationally, rising costs increasingly restricted entry to major markets and drove smaller titles out of business. Kopper (1983), after reviewing twenty attempts and nineteen failures to start up new regional or local

[6] The argument ran that entry costs into the market had been artificially inflated by the organised strength of the manual printing unions, who had insisted on high manning levels and high pay. Eddy Shah thus embarked upon a new project of launching a completely computerised national daily, *Today*, in Docklands, and Rupert Murdoch built a new printing plant in Wapping, East London. The shift to new technology was accompanied by an assault on the unions, mounted by management and assisted by journalists. This assault succeeded in breaking the unions and replacing large numbers of well-paid workers by smaller numbers of much more poorly paid workers (Curran and Seaton, 1991; Garnham, 1991; Negrine, 1994b; Sparks, 1995).

newspapers in Germany in the early-1980s, concluded that market entry is generally impossible. Rather, the practical circumstances of the press industry- particularly the newspapers' dependence on advertising income[7]- lead to the situation that, in the long run, only one newspaper can survive in a given market.

In addition to cost barriers Porter (1980) cited five major sources of barriers to entry in the newspaper industry: a) economies of scale. These economies mean that there are declines in unit costs as the absolute volume per period increases. Baden Fuller (1979) stated that economies of scale create barriers to entry when the minimum efficient plant size pertaining to the industry is large compared with the industry's output. Scale economies could be present in purchasing of newsprint, printing, distribution of print copies, selling of subscriptions and utilisation of home delivery systems; b) product differentiation. These differences are seen in established papers which have brand identification (e.g. with political parties) and customer loyalties, which must be overcome by an entrant; c) switching costs. This barrier involves costs of changing from one product to another. Readers (and advertisers, to a lesser extent) are used to existing papers and are not very interested in new ones. Gustaffson (1993) calls this situation 'inertia of the market'. However, advertising here would be a process of investing in consumer loyalty; d) access to distribution channels. In newspaper business, this involves the ease of access to news-stands and

[7] The fact that advertising raises entry barriers was illustrated by Shepherd (1979). He argued that to enter a market of advertised goods, a new entrant must meet 'penetration costs' - gaining a larger market share requires sharply rising advertising efforts. Shepherd argued that 'advertising intensity' is shown by advertising expenses as a percentage of total revenue. Within an industry, advertising intensity declines as market share rises (the dominant firm spreads the cost over a large volume) whereas among industries, advertising intensity is related positively with concentration (higher concentration causes grater sales effort and vice-versa). However, Shepherd also pointed out that advertising may not increase market power since it can be a powerful device by which new or small firms succeed. Thus advertising may offset barriers effect as well.

to home delivery systems; and e) advantages independent of scale. Porter includes in this source of barriers a number of advantages of already established firms. An example in Britain was the *Financial Times'* effort (unsuccessful though) to prevent the *Evening Standard* from introducing a pink column, a central characteristic of its own.

2.5 TYPES OF OWNERSHIP PATTERNS

In order to understand the processes of media concentration (and its relation to the free flow of information) we have to look at the processes that are used by media companies to create and strengthen their position in the market. A discussion of the procedures that firms use to concentrate or diversify their media activity is essential. These procedures can be identified as mergers, acquisitions, launching of other media and dealings with other media companies. Media concentration thus may appear in different forms which need to be defined. The exploration of the different growth strategies used by companies will help us understand how they influence the market. Horizontal and vertical elements of market share together with the trend towards conglomeration can have an impact on market structure because they affect the performance of corporations and the functioning of the market-place. Close analysis should be carried out to assess whether a particular pattern of common ownership reduces the substitutes available and increases concentration that may lead to a dominant position.

According to the Council of Europe, a company is considered to be in a dominant position *'at the moment when it has the possibility to behave independently on the relevant market in a way that gives it an* *opportunity to avoid rendering itself accountable to competitors, buyers or suppliers. This possibility could result from either the market shares of one undertaking, or from the market share of this undertaking linked closely to the possibility of controlling technical know-how, raw materials, or capital. This dominant position enables this undertaking either to fix prices, or to control a significant part of the production or the distribution of the relevant products'* (Council of Europe [CoE], 3rd European Ministerial Conference on Mass Media Policy, 1991: 10). Dominant position thus exists where one firm is in a position to use its dominant market power to minimise competition. Nevertheless, dominant position is not the same as concentration. Concentration may measure the general amount of competition in a particular market, but that does not necessarily mean that there is a dominant position in that market. There might be a highly concentrated market according to some concentration ratio (where, for example, only three firms are in a market, this market is normally considered as concentrated), without any firm enjoying a dominant position. This distinction is of paramount importance, since the various types of ownership patterns that will be examined below may result in an undesirably concentrated market, but they may not result in a dominant position.

2.5.1 Horizontal Concentration Issues

Horizontal integration is a situation in which an undertaking or group of undertakings control, at executive level, several production units of one only activity (a group controlling several TV channels, or several titles, or advertising sales). Horizontal integration has often been observed in the press industry. It enables a press group, by controlling different titles, to achieve economies of scale by combining previously separate operations: operations concerning advertising sales; publishing editorial segments common to different titles such as TV supplements, games pages, fashion pages; operations concerning printing, distribution, promotion (Compaine, 1982; CoE, 3rd European Ministerial Conference on Mass Media Policy, 1991). Horizontal integration takes place either as a result of a merger (the combination of two firms into one with the one firm absorbing the other), or through 'natural' expansion of firm activity. Horizontally integrated companies may own properties either in geographically discrete areas or directed to different audiences. The second case would be a company that publishes magazines for sports, for decoration and for mothers.

In the United States, mergers of newspapers located in the same city provide an example of horizontal integration. The US press industry is indeed highly concentrated. The number of chain-owned daily newspapers has risen dramatically over the twentieth century, accounting in 1992 for four-fifths of the daily newspaper circulation (Presstime, 1992). Press concentration causes considerations of economic efficiency and performance of production economies associated with large firms and of the degree of competition in the relevant market. But are there production economies associated with chain ownership? Are chains able to disseminate features, national news items, or advertising copy to individual firms at lower cost? The literature suggests various reasons for the trend towards newspaper chains. Many argued that there exist significant scale economies in the production of circulation and space. Ross (1970) stated that the absence of face-to-face competition in all but a few cities is most likely the consequence of scale economies in the production of circulation, news and advertising. Blankenburg (1983) found that newspaper chains possess greater managerial ability which makes them more profitable. Compaine (1982) argued that chains are more capable of extracting greater profits from newspapers. Dertouzos and Trautman (1990) found that the tax system stimulates chain growth.[8]

Chains are considered to be better able than independents to exploit their market power in order to charge higher advertising prices. The Antitrust Division of the US Justice Department has charged that chains have used predatory pricing financed by cross-subsidisation to drive competing newspapers out of business in some markets. Newspaper chains are thus a subject of concern for economic reasons. The loss of competition that may be brought about by increases in chain newspaper ownership may be avoidable by enforcing anti-trust laws. Busterna (1989) pointed out that economic analysis and the reliance on some of the anti-trust case law[9] suggest several options available to policy-makers that could make the newspaper industry more competitive and reduce the abuse of market power that chains may practice. Busterna argued that a possible solution to the problem would be the disintegration of the daily newspaper industry. He also noted that, even without this action taking place, policy makers can prevent monopoly pricing and profits by rate regulation of advertising and subscription prices.

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8 Dertouzos and Trautman's paper specified a five equation model of newspaper operations and estimated the model with data drawn from a sample of 129 newspaper firms. On the cost side, they confirmed that there are significant scale economics in the production of circulation and news. However, they did not find any evidence that chain newspapers can produce output more efficiently than independents, all things equal. According to them, economies associated with chain ownership fail to explain the growth of newspaper chains. What does explain this trend are the tax advantages associated with investing earnings in other paper properties. On the demand side, they found that newspapers located in contiguous geographic markets appear to have an important competitive effect on the demand for circulation (see also Dertouzos and Thorpe, 1982).

9 For a thorough description of how anti-trust laws have been utilised to deal with certain newspaper chain activities in the past three decades see Busterna, 1989: 6-10).

However, a close inspection of the nature of market structure and market power is a prerequisite in order to find the appropriate way to deal with horizontal media concentration issues. It should not be forgotten that newspaper firms compete in distinct but interrelated markets for advertising and circulation with other media (i.e. local radio, television stations, etc.). Once again it is clear that in examining company market power careful consideration should be taken as to whether the medium in question supplies the same relevant geographic and product market as others. The existence of close substitutes in a defined geographical market usually prevents concentration and constrains the formation of dominant positions.

A case recently considered by the European Commission provides an example of a competitive assessment and reveals the role of regulation in tackling horizontal concentration patterns. In 1994, News International plc, a UK based firm controlled by News Corporation Limited, acquired a 49.9% stake in Vox, a German general interest TV channel, in which the German based Bertelsmann Group already owned 24.9%. The Commission decided to allow the concentration on the grounds that it would not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it (Commission Decision of 6 September 1994, Case No IV/M.489). Regarding the relevant product market, the operation concerned the market for advertising in TV broadcasting, and more specifically, the segment of that for free access TV and for film rights. Bertelsmann had already been in the market for free-access TV through its stake in RTL (37.1% held by UFA in which Bertelsmann had 50% stake), RTL2 (7.8% held by UFA) and by the 24.9% stake in Vox. News International was only entering the

German free access TV market through its purchase of the stake in Vox. So the Commission decided that the position of Bertelsmann in the joint venture with regard to its interests in Vox and other TV channels does not change as a result of the proposed concentration. But News International had already been present in the German pay-TV market through Selco (a joint venture with Pro 7). However, the Commission decided that free access TV and pay-TV represent separate markets.[10] Although some substitutability exists between free access TV and pay-TV, since the value of the latter depends directly on the alternative viewing possibilities, nevertheless, the case did not, in the Commission's view, raise competition concerns even in the narrowest possible market.

Concerning the market for film rights, both Bertelsmann and News Corporation (through Twentieth Century Fox) had operations in film production and the trading of film rights in Germany. Bertelsmann was active primarily in the field of TV sports rights and its total market share for all rights was less than 10% at that time. News Corporation also had a market share for foreign language film and TV programming on the German market of less than 10%. Given that Vox's licence required it to be an information and entertainment channel and could not purchase significant amounts of sports programming, its low market share on the German free access TV market and the existence of other considerably more powerful players on the German market for film rights including the Kirch Group, the Commission concluded that it is unlikely that there is a risk of co-

[10] In the Commission's view, free access TV should be regarded as distinct from pay-TV for two main reasons. First, free access television is financed by advertising revenue and/or by other means (i.e. TV licence fee), depending mostly on whether the channel in question is state-owned or a private commercial one. Pay-TV is primarily financed by subscription fees. Secondly, free access TV offers a different programme mix in order to meet the requirements of a target audience. This can include live coverage of sport events or first television screenings of recent films.

ordination between News International and Bertelsmann through Vox. Regarding the relevant geographic market, the Commission noted that the TV broadcasting market is undergoing a strong process of development and geographical expansion due mainly to the growing importance of satellite TV. It also noted that the geographic reference market for TV broadcasting is influenced and determined primarily by the existence of language and cultural barriers, and therefore TV broadcasting markets remain mainly national or regional. Since the operation in question did not raise serious doubts as to the compatibility with the common market, the question of the precise relevant geographic market was left open by the Commission.

Regarding the measurement of the magnitudes, the Commission decided to measure market share both by advertising revenue and by audience figures. At the time of the scheme, Vox had a market share of 2.5% of the advertising turnover of all general interest TV channels. This compared with market shares of 35% for RTL, 27% for SAT1, 9% for ARD and 7% for ZDF. RTL2, in which Bertelsmann also had a stake, had a share of 1%. These figures were similar whether or not agency commissions were included. Regarding audience market shares, Vox had a market share of 1.8% in 1993. Further market share figures for the first half of 1994 suggested that Vox's viewing figures had remained under 2%. According to the 1993 figures, Vox was the ninth largest free access TV station in Germany. ZDF had 17.8%, RTL and RTL2 (in which Bertelsmann had a stake) 17.5% and 3.3% respectively, ARD 16.8% and SAT1 14.7%. News International had no presence on the German free access TV market. As a consequence, the acquisition of Vox would not create a dominant position exercised by this firm. Bertelsmann already had a stake in Vox, so there was no change to its market position. The Commission concluded that even given the financial strength of News International and the possibility for Vox to improve its market position following the completion of the operation, the market figures and the number of other channels in the free access TV market prevent the proposed concentration from creating or strengthening a dominant position on the German market for advertising in television broadcasting.

2.5.2 Vertical Concentration Issues

Vertical integration is the extension of the functional boundaries of a company. Vertically integrated entities are mainly large firms which have united several stages of the production and distribution processes under common ownership.[11] Vertical integration may intervene 'upstream', either to reduce costs (control of the paper-making and printing industry by publishers) or to ensure priority in access to programmes (trend towards the control of audio-visual production by TV broadcasters), or 'downstream' (integration of advertising sales agencies by press groups or broadcasters). Many broadcasting corporations such as the British Broadcasting Corporation (BBC) produce a large amount of their programming and form vertical relationships with independent producers, whereas others such as the Greek public broadcaster ERT or the Italian RAI also own local transmitting stations. Ownership links between the four big networks, programme producers and cable operators (multiple system operators) have been observed in the United States by Bagdikian (1992). The established relationship between networks and producers of new

[11] Blois (1972) and Auerbach (1988) used the term 'quasi-integration' to describe the situation where there is integration between firms which are not under common ownership.

programming in particular, often lasts from an early stage of programme production to final delivery and often harms rivals. When a company acquires exclusive use of the entire supply of high quality inputs, it forces competitors to rely on substitutes that may not be considered popular by consumers. Examples might include exclusive rights to tested popular programming, such as motion pictures and sporting events.[12]

Vertical integration can thus enable a firm to gain monopolistic advantages through the creation of a barrier to entry. However, the vertically integrated organisation can also increase or promote economic efficiency (Chandler, 1977; Auerbach, 1988; Brenner, 1993). Vertical integration of programme production (and/or distribution) and programme networking often enable the firm to exercise direct control of upstream and downstream subsidiaries. Patterns of vertical integration can also lead to increased market power. The broadcasting entity with a certain degree of market power can more completely exploit that power by using vertical integration to control production or distribution. For instance, a programme network might exploit its market power more effectively by controlling the ability of the video

[12] Rupert Murdoch's empire has cornered the television coverage of many major sporting events and has thus restricted the amount of similar programming shown by others. BSkyB, 40% of which is owned by Murdoch, has established the following major contracts. Football: £304m for five years of FA Premiership (with BBC); Rugby League: £87m for five years of Super League; Boxing: two-year with Frank Warren stable (Bruno, Benn, Hamed), possibly worth £50m if Tyson included; Golf: Ryder Cup and ten European PGA events; and Rugby Union: £7m for three-year share of domestic and Five Nations' highlights. The American Fox TV, 100% owned by Murdoch, has made two major contracts. American Football: £1bn over four years coverage of the National Conference of the NFL; Ice Hockey: £96m for five years of NHL. The German Vox, 49.9% of which is owned by Murdoch, has acquired the Americal Football for World League for £45,000. The Australian Channel Seven, in which Murdoch holds 15%, has made the following three main contracts. Olympics: £46.1m for Atlanta 1996 and Sydney 2000; Australian Rules Football: £39.2m for seven years for ARFL; and Rugby Union: £7.5m for five years of Super Ten, domestic rugby and home tests. Finally, Star TV (63.6% owned by Murdoch) has established two major sport contracts. Chinese Soccer: £18.75m for ten years, not exclusive in China; and Badminton: £12.5m for ten years of all international competitions (The Guardian, 13-06-1995: 22). So by acquiring exclusive use of major sporting events by vertical contracts, Murdoch's empire has excluded rivals from a sufficient quantity of high quality input.

distributor to substitute other networks as inputs, or might price discriminate more effectively by gaining control of downstream pricing of other video services. According to Brenner (1993: 123-51), vertical ties cause a concern that includes the possibility that unaffiliated programme networks will be denied access to video distribution; that independent producers will be denied the ability to sell their programming; that increased barriers to entry will result from backward integration into networking (by video distributors) or into programme production (by networks); that unintegrated video distributors will be foreclosed from purchasing integrated programme networks; and that the purchase by networks of exclusive rights to blocks of programming may increase entry barriers into networking.

The underlying reason for such concerns is that the vertical relationship will result in exclusion that may harm competition and may even increase or exploit market power. Of course, the question of whether or not an integrated company is able to enjoy increased market power involves the above described competitive analysis of a market. As mentioned elsewhere, the number of competitors (networks or distributors) in the same market, the ability of new suppliers to enter, and the ability of competitors to carry similar (close substitutable) programming, all have to be taken into account in analysing vertical relationships.[13] However, it is difficult to measure vertical integration and therefore the market power that it possibly exercises. Shepherd (1979) argued that one method would be to count stages of production;

[13] In the above mentioned Vox case examined by the Commission, both News Corporation and, to a limited extent, Bertelsmann had film production and trading activities. As to the purchase of film rights by Vox from News International and its affiliates (which would include News Corporation's subsidiary Twentieth Century Fox), it is true that the Fox film and programme library is an important source of programmes for TV channels. However, many other sources existed both for foreign (in the case of Fox mainly English) and German language programmes. Therefore, there was no foreclosure of the market for programmes through the proposed operation (Commission Decision of 6 September 1994 No IV/M.489).

the greater the number of stages embraced, the greater the integration. Defining stages though is a matter of judgement and debate simply because a 'stage' can include several individual steps. Another method proposed by Shepherd (1979) and Auerbach (1988) is to take the ratio of a firm's value-added/sales integration. An integrated producer adds value by processing at many stages so that the ratio would be high. There are occasions though where some one-stage industries have high value-added while others have many stages, each adding little value. Thus there is no perfect measure of vertical integration and no official indexes have been published.

2.5.3 Diversification Relationships

Diversification is the move of a business into other areas of businesses. It can be product extension (adding a product to an existing product line) or geographical extension and normally involves operations concerning different product markets. The Marris and Mueller's (1980) approach found the root of diversification in the managerialist imperative to grow, even if necessary beyond the constraints of traditional markets. Diversification was supported by a particular management theory, that was called 'portfolio theory' (Smith and Schreiner, 1969), which assumed that it was desirable for businesses either to diversify across a national market or have investments across a range of different national markets both in terms of 'relative maturity' and in terms of investing in several markets in case home market was adversely affected. The benefits of diversified entities are threefold: firstly, allocation of capital (the managers of a diversified firm could allocate capital among the various branches); secondly, the transfer of technology; and thirdly, the pooling of risks (combined risks are usually lower). Probably the most commonly explanation of diversification is that it is a form of risk aversion - a company does not 'put all its eggs in one basket' (Auerbach, 1988: 229-31).

In this respect, there is a confusion over the terms of diversification and vertical integration. This is due to the fact that diversification, like vertical integration, is now a common business practice and thus some of the trends related to diversification are inseparable from those of vertical integration. It might be difficult in particular cases to say whether a business strategy is diversification or vertical integration. In principle though the two processes are distinguishable, since they are driven by a different management logic. Diversification means the entry into new different markets which are not likely to be infected by a particular economic trend that affects the market therein (the market may have reached saturation, for example). On the contrary, vertical integration is about integrating a market. To that extent, vertical integration and diversification are quite different concepts and different strategies. In addition, unlike vertical integration, the measurement of diversification has no conceptual difficulties (for diversification measures see Auerbach, 1988: 231-33).

Diversification can be conglomeration in cases where the trend towards diversification does not come about through 'natural' expansion of firm activity, but through a merger. Conglomerate mergers are 'second best' solutions by acquiring companies mainly because there are no 'market power' advantages by new acquisition. Many acquisitions of this kind took place either because a leading firm felt that the market was 'saturated' with its product or because its market was 'mature'. Auerbach (1988) pointed out that nowadays companies tend to focus on what they do best. The American ITT, for example, already multinational giant in telecommunications in the mid-1960s was taken on by Harold Gennen. The plan proved to be unsuccessful so that in recent years, ITT tries to de-conglomerate by attempting to re-enter telecommunications, an action financed by selling off of the assets not related to electronics.

In the mass media field, diversification can produce industrial conglomerates (for instance, an oil company that goes into the media) or service conglomerates (where a sector such as financing or retailing moves into the media) (Murdock, 1990a). However, multi-media integration is the commonest form of diversified relationships in recent years. Multi-media integration is a situation where the same company invests in different sectors of the media industry. During the 1980s in Europe, for example, the phenomenon of the same firm investing in different sectors of the communication and cultural industries, led to the establishment of multi-media groups active on several markets (press, radio, television, cinema, records), along the same lines as already existed in the United States and, to a lesser extent, in Japan (IDATE, The World Television and Film Market, 1994). The trend towards multi-media diversification may be explained by different factors: developing expertise; preserving positions in the advertising market; promoting the same product developed in different media; investing in a market segment considered to be profitable; or even simply for prestige purposes (see below).

2.5.4 Multinational Relationships

The multinational expansion has been motivated by the same forces which permitted, and the same motives which impelled the development of giant, integrated and then highly diversified companies. The expansion of 'business horizon' have forced them to examine possibilities overseas. The search for economies of scale in operations such as the sale of advertising slots, the production or purchase of programmes, R&D (research and development) and the possibility of market segmentation have been some of the driving forces. Multinational integration in the member States of the European Union may also be explained by referring to the completion of the Single Market. Companies have sought to acquire stronger positions so as to be able to face up to competition at the level of the European market. In many cases, international expansion took the form of exports; however, with the increasing flexibility and sophistication of the giant firm overseas production came to be seen as a viable alternative to exporting.[14] Over time we expect to observe the expansion and diffusion of managerial technique and 'culture' to host company businesses and others who were formerly limited to production within national or even regional boundaries.

2.5.5 Co-operation Agreements

Finally, there is a trend towards co-operation agreements. These are agreements between distinct enterprises which intend to improve their

[14] Globalisation via horizontal expansion occurs when a company serves at least two different foreign markets through either FDI (foreign direct investment) - this refers to the ownership of a company in a foreign market and includes the control of assets, or exports (i.e. international trade) and sells the same product in each market. Globalisation via vertical expansion occurs when a firm is engaged in successive stages of the production chain through either FDI or long-term contracts, when one or more of those stages are located in different countries (US Department of Commerce, 1993).

market positions. The companies involved in these kind of agreements do not lose legal control but they agree to exert their power of decision separately for their common benefit. The 1994 global alliance between the British Broadcasting Corporation and Pearson to launch satellite delivered channels throughout the world is an obvious example. Co-operation agreements though, as all the other forms of concentration described above, may have anti-competitive implications and even lead to dominant positions. This was the case of 'Media Services', a 1994 technological joint venture, in which the German companies Bertelsmann, Kirch Group and Deutsche Telekom were involved. The partners intended to develop the infrastructure for digital television in Germany, but the deal was found to be anti-competitive by the European Commission. Commission Decision of 9 November 1994 (IV/M.469, OJ No L 364) declared that the joint venture would have created dominant positions on the markets for administrative and technical services, pay-TV and cable networks should the venture had gone ahead.[15]

2.6 MOTIVES AND EFFECTS OF ECONOMIC CONCENTRATION

It is necessary to have a closer look at the motives and the effects of the various forms of economic concentration in order to fully comprehend these growth procedures. This will help us to apply them in the media sector in the next section of this chapter. The first motive is the gaining of straight market power and profits. Indeed, if the resulting company has more market power, then it can achieve higher profitability.

[15] See next Chapter for an account of the Commission's Decisions concerning media concentrations in the Internal Market.

Horizontal mergers raise market power, for by definition they eliminate direct competition between two or more firms. Vertical mergers tie together firms in the chain of production but it is open to question whether they raise market power. Adelman' hypothesis in 1949 assumed that vertical integration does not affect competition and thus does not contribute to market power. Shepherd (1979) however, displaced that hypothesis on the grounds that markets are not pure and frictionless with perfect certainty and free entry as that hypothesis assumed. The answer therefore depends on the degree of competition in capital markets, on the role of entry barriers, on the extent of uncertainty and market imperfections and on firm behaviours.

A second motive is the gaining of economies of scale. These can be divided into two categories: pecuniary economies and technical economies. The former means that a merged firm may be able to enforce lower prices for the inputs it buys. Tax laws and accounting rules may also raise the profitability of mergers. In the latter case, horizontal mergers are mostly associated with the monopolistic advantages gained by creating large companies. On the contrary, vertical integration is associated with the increases in efficiency achieved relative to existing firms. Williamson (1971) argued that the advantages of integration are not that technological (flow process) economies are unavailable to non-integrated enterprises, but that integration harmonises interests (or reconciles differences) and permits an efficient (adoptive, sequential) decision process to be utilised. The problem is thus one of control and of conflict of interests between actors rather than a purely technological one. In fact, there have been a number of arguments against vertical integration. Firstly, it is thought that in a growing economy one expects progressively greater specialisation and differentiation (vertical disintegration) to take place at all levels (Stigler, 1951). Secondly, there is the widespread argument that moving into a new sphere of activity brings with it many of the managerial and productive difficulties associated with vertical integration.[16] Stigler (1951) argued that a 'young' industry might tend towards a vertically integrated structure (since it cannot afford specialisation) and then, as the industry grows, disintegration is likely to take place.

A third class of economies may arise from conglomerate mergers: a) the whole firm may be stabilised by combining disparate activities; b) financial guidance and flows may be superior in diversified firms; and c) 'synergy' may result from interaction among differing technology and management within a conglomerate. These economies however, can be achieved not only by mergers but also by internal growth (a firm invests to create new capacity instead of buying an existing company) and by long-term contracts among firms (vertical economies, in particular, can be realised through 20 or 30-year supply contracts thereby creating security of supplies). Shepherd (1979) mentioned three different techniques for measuring scale economies. The first divides cross-section data on company size and average cost (average costs though are hard to measure). The second involves managerial estimates of the 'optimum' scale of new plants and of possible economies of multiplant operations. The third regards estimates for

[16] However, as Auerbach (1988) illustrated, the US computing company IBM is a typical example of a vertically integrated enterprise that has been associated with managerial and productive flexibility. For IBM, full integration has extended the possibilities for firm development and greatly added to its flexibility. From the very beginning, the IB-360 was a vertically integrated conception both in terms of production and marketing: the innovatory SLT (Solid Logic Technology) components were devised and produced by IBM, as well as other parts of the computer. The final device not only was marketed by IBM at all stages but its genesis and production had at all stages taken place in the context of the marketing strategy which governed it. Another example of a firm at the highest levels of integration and managerial sophistication was the US AT&T before the break-up.

hundreds of markets in all sectors. If firms of size 'x' are surviving (or increasing in number) this proves their efficiency in all essential activities - production and distribution activity, location, research, and so on.

Other motives for mergers and acquisitions are the desire to build an empire for prestige purposes (not a business-led motivation) and the 'failing firm' argument. The latter means that although troubles within a company may be solved by inside changes (stockholder action or take-over), when more serious problems are causing 'failure', then the firm may be salvaged by merger with a healthy firm. This was the case of Vox, a general interest free access TV channel broadcasting in Germany, owned by Bertelsmann (24.9%) and a number of other small shareholders. It had been experiencing financial difficulties since its inception (1991) and thus required a substantial capital injection to enable it to continue broadcasting. News International plc, a UK based company controlled by News Corporation Limited, and Canal+, a French pay-TV channel, acquired in 1994 a stake of 49.9% and 24.9% respectively and enabled the channel to continue operating.

2.7 LEVEL, MOTIVES AND EFFECTS OF MEDIA CONCENTRATION IN THE WESTERN WORLD

Merger and acquisition activity increased significantly in the mid-1980s in both the United States and Europe. In the OECD 1988 Report on Mergers and Competition Policy, it was stated that the proportion of international mergers (non-US firms acquiring US firms and vice-versa) in 1985 was 11.6 per cent by number and 13.9 per cent by value of transactions. In the 1985-86 period, the number of all types of operations rose sharply to 561 (compared with 480 in 1984-85) and international operations as well as those between the European Union countries accounted respectively for 18 and 21 per cent of this total. When considering only international and intra-Community mergers and acquisitions of majority holdings, they accounted for more than a third of all operations of this type. Fairburn and Way (1989), looking at the history of merger activity in the United Kingdom observed four merger booms. The first one occurred at the turn of the century mostly in the textile industries and had only limited effect. The second merger boom in the 1920s had a major impact on most sectors of the manufacturing industry since it promoted rationalisation of the industry. In the late 1960s, aggregate concentration and concentration in most industries increased again after the 1930s world depression[17]. The firms' motivations for attaining large scale in that period were both the achievement of economies of scale and the reduction of costs. Finally, the recent merger wave in 1985-86 was accompanied with a concern of securing effective competition.

In an era of intense change, it can hardly be surprising that the media industry has been dominated with questions of concentration, ownership and control. The concentration in the communications sector is little more than the adaptation of this sector to the general concentration dynamic in the economy. Murdock and Golding (1978) have observed the basic shifts of the UK media in the mid-1970s: a long-term trend towards concentration and a more recent increase in diversification which has produced conglomerates with significant

[17] Auerbach (1988) mentioned that the overall effect of mergers on the growth of large companies was substantial: in 1960, in both the USA and the UK it accounted for half the rise in aggregate concentration. However, he also pointed out that, although mergers had a major impact on the growth of post-war aggregate concentration in both the USA and the UK, their relationship is complex. The rises in concentration in both countries were not coincident with great merger waves.

stakes in several sectors of the communications industry. As stated by Negrine and Papathanassopoulos (1990) these shifts have taken on an international flavour. The new media tycoons have not restricted their activities to any single country and they have developed their forces across several countries or even continents and also across different media sectors. In the late 1980s, there have been a series of major mergers and acquisitions in the communications industries around the world: the Japanese firm Sony's acquisition of the CBS's record division; the General Electric's take-over of the US TV network NBC; the German firm Bertlesman's purchase of the Doubleday book company and RCA records; Maxwell's take-over of the New York publisher Macmillan; Murdoch's acquisition of the Twentieth Century Fox film interests and others... to name but a few.

These trends continued in the 1990s. In August 1995 the other two US TV networks ABC and CBS were acquired by Walt Disney Co and the industrial group Westinghouse Electric Corporation respectively. In September 1995 Time Warner Inc and Turner Broadcasting System Inc (owner of CNN) were merged, with the resulting company being the largest in the world media sector with revenues of more than 20 billion dollars at the end of 1995. Similar practices are observed in the telecommunications sector. The American AT&T, in collaboration with 14 other telecommunications organisations (among them the Japanese KDD, the Dutch KPN, the Spanish Telefonica and the Swiss PTT) have created a 'telecommunications federation' called 'World Partners'. British Telecom has contracted alliances with telecommunications organisations operating in Japan, India, Norway, Finland and Denmark. Deutsche Telecom and France Telecom have created the joint venture 'Atlas' and by taking a 30% stake in the third largest US long-distance telephony company Sprint are prepared to complete a world-wide association named 'Phoenix'. According to Screen Digest (January 1994) three kinds of alliances are observed today: alliances primarily concerned with software production and ownership of content; alliances concerned with the business of distribution networks and delivering content; and those concerned with developing or obtaining access to key enabling technologies (see Appendix VII).

Murdock (1990a) pointed out that communications companies have been making efforts to expand their core interests which take several forms: a) growing integration between hardware and software, which has been prompted by a desire to ensure a supply of programming to service the new distribution technologies. Sony, for instance, acquired the CBS record division in the late-1980s which gave it a major stake in the international music industry to add to its already dominant position in the world market for compact disc players through its partnership with Philips, the Dutch electronics group;[18] b) growing interpenetration between the old and the new media market as the major players in established sectors have moved into emerging areas which offer additional opportunities to exploit their resources. Newspaper and journal publishers, for example, have moved into the provision of on-line data services and broadcast networks have branched out into cable programming. Murdoch stated that the rationale behind these moves is the desire for greater 'synergy'[19]

[18] The trend towards integration between hardware and software undertakings is common in the USA (General Electric/NBC, Sony/Columbia, Matshushita/MCA, the role of cable operators in cable programming). However, although increasing, it is still relatively rare in Europe (Philips/Polygram, cable groups in France).

[19] Synergy is 'a net gain in value due to real advantages when heterogeneous entities are conjoined' (Auerbach, 1988: 154). In media corporations, synergy calls for material from one kind of the firm's owned media, such as magazines, to be reused in altered form in its other owned media, like books and TV series. Investors favour synergy because a company's newspapers and magazines can be used to promote the celebrities featured in its other products such as movies and TV series. For Bagdikian (1992) though, this recycling of material trends to increase the already high level of imitativeness in

between the companies' various divisions so that activity in one sector can facilitate activity in another. When the Italian magnate Berlusconi bought the Standa department store chain in July 1988, he immediately announced a programme of cross-promotion whereby his TV stations would carry daily slots featuring the bargains in offer in the stores[20]. Gerson (1993) pointed put that the Time-Warner merger has taken the philosophy of vertical integration to a whole new level in terms of strategic planning at the international level (including books, magazines, movies, cable TV and VCRs)[21]. Murdoch's News Corporation Ltd. also used vertical integration strategy as a basis for launching new businesses. He entered the US market in 1985 with the purchase of seven TV stations from Metromedia, in 1986 he purchased the Twentieth Century Fox and therefore he combined a steady source of programming with ready-made distribution outlets.

There have been a large number of other authors and researchers who commented on the recent concentration trends within the European Union. Locksley (1989) argued that the economic dynamics of

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programming as it puts owners of a single type of medium at a competitive disadvantage. Nevertheless, for Garnham and Porter (1994) so-called cross-media synergy is 'largely a myth circulated in company reports to justify mergers rather than a demonstrable economic reality. There are no significant economies of scale or scope in operating across television, radio and print publishing'. Comanor (1991) also argued that economies of scale are exhausted at a modest level of firm size and that hardly any sufficient gains from mergers could be found.

20 Here it is worth exploring the distinction between conglomerates made earlier on. Murdock (1990) identified three varieties of conglomerate: a) industrial conglomerates (companies that own media facilities but the major operations are centred on the industrial sector); b) service conglomerates (these are centred on service sectors such as financing and retailing). Berlusconi is a typical example of this type of conglomerate; and c) communications conglomerates who are centred on the media and information industries. Examples of this kind of conglomerate are Murdoch and Bertlesman.

21 However, in Garnham and Porter's 1994 paper 'Evidence to the Review of Cross-Media Ownership' it is stated that the Time-Warner merger was 'a creation of the junk bond financed mania of 1980s America and remains deeply indebted'. The same could be said about Sony and Matsushita's entry into films, which have been disastrous. Sony is still struggling to restore Columbia's fortunes, while Matsushita is embroiled in an acrimonious row with the MCA management over the latter's desire to buy back the business. Nevertheless, the convergence of the entertainment industry with new technology has attracted a stream of investors to Hollywood. The misadventures of Sony and Matsushita have done little to dampen the enthusiasm of the other electronics, information technology and telecommunications companies, such as IBM, that are searching for partners in the entertainment business (Financial Times, 15-10-1994: 9).

information industries encourage enterprises in the sector to become vertically integrated, to expand horizontally, thereby raising levels of concentration, and to become involved in adjacent markets. Lohest (1983), in a report to the Council of Europe talked about technical diversification and economic concentration that have come to complement each other through the 'natural laws' of the market. All these trends in Europe could be attributed to two factors: a) to the widespread belief that the European industry must be restructured in order to be able to compete more effectively with the US and Japanese firms; b) to the argument that the European industry ought to be rationalised. The emergence of large, efficient Euro-firms would help to exploit advantages of mass-production strategies. This view is based on the belief that the scale economies are large and that a fragmented Europe prevents European companies from exploiting them. The industry thus becomes increasingly reliant on joint ventures (Papathanassopoulos, 1990).

Gomery (1986) argued that there are two reasons for such processes. Firstly, there is a business desire to take full advantage of the power of integration in terms of reducing the costs of sales and transactions. The vertically integrated corporation sells products to itself so that it does not have to go through bidding procedures. It can also publicise itself. Murdoch, for example, has promoted the Sky's satellite programmes in his own newspapers. Secondly, there is a business desire for attaining market control. A vertically integrated corporation need not worry about being excluded from key markets.

Regarding foreign investment in the media field Gerson (1993) offered a number of explanations for this trend. He argued that some media transnational corporations (TNCs) invest abroad to obtain specific proprietary assets - ownership of talent or specialised expertise. Sony's purchase of CBS and Record Divisions in 1988 and Columbia Pictures in 1989 was supposed to make the company a formidable player in both entertainment and music. Secondly, some TNCs invest abroad in order to enter a foreign market and serve it from that location (foreign market penetration). In fact, as stated by Behrman and Grosse (1990), the decision to invest abroad is dependent upon the profitability of the market, the growth potential and the existing competitive situation. The easiest way of a foreign market entry is the ability to buy an existing media property. This is illustrated by Hachette's strategy to establish a presence in many countries by buying an array of magazines since 1985.

A third reason for media international consolidation is the purpose of creating production and distribution facilities abroad (production and distribution efficiencies). The term 'comparative advantage' is used to describe situations in which a foreign entry manages to produce or service for less cost than that produced locally. The world's leading newspapers *Wall Street Journal* and *The Financial Times* distribute their news via satellite to various international publishing sites where the newspaper then is locally published and distributed. By doing that, they lower the distribution costs. A fourth reason for foreign media investments is the overcoming of regulatory barriers to entry. Since some markets are heavily terrified (i.e. there are regulatory controls on foreign imports), one way to overcome these regulatory barriers to entry is to promote joint partnerships or create foreign subsidiaries. In October 1989, the European Union adopted the 'Television Without Frontiers' Directive which required the reservation of space for

European works on broadcasters (89/552/EEC). In order to offset the potential effects of any proposed European import regulation, many US film and television industries have already begun forming joint partnerships with European media industries. Two examples of this trend are the Capital Cities/ABC's 50 per cent investment in the German television production house Telemunchen and the Viacom International's joint venture with the British Telecom and Mirror Group in order to launch the music channel MTV.

Another reason explaining the tendency towards media internationalisation and diversification is that single media ('mono-media') activity is risky as the competition between media for advertising revenue has become intense (Dyson and Humphreys, 1988). The 1992 EU Green Paper on *Pluralism and Media Concentration in the Internal Market* stated that multimedia developments (which are due most to publishers investing in the audio-visual sector rather than the opposite) are attributable to the value-added which multimedia represents for advertisers and for programme suppliers (COM(92) 480 final). Indeed, the advertising sector has been the subject of two specific phenomena over recent years: a) a trend towards the globalisation of commercial strategies and therefore the advertising of the firms on an international scale; and b) the multiplication and strengthening of the role and influence of intermediaries- the advertising agencies and the media buying houses[22]. Faced with the emergence and subsequent concentration of these intermediaries the media have been forced to group together and become more concentrated. Booz-Allen and Hamilton 1989 report pointed out that

22 Agencies have created media buying companies with the aim of managing the purchase of advertising space at a national and even international level and demanding reductions in advertising prices charged by the media. (The European Institute for the Media, 1993). An example is the buying house Zenith which belongs to the UK-based advertising agency Saatchi & Saatchi.

remaining in one sector only leaves entrepreneurs open to the erosion of their market share by intruders in this sector. In this respect, diversification creates a mass and a degree of strength absent from single media organisations.

2.8 CONCLUSION

The importance of exploring and evaluating media concentration is linked, on the one hand, to economic competition across the several media markets and, on the other, to pluralism and diversity in content with its related impact on the formation of public opinion. In both the United States and Western Europe there is a general consensus that free market competition (i.e. an absence of dominant monopolies) is a prerequisite for democracy. Unbridled competition however, often results in the creation of private monopolies and cartels which would stifle competition in a substantial proportion. Research has to look at the conditions that structure the development of print and broadcasting media systems and to point out and analyse factors that can be used to influence this development. In any case, it is very difficult to develop a coherent policy on mergers and concentration of activity when the measurement of market strength is itself difficult to assess (see chapter 4). The large diversified conglomerate cannot easily be classified under any single category. The question of which markets need to be identified, the level of market share beyond which concentrations become unacceptable (i.e. horizontal concentration) and what types of links between companies might affect the market (i.e. vertical or multi-media integration) are important and must be considered. In addition, we have to consider the measures that the states should take to protect against excessive media concentrations.

Negrine and Papathanassopoulos (1990) suggest that for policy to be coherent, one needs a regulatory body which could operate on carefully drafted regulations and use clear-cut procedures. Such a body would deal with controlling mergers, limiting market shares and prohibiting the establishment of alliances which would constitute an abuse of the system. But which approach should this regulatory body adopt? The economic one which emphasises expansion of markets beyond state borders and the advantages of mass production within large enterprises, or the cultural one which emphasises the necessity of maintaining free access to the media markets for both consumers and new companies and also gives priority to the advantages of plurality and diversification within a media sector? Unless policy-makers come to terms with this dilemma, any proposed concentration policy is doomed to fail.

The next chapter explores the media competition, concentration and merger control policies at European Union level. It advances the argument that the competition and merger control framework does not necessarily result in pluralism and diversity of opinions in the market-place. A media-specific regulatory framework is needed for this purpose. Competition law safeguards (with regard to mergers and uncompetitive behaviour) and media law safeguards (with regard to media pluralism) have different objectives. As the Commission has rightly stated in its 1992 Green Paper, pluralism and competition are different criteria, and the protection of pluralism often needs tighter control than the protection of competition. This makes it necessary to have specific rules on media pluralism even where the general competition rules apply. We therefore welcome the European Commission's initiative to form media-specific rules for safeguarding the above objective.

Chapter 3

Media Competition/ Concentration Policy in the European Union

3.1 INTRODUCTION

In December 1992, the European Commission published its Green Paper *Pluralism and Media Concentration in the Internal Market: an assessment of the need for Community action.*[1] This was the outcome of several requests on behalf of the European Parliament[2] and some of the interests concerned. The purpose of the Green Paper was to assess the need for action at Community level in the light of the disparities between national rules on media ownership and consider potential options. By adopting the Green Paper, the Commission sought to provide a basis for discussion and receive opinions of all interested parties - the European Parliament, competent national authorities, European organisations representing television and radio broadcasters, publishers, journalists, audio-visual creative artists and producers, satellite and cable distributors and advertisers. At the same time, it sought to stress the importance which it attaches to preserving pluralism in the frontier-free area (i.e. the Internal Market). In the Commission's view, the freedoms of the Internal Market cannot be put into practice at the expense of pluralism; instead, their implementation must help to strengthen that market through the opportunities which it gives both to citizens and the media.

Before the publication of the Green Paper, the instrument available for tackling concentrations in the European media field was (and still is until the Green Paper becomes Directive or Regulation) European competition law. Competition policy in general is concerned firstly with preventing agreements between undertakings that reduce the

1 COM (92) 480 final, 23 December 1992.

2 Resolution of 15 February 1990 on Media Takeovers and Mergers, OJ No C 68, 19-03-1990, p137-8; Resolution of 16 September 1992 on Media Concentration and Diversity of Opinions, OJ No C 284, 02-11-1992, p44.

effectiveness of the competitive process, secondly with controlling mergers that increase the probability of exercising undue market power, and thirdly with anti-competitive behaviour that enables companies either to acquire market power or to increase barriers to entry. In most Member States the media are subject to ordinary competition law and/or merger control provisions.[3] Competition law is a major growth area of European regulation. The EC Treaty has two main sections specifically on competition (Articles 85 and 86) and several others that may also be used - Merger Control, State Aids (Article 92) and Dumping (Article 91).

Competition policy rules ensure (or should ensure) that the competitive process is not threatened by either market structure or the conduct of firms. Its application though to the media industry cannot always safeguard other values and objectives such as diversity and freedom of expression. Media policy has encompassed a much wider range of public values and objectives than the efficient functioning of private markets. The media play a central role as a disseminator of information, opinions and culture, and policies are often founded on broad principles governing the circulation of ideas and information that are fundamental values for pluralistic democratic societies. Precisely because of the nature of the media industry, competition policy

[3] In Europe, the merger control provisions display a great deal of variety from country to country (see Appendix VIII). The main differences arise as regards firstly the criteria for defining or examining mergers - size and market share thresholds. Secondly, the standards by which a merger is considered desirable or undesirable (straightforward competition test or wider public interest criteria of which competition is but one, though important, element among others such as trade, employment, environment and regional policy). Thirdly, as regards procedure (judicial or administrative or some combination of the two, prior or post notification, procedure of advance clearance or approval of certain mergers). The 1988 International Mergers and Competition Policy divide the countries worldwide into those which rely entirely on a competition test (Canada, Germany, Japan and the USA) and those which take a broader position requiring a case-by-case assessment of a variety of factors before determining whether a merger is acceptable or not (France, Sweden, the UK and the European Union as a whole). In the UK, for instance, Fairburn and Way (1989) pointed out that policy operates on a two-tier procedure: merger proposals are first selected by the Secretary of State for Trade and Industry and then they are considered against a public interest standard by the Monopolies and Mergers Commission (MCC).

objectives are not enough for preserving other policy objectives. This is not to say that competition policy does not have a role to play in the cultural field. Policies promoting efficient competition may limit concentration of media control and at the same time they may also promote the presentation of diverse points of view. However, the safeguarding of a competitive environment and the promotion of pluralism are different (although sometimes overlapping) objectives. The latter can only be fostered by specific media rules on either content or ownership. The European Commission, through its 1992 Green Paper, recognised the difference between the two objectives and launched an ambitious initiative to regulate media ownership at European Union (EU) level with the aim of preserving pluralism in the market.

Therefore both media ownership rules and competition law (to a lesser extent) are applicable for pluralistic purposes. This chapter is thus divided into five parts. The first tries to evaluate the competition and merger control policies within the EU. An historical background of the European media concentration policy is then presented, followed by an outline of the main points of the Commission's Green Paper. The interested parties' reaction in the context of the first and second consultation rounds is then explored. Finally, an attempt is made to point out the factors opposing the enforcement of an effective European regulation in the field of media concentration.

3.2 COMPETITION POLICY IN THE EUROPEAN UNION

3.2.1 Restrictive Practices and Dominant Abuse

The EU's competition policy framework lies in the Articles 85-94 of the Treaty of Rome. These aim to maintain or increase competition in the Single European Market and ban restrictive practices which distort or prevent competition or lead to a dominant position. Article 85(1) especially, prohibits 'all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, in particular those which: (i) *directly or indirectly fix purchase or selling prices or any other trading conditions;* (ii) *limit or control production, markets, technical development, or investment;* (iii) *share markets or sources of supply;* (iv) *apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;* (v) *make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts'.*[4] By Article 85(2), any such agreements will be automatically void and could not be enforced in national courts. Nevertheless, Article 85 does not necessarily completely prohibit the above described practices because under Article 85(3), agreements which abridge competition can be exempted if (i) they contribute *'to improving the production or distribution of goods or promoting technical or economic progress'.* Typical improvements

[4] Examples of practices which could contravene Article 85(1) include: joint ventures, price cartels, co-production arrangements, discrimination through vertical integration, cross-media ownership, joint purchasing, market sharing and block booking (for more information see Howkins and Foster, 1989: 41-2).

are reduced costs, increased efficiency, the quicker penetration of markets or increased production. Many joint ventures are justified on this basis; (ii) allow consumers a fair share of the resulting benefits: (iii) do not impose conditions not indispensable to (i) and (ii) above: (iv) do not allow undertakings the possibility of eliminating competition in a substantial part of the product market.

Article 86 of the Treaty of Rome provides that *'any abuse by one or more undertakings of a dominant position within the Common Market or in a substantial part of it should be prohibited as incompatible with the Common Market in so far as it may affect trade between Member States'*. Such abuses may have the following chief features: (i) *'directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;* (ii) *limiting production, production or technical development to the prejudice of customers;* (iii) *applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;* and (iv) *making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts'*. In addition, Articles 92-94 forbid subsidies that distort, or threaten to distort, competition and therefore the free operation of the market. Article 92 of the Treaty of Rome, in particular, prohibits any existing state aid that distorts competition by favouring national undertakings.[5]

[5] The Commission ensures that the support measures do not excessively affect interstate trade and that the terms under which a right to State aid is granted, do not discriminate against citizens of other Member States. Making the granting of aid dependent on the nationality of the person asking support, is deemed to be discriminating, as the Greeks experienced in 1988 because of their system of support for their national film industry (Doc. of 21 December 1988 on aid granted by the Greek government to the film industry for the production of Greek films, OJ NoL208, 20-07-1989, p38-41). Under the Maastricht Treaty on European Union, State aid measures to promote culture and heritage conservation are explicitly permitted, provided that such measures do not affect trading conditions and competition

As defined both by Article 90 of the Treaty of Rome and by the Court of Justice, the term 'undertakings' applies to all firms engaged in economic activity and includes both private and public organisations. It thus covers media institutions. The Community's competence to regulate broadcasting, in particular, is in little doubt after the approval in 1989 by the Council of Ministers of the European Community of the Commission's proposed Directive 'Television Without Frontiers'.[6] According to the provisions of the Broadcasting Directive, DG IV (the Director General responsible for competition policy) is able to move against monopolistic situations that restrict competition in the broadcasting field. The Directorate's role has indeed become very important in view of the trends towards consolidation in the broadcasting sector, following the introduction of competition in the sector.[7] A report commissioned by DG IV[8] pointed out that the trends towards vertical and horizontal integration raises levels of concentration in the information industry. The Booz-Allen & Hamilton 1989 report[9] stressed that mergers and acquisitions will dominate the European broadcast and production industries in the 1990s. Lohest, in a report to the Council of Europe,[10] considered technical diversification

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to an extent that is contrary to the common interest. As concerns the press, the Commission permits in general terms State aid, because the majority of press publications are published in different Member States without being in competition with each other (see Van Loon, 1993: 28-9).

6 Council Directive, 89/552/EEC, OJ NoL298, Brussels, 03-10-1989. The TWF Directive harmonises national legislation regarding the free movement of television services. Harmonisation normally means that the Member States can no longer impose further restrictions on the basis of a general interest in the fields harmonised by the directive. However, the directive only aims at a minimum harmonisation, which means that members keep the right to adopt stricter measures for their own nationals as long as these measures are in conformity with primary Community law as laid down in the EEC Treaty (Lange and Van Loon, 1991).

7 Until the last decade, with the exception of Italy and Britain, Member States excluded competition in the audio-visual sector, by granting exclusive rights to (normally) one public entity. Under the EEC Treaty, the Court of Justice accepted this, as long as this was based on non-economic considerations of public interest (Van Loon, 1993).

8 Locksley, G., 'Satellite Broadcasting in Europe and the New Technologies', Commission of the European Communities, Brussels, 1989.

9 Booz-Allen & Hamilton report (by J. Hughes, A. Mierzwa and G. Morgan), 'Strategic Partnerships as a Way Forward in European Broadcasting', London, 1989.

10 Lohest, H., 'The Independence of the Media', Mass Media Files 4, Council of Europe, 1983.

and economic concentration as the reasons for an absence of diversification of broadcasting content. Media competition policy has thus a crucial role to play - to ensure that there are a large number of companies supplying TV programmes, printed material and other sources of information to the public.

3.2.2 Merger Control

Mergers may be a prelude to a restrictive practice or an abuse of a dominant position. Therefore, both Article 85 and Article 86 may be involved. In the absence of a merger regulation, the applicability of these Articles to mergers has arisen in several cases. They were not of much help though because they evaluated concentrations in retrospect, and therefore required the divestiture of a merger that was not in line with Article 86 only if it were found anti-competitive. Until 1989, the Commission had powers to act against anti-competitive mergers and acquisitions only after they have taken effect and a restrictive practice or 'dominant position' is established or strengthened. For many years the Commission has argued that it should have new, pre-emptive powers that would remove the uncertainty of retrospective action for the parties involved. The Commission made a proposal to the Council of Europe for a Regulation on the Control of Concentrations between Undertakings in 1973. The proposal, based on Articles 87 and 235 of the EEC Treaty, has been amended three times but was not acted upon by the Council until 1989. It should be noted that, as new legislation, the Regulation required unanimous Council approval. Following intensive bilateral discussions with the member states and discussions in the Council, a Regulation on the Control of Concentrations between Undertakings was finally adopted by the Council of the European

Economic Community on 21 December 1989 and became effective on 21 September 1990.[11] The Council thus granted power to the Commission to require the pre-notification of mergers having a 'Community dimension'[12] with the possibility that such mergers could be prohibited.

The Council Regulation was intended to complement the Commission's anti-trust powers conferred by Articles 85 and 86 of the Treaty of Rome. The object of the Regulation was to create a new legal instrument *'to permit effective control of all concentrations from the point of view of their effect on the structure of competition in the Community and to be the only instrument applicable to such concentrations'*. Article 3(1) declares that a 'concentration' shall be deemed to arise where (i) two or more previously independent undertakings merge; or (ii) one or more persons already controlling at least one undertaking, or one or more undertakings acquire, whether by purchase of securities or assets, by contract or by any other means, direct or indirect control of the whole or parts of one or more other undertakings. The provisions adopted apply only *'to significant structural changes the impact of which on the market goes beyond the national borders of any one Member State'*. Thus the scope of application is defined according to the geographical area of activity of the undertakings concerned[13] and is limited by quantitative thresholds.

[11] Council Regulation (EEC) No. 4064/89 of 21 December 1989 on the Control of Concentrations Between Undertakings, OJ No. L 395, 30-12-1989.

[12] For the criteria when a merger or acquisition has a 'Community dimension', see Article 1(2) of Council Regulation No. 4064/89.

[13] Council Regulation No. 4064/89 states that *'the geographical reference market shall consist of the area in which the undertakings concerned are involved in the supply of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas. This assessment should take account in particular of the nature and characteristics of the products or services concerned, of the existence of entry barriers or of consumer preferences, of appreciable differences of the undertakings' market shares between neighbouring areas or of substantial price differences'.*

In particular, Article 1(2) states that concentrations may be presumed compatible with the common market if the aggregate world-wide turnover of all the undertakings concerned is less than ECU 5,000 million and the aggregate Community-wide turnover of each of at least two of the undertakings concerned is less than ECU 250 million, or each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.

It is worth noting that, despite these high threshold provisions, multi-media and international mergers are likely to surpass them. Indeed, they have done so as the examples below will reveal. In any case, assessment on the level of concentration on the basis of a one product market in the current multi-media era is difficult. It is almost impossible to measure the market power of big, vertically integrated units operating globally across a range of product markets in which they hold different shares (see Chapter 4). Another grey area is that Commission and Member states have agreed that national authorities should be allowed a second bite after Commission vetting (Papathanassopoulos, 1990: 27-30). Although the object of the Regulation is purely economic (i.e. effective competition), Article 21(3) stipulates that members may protect other values than those pursued by the Regulation. These are public security interests, plurality of the media and prudential rules. Therefore if the Commission decides that a concentration is compatible with EEC law, members could still prohibit that concentration because of other legitimate interests. The Court of Justice would then have to decide on a 'case by case' basis whether restrictions following from such a prohibition are admissible regarding Community law (Lange and Van Loon, 1991: 33).

Thus the Regulation on mergers covers only large mergers which affect competition on the market in question. As a consequence, it has allowed many mergers to proceed simply because they did not meet the high thresholds that the Regulation itself had imposed[14]. The Sky/BSB merger in Britain, for instance, fell outside the scope of the Regulation because each of the undertakings concerned achieved more than two thirds of its aggregate Community-wide turnover within one and the same Member state. That, according to Lange and Van Loon (1991: 40-1), might be the reason for the inclusion of the provision that members can continue to apply their national legislation on the protection of pluralism and freedom of expression in cases where the Commission permits a merger in the media field. Likewise, the application of Community law, in particular Articles 85 and 86 of the Treaty of Rome, cannot cover all situations in which there is a threat to pluralism, notably in the case of multi-media ownership. As indicated above, when investigating cases in the light of Articles 85 and 86 of the EC Treaty, the Commission takes into account the cultural dimension. Its aim is not to frame a policy on culture or to make value judgements in applying the provisions, but rather to assess business practice with due regard to the repercussions they could have on the Community's cultural policy.[15] The overriding principles though are those of fair competition.

This will become evident if one takes a closer look at the various cases that have been examined by the Commission. There have been many cases in which the Merger Task Force (the body which investigates merger practices in Europe) had to assess concentrations in which

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[14] It has been estimated that half of the Gross Domestic Product of the Community arises from industries in which no two firms have an aggregate turnover of ECU 5 billion (Korah, 1990).

[15] See 23rd Report on Competition Policy.

media undertakings were involved[16]. In all those cases but two, the Commission concluded that the notified operations fell within the scope of application of Council Regulation No. 4064/89. In Case IV/M. 410 - KIRCH /RICHEMONT/TELEPIU,[17] for instance, it firstly found that the project had a Community dimension - the undertakings had a combined aggregate worldwide turnover in excess of 5,000 million ECU, a Community-wide turnover of more than 250 million ECU, and they did not achieve more than two thirds of their aggregate Community-wide turnover in one and the same Member State. That the acquisition constituted a concentration within the meaning of Article 3(1) of the Council Regulation, was justified on the grounds that the parties will together have the right at least to veto the principal decisions referring to Telepiu's activities, and therefore they will have joint control of Telepiu. The compatibility with the common market was based on the assumption that the acquisition of joint control of Telepiu will not give rise to co-ordination of the competitive behaviour between the parties, since the TV activities of Richemont (through FilmNet), the Kirch Group and Telepiu are carried out in separate geographical markets. Regarding the relevant product market, and since the operation concerned the market for pay-TV, the conclusion

[16] Case No. IV/M037 - *MATSUSHITA / MCA*, 10-01-1991;
Case No. IV/M110 - *ABC / GENERALE DES EAUX / CANAL+ / W.H. SMITH TV*, 10-09-1991;
Case No. IV/M176 - *SUNRISE TELEVISION*, 13-01-1992;
Case No. IV/M202 - *THORN EMI / VIRGIN MUSIC*, 27-04-1992;
Case No. IV/M410 - *KIRCH / RICHEMONT / TELEPIU*, 02-08-1994;
Case No. IV/M489 - *BERTELSMANN / NEWS INTERNATIONAL / VOX*, 06-09-1994;
Case No. IV/M469 - *MSG MEDIA SERVICE*, 09-11-1994;
Case No. IV/M525 - *VOX (II)*, 21-12-1994;
Press Release IP/95/535 - *SUPER RTL*, 30-05-1995;
Press Release IP/95/526 - *HOLLAND MEDIA GROEP S.A. (HMG) (commission to carry out detailed enquiry in Dutch TV joint venture)*, 24-05-1995.

[17] This concerned the proposed acquisition by Compagnie Financiere Richemont AG (Richemont), a Swiss-based holding company and the Kirch Group, active in film and TV production and broadcasting in Germany, of joint control of Telepiu S.r.I.

reached was that the case did not raise competition concerns because pay-TV represents a separate market.

However, some substitutability exists between pay-TV and free access TV, since the value of the former depends directly on the alternative viewing possibilities. Moreover, pay-TV channels are likely to take away audiences (and therefore revenue) from channels that are free at the point of reception. The decision is also open to criticism because the Kirch Group already had a 34.72% shareholding in Telepiu and a representative that was President of the Board. Although the parties agreed that a member of the Board nominated by Richemont will also be managing director, and thus they will have joint control of Telepiu, Kirch Group's long-standing experience in television activities[18] compared with Richemont which is mainly involved in producing and distributing tobacco products can turn the balance in the decision making process in favour of the former. Anyway, the approval of this particular transaction as well as of all the others allowed was based on economic criteria only. There was no mention or evaluation of whether the schemes would affect wider objectives such as diversity of alternative points of view or choice for the consumers.

Competition policy though might favour pluralism, to the extent that it operates to prevent the erection of greater barriers to entry, or indeed to reduce the existing barriers rendering the market contestable. For example, DG IV's decision to block a pay-TV joint venture in Germany between the Bertelsmann and Kirch groups and the state monopoly Deutsche Telecom was made on economic grounds. The joint venture

[18] In addition to the 34.72% shareholding in Telepiu, the Kirch group had at the time of the transaction interests in two commercial channels and one pay-TV channel in Germany (SAT-1 [43%], DSF [24.5%], Premiere [25%]), and owned a 25% shareholding in the Spanish commercial channel Gestavision Tele Cinco S.A.

under the name of MSG Media Service[19] was declared incompatible with the common market on the grounds that it would create or strengthen dominant positions on the markets for administrative and technical services, pay-TV and cable networks. In this case, the Commission found that the parties to the joint venture would have created or aggravated a dominant position in three markets should the venture had gone ahead. However, it is not difficult to see that the proposed joint venture would have also created a very large player with significant clout and scope for exercising influence in the cultural and political market.[20] The dominant position of the proposed scheme as a supplier of programmes and services (distribution of decoders, administration of consumer base) would have meant that competitors had to overcome significant entry barriers in order to obtain these services. These would have greatly constrained entry, with the potential for an abuse of economic power, but also with damage to pluralism. Although the interested parties invoked technical and economic progress in having the initiative allowed[21], the Commission stated that it is extremely doubtful whether the establishment of a digital infrastructure for pay-TV by MSG will actually contribute in a positive manner to the development of technical and economic progress.

Another proposed TV joint venture under the name of Holland Media Groep S.A. (HMG) between RTL4 S.A., Vereniging Veronica Omroeperganisatie and Endemol Entertainment Holding BV faced Community objection. The Commission decided in May 1995 to

[19] MSG Media Service was a proposed joint venture being set up by Bertelsmann AG (the leading German media group), Deutsche Bundespost Telekom (the public telecommunications operator in Germany) and Taurus Bateiligungs GmbH (a holding company belonging to the German Kirch group).

[20] See Chapter 4 for a definition of the 'political and cultural market'.

[21] On the notifications, time limits and hearings provided for in Council Regulation (EEC) No 4064/89 on the Control of Concentrations Between Undertakings, see Commission Regulation (EC) No 3384/94 of 21 December 1994, OJ No L 377.

proceed to an in-depth investigation of the above proposed TV joint venture, following a request from the Dutch government.[22] The fear was that the combination of the parties' activities in HMG could lead to high market shares in the Dutch TV market, in particular with respect to TV advertising.[23] The decision reached in October 1995 took this fact into account and did not allow the joint venture to take place. It also declared that the position of Endemol, the largest independent producer of TV programmes in the Netherlands, could be strengthened, with the possibility of forming a dominant position.

The prohibition of the formation of dominant positions thus might achieve plurality because it prevents further concentration of power. The Council Regulation though cannot catch all cases in which states want to preserve plurality. For either Council Regulation or Article 86 to apply there has to be a certain creation of dominance and clear evidence of an abuse of such dominance. The Merger Task Force is looking at a particular transaction and analyses that transaction on competition terms. It is a pure competition assessment, in so far as culture in policy terms is not very clearly a Community objective. The Commission has to be careful in considering pluralism under the Treaties. In an era where subsidiarity is accepted and Member States are questioning Community's competence in the area, the Commission

[22] In the absence of the Dutch government's request, the Commission would have had no jurisdiction to deal with the case since the requisite turnover thresholds set out in the Merger Regulation were not attained by the parties concerned. Where the thresholds are not attained jurisdiction rests with the Member States. In that situation however, a Member State is entitled under Article 22 of Council Regulation 4064/89 to request the Commission to take up the case and to examine it. Nevertheless, it should be stressed that in the meantime the parties are entitled in this case to complete their operation.

[23] As to the market for TV advertising, in 1994 the market share of the public broadcasters as a group in the Netherlands, and of RTL, was around 50% each. It is not possible to attribute a precise market share to each of the nine major public broadcasters, since advertising time for the three public channels is sold by STER, a state-owned organisation. The revenues from advertising on the public TV channels as well as from the licence fees are first distributed to the Dutch state. NOS, the largest public broadcaster, receives a share of the revenues on the basis of its yearly budget approved by the Dutch government. The other eight major broadcasting organisations each receive an equal share of the revenues from the licence fees and advertising revenue.

should be very clear over its scope of intervention. The subsidiarity principle is also a hot issue in the current talks of presenting Europe-wide media ownership rules as we shall see below.

3.3 EVOLUTION OF EUROPEAN MEDIA CONCENTRATION POLICY

3.3.1 The Council of Europe and Media Concentration

The Council of Europe has been involved in the field of media concentration, especially in the press sector, since 1967 with a view to protecting human rights and fundamental freedoms. Several debates, analyses and reports have been undertaken and led to the adaptation of a number of 'Recommendations' and 'Resolutions' during the 1970s.[24] Most of them discussed the scope and causes of press concentration and provided an initial analysis of its effects on freedom of opinion. In the light of the potential or actual threat to diversity in the press (resulting from the decreasing number of both newspaper titles and newspaper groups), the declarations called for measures of assistance to the press (direct or indirect subsidies - special taxation and postal rates, etc.). In the 1980s, the Council of Europe urged a pluralistic approach towards the electronic media. In its 1981 Recommendation,[25] the Consultative

24 The most important are: a) Resolution 338 (1967) on press concentration, 26-01-1967; b) Resolution 428 (1970) containing a declaration on communication media and human rights, Consultative Assembly, Document 2867, DH-MM (85)6; c) Report on press concentration (draft resolution), presented by the Political Affairs Committee, rapporteurs: Bjork and Van Der Sanden, Consultative Assembly, 03-10-1972, Document 3178; d) Opinion on press concentrations, presented by the Legal Affairs Committee, rapporteur: Fanelli, Consultative Assembly, 12-10-1972, Document 3188; e) Resolution (74) 43 on press concentrations, Committee of Ministers, 16-12-1974, DH-MM (85)5; f) Recommendation 747 (1975) on press concentrations, Consultative Assembly, 23-01-1975, Document 3536, DH-MM (85)6; g) Recommendation 834 (1978) on threats to the freedom of the press and television, Parliamentary Assembly, 28-04-1978, Document 4090, DH-MM (85)6. All these are proposals or declarations and not binding legal instruments (for more information, see Lange and Van Loon, 1991, p26-31 and Annex 1).

25 Recommendation 926 (1981) on questions raised by cable television and by direct satellite broadcasters, 02-10-1981, Document 4756, DH-MM (88)3.

Assembly expressed fear that the independence of programme makers would be undermined by the technical developments in the field of cable and satellite television. It argued that a deterioration of the financial resources of existing broadcasting organisations was to be expected, leading to a decline of the intellectual and cultural pluriformity in Council of Europe Member States. The Assembly took the view that measures to guarantee access of all political, social and cultural forces to the electronic media on fair terms was highly desirable. In its 1987 Recommendation,[26] the Assembly recognised potential positive effects related to new developments in cable and broadcasting - opening up of new fields for cultural creation and expression, broadening of the range of programmes, assisting awareness of other European languages and cultures. However, it mentioned that such advances also carry cultural risks, such as: reduction in programme diversity, undermining of the cultural identity of smaller countries, economic and cultural dependence on large commercial actors. It proposed harmonisation of legal arrangements which would respect national differences.

A number of Ministerial Conferences on mass media policy[27] since the mid-1980s also tackled media concentration. The 1986 Conference stipulated that the Ministers should, among other things, act against monopolistic trends of the new TV services. The 2nd Ministerial Conference in 1988 called for concrete political measures in the field of media concentrations. The ministers recommended the Committee of Ministers of the Council of Europe to pursue consideration of questions

[26] Recommendation 1067 (1987) on the cultural dimension of broadcasting in Europe, 08-10-1987, Document 5782, DH-MM (88)3.

[27] a) First European Ministerial Conference on Mass Media Policy, Vienna 9-10 December 1986; b) Second European Ministerial Conference on Mass Media Policy, Stockholm 23-24 November 1988; c) Third European Ministerial Conference on Mass Media Policy, Nicosia 9-10 October 1991; d) Forth European Ministerial Conference on Mass Media Policy, Prague 7-8 December 1994.

raised by media concentrations and develop research and the exchange and distribution of information in order to: *'a) evaluate the consequences of such concentrations for the freedom and pluralism of information, cultural diversity and the circulation of television services and audio-visual works; b) identify appropriate means of preventing abuses of dominant positions and the harmful consequences which could result therefrom'* (Resolution No1). In Spring 1988, the Steering Committee on the Mass Media (CDMM) and the Parliamentary Assembly of the Council of Europe decided to co-operate in order to analyse the developments taking place in the member States in the field of media concentration. A Working Party on media concentrations (CDMM-GT-CM) consisting of national experts was thus set up and it was agreed to entrust two specialised institutions (IVIR and IDATE[28]) with the task of reflecting on the methodology and formulation of a questionnaire which would make it possible to co-ordinate national studies on multi-media and cross-media ownership and gather information from the member States. The questionnaire, divided into three parts (legal situation, statistical data and qualitative evaluation), was sent to the member States of the Council of Europe for completion. The answers received,[29] were then analysed and classified by the experts of IVIR and IDATE Van Loon and Lange respectively and resulted in two reports.[30]

28 Institute for Information Law (IVIR), University of Amsterdam; Institute of Audio-visual Media and Telecommunications in Europe (IDATE), Montpellier.

29 Answers to the questionnaire were received by the members of the Working Party Austria, Belgium, Finland, Germany, Greece, Italy, the Netherlands, Portugal, Sweden, Switzerland, the United Kingdom, by the Commission of the European Communities as an observer, and by Denmark. France, Ireland, Luxembourg, Malta and Spain.

30 Van Loon, A. (1991) 'Pluralism, Concentration and Competition in the Media Sector', report to the Council of Europe, 01-12-1991, CDMM (92)8, vol.I, p281-91. Lange, A. (1992) 'Study on Media Concentrations in Europe (Economic Analysis)', CDMM (92)8, vol.II, Strasbourg, 16-06-1992, p1-78. The first report contained the legal part of the study, while the second was about the economic and statistical part.

On the basis of these reports, and taking account of its own work in this area, the Working Party submitted a synthesis report on media concentrations to the 3rd Ministerial Conference on Mass Media Policy (Nicosia [Cyprus], 9-10 October 1991). That Conference reaffirmed that the starting point of any discussion on the desirability of media legislation in the area of media concentration at national and/or European level, should be the freedom of expression[31] and the ways of protecting the existing cultural diversity in Europe. In view of the complex situation and the different national approaches towards media concentration and pluralism, it invited participating states to elaborate and develop common policies addressing these problems. In addition, the Ministers agreed to identify and support policy measures for the establishment of various independent and autonomous media reflecting a diversity of opinions and ideas and meeting the interests and expectations of the public. They reached the conclusion that support measures for communication undertakings, such as direct subsidies, indirect incentives and support for training, are often more effective in safeguarding pluralism than restrictive ones (i.e. competition and media law provisions).

Following the 3rd Ministerial Conference, a Committee of Experts on media concentrations and pluralism (MM-CM) was set up.[32] The

[31] Freedom of expression is laid down in Article 10 of the European Convention for the protection of human rights and fundamental freedoms. It is generally accepted, as has been stated many times by the Parliamentary Assembly of the Council of Europe, that the right to freedom of expression is not simply a right protecting individuals from state intervention. The freedom also has a social aspect: all democratic states have an obligation to secure an adequate protection of this freedom for everyone. This means that the state has a duty whenever individuals prevent other individuals from exercising their right to freedom of expression.

[32] The terms of reference of the Committee are: Under the authority of the CDMM, and taking into account of the work already carried out within the CDMM in this area, the MM-CM will give concrete follow-up to the conclusions concerning media concentrations adopted at the 3rd European Ministerial Conference on Mass Media Policy, including that concerning the possible creation of a multilateral consultation mechanism on this subject. In this regard, the MM-CM will endeavour, in particular, to define clearly the notions of political and cultural pluralism for the purposes of its analysis of all the various implications of media concentrations for the safeguarding and promotion of

Committee met on nine occasions between 1991 and 1994 and carried out several projects.[33] Over the course of its meetings, it gave priority to monitoring the evolution of media concentrations in the European continent, so as both to explore the impact of such concentrations on political and cultural pluralism and formulate proposals for policy measures. The Committee decided first of all to agree on a working definition of the notion of pluralism: '*In relation to media concentrations, the notion of pluralism is understood to mean the scope for a wide range of social, political and cultural values, opinions, information and interests to find expression through the media. Pluralism may be internal in nature, with a wide range of social, political and cultural values, opinions, information and interests finding expression within one media organisation, or external in nature, through a number of such organisations, each expressing a particular point of view*'.[34] It also felt that the issue of access to media markets should be more closely examined. The Committee thus instructed a consultant to analyse the factors which may facilitate or hinder access

pluralism. The MM-CM will follow closely the evolution of media concentrations, in particular at the transnational level, with a view to identifying any possible risks arising for pluralism. It will put forward, if necessary, proposals to supplement and co-ordinate the measures which the member States might take at the national level for promoting pluralism. The proposals may, if deemed useful, take the form of appropriate legal instruments (4th European Ministerial Conference on Mass Media Policy, 1994: Appendix I).

33 These are: a) MM-CM (1993) Comparative Table of National Legislation of Relevance in the Area of Media Concentrations, (93)6, Strasbourg, 22-02-1993; b) MM-CM (1994) Discussion Document on Multi-media Concentrations, (94)6, Strasbourg, 10-01-1994; c) MM-CM (1994) Resolution of the European Parliament on the Green Paper 'Pluralism and Media Concentration in the Internal Market', (94)9, Strasbourg, 28-01-1994; d) MM-CM (1994) Consultant's Study on the Notion of Access to the Market (final version), (94)7, Strasbourg, 29-03-1994; e) MM-CM (1994) Summary of the Evolution of Media Concentrations in Sweden, (94)14, vol.I, Strasbourg, 27-04-1994; f) MM-CM (1994) Study on Media Concentrations in Central and East European Countries, (94)17, Strasbourg, 06-05-1994; g) MM-CM (1994) Summary of the Evolution of Media Concentrations in Finland, (94)14, vol.II, Strasbourg, 17-05-1994; h) MM-CM (1994) Summary of the Evolution of Media Concentrations in France, (94)14, vol.III, Strasbourg, 26-05-1994; i) MM-CM (1994) Summary of the Evolution of Media Concentrations in Switzerland, (94)14, vol.IV, Strasbourg, 11-07-1994; j) MM-CM (1994) Summary of the Evolution of Media Concentrations in Austria, (94)14, vol.VI, Strasbourg, 06-09-1994; k) MM-CM (1994) Summary of the Evolution of Media Concentrations in the French Community of Belgium, (94)14, vol.VII, Strasbourg, 06-09-1994.

34 Report from the 3rd meeting of the Committee of Experts on Media Concentration and Pluralism, MM-CM (92)12, Strasbourg, 1992, p3.

to the market.[35] This analysis firstly stated that pluralism should not be confused with the issue of 'freedom of speech'. It defined freedom of speech as any body's freedom to establish any kind of media (market access). However, this does not ensure pluralism. It concluded, among other things, that opportunities for entering the market and for remaining competitive in the long-term depended to a great extent on the presence of sufficient resources for the creation and development of new media without undermining the financial basis of those media already on the market. Since this threshold can vary according to the type of media and the market in question, the ease of access to the market can only be analysed on a case-by-case basis. Therefore no general conclusions can be drawn which are valid for all countries and all types of media. Moreover, any such threshold cannot be measured at the outset, given that this would depend upon how the public invests its resources between the media and other consumer needs as well as in relation to the choice of media.

An account of the activities undertaken by the MM-CM since the date of its inception (December 1991) was presented to the 4th European Ministerial Conference on Mass Media Policy (Prague [Czech Republic], 7-8 December 1994). Key issues of the Committee's concern are media transparency and multi-media concentration. It defined multi-media concentration as *'the accumulation of interests by the same company or by the same group in different media sectors'*.[36] As was noted by certain members of the MM-CM at the 6th meeting of the Committee,[37] current provisions in the legislation of member States on the limitation of multi-media concentrations are intended to regulate

[35] MM-CM (94)7, 1994: 1-28.
[36] 4th European Ministerial Conference on Mass Media Policy, 1994: 11.
[37] MM-CM (93)22, 6-8 December 1993, §19.

what may be termed 'traditional forms of multi-media concentration: the participation of press undertakings in the capital of broadcasting organisations (and vice versa), the exploitation of different types of electronic media (radio, TV, cable) by the same undertaking'. The MM-CM stressed the potential inadequacy of these rules in the light of the new trends appearing due to advances in technology: the increase in the number of specialised services including subscription services in the broadcasting sector; the trend towards the integration of broadcasting organisations and other sectors of activity which are situated either downstream or upstream from these bodies; the trend towards the integration of mass and individual means of communication which facilitates the appearance in the media sector of actors from a new background and which are equipped with significant financial resources - telecommunications companies, data processing enterprises, etc. The evolution of these new forms of concentration, the argument follows, has made it very difficult for the public and the responsible authorities to identify who in fact owns the media and who are behind the owners who may have an influence on the media (for instance, through the provision of funding or other services).

The Committee therefore considered a number of measures to support media transparency that took the form of a draft Recommendation.[38] Specific provisions in national legislation, or the adoption of self-regularity measures by media firms themselves constituted possible options. The distinction between the press and broadcasting sectors was also raised due to the different transparency needs involved and the different ways of guaranteeing transparency in the two sectors. In any

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[38] It is worth mentioning that, in deciding to prepare a text on media transparency, the Committee was of the opinion that media transparency was not per se a means to regulate media concentrations, but constituted a preliminary step in this direction.

case, account must be taken of the diversity of structures and traditions for regulating media transparency in the different member States. Regarding the international dimension assumed by the media transparency issue, the MM-CM called for the facilitation of information exchanges between competent authorities at the European level. The draft Resolution was approved by the Steering Committee on the Mass Media at its 38th meeting (11-14 October 1994) and adopted by the Committee of Ministers in November 1994.[39]

It can be seen thus that the Council of Europe has been actively involved in the field of media concentration and diversity, particularly after the composition of the Working Party on media concentrations and the establishment of the Committee of Experts on Media Concentrations and Pluralism. A large number of declarations and recommendations have been presented which, although not legal instruments, have stimulated the discussion and helped several aspects to come to light.

3.3.2 The European Parliament and Media Concentration

In the last several years, the European Parliament (EP) has been leading a campaign to urge the Commission to propose regulatory measures in order to limit media mergers so as to safeguard pluralism. EP's two resolutions in the mid-1980s called on the Commission to formulate a policy framework regarding competition rules for the mass media. In 1985, the EP adopted a 'Resolution on the economic aspects of the common market for broadcasting in the European

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39 CoE (1994) 'Recommendation No R (94)13 of the Committee of Ministers to member States on measures to promote media transparency', adopted on 22 November 1994, DH-MM (94)10.

Community',[40] based on the De Vries 'Report on the economic aspects of the common market for broadcasting'.[41] The resolution requested the Commission *'to set up an investigation into the competition policy aspects of current developments in the television market and the film industry'* (EP, 1985: § 15). In its 1986 'Resolution on the Fifteenth Report of the CEC on Competition Policy',[42] Parliament considered that *'there are considerable potential dangers to competition in the fast-growing and increasingly complex area of the media, which is increasingly supranational in scope, and where interlocking ownership of newspapers, magazines, television stations and cable and satellite interests is becoming increasingly frequent'* (EP, 1986: 62). The request was repeated by the EP in its 1987 'Resolution on the Sixteenth Report of the CEC on Competition Policy',[43] based upon the Sir Steward-Clark 'Report on the 16th report of the CEC on competition policy'.[44] The Commission's reply to those repeated requests was that it was carefully considering Parliament's advice, especially in view of increases in concentration at that time.

The EP dealt with the problem of pluralism through its amendments to the Television Without Frontiers Directive proposal in 1985. After mentioning that the level of concentration has been increased in the audio-visual industry due to the creation of private monopolies, it called for the safeguarding of cultural diversity in the sector.[45] The

40 EP, 10 October 1985, PE Texts 7/85, October 1985/1, p57-60.

41 De Vries, G. (1985) 'Report drawn up on behalf of the Committee on Economic and Monetary Affairs and Industrial Policy on the economic aspects of the common market for broadcasting', COM (84) 300 final, 30 September 1985, PE Document A 2-102/85.

42 EP, 14 November 1986, PE Texts 10/86, p58-65.

43 EP, 17 December 1987, PE Texts 12/87, p56-61.

44 Stewart-Clark, J. (1987) 'Report drawn up on behalf of the committee on Economic and Monetary Affairs and Industrial Policy on the 16th report of the Commission of the European Community on competition policy', PE Documents A 2-223/87, p10, 23.

45 EP, OJ No C 288/113, 11-11-1985.

Barzanti report,[46] supported by many members of Parliament, called Member states to *'monitor developments with a view to preventing abuses of dominant positions which might be detrimental to trade between Member States or restrict the pluralism and freedom of broadcast information and the information sector as a whole'* (Amendment 21 of Article 2a). The EP Legal Affairs Committee put forward several amendments on the TWF Directive tackling the development of dominant positions in the mass media. In Amendment 66 of Article 22a, the Committee stated: *' If the market is to be a creative melting pot, the Community must put up a determined struggle against the pathological tendencies to destroy fair competition and real variety. If the market is to be dominated by a few media companies, we risk losing freedom of choice'.*[47] The TWF Directive was agreed upon by the Council on 3 October 1989. As indicated elsewhere though, the Directive does not include specific proposals on the media concentration question.

In 1990, the EP adopted a 'Resolution on media take-overs and mergers',[48] which states that *'restrictions are essential in the media sector, not only for economic reasons but also, and above all, as a means of guaranteeing a variety of sources of information and freedom of the press'.* The EP thus recognises two reasons for controlling media mergers at a European level: traditional economic ones - control the potential abuses arising from market dominance - and pluralistic ones - safeguarding a variety of information sources. It considers that a

[46] Barzanti, R. (1987) 'Report drawn up on behalf of the Committee on Legal Affairs and Citizens Rights on the proposal from the CEC to the Council (COM (86) 146 final-Document C2-38/86) for a Directive on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of broadcasting activities', PE Document A 2-246/87, 08-12-1987.

[47] EP, OJ No C 110/21, 27-04-1988.

[48] OJ No C 68/137-8.

process of unlimited and unchecked concentration in the media threatens the right to information, editorial independence and journalists' freedom. It recalls that Community legislation regarding the completion of the internal market does not include any regulations on the protection of the right to information or media mergers. It therefore calls on the Commission to '*put forward proposals for establishing a special legislative framework on media mergers and takeovers together with anti-trust laws to ensure that: a) minimum professional standards are guaranteed; b) journalistic ethics are protected; c) the risk of subordination of small companies is eliminated; and d) freedom of expression for all those working in the media is safeguarded*. It concludes by asking Member states that do not have laws limiting concentration in the media sector to adopt such instruments as soon as possible, giving due consideration to written and audio-visual communication.

Following that resolution, the Commission published its 'Communication to the Council and Parliament on audio-visual policy' on 21 February 1990.[49] In § 2.2.3. on Pluralism and Mergers, the Commission specifies that the Community's audio-visual policy does not seek to develop the audio-visual sector at the expense of pluralism; on the contrary, it attempts to strengthen it by encouraging the diversity of the programmes offered to the public. It also mentions that, since media operators' activities assume a European dimension, national legislation could be circumvented and would not therefore be sufficient to guarantee pluralism in all cases. Significantly, the Commission recognises that both the application of Articles 85 and 86 of the Treaty of Rome and the Merger Regulation are unable to cover

[49] COM(90) 78 final.

threats to pluralism posed by multi-media ownership. One could easily detect here a coincidence of the views of the EP and the Commission as far as the safeguarding of pluralism is concerned.

The EP 1992 'Resolution on media concentration and diversity of opinion',[50] drafted by socialist MEPs Ben Fayot and Dieter Schinzel, called on the Commission to *'submit a proposal for effective measures to combat or restrict concentration in the media, if necessary in the form of an anti-concentration directive, with a view to: (a) harmonise national provisions on the concentration of media ownership; and (b) guarantee diversity of opinion and pluralism where the proposed concentration is on a European scale'*. The above MEPs mentioned that competition law cannot be used as a substitute for media law or for a specific law on media concentration: *'...concentrations in the media sector which threaten diversity of opinion do not necessarily also involve distortions of competition, just as, conversely, the conditions of freedom of competition are no automatic guarantee for diversity of opinion'*.[51] The resolution also asked the Commission to submit a) a proposal for a European framework directive safeguarding journalistic and editorial independence in the media and b) a proposal for a directive regulating the right to reply in the print media and radio sectors. Advertisers' obligation to provide adequate funding for the press and vocational furtherance (including professional ethics) of journalists were two additional suggestions. The most controversial

[50] EP, OJ No C 284/44, 02-11-1992.

[51] Document EN/RR/207 249, PE 152 265 final, Part B: Explanatory Statement, p22-3. In this explanatory statement, MEPs Fayot and Schinzel point out that the regulations on competition that exist both in Member states and at EC level include the media industry, but are not specifically aim at the media. Germany, for instance, has stricter controls on mergers for the press sector. In their view, competition rules cannot replace rules on concentration in broadcasting legislation. In all members, broadcasting is regulated by legislation governing the acquisition and possession of broadcasting licences. However, there are great differences between them and often what is forbidden in one country is allowed in another. All these national restrictions cannot, according to the above MEPs, counteract the dangers to pluralism and diversity posed by multi-media concerns.

proposal however, was the EP's call to the Commission to set up a European Media Council, a new body charged with observing media ownership patterns, ensuring transparency with regard to the inter-linking of firms, reporting on proposed mergers and submitting proposals on possible concentration measures. An extensive legislative scheme is thus put forward by this resolution.

As pointed out by Brian Sturgess (1992: 7) however, although the Fayot/Schinzel report listed several implications of media concentration, its concern often exhibits both economic naivety and an obsession with cultural questions. As far as the setting up of a European Media Council is concerned, the suggestion met with some hostility. Many stressed that a creation of a supra-EC body as suggested by the EP might well become a bureaucratic superfluity inclined to meddle with the due process of Community or national law. Others believed that it would be extremely difficult to define the terms of reference of such a body which could justify its existence (see below). In addition, there were those who questioned the relevance of some proposals that were put forward by the EP (training programmes, for instance) to the intention of the proposed regulation (i.e. to regulate the media concentration process with a view to safeguarding or promoting diversity of opinion). Ad Van Loon (1993: 31-6), for example, argued that a number of proposed measures do not fit in the fundamental rights framework - minimum professional standards, journalistic ethics - or are not relevant in the light of the aims of the proposed resolution - regulation of advertising influence on programming and contents, access to information, training programmes. Van Loon concluded that in many cases provisions of general law or forms of self-regulation may well be used to reach the aims of some of the proposed measures.

3.4 THE 1994 GREEN PAPER ON PLURALISM AND MEDIA CONCENTRATION

Overall, the EP's concerns can be summarised as follows: a) unchecked concentrations in media ownership could pose a threat to information, editorial independence and journalists' freedom (i.e. objectivity of reporting); b) concentration of ownership threatens diversity of information and opinion and therefore hinders free information to the public; c) control of a large number of media by one individual or company jeopardises pluralism by lessening media autonomy and independence; and d) differing national laws on media concentration could disadvantage the operation of the Single Market, as this creates the risk of circumvention of the law and distortion of competition between media companies in various Member States as well as different start-up conditions for those embarking upon activities in the media. The Parliament calls for a legislative framework on media mergers and takeovers together with anti-trust laws on the grounds that diversity of opinion and pluralism of information cannot be guaranteed by competition rules alone.

As indicated above, the Commission responded to Parliament's proposals by publishing its 'Communication to the Council and Parliament on audiovisual policy' in 1990. The results of the Communication are laid down in the promised Green Paper, *Pluralism and Media Concentration in the Internal Market: an assessment of the need for Community action*. It should be noted that this is a 'new style Green Paper'[52] since it is not accompanied by a proposal for a

[52] Up to then, Green Papers used to present the Commission's point of view in combination with a proposal for a Directive. The Maastricht Treaty on European Union (OJ C 191, 29-07-1992, p1-113) however, has made the Commission more cautious since it restricts actions in areas where the

Directive of the EC Council. Its purpose is to present both an initial assessment of the need for Community action concerning concentration in the media (television, radio and the press) and the different approaches which the Commission might adopt once it has consulted the parties concerned.

The remarkable difference from the 1990 Communication though is that the Green Paper (GP) identifies no objective regarding media pluralism at EU level: *'Protection of pluralism as such is primarily a matter for the Member States...there would not appear to be any need for action at Community level, since national mechanisms for protecting pluralism can be applied to situations with a Community dimension'* (GP, 1992: 7). The Commission does not provide a definition of media pluralism; on the contrary, it mentions a variety of expressions used in national legislative statutes containing the 'pluralism' concept: *'pluralism of the media', 'pluralism in the media', 'the pluralist nature of the expression of currents of thought and opinion', 'pluralism of information', 'pluralism of the press'* and *'plurality of the media'* (GP, 1992: 14). In the Commission's view thus the concept is imprecise but is easily used as a reason to justify measures in support of freedom of expression or diversity of information sources.

Following its own legal analysis of the European Convention of Human Rights as interpreted by the European Court of Human Rights and of national laws, the Commission states: *'the concept of pluralism serves to limit the scope of the principle of freedom of expression; the purpose of such limitation is to guarantee diversity of information for*

Commission has not been given absolute competence. Media policies is such an area (Van Loon, 1993: 5; Kosmopoulos, DGX, personal communication, 01-06-1995).

the public' (GP, 1992: 15). The concept of pluralism would only be used to detract from the principle of freedom of expression. So the Commission considers it acceptable, for the sake of pluralism, for states *'to refuse a broadcasting licence or permission for the takeover of a newspaper , a monolithic corporate structure, a holding in a media company, etc.'* (GP, 1992: 15). Nevertheless, according to Van Loon's 1993 legal analysis of the Green Paper, this statement is partially wrong. 'Pluralism' is not mentioned in Article 10(2) of the European Convention on Human Rights[53] as a concept on the basis of which the fundamental right to freedom of expression could be restricted. Pluralism thus cannot be used to derogate from this fundamental right; it could only be used to give substantial meaning to it. For this reason, Van Loon concludes that it is not right to argue that the concept of pluralism might be used to restrict freedom of expression. On the contrary, the notion might only be used to promote and safeguard freedom of expression. In any case, such negative and legalistic interpretation of pluralism being set out in the GP contrasts sharply with the Commission's promises in 1990.

The GP suggested three possible ways for assessing pluralism: a) *according to the editorial content of the broadcasts or the press.* This is considered the most logical criterion although the most complex, data-demanding and subjective;[54] b) *according to the number of channels or*

[53] The European Convention on Human Rights is an international agreement negotiated in the framework of the Council of Europe. The states belonging to the Convention have recognised the jurisdiction of the European Court of Human Rights. Article 10 protects the 'freedom of expression' principle: *'... Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers* (§1). But freedom of expression is not an absolute freedom. Article 10 continues: *'... This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises'* (§2). Article 10(2) provides that freedom of expression and freedom to receive and impart information can be restricted only in the interests of public order, public safety or public health. Pluralism obviously cannot be associated with these (see Van Loon, 1993: 22-6)

[54] The Commission points out that *'it would indeed be necessary to take account of all the editorial characteristics of the medium in question (such as type of medium, type of programme or column,*

titles. Despite the fact that it is easily measurable, this alternative is rejected as insignificant in terms of diversity of editorial content; and c) *according to the number of media controllers or owners*. This seems to be the Commission's preferred criterion since, although it too does not reflect editorial content, '*whatever the editorial content or the number of information carriers, concentration of control of media access in the hands of a few is by definition a threat to the diversity of information*. (GP, 1992: 20). Without being able to guarantee diversity of editorial content, this system constitutes a minimum condition to promote diversity of choice for the public.

However, such emphasis on the number of controllers implies a narrow and legalistic interpretation in which the function of the pluralism principle is defined, as mentioned above, in a negative sense. On the contrary, the emphasis on editorial contents reflects a view of pluralism as an objective, that is, the positive concern with ensuring a sufficiently wide variety of differing product types (for instance, programming schedules which pay attention to minority, political, cultural and social interests, or regional issues). In a broader perspective, we are sympathetic to a definition of pluralism that incorporates three positive elements: a) sufficient programme diversity (variety of programme content). The media sector should offer a sufficient diversity in terms of breadth, price and quality of the product range, so that it reflects consumer preferences including cultural minorities. The existence of distinguished programmes/titles in areas where total demand is scarce (in arts, minority languages, etc.), available at affordable prices should be of prime importance in order to achieve a pluralistic media sector;

editorial opinions, frequency and duration of broadcast or circulation, etc.) and also to see whether the consumer, given actual media consumption patterns, genuinely benefits from such diversity (Does he have access to it? Is the diversity of opinions in society and among consumers reflected? etc.) (GP, 1992: 19).

b) sufficient access to information. Diverse media should be accessible to all citizens if a truly democratic and pluralistic society is to be accomplished; and c) sufficient balance in the provision of news and information. Diverse and accessible to all media that are culturally or politically biased when reporting or presenting information programmes present the worry that one particular cultural/political point of view might become dominant. The above concept of pluralism is related to the supply of media content available to the market. Although one could argue that 'consumption pluralism' and not 'supply pluralism' should be the ultimate goal of media policy measures,[55] the adoption of such a broad definition of pluralism on the supply side could ensure, at least in principle, that cultural and political diversity will be preserved.

Part two of the Commission's Green Paper describes the level of media concentration in Europe. This part is based upon a Booz-Allen & Hamilton study[56] commissioned by the Commission. The study tried firstly to analyse the relevant media consumption patterns from the point of view of exposure to lack of pluralism, secondly to show the level of concentration in the supply and consumption of the media, and thirdly to assess whether there should be a need for a Community-level intervention in the field of pluralism and concentration of the media. Regarding the first issue, it pointed out that while there was a wide

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[55] 'Consumption pluralism', that is citizens' use of the media in a certain way, although a fundamental conceptualisation, cannot be enforced by media policy measures. Politicians in democratic societies do not, by any means, wish to force people to use the media in a specific manner. Nevertheless, policy makers can ensure that consumers are exposed to a pluralistic set of news, information, opinions and cultural experiences through the media ('supply pluralism'). By providing such pluralistic output, decision makers can ensure that citizens have at least the opportunity of being exposed to a pluralistic set of ideas from the media and thus influence, in a way, 'consumption pluralism'.

[56] Booz-Allen & Hamilton (1992) 'Study on Pluralism and Concentration in Media - Economic Evaluation', Report to the Commission of the European Communities, DG III/F-5, Brussels, 6 February 1992.

choice of channels available to consumers, a few national channels (TV broadcasters or radio stations) or daily newspaper titles tended to enjoy a dominant share in consumption.[57] Regarding media concentration levels, the study found that the top three TV channel controllers had over 80% of the audience share in most of the Member states. In radio too, top four station controllers (many of which operated several stations) had over 70% of the listeners in seven of the then twelve EU countries. The concentration level in daily newspapers was found to be low in comparison with TV and radio. Overall, media concentration in the Community appeared to be high[58] if state-owned channels were to be included in the analysis. The study concluded that national rules limiting the shareholdings in a channel did not appear to prevent dominating influence of a single group.[59] Therefore, a Community-level initiative to harmonise the different rules aiming at ensuring pluralism and checking on media concentration would be appropriate.

The GP set out to assess the need for action at Community level in the light of the disparities between national rules on media ownership. Part three of the GP presents a view of measures taken at national level.[60] Indeed, since the mid-1980s all Member States have introduced various and differing rules on media ownership in order to limit operators'

57 The study found that pluralism exposure in 1990 was generally transparent as media provision was often concentrated in a few nation-wide channels. For example: in TV and radio, government-owned broadcasters dominated in the UK, Germany, Denmark, Ireland, Portugal and the Netherlands; in the newspaper sector, nation-wide titles had over 40% share of total circulation in all countries examined and an average of 63.5%.

58 That conclusion was also reached in an earlier analysis of the same consulting firm. In 1989, although it did not regard the European broadcasting industry as highly integrated, the consultant argued that merger and acquisition activity in broadcasting was increasing and called for further deregulation.

59 According to the study, other broadcasters (typically non-media players) tended to hold stakes as long-term investments, letting one majority shareholder control the channel operations and programme content. Also, such rules tended to promote partnerships between large media groups which could otherwise be competing with each other.

60 This part is based on the replies which most Member States provided to a request for information by the Commission dated 17-04-1990.

freedom and consequently preserve pluralism. Four types of provisions can be distinguished: a) limits on mono-media concentration. These prevent the same person (natural or legal) from controlling or having an interest in several media of the same type at once (TV, radio or newspapers); b) limits on multi-media concentration. These prevent a single person from controlling (or having an interest in) several media of different types (for example, a newspaper company cannot control a television station, or a TV station is not allowed to control a radio station); c) limits on shareholdings in a radio or television company. This applies irrespective of how many other media are controlled (for instance, in some member states it is impossible for a person who does not own any other media to hold more than 25% of a TV station); and d) limits concerning 'disqualified persons'. These prohibit certain types of operators or bodies from holding a radio or television licence (public bodies, local authorities, religious or political organisations, advertising agencies, etc.).

These provisions vary widely between Member States. In some countries (Italy) a media company can own 100% of a television channel, whereas in others the ceilings are 49% (France), 50% (Germany), or even 25% (Greece). In most countries there are numerical limits on licences one person can hold but in others such restrictions do not apply to satellite or cable channels (United Kingdom). A few countries allow newspaper publishers unlimited access to television and radio ownership (Belgium, Finland), while in others are subject to restrictions (for more information see Appendixes I to VI). The concern is that these discrepancies of existing national rules on media ownership create obstacles to the freedom to provide services across borders and the freedom of establishment, thereby preventing media operators from benefiting from the advantages of the Internal Market. They produce distortions of competition between firms from different states by placing companies operating in liberal regimes in a better position than those established in systems with stricter rules. Such difference in national legislation might also hamper media companies in developing pan-European strategies - creating subsidiaries in different Member States or investing in new media outlets across Europe. According to Margot Frohlinger (1995: 1-8), Head of Unit E/5 'Media, Commercial Communication and Unfair Competition', the differing national laws on media ownership affect not only growth and competitiveness of the European media industry but also adversely affect pluralism since foreign operators entering national markets often contribute to political, cultural and linguistic diversity. She concludes that there is a demand for action at EU level in order to guarantee the fundamental freedoms of the Internal Market.

In part four, the Green Paper proposes three ways of responding to the situation, without the Commission expressing a preference for any one of them at that stage.[61] The first is taking no action at all. This option means that the Member states would continue settling the matter on their own and EU action would only be justified if the individual states failed to achieve results. However, such a laissez-faire approach would not by any means lead to the convergence of disparate national laws, thereby slowing the European consolidation of the media. Indeed, two European countries have already introduced new rules to regulate media ownership,[62] while others (i.e. Germany) have announced their

[61] It should be noted however that, given the space the Green Paper devotes to explore the third option (i.e. taking action), one might conclude that this was the preferred way from the very beginning. The position that the 1994 Follow-up to the Green Paper takes warrants that conclusion.

[62] In Britain, the former National Heritage Secretary Steven Dorrell presented to Parliament in May 1995 the government's policy document 'Media Ownership: The Government's Proposals', Cm 2872, London. In Greece, the then Minister of the Press and the Mass Media Eleftherios Venizelos presented

intention to review their media laws. The second option is a recommendation to enhance transparency in the media. The aim would be to facilitate the disclosure and exchange of information on media ownership between national authorities. As shown above, the need for transparency has been pointed out repeatedly both by the European Parliament[63] and the Council of Europe.[64] In the Commission's view though, transparency as such does not raise serious problems which have to be dealt with at Community level. The Green Paper states that the Commission has not been notified of any obstacles in the exchange of information between competition authorities so that there is no need for an institutional mechanism (GP, 1992: 79-80).

The harmonisation of national restrictions in the area of media concentrations either via a Directive or a Regulation or by the creation of an independent committee consists the third option. The intention would be to establish common rules that would strike a balance between the objective of diversity of media ownership and access to the media. The above desired dual objective would probably be better achieved through an effective and directly applicable instrument, such as a Regulation rather than a Directive, which leaves Member states room for manoeuvre in applying the law. The drawbacks, according to the Commission, would be firstly that the content of a potential Council regulation would have to be more precise in order to be directly applicable and secondly that the Regulation would create inflexibility for measures at the national level (GP, 1992: 117). Regarding the

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to Parliament in June 1995 the new media Law 'Nomiko kathestos tis idiotikis tileorasis kai tis topikis radiofonias, rithmisi thematon tis radiotileoptikis agoras kai alles diataxis' ("Legal Regime of Private Television and Local Radio, Regulation of the Audio-visual Market and Other Provisions"), No 159/1995, Athens, which contains provisions for the regulation of media ownership.

63 Esp. in the Resolution on media concentration and diversity of opinions, 16 September 1992.

64 Esp. in the Resolution adopted at the Third Ministerial Conference on Mass Media Policy, held in Cyprus, 9-10 October 1991.

setting up of an independent committee, with the task to facilitating the application of the harmonisation rules and expressing an opinion on media concentration issues (a European Parliament's proposition), the Commission has its reservations. The approximation of legislations accompanied by the establishment of an independent body presupposes the existence of national independent authorities competent for audio-visual matters. None the less, not all Member States have such bodies. If the Member States were obliged to set up audio-visual authorities, the argument follows, it could lead to a centralisation at EU level of matters that could be handled at national level (GP, 1992: 118).

The three policy options mentioned by the Commission in its Green Paper should be considered in the light of the four objectives that have become apparent from the above analysis. It should be obvious by now that the chief objective is the completion and the proper functioning of the Single European Market. The craving for the harmonisation of national media ownership rules has more to do with ensuring the smooth operation of the single market rather than safeguarding pluralism as such.[65] This might be the reason why harmonisation would affect ownership rules only and not rules related to the content of the mass media, since the latter do not normally influence the performance of the internal market. In any case, the accomplishment of this objective could, in the Commission's opinion, help to increase pluralism by providing more opportunities for media entities. Pluralism is once again invoked to justify the second major objective, that is the implementation of an industrial policy to foster the competitiveness of the media industry. By making media firms

65 As already pointed out, the sole objective of safeguarding media pluralism is, in the Commission's view, neither a Community objective nor a matter coming within Community jurisdiction as laid down in the Treaty of Rome or the Treaty on European Union.

competitive, the Commission seeks to contribute indirectly to media pluralism. The main concern though is to create an economically viable media sector, boost production and assist the formation of big units able to compete internationally. Differing national regulatory frameworks on media concentrations, mergers and acquisitions might affect the competitiveness of media undertakings. This is in line with the conclusion of the 1989 Booz- Allen & Hamilton study which, as indicated above, called media firms to make use of the opportunities offered by the Single European Market in order to match their US counterparts.

The formation of an audio-visual policy to create the European audio-visual space is the third Community objective. The national inconsistencies and sometimes media policy anachronisms could indeed affect the operation of trans-frontier channels. However, trans-border activity should not, according to the Commission, result in Euro-conglomerates that might affect fundamental rights and especially pluralism and freedom of expression. The Commission is of the opinion that respect of fundamental rights is of paramount importance and therefore constitutes an obligation which embraces the three previous objectives.[66]

Our impression is that DG-XV's approach, as expressed through the Green Paper, is to conflate two different although sometimes overlapping goals. On the one hand, it tries to pursue an industrial strategy which would enable European media undertakings to become

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66 Article F(2) of the Treaty on European Union reaffirmed the case-law of the Court of fundamental rights in which respect for fundamental rights forms an integral part of the general principles of law which the Court of Justice ensures are respected. The Court explicitly ruled in Case 11/1970 Internationale Handelsgesellschaft [ECR] 1970 1125 that fundamental rights must be protected within the framework of the structure and objectives of the Community (see GP, 1992: 61).

big and therefore both compete effectively globally and prevent, by their presence, the takeover of a country's media by foreign interests. The deregulatory move that this aim implies carry a price, that is the threat to the diversity and circulation of ideas that might be caused by the concentration of political power in the hands of a few. The Commission is careful to ensure that its policies *'do not adversely affect pluralism'* (GP, 1992: 7). It also argues that competition law *'can also contribute to pluralism in the media'* (GP, 1992: 60). The positive point is the GP's acknowledgement that competition and pluralism are different criteria and cannot replace one another. Yet it affirms that there is a connection between them, since the former can have positive effects on the latter. As stated by Jonathan Davis (1993: 9) however, the twin aims of competition and pluralism are safeguarded in different ways. The first is fostered by removing barriers to entry whereas the second is guaranteed by 'positive' content regulation. The Green Paper itself admits that the achievement of the pluralism objective requires tighter regulation than that of competition (GP, 1992: 82). It seems thus that the Commission has embarked upon a dubious task of conflating diverse and incompatible concerns. It remains to be seen whether it will achieve the desired end. As we shall see though, the industry's reply was not encouraging.

3.5 THE CONSULTATION PROCESS

As soon as it was adopted, the Green Paper was transmitted to the European Parliament and the Council of Europe. The Commission also asked the Economic and Social Committee to deliver an opinion on it. In addition, federations and associations representing industry interests at European level as well as individual operators were also asked to make contributions on the seven specific questions raised in the GP (see Appendix IX). In launching a wide-ranging consultation process, the Commission sought to provide a basis for discussion on whether Europe-wide legislation in the field of media concentration is necessary. The purpose was to feed the Commission with the information it requires if it is to adopt a position on this sensitive issue. The Commission document refrains from any ambitious proposals, although it reveals a slight preference for taking action.

The consultations lasted over a year, with more than seventy organisations sending written comments on the Green Paper. The first hearing between the Commission and European associations and federations[67] was held on 26 and 27 April 1993 (see Appendix X for a list of participants). It became clear, from the outset, that no agreement between the interested parties was about to be worked out. The majority of proprietors were against any kind of intervention at Community level while non-proprietary interests regarded EC action as essential. Overall, however, the industry's position was in favour of imminent change concerning the national rules on media ownership so as to be compatible with globalisation and the development of new technologies. The diversity of the interests concerned was especially on the question of the level - national or European - at which the change should take place. The industry was reluctant to take a position on this matter without knowing in advance the exact content of the rules.

Having analysed the results of that hearing, the Commission decided to send a complementary questionnaire to all interested parties on 28 July

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67 Only European organisations were invited due to space constraints but, according to the Commission, the positions of other interested parties were taken fully into account.

1993 (see Appendix XI). The aim was to obtain more information on the issues raised during the preliminary reactions to the Green Paper and, in particular, on the impact of the new technologies, the potential development of national regulation and the content of the rules ('audience' and 'control' criteria[68]). That complementary questionnaire together with numerous contacts and informal bilateral meetings that took place between the relevant Commission departments and the interests concerned helped, in the Commission's view, to increase the latter group's awareness of the need to take part in the consultations. Nevertheless, apart from European industry federations, thorough comments from interested parties were received from three countries only (United Kingdom, Italy and Germany) while some positions were originated in France, the Netherlands and Greece. The television sector made the most numerous written contributions (about twenty), whereas some fifteen positions emanated from the press industry, six from the radio sector, eight from multi-media groups and five from journalists' federations and employees in the media sphere (see Appendix XII for a list of replies to the complementary questionnaire). The big absentees were consumer associations which were not invited to the consultation process. The non-participation of consumer federations is highly regrettable since it is in the name of consumers that the changes will take place.

3.5.1 Media Proprietors' Response

Most media proprietors' federations were against an EC initiative to harmonise legislation on media ownership at European level. The European Newspaper Publishers Association (ENPA), in its April 1993

68 These are discussed extensively in the next Chapter.

response to the GP, supports Option I (taking no action) because: a) a lack of pluralism and diversity is unproved; b) the status quo is preferable to opening the door to what they believe would be greater restriction; c) they feel that the imperative of national pluralism regulation will take precedent over Commission action; and d) they question the legal competence of the Commission to rule in this area.[69] In its 1994 response to the complementary questionnaire, ENPA adds that if the Commission is to take action with regard to cross-ownership, such action should definitely not bring about more regulation but its opposite, deregulation. It concludes that changes in the media caused by new technologies (i.e. digitalisation and compression) will create many new sources of information, giving the public a vast array of choice. The public will immediately turn to another source as soon as it realises that there is one-sided information.[70] A similar approach was taken by the Association of Commercial Television (ACT), the European Publishers Council (EPC) and the Federation of Associations of Periodical Publishers in EC (FAEP). FAEP's view, in particular, was that special regulation for the media is unnecessary since there are sufficient instruments at hand covering companies in general,[71] while the EPC considered cross-media activity essential if newspaper and magazine publishers are not to lose competitive advantage in the developing multi-media world.[72]

Big media units such as News International plc, a wholly owned subsidiary of Rupert Murdoch's multi-media company News

[69] Consultation Volume I, April 1993, item 14: 1-8.
[70] Consultation Volume IV, February 1994, item 6: 1-18.
[71] Consultation Volume I, April 1993, item 7, p1-7. See also Consultation Volume IV, February 1994, item 8: 1-3.
[72] Consultation Volume I, April 1993, item 6: 1-9. See also Consultation Volume IV, February 1994, item 7: 1-10.

Corporation and Fininvest Communicazioni, Silvio Berlusconi's multi-media group, held that the Commission ought not to take any action at EC level to discipline media concentrations. The variety and configuration of media products on offer is, according to them, the best way to ensure freedom of thought. A positive approach would insist on action to eliminate the restrictions, not harmonise them, and therefore create the greatest possible space for freedom of enterprise. Both companies argued that, since there is little evidence that the diversity of national pluralism regulation causes distortion of the internal market, there is no scope for Community action to harmonise it.[73] There were quite a few medium-sized firms, however, which were in favour of a change of the status quo. Three UK-based media companies (Independent Television Companies Association, Channel Four Television and Pearson plc), together with the Milan-based multimedia group Editoriale L'Espresso supported a harmonised, although liberalised, system of regulation. ITCA's response, in particular, focused on the distortion of competition in the UK market caused by BSkyB, a satellite channel in which Murdoch owns a 40% share. Since BSkyB has been classified as a non-domestic satellite broadcaster, it falls outside UK jurisdiction with regard to ownership regulations. This loophole enables Murdoch's News International to own 40% of this national satellite TV channel, whilst also owning about 37% of the national press in the UK. In contrast, an ITV company can only hold 20% of a national newspaper or 20% of a satellite channel. Pearson plc, a then shareholder in BSkyB and publisher of *The Financial Times*, also called for EC action to eliminate inequities in media investment opportunities in Member States which arise by virtue of diverse national rules. Pearson however, like Channel Four Television and

[73] See Consultation Volume II, April 1993, items 7 & 11: 1-22 & 1-22 respectively.

Editoriale L'Espresso, argued that a liberalised system of regulation setting minimum but adequate transnational standards would be the only way to create a 'level playing field' without resorting to divestment.[74]

3.5.2 Media Professionals and Workers' Organisations Response

Representatives of media professionals and trade unions formed another group considering EC action desirable. The European Group of the International Federation of Journalists (IFJ), for example, after linking the pluralism notion with that to access to information channels and diversity of information sources available to the public (a citizen rather than an operator-oriented approach), criticises the Green Book for using as its starting point the concept of the single market and putting pluralism in second place. On the question on whether Community has the competence to regulate pluralism, the IFJ accepts that the protection of pluralism as such is primarily a matter for the Member States but urges the Commission to at least ensure that Member States are in a position to protect pluralism through national regulation. Media policy in Europe would thus guarantee that concentration in the media did not adversely affect pluralism, democracy and diversity of opinion. Although concentration can, in theory at least, safeguard the autonomy of editorial groups vis-a-vis advertisers and political power, the plain fact, according to IFJ, is that concentration of media ownership as such has not resulted in a more critical media serving the public interest. Having been critical of other arguments supporting media concentration (i.e. the argument that

[74] See Consultation Volume II, April 1993, items 2,4,5 & 8: 1-10, 1-16, 1-9 & 1-14 respectively.

concentration saves unprofitable publications from closing down, or that it enables media firms to compete effectively in the global market), the IFJ concludes that the identified high level of concentration of media ownership harms fundamental rights such as freedom of expression and pluralism. A comprehensive media policy at European level, taking into account not only economic but also cultural factors, is thus urgently needed.[75]

The European Graphical Federation (EGF), the European Committee of Trade Unions in Arts, Mass Media & Entertainment (EGAKU), the Broadcasting, Entertainment, Cinematograph & Trade Union (BECTU) and the Comite des Industries Cinematographiques et audiovisuelles des Communautes Europeennes et de l'Europe extracommunitaire (CICCE) were also convinced of the need for an initiative to preserve cultural goals like pluralistic information and cultural/linguistic identity. The EGF strongly favoured EC action. It provided examples of transnational concentrations that show clearly the links between individual large firms and how such links are used in part to circumvent national constraints on the size of shareholdings in media undertakings. For this reason, it pointed out that national capacity to act must be protected by European agreement on basic principles and minimum rules. It went on to criticise the GP for leaving out important measures to create information pluralism, such as legal minimum standards for 'internal pluralism of the press' and workers rights, the protection and encouragement of different forms of ownership and commercial organisation, and the safeguarding of journalistic principles. The EGF urged the Commission to introduce Community-wide limits on owning interests in companies, directives on press and

[75] Consultation Volume I, April 1993, item 9: 1-14.

advertising concentration and tax advantages and other subsidies.[76] Both EGAKU and CICCE called the Commission to develop, in co-operation with the Member States and representative professional organisations in the media, a truly European cultural policy that will maintain the principles of pluralism and cultural diversity.[77] Finally, BECTU, a trade union representing 55,000 members in the British broadcasting, film and theatre sectors, illustrated the need for limits on media concentration, for consistency of regulation across the Community and for limits on non-EC concentration of media ownership.[78]

3.5.3 Public Service Broadcasters' Response

In its answer to the complementary questionnaire sent by the EC Commission, the European Broadcasting Union (EBU) stressed first of all the risks that the digital technology carries for media pluralism. It pointed out that the expected proliferation of channels will not bring about a wider variety of programmes; on the contrary, the new channels will offer more of the same due both to financial restraints and limited audience shares. An additional risk to media pluralism highlighted by the EBU is the increased competition for programme material that the new technology will cause and its adverse consequences on small and newly formed firms. Only those enterprises that are in a position to establish vertical links with programme suppliers will have a strategic advantage. Multimedia concentration, integration between software and hardware sectors, and the convergence between media, telecommunications and data processing

[76] Consultation Volume III, July 1993, item 1: 1-42.
[77] See Consultation Volume I, April 1993, items 5 & 11: 1-4, 1-3 respectively.
[78] Consultation Volume II, April 1993, item 1: 1-3.

will also increase the risks of biased programme information and programme selection systems. For these reasons, the EBU declares that national measures on media ownership will become inadequate. However, it claims that EC harmonisation would not solve the problem, since broadcasters will be free to set their activities outside the Community and use the frequencies of a non-EC country. On the contrary, transparency measures are highly desirable. In any case, it advanced the position that public service broadcasting organisations must be exempted from a potential harmonisation instrument. This is because they cater for internal pluralism, that is the multiplicity of opinions and information which are reflected within a company, as opposed to external pluralism, which presents a situation where many firms are varied to such an extent that together represent a multiplicity.[79] Indeed, by setting limits on the concentration of ownership and the control of media companies, the Commission wants to foster external pluralism. Similar positions were advocated by German public broadcasters ZDF and ARD. They rejected option III (harmonisation) and supported option II, favouring transparency measures.[80]

3.5.4 Advertising Sector's Response

Advertisers and advertising agencies have decided to remain silent on the question of media concentration. The European Advertising Tripartite (EAT), promoting the common interests of the advertising business - advertisers, advertising agencies and media - at European level as well as national and international 'tripartite' advertising bodies,

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[79] Consultation Volume IV, February 1994, item 3: 1-9.
[80] Consultation Volume II, April 199, item 9: 1-5.

did not wish to put forward a specific position on media ownership. In its letter of 15 April 1993 to the Commission, it suggested that a more detailed approach to this important dossier should be best communicated to the Commission by its members on an individual basis.[81] Similarly, the World Federation of Advertisers (WFA), in a two-page communication chose not to be involved in this issue.[82] Yet the general question of the advertising industry's position vis-a-vis pluralism and media concentration remains high on the agenda. The European Parliament adopted a resolution in January 1994 urging the Commission to submit a proposal for a Directive (see below). Among other things, it calls for an in-depth investigation of dominant influences in the field of advertising, the excluding of specific groups, such as advertising agencies, from owning media properties and for the application of stringent national and Community provisions for controlling media buying groups. Therefore, advertisers do not constitute a disinterested group in the whole debate on media ownership. As Toby Syfret[83] puts it, 'issues on media ownership and pluralism are very much the advertising sector's business, in a business sense'.

[81] Consultation Volume I, April 1993, item 4: 1.
[82] Consultation Volume I, April 1993, item 10: 1-2.
[83] Personal communication, 04-06-1995. See also Syfret, 1994: 45.

3.5.5 The Economic and Social Committee's[84] Response

The Economic and Social Committee (ESC) adopted an opinion on the GP on 22 September 1993.[85] Regarding the safeguarding of pluralism as such, it declared, as trade unions and journalists' federations did, that there is a risk that information pluralism may be affected by monopoly-type mergers so that action at EC level to maintain it is required. It considers Community's decision to avoid taking action to maintain pluralism as not correct, adding that economic health and competitiveness of business do not automatically increase it (ESC, 1993: § 3.1). Recognising the special role of the media in the democratic process, the Committee advocates minimum democratic standards in the European press and audiovisual sectors. It thus calls upon the Milan Declaration of 5 March 1993 of the International Federation of Journalists, which stressed the need both for securing pluralism within media and protecting editorial independence (ESC, 1993: § 3.1). The Committee approves most of the European

[84] The Economic and Social Committee has played an active role in the formation of European media policy. In its Opinion of 25 September 1985 (OJ C 303, 25-11-1985, p13) on the Green Paper on the establishment of the common market for broadcasting, especially by satellite and cable (Doc. COM (84) 300 final), it argued that the licensing of radio and TV channels should be left to Member States, whereas the Community should take measures to protect pluralism of information and opinions. It called for the protection of minors, right of reply and copyright safeguards while, at the same time, advocated an in-depth investigation on the influence of advertising agencies on the trade in programmes. In its Opinion of 1 July 1987 (OJ C 232, 31-08-1987, p29) on the proposal for a Council Directive on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of broadcasting activities (OJ C 179, 17-07-1986, p4) as well as in its Additional Opinion of 27 April 1989 (OJ C 159, 26-06-1989, p67) expressed the concern that pluralism and freedom of information will be eliminated unless measures are taken to prevent the creation of a dominant position in the broadcasting sector. In its Opinion of 20 December 1989 (OJ C 62, 12-03-1990, p26) on a fresh boost for culture in the European Community (OJ C 175, 04-07-1988), after noting the trends towards concentration, internationalisation and monopolisation in the media, the Committee urged for anti-trust and transparency measures, together with the creation of a European Media Observatory with the task to monitoring economic concentrations and promoting freedom of information and cultural pluralism. Finally, measures to combat the development of monopolistic structures in the record, cassette and film distribution business were also voiced in the Committee's Opinion of 20 September 1990 (OJ C 232, 31-12-1990, p174) on the Commission Communication to the Council accompanied by two proposals for Council Decisions relating to an action programme to promote the development of the European audiovisual industry - 'Media' 1991-1995 (OJ C 127, 23-05-1990, p13).

[85] OJ C 304, 10-11-1993, p17-24.

Parliament's observations pointed out in the resolution of 16 September 1992 and, in particular, the drafting of a charter for European non-profit making broadcasting organisations, the protection of Europe's cultural heritage, the formation of a Media Code with the intention to maintain professional ethics, a Directive securing journalistic and editorial independence, and the proposal for measures to tackle concentration in the media including transparency (ESC, 1993: § 1.7). However, it rejects action relating to transparency separate from rules on media ownership (option II) because it believes that both types of measures should be dealt with together to be effective. Therefore, it calls for a drafting of a proposal for a directive and considers sub-option c (establishment of an independent Committee) to be 'both reasonable and effective' (ESC, 1993: § 4.7).

3.5.6 The European Parliament's Response

The European Parliament reacted to the Commission's GP through its Resolution of 20 January 1994.[86] That resolution was based upon a report that was drafted by the authors of the 1992 resolution Luxembourg and German Socialist MEPs Ben Fayot and Dieter Schinzel.[87] The report requests that the European Commission prepare a proposal for a Directive firstly to harmonise national anti-trust legislation in the media industry and secondly to enable the Community to interfere should a dominant position that might undermine pluralism arises. That would give the Commission unprecedented powers to intervene in the media sector, wherever it felt that a proprietor owned too many newspapers or TV channels. The two rapporteurs suggested

86 OJ C 44, 14-02-1994, p177-9.
87 Document EN/RR/242/242609, PE 204.759/final, 05-01-1994.

that the Directive should cover all media and carry on investigating concentration patterns well beyond formal ownership (for example, 'sleeping partners'). They also asserted that advertising agencies should be excluded from running media companies, that firms buying advertising space should be subject to anti-trust rules in order to ensure that they cannot exercise undue influence on the media, and that links between broadcasters and programmers should be restricted.

According to the rapporteurs, the accomplishment of the above goals requires an action programme including the following: a) a Directive on the right of access to information from both the European Union and national bodies, similar to the Freedom of Information Act existing in the United States; b) a European media code to preserve professional ethics; and c) a framework Directive to retain journalistic and editorial independence in the entire media sector. Particular reference was made to the creation of a European Media Council whose role would be monitoring developments in the media, providing expertise and opinions to the Commission on mergers, and ensuring transparent relations between media firms.

The European Parliament adopted the report by 112 votes in favour, 60 against and two abstentions. Although the majority of the European Parliament voted in favour of the report, the result clearly reveals that not all MEPs thought that more regulation in the area of media concentration is in the public interest. The vote on the report split the European Parliament along ideological left-right lines, showing that the battle for Community policy in the area of media concentration and pluralism has not only a juridical basis[88] but, above all, a political hue. Indeed, if one takes a look at the debates for the adoption of the Fayot/Schinzel report,[89] it will become clear that, even though all MEPs agreed on the need for pluralism, some argued that the achievement of this goal should come through stricter rules and others asserted that liberalisation is the appropriate root. The MEPs divided according to their political positions. The Socialists backed the report since it was drafted by two of their associates, while the Greens argued that it should go even further to protect job losses. On the contrary, the Liberal Group and the European People's Party, both pursuing right-wing policies, opposed the text claiming that it is far to interventionist and does not take adequate account of crucial economic and competitive aspects. Christopher Jackson (UK), draftsman for the Opinion of the Committee on Economic and Monetary Affairs and Industrial Policy, although agreeing with the rapporteurs on preserving pluralism, also mentioned that media concentration in Europe must be encouraged in order not to allow Japan and the United States to take the lead. His associate Hoppenstedt (Germany) declared that 'certain concentration operations are simply an economic necessity', whereas Mrs Lavire (Netherlands) called for less bureaucracy and opening of the market. Rawlings (UK) emphasised: 'the rapporteurs' exclusive preoccupation with pluralism of ownership has blinded them to the real issue now facing the European media', meaning the convergence of new

[88] It might have become clear by now that the question of media ownership has created a complicated and frustrating interplay of European competence versus national competence. Under Articles 57(2), 66 and 100a of the EC Treaty, the Community has indeed powers to enact harmonising measures. However, the Commission recognised in the 1992 Green Paper that any harmonisation measure should respect the principle of subsidiarity. The principle (clearly defined in Article 3b and further clarified at the Edinburgh Summit in 1992) dictates that the Commission should only propose such action where this is both necessary to achieve the objectives of the Treaty and an area where Member States are unable to legislate effectively. As mentioned elsewhere, and in accordance with the Commission's statements (see p98-9, 103 of the Green Paper), our interpretation is that the only relevant objective in this case is that of development of the Internal market.

[89] OJ No 3-441, 20-01-1994, p228-36.

communication technologies and digital compression. The Internal Market Commissioner Vanni d'Archirafi, closing the debate, reckoned that no Directive would be able to harmonise behaviour patterns and attempted to reach a compromise by stating that 'if pluralism is to be protected, we need a strong, competitive communications industry in Europe. The former, pluralism, cannot exist without the latter'. He then promised that the Commission will reflect on Parliament's proposals and take a position in spring 1994 on the necessity of Community-wide action.[90]

3.6 THE 1994 COMMUNICATION

The Commission thus set itself an ambitious timetable for action. That timetable though has never been achieved. The Commission postponed plans to introduce a law on cross-border media ownership, something that would have caused a major reform of the European media industry. Instead, it submitted a Communication to the Council and the European Parliament on 5 October 1994 (COM(94) 353 final), in which it presented the outcome of the first consultation exercise and its evaluation. The Communication also called for further consultations on the subject across the media industry, with the dual objective of 'rejecting or confirming the need for a Community initiative' and 'in the event that such an initiative would prove necessary, define its limits' (COM(94) 353: 6). At first glance this seems to be a positive step towards maintaining and developing Commission's links which were forged with MEPs and the interests concerned during the first consultation process. Yet the first issue - the need for EC action - was dealt with extensively in the first consultation round, where the

[90] Document EN/RR/242/242609, PE 204.759/final, 05-01-1994.

European Parliament, the Economic and Social Committee and the majority of the 70 companies and industry organisations answered positively on the necessity of such action. That result was confirmed by the Communication itself (COM(94) 353: 15-21). Bearing in mind that the second objective - content of an initiative - was also tackled in the complementary questionnaire, one could safely conclude that the first consultation exercise which lasted one and a half year was pointless.

This was not what Commissioner Vanni d'Archirafi wanted to happen. In the debates preceding the publication of the Communication, the sitting Internal Market Commissioner presented a paper on the issue for discussion at the European Commission's weekly meeting on 21 September 1994.[91] He tried in vain to convince the Commissioners that harmonisation of national ownership rules is needed in the name of smooth operation of the Internal Market. Many participants highlighted the difficulties arising from the subsidiarity principle. Competition Commissioner Van Miert argued that the Commission should be careful not to offend national sensibilities by taking measures which would have an impact on media pluralism, an area which is within the exclusive jurisdiction of Member States. Mr Van Miert presented his country's experience where there is a complex regulation system in force with the aim to maintain a balance both between language groups and television and the press. Belgium, he declared, is against an EC initiative which would require it to liberalise its media market. Most Commissioners agreed with Mr Van Miert, asserting that the European Union should avoid intruding on subsidiarity territory, although admitting that national regulation on pluralism could constitute obstacles to free movement of services and freedom of establishment.

91 Tech Europe, October 1994: 5-7.

3.7 CONCLUSION

Thus the drafting of a directive on this hot issue proved to be politically unworkable. As a result, the final document passed refrains from any ambitious proposals and simply announces a second consultation phase based on another questionnaire (see Appendix XIII). In fact, this constitutes a third round taking into account the 1993 complementary questionnaire. The Commission's unwillingness to commit itself to a policy proposal could mean either that it is playing for time or, even worse, that the 'no action' option is still on. Those hesitations made the European Parliament express its disappointment to the non-decision-making policy course. In its resolution of 27 October 1994,[92] the European Parliament calls the Commission once again to take action to harmonise national legislation on the media with the objective of creating and maintaining a diverse and pluralistic forum of opinion in the media (EP, 1994: § 6). In addition, it urges the Community to give a precise calendar for the presentation of a draft legislation in the field of media concentration and pluralism.

However, the probability of a directive looks extremely low at the time of writing. The Commission is still in the process of analysing the results of the second survey. Although it promised the presentation of a potential initiative during 1995 (COM(94): 44), this is not the case any more. There are several factors that complicate the outcome. Firstly, there is the conflict among the Commissioners about the viability of the plan. The media concentration topic has been a political hot potato within the EC for several years. Secondly, there is the question of the content of the scheme. The creation of a European Media Council

[92] OJ No C 323/157, 21-11-1994.

seems highly unlikely, while some other of the European Parliament's proposals to maintain diversity, such as controls on advertising and bartering, could be taken by DG-XV. The question of how to measure media concentration though is likely to create unsolvable problems. As we shall see in the next chapter, the 'audience criterion' envisaged in the 1992 Green Paper has given rise to misunderstandings and has not been viewed in a favourable light. The only recommendation that DG-XV is likely to heartily endorse is the proposal that guarantees access for all broadcasters. In any case, if there is to be an initiative of some kind, the Commission is far from deciding precisely what form it will take. In the meantime, the big players continue forming alliances, taking advantage of non-decision-making policy course. Murdoch's tentative talks to take a stake in Fininvest, the £3 billion merger between United News and Media (publisher of the *Daily Express*) and MAI (the broadcasting and financial services group which controls two ITV franchises) in February 1996, the partnership between the French Canal Plus, the German Bertelsmann and Murdoch's BSkyB in March 1996 in order to develop digital technology and pay-TV in Europe, and the merger between Compagnie Luxembourgeoise de Telediffusion (CLT) and UFA (which holds Bertelsmann's business in the electronic media sector) in April 1996 (subject to the approval of both German and Brussels competition authorities) are four examples of the on-going tendency towards concentrated ownership power. These examples provide a good illustration of the extent to which delays in policy making can benefit big players.

Chapter 4

Methods of Measuring Media Concentration

4.1 INTRODUCTION

The subject of this chapter is the exploration and analysis of the different methodologies of measuring media concentration. The appropriate measure depends on the objective of the measurement. The crucial question that should be asked beforehand is what is the purpose of the measurement: the examination of economic power or an assessment of whether market structure might restrict diversity in the media industry? So far media academics have borrowed measures that were developed by economists. Regarding the examination of economic power, economists have used companies' market share, shares of assets, value-added, sales, advertising revenue or even number of employees in forming an opinion of their bulk in the economy. These measures are more appropriate for industrial structure and manufacturing sector. In the media, because of their nature and their significant role in culture, society and politics measures examining the media firms' economic power alone seem to be inadequate. The special social significance attached to the media's role in disseminating information requires an investigation of whether a concentrated media market restricts the free flow of information.

To overcome this limitation of economic-based measures a few media analysts have proposed a number of media concentration measures which take into account their importance to the public. The view that has emerged from the recent debate on media concentration at European (initiated by the EU 1992 Green Paper) and national (Arthur Andersen's 1994 study *UK Media Concentration*) levels, is that it is possible to measure the 'influence' exerted by the media by applying audience-based criteria. It has been put forth that while financial units are close to the traditional systems of concentration measurement which permit assessment of media market concentration or even the existence of a dominant position (concentration of resources), audience-based methods are coherent with the cultural/political standpoint and can be held to be most effective for the measurement of pluralism and influence in the market-place for ideas. Nevertheless, influence over the audience cannot be assessed by using audience-based criteria, whether that is readership, audience reach, viewing or listenership share, etc. Audience exposure to mass media is certainly not the same as influence over the audience. In the end, these so-called new measures are nothing but refinements of measures of market power.[1] They measure market power, although in a more sophisticated way. They are a form of market share measurement, which is a classic economic measurement.

This chapter examines the problems associated with both types of concentration measures and assesses their appropriateness in the broad context of media concentration's impact on the public interest. It will be argued that both financial and audience-based units apply, since economic power and diversity (especially in the range of material offered) are closely linked. A thorough definition of the markets in which market shares would be calculated is firstly provided, followed by a discussion on the measurement of economic power. In discussing the measuring of shares in the political/cultural market, the notion of the 'media controller' is firstly analysed, followed by an extensive examination of the various units that have been said to capture a media operator's ability to influence public opinion. At the end of this chapter

[1] There is nothing wrong with that, provided that one realises that 'influence' is very difficult to assess and therefore, as a substitute, market power is being measured.

alternative proposals are put forward in an attempt to develop a better measure which takes into account a large number of public interest issues.

4.2 DEFINITION OF MARKETS

4.2.1 Defining the Geographical Market

When focusing on levels of concentration, one has to define the relevant market for which the market shares would be calculated. Relevant markets are defined firstly in terms of geography and secondly in terms of products or services (the good in question). The definition of the market-place can have an impact on what is perceived as its structure. The geographical dimension of market definition determines the scope of the market, that is, whether markets are defined as being local, regional, national or even international. The issue of the relevant geographic market being examined is particularly important, since the adaptation of either narrow or wide market definitions may lead to totally different results in measuring levels of concentration.

Most media economic studies have adopted fairly narrow definitions of markets. Regarding the newspaper market structure, those studies were often restricted to local markets for dailies. US mass communication researchers have investigated newspaper concentration for decades assuming that the *city* was the appropriate territory. Nixon (1968) talked about competition as a city phenomenon while Busterna (1988b, 1988c) analysed levels of concentration in cities. Picard (1988) moved away from the traditional way of describing markets and examined daily competition in *metropolitan* areas. After considering the national newspaper market and thirty markets from the largest 100 metropolitan areas, he reached the conclusion that newspaper concentration increased as the geographical size of the market decreased. Finally, Lacy and Davenport (1994) examined the degree of concentration and competition in the US newspaper industry based on the *county*. They argued that although daily newspaper markets showed higher concentration and lower competition than other US industries, these markets were less concentrated and had a greater potential for competition in 1983 to 1988 than suggested by other studies using cities as the geographic market.

It is obvious then that using the city as the geographic market yields different descriptions of market structure than using the county as the geographic market. The same could be said about national and local or regional markets. The Arthur Andersen study,[2] for instance, adopted a national perspective in examining UK media concentration. As we shall see below, in order to measure company shares in the national cultural market, the consultancy used the *time* that the public actually spends on the media. It is easily understood that, under such interpretation, regional channel Carlton's share will be smaller in relation to media with national coverage (i.e. BBC). In fact, the above analysis found that BBC's share in the national market is 44.1% while Carlton's share in the same market is just 6.9%. However, it is meaningless to calculate Carlton's national market share since people living outside the London area do not have access to that channel.

[2] Shew, W. (Arthur Andersen Economic Consultancy), July 1994, p1-20.

Broadly speaking, some markets such as the financial ones may be international, while others such as that of magazines may be regional or national, and others such as cable or the sale of advertising may still be very local. Local advertisers, for example, are interested primarily in the local market and thus normally restrict themselves to consideration of local markets. So there are several definitions of the geographical market depending on the product in question. One thus should be careful when establishing the sphere of competition and trying to determine the extent and effect of competition on pluralism. Insufficient competition and therefore excessive influence may arise at a number of levels - local, national, regional, or international. The regulator must ensure reasonable diversity and balance in the information and entertainment available at all these levels. Referring to the UK media market, Robinson et. al (1995: 57) argued that 'the main worry, from a pluralism viewpoint, is that a company might acquire excessive influence in a local market through its ownership of both a local newspaper and the local commercial TV franchise. Yet, if such a company operated only in one English region, its share of the national media markets would be so small that it would comfortably pass under all the proposed thresholds'.

The above discussion illustrates that cross-ownership between a local TV channel and a local newspaper (or a local radio station) would lead to elimination of competition and therefore increased concentration in a media market, only if they are based in the same area. This is generally true since different newspaper groups or broadcasting channels operating in different regions do not compete for the same audiences. Yet they might be in direct competition for advertising revenue. Referring to the newspaper business, Veljanovski (1990: 18) stated that 'national newspapers are seeking a greater share of the classified advertising business dominated by the regional and local press, through regional editions and inserts, and the regional character of their readership. Regional newspaper companies which each own many local and regional newspapers, now offer attractive rates for advertising simultaneously in all their newspapers'. From a pragmatic viewpoint thus, it cannot always be assumed that regional and national media outlets are not in direct competition for advertising revenue.

4.2.2 Defining the Product Market

Besides being geographically-defined, markets are also product (or service)-defined. 'The products chosen must form part of a group with characteristics which separate them in an economically sensible way from all other products' (Frazer, 1992: 14). The economic criteria for market definition are based on the notion of substitutability across products as measured by their price elasticities. According to competition policy, two products belong to the same market when their producers' price-setting behaviour is interdependent. There must be substantial interchangeability (if not homogeneity) between these products and others. According to Frazer (1992: 14-16), the degree of interchangeability may be assessed from both producers' and consumers' viewpoints. The first method of assessment - supply-side analysis - seeks to identify those firms which are either supplying the products, or which will be willing and able to supply the products if there were an increase in their price. The second method of assessment - demand-side analysis - measures the willingness of consumers to substitute one product for another. If there is a high degree of substitution between the two products, then they will be considered to be part of the same market. If, for example, consumers are willing to substitute free-access television (whether financed by advertising or licence fee) for pay-TV, then these will form part of the same market.

The current technological developments in the media sector have made it difficult to reach a proper product market definition. Indeed, in the current 'multimedia' age (i.e. proliferation of new media, convergence of technologies), the question of what products are part of the same market is becoming hard to answer. The above described studies concerning the US local newspaper industry, narrow the market by ignoring the impact of non-local dailies and of print sources other than dailies (other non-print media). Given that a meaningful definition of a media market must indicate the range of alternative sources of supply open to readers, listeners and viewers, conventional ideas about control of the market by publishing or broadcasting companies must be open to criticism (Peacock, foreword in C. Veljanovski, 1990: 6). Cento Veljanovski (1990: 16) illustrates this by giving the example of one firm which produces 100 per cent of the domestic output of white handkerchiefs. This may indicate that the company is the only domestic producer, but it is not evidence of complete monopoly and does not imply the ability to influence price unilaterally. Such a manufacturer faces competition from imports, substitute products (including handkerchiefs of another colour or tissues), and from potential entrants. Similar considerations, the argument follows, apply to the media industry. Television companies compete for audiences not only between themselves but also with VCRs, cable and satellite TV, and for advertising revenue with all these and also with radio, newspapers and magazines. Competition among media sectors thus must be taken into account when defining the relevant product market.

The fact that different media are seen as substitutes is shown if someone looks at local news which could be found on television, radio and local papers, and at national news which could be found in all these and also in cable TV, regional radio outlets, and so on. The same or similar information can be delivered via print, on-line, teletext or audiotext and there are products and services which combine different communication modes: images, text and audio. What is the definition of the broadcasting market then? If we take as an example the release of a film which can be viewed firstly in a cinema, then as a TV programme and lastly in a home video, then the market for this product should include all these sub-markets. A soap opera, on the other hand, may only be used as a TV programme and therefore the market for this product is television. Thus the market for soap operas and films is defined differently. Further, should the definition of the broadcasting market cover electronic publishing? However, if electronic papers are defined as televised media, then they should be covered by the very same rules that applied to the broadcasting sector (many would strongly oppose that). As stated by Jonathan Davis (1994: 7) 'it will be necessary to adopt a much more fungible approach to market definition than either competition authorities are used to or is currently applied to the media'.

As the distinction between both electronic and non-electronic media and terrestrial broadcast TV and telecommunications services becomes more and more blurred, so does the definition of the relevant market. The presence of close substitutes can expand the market, resulting in lower levels of concentration. Therefore, several alternative market definitions need to be considered simultaneously. Levy and Setzer (1984), for example, considered concentration levels in the US national video market-place under alternative definitions of the video market-place-broadcast only, broadcast plus cable, etc. There have also been many studies that, by trying to identify the user of the medium while measuring concentration, draw a distinction between audience markets and advertising markets. Mc Fadyen et al. (1980) noted the difference between market for revenue (through time sales to advertisers) and market for audiences and measured concentration in Canadian broadcast markets separately for the two groups. Larson (1980) not only considered concentration in the US television industry at both national and local levels but he also looked at levels of concentration in broadcasting and among broadcast advertisers. Levels of seller concentration (TV stations) were measured by station net weekly circulation[3], estimated TV station income, network advertising revenues and by national and regional advertising revenues. Buyer concentration was treated both by advertising agencies, who purchase time in the industry for television advertisers and by the advertisers themselves, who are the ultimate consumers of the television time. These studies make it clear that much of the media serve two general markets - that of consumers and that of advertisers - and further distinctions within these markets based on specific types of advertising and/or region have to be drawn.

The main point so far has been that media today can be seen as close substitutes because of the convergence of technologies. However, it is not only the substitutability in distribution networks that matters but also substitutability in content. We indeed have convergence in distribution today but that does not necessarily mean that what is on TV

[3] Larson defined weekly circulation as the tabulation of the number of unduplicated television households which view a station for at least 5 continuous minutes at least once a week.

is substitutable for what we read in newspapers, or listening to the radio is substitutable for watching television. Newspapers may be read through computers today (i.e. Internet) but the content that is provided to Personal Computers (PCs) is the same. In economic literature, substitutability relates to the question of whether a range of goods or services in a market are essentially, as far as the consumer is concerned, choices between one or the other in terms of quality or price; or are they provisions of alternative goods, in which case the choice between them will depend on the consumer's criteria of utility. People do make choices between going to the cinema or going to restaurant, but these do not compete in the same market (they are not substitutes). On the other hand, going to a restaurant and take-away from a restaurant are probably substitutes.

When it comes to the media industry, the question not only is whether television is a substitute for newspapers but also whether advertising in television is a substitute for advertising in newspapers; or news and opinion output (where pluralism matters greatly) provided by newspapers is a substitute for news provided by TV. From a consumer point of view, does it make any difference if he/she orders a video tape from a telephone company or takes it from a video store? Surely such decision has nothing to do with content at all; it is just the convenience of delivery which is competitive and that makes a big difference on policy grounds. Referring to the television sector, Bates (1993: 7) argues that 'audiences are concerned primarily with video signals, no matter the delivery channel. In this sense, audiences may not make much of a distinction between regular broadcast television, cable and alternative delivery systems such as home satellite dishes, low power TV, multi-point delivery systems, etc., at least to the extent that such alternatives are available'. The definition of substitutability thus has to be drawn very carefully, encompassing both substitutability in distribution networks and substitutability in content.

These distinctions suggest that considerations of the print and broadcast market structure need to be based on multiple definitions of markets, with separate considerations of local, regional, national and international markets, of audience and advertising markets and of potential substitutes. Apart from this aspect of the problem however, one has to find an appropriate standard for the measurement of market share. There follows an assessment of the relative merits of both revenue and audience related criteria firstly for the measurement of economic power and secondly for the measurement of diversity and pluralism. It will be argued that both financial and audience-based units apply, since economic power and diversity (especially in the range of material offered) are closely linked.

4.3 MEASUREMENT OF ECONOMIC POWER

One of the arguments about levels of concentration concerns the measurement of the magnitudes. The most usual method consists of the presentation of absolute numbers: rankings according to turnover, profits, number of employees in the companies or, in the media industry specifically, number of TV stations or newspaper titles, and so on (Seymore-Ure, 1991). Shepherd (1979) argued that one can use firms' shares of assets, value-added, employees, or profits in forming an impression of their bulk in the economy. Nevertheless, he also noted that each measure has a slightly different meaning. Assets may be the best indicator of the firms' economic power while value-added shows their role in the country's production process. The large companies' share of workers reflects their influence over jobs or even votes whereas profits reveal their ability to gain market advantages compared to the rest. All these 'technical' problems in measuring corporations' scope (size) indicate that there is no single best measure of 'aggregate concentration' in an industry. 'Bigness' therefore is something everyone understands but no one can measure definitely.[4]

Apart from these problems there is the question of which number of large firms is the 'best' one for defining the share of large firms. As indicated elsewhere, measuring concentration in media markets requires both a measure of the market (identification of the market) and a measure of concentration. A number of indexes have been developed since the 1950s in the USA for both purposes. The Bureau of Census and scholars of American industries have presented concentration data and ratios as a percentage of control of a measured value by the largest 4, largest 8, and largest 20 ownership units in an industry (see Larson, 1980: 25). The 4, 8 and 20 criteria were used by Caves (1962, 1966) in his airlines and in his water industry studies, and by Bain (1968) in his studies of business concentration. One thus can slice the large-firm share at any of a number of levels. Shepherd (1970, 1979) however argued that the four-firm concentration index is the most commonly used measure of concentration in general industry studies. The advantages of a concentration ratio are firstly that it shows the degree of concentration of few-firm leadership directly and correctly and secondly that it shows changes in market power with special clarity. The defects though are that concentration ratios are

[4] Although there is no best all-purpose index, in practice, sales and assets are the most commonly used measures of size. Picard (1988), for example, defined concentration as the proportion of sales controlled by the largest firms in an industry.

often too inclusive, embracing scores of disparate products and distinct regional sub-markets. The national ratio of, let say, 10 per cent for newspapers for instance, may conceal very high local concentration. In addition, concentration ratios may be too narrow. In some cases imports, not included in the ratios, cause concentration in total sales to be lower than the ratios state.

The 4, 8 and 20 criteria were also used by scholars including Nixon and Hahn (1971) who specifically treated concentration in the newspaper industry. A more recent analysis carried out by Picard (1988) used four ways to measure concentration in the US daily newspaper industry: the one-firm concentration, the two-firm concentration, the three-firm concentration and the Herfindahl-Hirschman index (HHI). The first three concentration measures are the percentage of circulation controlled by the largest circulation newspaper, the two largest circulation papers and the three largest circulation titles respectively. The HHI is a way of placing concentration on a continuum from 0 to 10,000, the latter representing a monopoly. The index is determined by summing the squared value of the market shares of all of the firms in a market. The HHI uses shares ranging from 0 to 10,000. But at what point is the market considered concentrated? Stigler (1983), one of the supporters of using the HHI for concentration measurement purposes, argued that one can roughly identify markets with HHI>1,500 as tight oligopolies and those with HHI<1,000 as loose oligopolies. If the index falls well below 1,000 then the market is unconcentrated and when it falls above 1,800 then the market is highly concentrated.

As regards the television market, in particular, the evidence shows that little variation can be found in the most commonly used concentration ratios (2, 3, 4, 8 , or even 20-firm). Larson's 1980 study referred to above, measured levels of concentration in the US TV industry using a 3, 8 and 20 breakout and concluded that all the used measures revealed that the TV station industry was not highly concentrated.[5] Such conclusions may not be true, not least because television broadcasting is not an ordinary, typical industry. The television market is distinctive in a number of ways: a) in that the question of economic power has manifested itself in two distinctive policy arenas. On the one hand, there is concern over the impact of concentration on economic conduct and performance, pricing behaviours, barriers to entry and limitation of output (Ferguson, 1983; Bates, 1993). On the other hand, there is the question of the social performance of the market (pluralism, diversity, and so forth); b) TV stations are operating in several markets simultaneously. In one market they trade programming for audiences and in another market they sell audience to advertisers (Bates, 1987, 1993); and c) television stations operate in a number of geographical levels (Compaine, 1981, 1985). Therefore, according to Bates (1993), the strict barriers to entry and the domination of affiliates of the three networks make the concentration ratios of little importance in measuring concentration in the US local TV markets.

[5] Larson found the TV industry to be highly concentrated only when he considered an 'additional' measure, that is, the product representative function of the networks (i.e. their networking functions involving programme and advertisement sales).

4.4 MEASURING SHARES IN THE POLITICAL AND CULTURAL MARKET

Large companies' sales and turnover may be the best indicator of their economic power and reveal their ability to gain market advantages compared to the rest. In other words, very powerful firms can influence economic conduct, performance and pricing behaviours and have an impact on barriers to entry and limitation of output. Therefore, when the purpose is the traditional examination of market power then a high revenue company share may provide a quite useful guide. When it comes to the media however, the concern not only is over the impact of concentration on economic aspects but there is also the question of the social performance of the market (i.e. pluralism and diversity). Are measures tailored to measure economic concentration good enough to capture concentration levels in the political and cultural market, the so-called 'market-place for ideas'?

The view which has emerged from the recent debate on media concentration at European (EU 1992 Green Paper) and national (Arthur Andersen's 1994 study *UK Media Concentration*) levels, is that it is possible to identify a sort of relevant 'market for ideas', which does not coincide with the economic definition of relevant market; and that de facto restrictions of pluralism and diversity are the results of an abuse of power in such market (abuse of political and cultural power). There are three problems associated with such approach. Firstly, there are substantial difficulties in defining a suitable notion of relevant market in the political and cultural sense. As the relevant product tends to extend across different media, the cultural/political notion of the relevant market may be significantly broader than the economic one.

The problem is bound to be exacerbated as multimedia conglomerates expand their activities further, and ownership of complex transnational media chains becomes widespread. To illustrate, how does one assess the effective combined share of, say, News International in the broader market for information, culture and political opinion, comprising newspapers and TV outlets in several countries? Secondly, the exact nature of the potential abuse is not clear and explicable and cannot be specified in the same way as abuses of economic market may be specified. What then counts as an abuse of power in the political/ cultural market? Beyond the general assumption that all media exercise some form of political and cultural influence on the public, there have emerged no satisfactory criteria so far for the definition of a broad political and cultural market in which spheres of influence by a single controller could be assessed.

The most serious reservation concerning this approach though has to do with the selection of the criteria for measuring diversity in the market place for ideas. It has been put forth that while financial units are close to the traditional systems of concentration measurement which permit assessment of media market concentration or even the existence of a dominant position (concentration of resources), audience-based methods are coherent with the cultural/political standpoint and can be held to be most effective for the measurement of pluralism and influence in the market-place for ideas. Nevertheless, influence over the audience cannot be assessed by using audience-based criteria, whether that is readership, audience reach, viewing or listenership share, etc. Audience exposure to mass media is certainly not the same as influence over the audience. In the end, these so-called new measures are nothing but refinements of measures of market power.[6] They measure market power, although in a more sophisticated way. They are a form of market share measurement, which is a classic economic measurement. Audience-based units are the equivalent of, say, measuring sales - i.e. market share - which is a classic economic measure of market power.

In any case, political/cultural diversity and economic power are closely linked. It might be worth at this point spelling out the arguments about the relationship between economic power and the range of material offered. There is a clear relationship between economic measures of media power and influence/pluralism because economic power determines the control over choices offered. In fact, in terms of the public interest and debates about regulation and concentration of media ownership, there are two wide-spread arguments. On the one hand, there is the argument saying that a highly concentrated market structure in the media sector is of concern not only for the possibility that it may lead to abuses of economic market power, but also for the potential effects on pluralism. A large media player who controls a substantial portion of at least one media sector (for example daily press or TV) has the potential for forcing his/her views across a range of products (political/cultural bias), and thus for restricting the choice of products available to the public in political and cultural terms. In this sense, a competition policy decision aimed at curbing an abuse of economic market power (excessive pricing, creation of barriers to entry, etc.) may also increase pluralism, at least in the sense of reducing bias.

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6 There is nothing intrinsically wrong with that, provided that one realises that 'influence' is very difficult to assess and therefore, as a substitute, market power is being measured.

On the other hand, there is the argument saying that increased competition may lead to less pluralism in the market. Increasing the number of firms in an industry does not necessarily imply greater diversity in the quality and variety of products on offer - especially where price competition is weak. If firms compete on price, product differentiation provides a device for softening the intensity of competition: in a simplified world with only two companies, they will have an incentive to locate themselves as far as possible from each other on the product line (i.e. to offer as diverse a product as possible in terms of product variety and quality). Proximity of location would mean that prices are gradually eroded as the companies compete for each other's business. However, if there is no explicit interaction in the firms' pricing decisions, the opposite result obtains: the firms will locate as close as possible to one another, as the 'market share effect' (the incentive to be where demand is, or to increase one's market share given the market structure) prevails over the 'strategic effect' (the interdependence of the two firms' pricing decisions). Thus the incentive to differentiate products is weaker when companies are able to operate in the near-absence of price competition. The tendency to converge on tried-and-tested formulae poses a potential danger to welfare in terms of the variety of products offered by the market. Hotelling (1929: 41), who originally discussed this effect, talked of 'an undue tendency for competitors to imitate each other'. Therefore, a more fragmented industry structure in the media sector may not necessarily deliver the socially desirable level of product differentiation because it may be more profitable for the companies to locate 'where demand is' (i.e. stick to the middle ground in order to catch the widest audience).

A further important question relates to the possibility that too much competition might display a bias in favour of certain types of products and neglect others. The particular bundle of commodities that are actually produced in the media market (the type of programmes/titles available) might be sub optimal from a social welfare point of view. When demand for products in a particular category is generally inelastic, the products which are being actually offered may end up positioning too close to each other (sub optimal product diversity); and those products for which the elasticity is comparatively lower may not be produced at all. The implication could be that some segments of tastes and preferences might systematically not be catered for, although there might be a large number of different media products.[7] So, strictly from the point of view of pluralism, there might be no automatic advantage to be gained from a more diverse media structure. On the other hand, so the argument runs, a very concentrated industry structure might lead to great diversity, if the dominant firm(s) seeks to prevent entry in the market by filling all gaps in product space.

Having provided, to some extent, an argument that economic power affects the range of material offered, and having spelled out the arguments as to whether concentration or a fragmented industry can deliver best the desired diversity, we now turn to the question of which criterion is the 'best' one for measuring concentration levels for media pluralism purposes. The close relationship between economic power

[7] See on this point Dixit and Stiglitz (1977) who argued that there is a bias against inelastically demanded products which are demanded intensely by a few customers. According to London Economics 1995 study, a media-based example of this effect is the time devoted relatively to snooker and opera on British television. Opera is demanded by only a few customers who would be prepared to pay a high price for it, but snooker, which is in greater demand, provides broadcasters with higher profits relative to costs. Under some value systems, this could lead to a welfare loss - despite the far greater number of snooker fans than of opera lovers - because of the high value that opera lovers place on being able to see opera. With the introduction of new payment mechanisms for television though, minorities would be able to watch their favourite programmes like opera, provided they can afford it.

and pluralism/diversity indicates that criteria that are being used for the measurement of market power can also be used, at least in principle, for the measurement of media influence and vice versa. Financial criteria, for instance, a long-established method for measuring market power, could also be adopted for measuring 'influence' (audience exposure to the mass media); and audience figures, supposed to be more efficient for measuring diversity in the market place for ideas, could also be a measure of economic power, especially as they are sold to advertisers. There are still problems though, since different criteria might give a rather different picture in terms of the participants' individual shares and may lead to disparate inferences on their roles and importance. The rest of this chapter examines the problems that are inherent in defining an appropriate measure of concentration in the information market.

4.4.1 Criteria Based on the Number of Licences Controlled by a Single Operator

Media concentration rules in the audio-visual sector have traditionally been placed on the number of licences or franchises a single operator can hold. Most Western European countries have developed such restrictions with the aim of preserving pluralism in the market. For Frohlinger (1995), head of Unit E/5 'Media, Commercial Communication and Unfair Competition' of DG XV, there were two reasons for this: the scarcity of available frequencies, which required the prevention of one person or body from using all or most of the spectrum; and the lack of reliable audience measurement. However, technological change together with the proliferation of channels and the convergence of different forms of distribution imply that it is no longer necessary (or even suitable) for governments to limit the number of licenses. Further, the progress in audience measurement enables the calculation of reliable figures on the basis of which thresholds for the access to media ownership can be fixed.[8] This is one of the reasons why the European Commission wants the replacement of numerical restrictions on the number of licences by thresholds based on audience share. As is explored below, the Commission is of the opinion that the audience share criterion would allow more flexibility, growth, innovation and increased diversity in the media market. It would facilitate, in particular, the launch of multi-channel packages (packages of specialised or thematic channels) which under existing laws limiting the number of channels are difficult to develop.

Rules placing limits on the number of licences or channels a person may control are indeed not appropriate by themselves as measures of plurality in the media market, since they pay no attention to media revenue, coverage or audience. These rules may measure diversity of media ownership but are crude as measures of the existence in a society of a number of different points of view. To illustrate, in the UK some Channel 3 licences are much larger than others in terms of advertising revenue and audience, so that rules limiting the number of franchises one can own but taking no account of revenue and audience size cannot prevent undue influence. It is imperative thus to take total revenues and population coverage into account, in addition to the number of outlets

[8] Television audience measurement, in particular, the so-called *peoplemeter technique*, can be held to be very reliable. Peoplemeters measure individual viewing by means of dual metering, with one meter monitoring set status, whilst another push-button device (nowadays a remote control handset) registers individual presence as a viewer. Each household member has his own button, which he presses at the beginning and termination of each viewing session. Later, the overlay of set meter and individual viewing records yields estimates of audience by channel or other set activity (for example, use of teletext, pre-recorded video cassettes, video games, etc.) (for more information on audience measurement techniques see ESOMAR's 1994 Report on Newspaper and Magazine Readership Measurement in Europe and ESOMAR's 1995 Report on Radio and Television Audience Measurement in Europe).

owned by an individual or a group, when constructing rules on media ownership. Lessons from press regulation are useful here. The press has never been subject to rules counting the number of titles one may hold. Traditionally provisions aimed at limiting press concentrations have fixed thresholds based on circulation figures and not on the number of titles that can be owned by a single publisher. In most European countries a merger qualifies for investigation on the basis of circulation, and not on the number of titles controlled.[9]

4.4.2 The criterion of the Media Controller

Diversity of media ownership could thus be measured by using the criterion of the number of media carriers (TV channels, newspaper titles or radio outlets) owned by a single 'controller'. The purpose is to find a definition that makes it possible, when a new channel or newspaper is launched by a group or an individual (or when he/she acquires control of an existing channel or newspaper), to estimate the number of media that are already controlled by the group or individual and broadcast or distributed over the same area as that of the new scheme. Determining who controls what media has a distinct advantage. This sort of knowledge undoubtedly makes it possible to provide the legal certainty for investment and sufficient effectiveness for avoiding circumvention. In addition, the concept of media controller is more accurate compared with the concept of owner or majority shareholder in the media company, since there may be several shareholders with the same proportion of ownership. The problem is that it is not always easy to identify clearly who is the controller with decisive influence. Who is

[9] In Greece however, under the recent Law 2328/1995, the press has become subject to counting rules (see Appendix I)

the actual controller of a media outlet in the case, say, where there are three shareholders each having 33 per cent share of the capital of the medium?

There is thus a technical issue of the relationship between levels of ownership and control. Before discussing that however, it seems to us that a preliminary issue arises, and that is the question of whether owners are controllers at all. In other words, can we simply equate ownership and control? Does ownership actually translate into control? Undoubtedly the answer is yes in cases where the founder of a media company holds the majority of the shares and his/her family the rest. Traditional press company structures have been formed along these lines.[10] Today things are different though. The formation of large vertically-integrated and diversified units has led to a corporate structure in which shares are normally dispersed, in which financial institutions and industrial corporations have significant shareholdings, and in which highly qualified managers make key decisions. In situations of dispersed share ownership, who can be said to control the firm in question? When ownership is dispersed, does that mean that the share owners still control it?

The measurement of control in terms of ownership has weaknesses because it does not take into account other ways and means by which influence can be exerted over a firm's decision-making centres. Managers, for example, have been appointed in key positions in diversified enterprises (and often given the opportunity to hold minority stakes) because their specialised knowledge and expertise has

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10 In the inter-war period (1920-1939) in the United Kingdom, for instance, five men - Lords Northcliffe, Beaverbrook, Rothermere, Camrose and Kemsley - enjoyed a dominant position in the press sector by launching titles and retaining the majority of the shares (for more information see Curran and Seaton, 1991).

been considered essential for the smooth running of the modern media enterprise. This, however, creates an *agency problem*, i.e. it poses the problem of the relationship between owners/shareholders and management, often putting the editorial control with the management. An agency problem is always evident in the presence of delegation, that is, in all cases where one individual is contracted to carry out a task on behalf of another and the parties' incentives do not coincide *a priori*. A typical case is the shareholder/manager relationship, where the manager's decisions reflect his/her own preferences (which might include greater power or increased prestige) rather than the shareholder's goal of profit or value maximisation. The instrument available to the shareholder for aligning the manager's incentives with his/her own is the contractual arrangement: by making the manager's compensation also a function of his/her same objective (firm's profit or stock market value) the efficiency loss from delegation might be reduced.[11]

Some economists[12] stated that the above argument has great validity in cases where there are few shareholders but it might be open to question where there are many minority holdings. They pointed out that solving the agency problem and placing an effective control on management is

[11] Owners however might be reluctant to monitor managers, not least due to the 'free-riding argument in management monitoring'. If one shareholder were to engage in the task of specifying and enforcing the managerial contracts, he/she would bear the full cost of that activity but receive only a fraction of the total gain, while conferring external benefits on all other shareholders. This reduces his/her incentives to do so and therefore the intensity with which managers are monitored are low. The discipline role normally exercised by capital markets is also supposed to keep managerial discretion in check: when managers pursue objectives which are at variance with what is perceived by the stock market to be consistent with maximising the firm's profits, share prices would fall and the firm would become vulnerable to take-overs. While this is generally true, it is also true that the potential role of take-overs in changing corporate control is relatively well-developed only in British-style securities markets. Elsewhere in Europe, stock markets tend to be much smaller and their role is not perceived as being one of disciplining managers; instead banks and families have controlling interests that impede the take-over process (see Franks and Meyer, 1990).

[12] Kosmopoulos, DGX, personal communication (01-06-1995); Caffara, London Economics, personal communication (12-10-1995).

relatively easy in cases where there is one or few shareholders. Nevertheless, it is far less likely to be successful where ownership is significantly fragmented across a large shareholder base. Dispersed share ownership, according to them, has important implications for the effectiveness of shareholder monitoring of management. In the media sector, the implication of having fragmented ownership due to strict ownership rules, might be that the editorial control would rest entirely with the management. To the extent that management might also pursue a particular agenda, ownership restrictions would then simply replace one form of potential threat to pluralism (that from the owner) with another (that from the management). Therefore, while the dominance of a single individual or shareholder group might be prevented, the management might in turn pursue objectives which are not less damaging in terms of pluralism and diversity. Within a company thus there is clearly a question of who actually controls the company's policy - the owners or the managers. It seems to us that a case-by-case analysis is required to assess who makes the key decisions which influence the editorial content.

It is not only the emergence of the new elite of managers that has raised questions over the relationship between ownership and control. It is also the links between advertising industries and the media that have masked the above separation. There have been two trends in the advertising industry that justify such assumption. Firstly, the progressive concentration of the advertising mediators (agencies and buying houses) and the separation between the creative activities (agencies) and the management of accounts (buying houses) have changed a key stage in the relationship between the media and the advertisers: the determination of the prices of insertion and other contractual conditions of advertising space and time. Secondly, new advertising formulae for advertising and commercial promotion such as bartering, product placement and teleshopping represent a means of integration between the advertisers and programme production industries and undoubtedly weaken the barriers between production, programming and advertising. Despite the economic advantages of bartering,[13] for example, this formulae for advertising poses the risk of loss of editorial control by broadcasters, as does teleshopping and to a lesser extent product placement.[14]

The increased involvement of other concerns such as financial institutions and industrial corporations in media share ownership is another trend that needs consideration. Marxists like Murdock and Golding argued as early as 1977 that 'shareholdings in the large corporations have become progressively concentrated in the hands of the dominant financial institutions and of other large corporations' (Murdoch and Golding, 1977: 30). They added that 'compared with the general passivity of most private shareholders, institutional investors are likely to pursue a much more "interventionist" policy with respect to the operations of companies in which they have holdings' (ibid: 30). For Murdock and Golding though, such interconnection of the major communication firms with the dominant financial and industrial interests prove the fact that the ownership has not actually been

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[13] Bartering has become established in Europe due to the relative scarcity of entertainment programmes resulting from the proliferation of channels in the 1980s. In this way, some advertisers provide programmes in exchange for advertising time on a particular channel. In the majority of cases, the advertisers provide soap opera, quizzes and other light entertainment programmes, devised to attract large audiences (EIM, 1993).

[14] Teleshopping and product placement are similar to bartering in the sense that they blur the separation between the audio-visual and advertising industries. Teleshopping consists of offering products or services directly to the public, in a similar way to selling by mail. Product placement means presentation on the screen, within programmes (like films or soap operas), that do not tend to have product advertisements. This technique is not really industrial integration but is similar to the previous activities in that they may lead to loss of editorial control on the part of broadcasters (EIM, 1993).

separated from control. 'Control over the key processes of resource allocation is still significantly tied to ownership' (ibid: 32). They supported that argument by saying that both interests - communication and industrial/financial ones - share similar views. In their words, 'the owning group continue to constitute an identifiable capitalist class with recognisable interests in common' (ibid: 33). Negrine (1994b: 63-4) however challenged that statement on the grounds that it is 'too general to be meaningful', it is a general assumption 'pertaining to a concern for success and survival'. For Negrine the media exist in a competitive market place and have to employ whatever means possible to survive in that market place. So the general validity of the argument concerning the allocative power of ownership is in no doubt. What is in doubt for him, in view of lack of evidence, is the assumption that economic aims constitute the basis of pursuing a particular ideology ('conservatism') in the media.

The question of whether ownership is equated with control (and the search for a proper interpretation of 'control') is still with us today and forms a significant part of the current debate over establishing common ownership rules at European level. The Commission has initiated a study on this subject in order to reach a definition of 'controller' which will reflect experience at national level and will be in line with the various definitions of control already used in competition law and company law.[15] The study, carried out by the European Institute for the Media (EIM),[16] tried to identify who is genuinely in control of a press or broadcasting enterprise. After reviewing several criteria for defining the controller in a number of European countries, it identified

15 For an account of 'media controller' definitions in selected European Union countries, see Appendix XIV.

16 The European Institute for the Media, 1994, p1-20 (English text).

five means of influencing a firm's decision-making centre: *direct links*, *indirect links*, *family connections*, *external financial or contractual relationships* and *unofficial agreements*. Despite the fact that direct links with the enterprise appear at first glance to be the most influential means, it would be wrong, according to the analysis, to underestimate the others. Owning a stake in a company either indirectly or through a relative (Kirch, for instance), could be just as effective a means of wielding influence as being a majority shareholder. Likewise, appointing the management (Murdoch's strategy) could be as powerful a means of exerting influence as being appointed to a management position. The study also identified four ways of wielding influence: *influence through ownership links* (capital), *influence through links with staff*, *influence through financial links* (debts) and *influence through contractual links* (supplies, distribution). It concluded that ownership links are the most effective way of gaining influence over the board of directors, although the other three - financial, staff and contractual links - should also be taken into consideration.

On the basis of these criteria it is then possible, with respect to each player directly or indirectly involved in the operation of the media in question, to evaluate by which ways and means he/she may exert a decisive influence on the operation. Margot Frohlinger of the European Commission (1995) argued that such a qualitative definition of media control seems both to be better adapted to the complexity of current ownership and control/dependency structures and respond to various attempts at circumvention of media ownership rules. Indeed, the EIM's analysis suggests that 'control' must be interpreted as widely as possible to include any means of exerting influence over the actions, editorial content, strategic direction and so on of the media organisation in question. Apparently though the Commission is concerned that the four criteria of wielding influence defined in the study are not clear enough to ensure fair and impartial application throughout the EU. This concern is expressed in its Questionnaire No III, questions E.1-E.8 (see Appendix XIII) where it seeks opinions on which of those criteria are most important and which have subsidiary status. According to National Economic Research Associates (NERA, 1995), it does not seem feasible to put together so many different variables for monitoring media control. Their conclusion is that the only satisfactory approach is to abandon hope of achieving absolute legal transparency, and to adopt a discretionary test based on an ownership criterion such as that provided by the newspaper provisions of the British Fair Trading Act (i.e. control applies where one person owns a certain per cent of the voting rights of the media enterprise).

It is indeed impractical to determine theoretically whether one particular criterion is of more importance than another. According to British Broadcasting Corporation (The BBC's Views: Pluralism and Media Concentration in the Internal Market, 1995), there are two reasons for that: a) the relative importance of criteria is changing over time; and b) in some cases a 'weak' link can be used to exert more influence than a 'strong' link in others - for example, non-voting shares offer less opportunity to influence editorial control than friendship with the editor. However, any definition of the controller based on ownership links (or the voting rights of a media company) should be complemented by at least one of the other criteria identified in the EIM study, that of contractual links. The inclusion of the criterion of contractual links is particularly important because it makes it possible to cover cases of vertical integration. The EIM analysis has the merit of demonstrating how growing vertical integration and how concentration on so-called 'intermediate markets' (i.e. programme supply and distribution) have an increasing effect on media pluralism. In particular, the study examines the possible consequences of the introduction of new technology and concludes that both upstream and downstream industries of the media enterprise are developing in a way which is likely to reverse the balance of power against the broadcasters. According to the European Broadcasting Union (EBU, 1995), it is not so much vertical integration as such that poses a problem for media pluralism but concentration in intermediate markets at different stages of the audio-visual chain. Indeed, there is nothing intrinsically wrong with vertical integration. The fact that a broadcaster has its own network of correspondents, produces a great part of its programmes and operates its own transmitter network helps it to maintain its independence and probably contribute to media pluralism. Vertical links become a threat to media pluralism only if they are coupled with dominant positions in intermediate markets, thus undermining the independence and development of the broadcasters (either by imposing or by withholding certain programme material).

Downstream activities such as distribution are increasingly developing into industries in their own right, separating their activities from those of content provision, and facing increasing competition as new technologies facilitate the entry of new players. This means that their bargaining power in terms of contractual links will take on an importance not seen in any of the traditional media. The ownership of conditional access systems by broadcasters is an example of this trend. The provider of the conditional access system that consumers need to decode encrypted digital broadcasts becomes the 'gatekeeper' of the digital broadcast, able to limit the flow of broadcasts and the access of broadcasters to his/her system. If the conditional access company is owned by a broadcaster, that broadcaster can restrict competition in the market[17] (BBC, 1995). Thus ownership of this form of distribution system should be included among the list of criteria for identifying the nature of the media controller and the exercise of that control.[18] Contractual rights to content should also be added to forms of control that can be exercised. Certainly, control can be exercised by buying the rights to be in the popular markets of sports and films. This is what is happening with BSkyB imposing conditions on cable channels with the right to carry its programme.[19] Media groups should not be in a position to control the preceding stage of the audiovisual chain to an extent which would allow them to prevent broadcasting services not belonging to the same group from having access to film catalogues, sports transmission rights, television advertising, or other resources.

Having setting up the arguments and explained, to some extent, that there is a difference between ownership and control and therefore diversity of ownership might not lead to the desired levels of pluralism in the media market unless we extend the notion of 'control' to encompass influences exerted by managers, advertisers, companies upstream or downstream, etc., we now turn to the question of how

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[17] The regulatory solution to this problem might be either to prevent the formation of such gatekeepers wherever possible or, if they form, to ensure that they cannot restrict the entry of competitors or access to service providers such as broadcasters. In the case of conditional access systems, the inclusion of a 'common interface' on digital set-top boxes to allow any conditional access system to plug into a standard set-top box would rapidly expand the digital broadcasting sector and attract competition in conditional access. However, since conditional access is today a virtual monopoly, conditional access providers must be obliged to provide fair and non-discriminatory terms of access to any who wish to use their system, together with published tariffs (BBC, 1995).

[18] Consideration of the degree of vertical integration and the control of gateways like conditional access systems was given for the first time by DG IV's Merger Task Force in its decision to prohibit the MSG Media Services project in 1994 (see previous chapter).

[19] At the moment the vast majority of cable subscribers in the UK do so to get access to Murdoch's channels, not to 'cable-exclusive' TV - a serious indictment of the quality of its product (The Guardian, 06-09-1995, p18).

control can be defined technically. A controlling interest (over 50%) or the ownership of a certain percent of the voting rights of the company should be enough to imply control of the enterprise in question. The problem arises where there are two or more large share-holdings in the same medium (for example, two persons having over 20% stake). The simplest way is to treat only the biggest shareholder as the controller of the medium in question. Although this way does not cause any problems in numerical terms, it has two major drawbacks. Firstly, the largest shareholder is not always the effective controller of an enterprise. Secondly, this method gives incentives for small shareholdings across different media.

Another approach would be to attribute owners influence according to their share-holding level. There is an on-going debate in Europe, and in Germany in particular, on whether owners above a certain level should be treated as controllers of a media unit. The German regulators suggested in September 1994 that an audience-share model to control TV ownership should be adopted (a reorientation of the debate is now under way, with consideration of a new model based on commercial revenue). The setting of a limit for each investor's holdings at 25% of total viewing share, could define the controller(s). Bertelsmann and the Kirch Group argued that it is unfair to take into account the whole audience share of a channel in determining whether an investor's overall share breaches the limit; instead, a proportion of the share, equivalent to the investor's stake, should be considered (see Table 4.1).

Table 4.1
How German TV Groups Would be Affected by the Media Authorities' Plan - and by their Own Counter-plans

			Audience shares to count towards companies' combined audience share		
Groups and channels	**Percentage stake %**	**Audience share %**	**Authorities model %**	**Bertelsman model %**	**Kirch model %**
Bertelsmann					
RTL	37.1	17.8	17.8	6.6	6.6
RTL 2	7.8	3.4	3.4	-	0.3
Vox	24.9	1.9	1.9	0.5	0.5
Premiere*	37.5	-	-	-	-
Total			**23.1**	**7.1**	**7.4**
Kirch Group					
Sat 1**	43.0	14.6	14.6	6.3	6.3
DSF	24.5	1.2	1.2	0.3	0.3
Premiere*	25.0	-	-	-	-
Total			**15.8**	**6.6**	**6.6**
If Th. Kirch chnnels incl					
Pro 7	47.5	9.2	9.2	4.4	4.4
Kabelkanal	45.0	2.0	2.0	0.9	0.9
Overall Kirch total			**27.0**	**11.9**	**11.9**
CLT					
RTL TV	47.9	17.8	17.8	8.5	8.5
RTL 2	15.0	3.4	3.4	-	0.5
Total			**21.2**	**8.5**	**9.0**

Source: Satellite TV Finance, 29 September 1994

Note: The authorities recommended that an investor's stake of 5 per cent or more attracts 100% of a channel's overall German audience share, and that an investor's combined share should not exceed 25 per cent. Bertelsmann argued that only investor stakes of 20 per cent or more should be taken into account, and that only an equivalent proportion of the audience share should be allocated. Kirch also mentioned that proportionate audience shares should be allocated, but there should be no lower stake limit. An investor should be allowed a combined audience share of 35 per cent.

* Shareholdings in Premiere are not relevant (a separate structure was to be developed for pay-TV)

** No account is taken of Kirch's stake in Sat 1 shareholder Springer

Although the companies asserted that pro rating each person according to their stake is an impartial method that provides for fair company treatment within a media sector, we will agree with the German authorities that this model is complicated and may also be used to conceal an owner's real influence in a channel.

A more reasonable and feasible approach would be to treat all those with a shareholding above some threshold as controllers of the firm in question. Each of the partners above a certain level of control should be considered as a 100% controllers in terms of their position in the market, and should be subject to the same constraints and responsibilities as if they were the sole controller. There are still two problems with this approach. Firstly, it is likely to lead to totals summing to more than 100%. Pearson, for instance, owns the *Financial Times* and the *Economist*, and it has a 14% stake in 'Yorkshire/Tyne Tees TV', to name but a few.[20] The second problem is to fix the threshold above which an operator would be regarded as the controller of the medium in question. NERA (1995) proposed that a 20% stake should be considered as the minimum threshold that a media operator should have in order to be regarded as controller. The analysis assumed that ownership below 20% does not confer control. The 20% level was chosen arbitrarily using three reference points, namely the 20% limit on cross holdings and accumulation of holdings in the British 1990 Broadcasting Act, the 25% limit for newspapers mergers, and the 15% test level used by the Director General of Fair Trading (DGFT) in judging the likelihood of material interest. The 20% level seems reasonable and close to that used in other European countries' legislation such as Germany (25%) and Greece (25%). One point that

[20] For more information about how the British media are related see Williams, 1994.

should be born in mind though is that in the United States a shareholder can be deemed to be in full control of a company once he/she has a stake of as little as 5% of its capital.

Any restriction setting a ceiling on the maximum share of the market which may be held by one controller (individual or interest group) runs the danger of being not only arbitrary but also easy to bypass. Choosing the admissible ceiling is a delicate decision, as a simple example may reveal. Suppose it is established that no individual may hold more than 5% of the media sector as a whole, and assume that this includes one television station which accounts for 9% of the overall media audience and one newspaper which accounts for 7%. The implication is that the rule makes it equally possible for the individual to hold 55% of the TV channel (which implies full control), or, for example, 22% of the TV channel plus 43% of the newspaper (in both situations he/she holds under 5% of the total media market). Yet if the ceiling is raised, say from 5% to 8.2% of the media market, then it is possible for the operator to control both the newspaper and the TV station (8.16% of the market accommodates 51% of both). If, on the other hand, the ceiling is reduced even slightly to 4%, the operator will not have even the formal control of the TV channel (and indeed nobody will: with a 4% ceiling, any one party may control at the most 44% of the television channel) (see Table 4.2). It is obvious then that setting too 'high' a level may defeat the purpose of having diversified media ownership.

Table 4.2
Thresholds of Ownership (%)

1. Share of total media market taken by each medium	**TV Station**	**Newspaper**	**Other**	**Total**
	9	**7**	**84**	**100**
Scenario A				
2. Share of medium	55			
3. Share of market (=2x1)	4.95			4.95
Scenario B				
4. Share of medium	22	43		
5. Share of market (=4x1)	1.98	3.01		4.99
Scenario C				
6. Share of medium	51	51		
7. Share of market (=6x1)	4.59	3.57		8.16
Scenario D				
8. Share of medium	44			
9. Share of market (=8x1)	3.96			3.96

Source: London Economics, April 1995

The key point is that restriction rules based on universal thresholds may have different results depending on the underlying distribution of the shares of the various component parts of the market - TV channels, radio stations, press titles, etc. The danger is that a pan-European rule established at the Commission level would have a significantly different impact in different national contexts. The fixing of a limit on the maximum share of the market which may be held by one operator is a question of media policy and, above all, a political decision. Given the great heterogeneity of the national media ownership regulatory frameworks though, it is doubtful whether there will be a consensus on this sensitive issue. In addition, there is the issue of how media ownership rules may be actually enforced. Most rules setting a ceiling on ownership can be de facto bypassed, for example through interlocking shareholdings or the formation of stable syndicates and interest groups. Thus where an owner is forced to divest from part of his/her holdings, there are ways in which his/her original editorial control might still be maintained, for example through transfer of shares to sympathetic partners, or business allies, or even to family members (i.e. Berlusconi in Italy).

The crucial question however should not only be who controls a media company but also how much influence does he wield over the diversity of opinions. To answer this question, the European Commission (through both its 1992 Green Paper on *Pluralism and Media Concentration* and the 1994 *Follow-Up to the Green Paper*) and various economic consultants[21] stated that one should have a clear picture of the diversity of media ownership by measuring the audience reached by media controllers. They rejected revenue-based criteria on the grounds that they are only suitable for the measurement of media economic market power and not for assessing plurality. Audience-based measures (daily reach, time spent reading, viewing or listening and so forth), they suggested, are preferable for evaluating plurality because they reveal directly the impact of media controllers on the citizens. What should become clear however, is that neither criteria reflecting media consumption nor financial data will tell us how much influence is wielded over the diversity of opinions. What would measure influence is a very difficult question to answer and no satisfactory criteria have emerged so far. In the absence of a direct measure of influence, crude numerical (counting) measures which attempt to proxy for influence can be used as a substitute. We first examine market shares measured in

[21] Arthur Andersen Economic Consulting (1994); GAH Group (1994); British Media Industry Group (1995); National Economic Research Associates (1995).

terms of revenue to the media enterprise. We then move on to assess the potential use of audience-based measures.

4.4.3 The Criterion of Revenue

The most obvious criterion for the calculation of the individual controllers' shares, which is the analogue to the standard calculation of market shares in any industry, is the reference to *total revenues.* The general rationale for using the revenue criterion is that if a company produces a large proportion of an industry's total output or turnover, its actions will have a greater impact on that industry's supply, and therefore on the level of prices. In this classic sense, a high revenue share provides an indicator of the firm's market power. Is revenue a good unit for the assessment of the level of concentration in the market place for ideas?

To answer this question, it might be helpful to distinguish between two rather different categories of revenue for the media companies, that is *advertising revenue* and *consumer expenditures on the media.* One can link these distinctive markets with the two basic arenas of policy concern: the concern over economic equity has focused on the advertising market, while the concern over the market-place for ideas and diversity places grater emphasis on the market for audiences and the programming that attracts them. Advertising revenue reflects advertisers or advertising agencies' willingness to pay in order to reach a particular audience. Advertising then is not considered as an expenditure by families to obtain information; instead, it is considered as an expenditure by companies to acquire audiences. Arthur Andersen's 1994 study pointed out that, while in assessing media firms' economic power advertising revenue may indicate their strength in a market, in measuring media influence it seems to be a poor guide. The reason is that, in the latter situation, the crucial issue is the audience's use of media products. Hence, consumer expenditures on the mass media, whether that is subscriptions to TV channels or revenue from newspaper sales, seem at first glance to be more suitable for measuring concentration in the political and cultural market.

By focusing on consumer expenditures on the media however, we will not be able to determine plurality in a market. The money that the public spends on various media does not reveal either how the public uses the media products or how people's beliefs are influenced by the media they choose. In any case, both advertising revenue and direct consumer expenditures on the media have a major defect as a way of measuring concentration of influence. Some media such as pay-per-view channels or most of public service broadcasters across Europe obtain no advertising so that, by the advertising revenue standard, they would gain no share in the market-place. Likewise, other media such as the free press and commercial broadcasters depend entirely on advertising revenue and consequently, by the consumer expenditure criterion, they would gain no share in the market-place.

Another indicator of a media operator's influence might be his/her share of the *total expenditures on creating programmes or publishing.* Many media as well as disseminating information produce much of the material they distribute. Other media spend huge amounts in acquiring programmes and bidding for rights and talents. It is logical thus to raise the question of whether expenditures could be a more suitable criterion for assessing a media owner's influence on the public. The obvious drawback when using this standard is that it yields rather narrow interpretation of market power, as given by the channel's share of the industry's spending. There are two additional disadvantages. Firstly, there is the problem of data availability since few companies publish expenditure figures. Secondly, the expenditure standard tends to emphasise the weight of public service broadcasting organisations where expenditures represent a larger proportion of revenues. Since the vast majority of public channels are not profit-maximisation oriented and cater for creating innovative programmes, the expenditure criterion would grant them untrue influence.[22]

Another hypothesis is to calculate a media proprietor's influence on the basis of *cross-subsidisation,* that is, an operator's ability to finance his loss-making sector with revenues extracted from other businesses he may possess. Rupert Murdoch, for instance, decided in 1993 to cut the price of his three newspapers in the UK - *The Times*, the *Daily Mail* and the *Sun* - at a figure that his rivals could not match, even, in the case of *The Times*, at a loss (he recently put them up again). Of course, he was able to finance this loss-making paper through his other businesses (BSkyB and other assets abroad). The emerging newspaper price-cutting war is most likely to lead to huge losses for newspaper companies and even closure of some titles. The plurality of British newspapers is apparently at stake and readers face less choice. Another example is the use of the substantial profits of Robert Maxwell's Mirror Group Newspapers (before 49 per cent of the company was

[22] Here, there arises the whole question on whether public service broadcasters (psb) should be subject to a possible EU initiative to set rules on media concentration and to a potential single measurement unit proposed. It seems to us that a separate treatment for psb is needed due both to their obligation to provide internal pluralism (i.e. a range and diversity of material and views within their output) and to the fact that public channels are not available for sale or take-over. However, to the extent that psb seek access to private media ownership and become controllers of commercial media firms which do not provide services of a public service nature, then they should be covered by the same rules on media ownership as any private entity.

floated in the early 1990s) to invest in other private side firms (see Financial Times, 17 October 1995, p9, 20). Once again however, the selection of the cross-subsidisation criterion bears rather narrow interpretation of market power.

Measures based on revenue have been rejected by the Commission through the 1994 *Follow-up to the Green Paper on Pluralism and Media Concentration in the Internal Market* (COM(94) 353 final) on the grounds that they can only apply to the measurement of economic market power and not to assess influence. As stated in the Follow-up to the Green Paper, the disadvantage of the market share standard is that 'it duplicates the efforts of competition law, which uses this criterion to assess the behaviour of economic operators among themselves (taking account, in particular, of earnings) and not to evaluate as such the impact of media control on the 'citizen consumer'' (COM(94) 353: 42). Indeed, as Robinson et al. (1995: 40) argues, if the European Commission were to legislate in this way, it would be prejudging work that is elsewhere left to the empirical investigations of the Merger Task Force. There would therefore be a potential conflict between one part of the law and another. Revenue-based measures have also been dismissed as inappropriate in the Andersen's study which also pointed out that revenue can only be used to evaluate a company's economic power.

Nevertheless, it may not be right to reject revenue as a measure of pluralism so easily. A significant revenue-based market share is related to economic strength and normally (although not necessarily) reflects plurality in the market indirectly. Revenue may serve as a useful element to be considered because it captures power in the market place to acquire rights, for example, in a way that other criteria (such as audience share) fail to do. Of course, mapping the breakdown of media revenues could not be considered as the only criterion for measuring pluralism, not least because of the complexity of definition of pluralism. However, it seems useful to consider the possibility of collecting revenue data for regulatory purposes. The advantage, as Lange (1995: 8) reminds us, is that this kind of system could be based on hard data (i.e. company turnover) already available and published in the general framework of general company laws.[23] In addition, revenue-based measures have the advantage of providing an appropriate unit for measuring concentration across media. In this way, they are suitable for aggregation and, combined with direct measures of audience (as it is argued below), they could capture in principle an operator's ability to influence public opinion.

4.4.4 The Criterion of the Media Consumer

As stated in the 1994 *Follow-Up to the Green Paper on Pluralism and Concentration in the Internal Market*, in addition to the question of who actually controls a media company, one has to find out the actual number of consumers reached by a media company or 'controller': 'when it comes to the question of pluralism in the mass media, it is necessary to determine the effects of concentrations on the "citizen consumer". We summarise here the arguments listed in the 1994 Follow-Up to the Green Paper to support the use of the audience standard: 'compared with the criteria based on company share holdings, the media consumer criterion does not duplicate the efforts of

[23] Nevertheless, Lange also mentions that a certain number of firms (mostly press groups) refuse to publish their accounts, not respecting their legal obligations. In fact, this is the case for two of the leading press groups in France and almost all press groups in Greece.

competition law, which uses the above standard to assess the behaviour of proprietors among themselves. Moreover, compared with the criterion of the number of channels that can be controlled by an individual, the consumer unit is more suited to the expected development of digital compression technology which will lead to a proliferation of channels. Whether a media company controls two or a hundred outlets will then no longer be decisive in itself in determining the granting of licences. The important point will be how many consumers are already being reached (within a relevant market) by these different outlets (TV, radio or the press).[24] In this respect, this criterion has also the advantage of covering all branches of the media, whether that be newspapers, television, magazines, radio etc., thereby being a good indicator of evaluating multimedia concentrations. Furthermore, it could be economically more sensitive and less harsh in the sense that it could facilitate the creation of a large number of specialised channels which normally do not attract large audiences. The criterion of the number of channels controlled by a single person could prevent this and therefore limit the level of pluralism in a particular area. Likewise, the audience standard may be more effective as regards preserving pluralism since a single channel with a large audience could also frustrate pluralism' (COM(94) 353: 42).

Despite these arguments, the criterion of audience share has met a lot of scepticism by both the media industry and some academics. In their response to the Commission's complementary questionnaire asking specifically about the possible use of the audience criterion, the majority of media firms and media representatives expressed

24 There are two objections on this point. Firstly, it is related to the whole question of substitutability in distribution networks and in content we referred to above. Secondly, as we shall see below, it might not be quite healthy for a democratic regime to have one media company controlling several outlets, even though the total audience reached by it is negligible.

reservations about its use. Those reservations regarded both the adequacy and the feasibility of such a criterion. The European Broadcasting Union (EBU), for example, stated that it would not be possible to apply the same audience thresholds in different contexts (i.e. different kinds of media and different distribution areas). Indeed, in smaller countries and restricted language areas there may be room for one or two generalist channels, whereas in large markets an audience share of, say, 25% would already appear very high. In addition, it mentioned that pluralism must be safeguarded within each relevant media sector. Even within one and the same media sector, for example television, further distinctions would have to be made between pay-TV and television free at the point of reception, between generalist and thematic channels, and between different kinds of thematic channels (news, sports, culture, etc.). In view of such differences, EBU argued that, in case 'audience' was selected, thresholds should distinguish between media and be fixed at the national/regional level only in accordance with the principle of subsidiarity.[25] This is linked to the question of the proper definition of the market, to which we have previously referred.

Many media organisations argued that the use of the audience criterion would punish growth and penalise the success of a proprietor. The EPC (European Publishers Council) and ENPA (Association Europeenne des editeurs de journaux), for instance, pointed out that if audiences grow in response to a company's commercial success, then the effect would be to restrict that success, something which seems pointless when the aim of any new regulation should be to stimulate the market and give

[25] Consultation Vol. IV, 1994, item 3: 1-9.

media firms more opportunities in the Single market.[26] Others challenged the Commission's argument that the use of the audience criterion will encourage the establishment of thematic channels. EGTA (European Group of Television Advertising) and ITCA (Independent Television Companies Association) stressed that there is a strong possibility that the opposite effect will result, as a preliminary question must be asked once again about the definition of the market. What is the position of, say, a specialist channel taking 50% of the viewers in its niche market but an insignificant overall share?[27] Even those in favour of a possible use of the audience standard (i.e. Independent Television Commission) questioned its robustness and its capability of applying equally in different circumstances and between different media, or argued that it must be accompanied by a 'harder' unit such as revenue.[28]

There has also been opposition to the application of audience shares for assessing media concentrations from the academic side. In an article in *The Independent*, Barnett (1995a: 15) expressed strong disapproval of the 'share of voice' argument[29] and criticised any kind of proposals that attempt to shift the emphasis from ownership. Ownership for him still matters, for different owners have different versions of the world and different attitudes to news. It is then wrong to replace existing rules based on the number of outlets an operator can possess by rules based on newspaper circulation, television viewing and radio listening. In a later paper in Public Policy Review, Barnett (1995b: 1-5) proposed that

[26] Consultation Vol. IV, 1994, items 6, 7: 1-18 & 1-10 respectively.

[27] Consultation Vol. IV, 1994, item 5: 1-2; Consultation Vol. II, 1993, item 5: 1-9.

[28] Consultation Vol. II, 1993, item 10: 1-8.

[29] That is, to measure what share of the total media cake is owned by which organisations. As defined by British Media Industry Group (BMIG), share of voice is 'any one media company's overall percentage share of the combined consumption in any given market of national and paid-for regional newspapers, of radio listening and of television viewing'.

regulators should allow owners to possess media outlets in just one sector and bar completely cross-ownership. In his words, 'we simply need to maintain a clear distinction between them [media sectors], and to insist that those who wish to own newspapers should continue to be debarred from owning television channels and vice versa' (ibid: 5). Similar views had been expressed earlier on by Curran and Seaton (1985: 342-3). Lange (1995: 7-8) criticised the pertinence of the audience standard from both a technical point of view and from a conceptual point of view. The technical problems he saw are firstly that there are important margins of errors of audience and circulation measurements, and secondly that these measurements are meaningless unless they are done on different geographical scales.[30] From a conceptual point of view, he challenged the assumption that audience measures are more appropriate for evaluating pluralism. In fact, the 'audience' proposal analyses the question of pluralism in terms of consumption of information and not in terms of offer (i.e. in terms of possibilities to access a great diversity of information). Audience measurement is a quantitative analysis of consumption by readers, listeners or viewers, developed for market analysis purposes. Pluralism means basically 'diversity of information'. However, this is a qualitative objective both in terms of offer of information and in terms of reception of that information. Audience research, the argument follows, does not measure either the diversity of offer or the quality of reception.[31]

[30] As explained above, in some countries the problem of media or cross-media ownership seems problematic at the local/regional level. There is thus the risk of a local/regional monopoly of a company on the local/regional audience/circulation market, which might not be shown in national statistics.

[31] Lange argued that the quality of offer could be analysed on the basis of various criteria: structural possibilities of access to media expression for all citizens, variety of information sources, programme variety and independence of creators, programmers and journalists. Examining the quality of reception indeed includes analysis of the quantitative aspects of consumption such as audience practice. For Lange however it also means analysing the semiotic process of appropriation of a message by a receiver.

The audience criterion thus has raised a number of serious questions. This has prompted the Commission to launch a feasibility study examining the comparability and compatibility of the different national systems of audience measurement, the types of audience measurement that can be used and the possibility of using a single composite criterion or of combining several types of measurement depending on the configuration of the media in question.[32] The study distinguished between monomedia audience maps (where only one medium is under review) and multimedia ones (where TV, radio and newspapers are combined). In constructing monomedia audience maps, it recommended the use of *audience share* for television, *circulation share* for newspapers and *listenership share* for radio measurement purposes. In the case of multimedia maps, it recommended using the *daily average contacts* as a criterion that satisfies the requirement that the measures are equivalent across media. The analysis concluded that, although there were disparities among national audience measurement systems, the use of audience measures to examine pluralism across the EU is both valid and practically feasible. It takes the consumer as the point of reference and will therefore be of maximum effectiveness in relation to the objective sought, namely that of serving the interests of the media consumer. One has to remember though that the study was commissioned by DG XV which would very much want a definite statement on the application of audience measures as indices of pluralism. It comes as no surprise that the GAH Group's findings are in line with the DG XV's wishes, as many times although not necessarily the employee wishes to satisfy the employer.

[32] *Audience Measurement in the EC*, Internal Report prepared for DG XV E/5 by the GAH Group, September 1993, p1-104; *Feasibility of Using Audience Measures to Assess Pluralism*, Position Paper, prepared for DG XV E/5 by the GAH Group, November 1994, p1-38.

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Ridder, C-M. (1995) 'The Policy Debate on Media Concentration in German Broadcasting: Ownership Rules Between Plurality Goals and Commercial Interests' in Intermedia, vol.23, no.3, p34-7.

In fact, there has been much criticism of the GAH Group's work. Leighton Andrews (1995: 26), head of Worldwide Corporate Affairs BBC, stated that the study 'simply demonstrates that comparable audience data is available across the EU, it does nothing to make the argument as to *why* audience share is the most suitable measure of dominance'. As mentioned above, the EC's consultants came to the conclusion that despite the differences in national audience measurement systems the measures are comparable and compatible and can be the basis of uniform thresholds to be applied throughout Europe. However, it left a number of questions unresolved. In particular, the question of weighting the audience of different types of media such as TV, radio and the press and the question of where to fix the thresholds. Of course the latter is a matter of media policy but, due to the great heterogeneity of the current European media map, it will be very difficult (if not impossible) to find a political consensus on such a threshold at a European level.

The first problem - the establishment of market shares based on the number of people reached by each medium - is equally difficult to solve. How is it possible to create an overall market share of, say, a company holding 20 per cent of the TV market, 10 per cent of the national newspaper market and 5 per cent of the radio sector? As Robinson et. al. (1995: 59) argue, 'we need to find some robust and objective method of constructing a weighted average of these three market shares to arrive at a single figure for the media market as a whole'. The absence of a weighting will lead to false results as the GAH Group's analysis reveals. The EC's consultants recommended the use of daily reach as an indicator of influence. As demonstrated by the

National Economic Research Associates[33] the use of daily reach in the UK media market gives a high weighting to television and radio and a low weighting to the press (see Table 4.3). According to NERA, this is because most people have ready access to all TV and radio stations every day, and can switch between them in deciding what to watch or listen to. Nevertheless, they generally choose one or two newspapers a day and cannot pick and choose content from one or another. This results in a much smaller number of daily contacts for the press, which is not necessarily a measure of relative influence.

Table 4.3
Use of Reach Weighting in the UK Media Market (1994)

Sector	*Weighting*	*Total Daily Reach Contacts*
Television	55.3%	133,815,268
Radio	18.9%	45,714,000
National Press	15.6%	37,578,186
Regional Press	10.2%	24,715,286
Total	**100%**	**241,822,740**

Source: NERA, based on data supplied by BARB (television), RAJAR (radio) and Pressad/JICREG, Newspaper Society, ABC, NRS (newspapers)
Note: TV reach is based on people over the age of 4; other reach figures are based on adults over the age of 15

Undoubtedly it will be difficult to develop a suitable and generally accepted method of ascertaining these figures. One such method, taking into account the different sizes of, and power wielded by, different media, has been proposed by the British Media Industry Group,[34] a consortium of four big newspaper groups (Associated Newspapers, the Guardian Media Group, Pearson and the Telegraph Group) set up in

[33] NERA, Economic Consultants Methods of Media Market Measurement, a study for the Department of National Heritage, London, August 1995.
[34] BMIG, A New Approach to Cross-Media Ownership, a study for the Department of National Heritage, London, February 1995.

August 1993. Their study uses the well-established audience figures to calculate market shares for television and radio, and circulation figures to assess market shares for newspapers. In calculating overall share of voice in the UK media market, they recommend that radio listening be down-weighted by 50% compared with newspaper circulation and TV viewing. BMIG justify these weightings on the grounds that radio has lower impact on diversity of view issues, either due to the prevalence of music-based radio formats, or because radio is normally consumed in parallel with other activities.

According to the study thus 1% of newspaper circulation or TV viewing is deemed to have more impact on diversity of view issues than 1% of radio listening. So their suggested weighting is 28.6% for television, 28.6% for national press, 28.6% for regional press and 14.3% for radio. Their findings, shown in Table 4.4, give BBC the highest audience share (19.7%). The next top two places are occupied by News International on 10.6% and ITV network combined on 9.4%.[35] The top 8 media firms have 57.4% of national share of voice. The main advantage of the BMIG approach is that it treats television, national newspapers and regional titles equally. The inclusion of regional papers, in particular, is a positive step towards realising that it is not only the national market that matters but local/regional monopolies should also be tackled. Further, the selection of the most appropriate units to measure market shares for each medium (*circulation* for national and regional papers, *share of viewing* for terrestrial TV, cable and satellite, and *share of listening* for regional and local radio) provides a more or less accurate picture of market shares within each media sector.

[35] The ITV network figure is a London Economics estimate using BMIG methodology.

Table 4.4
Media Concentration in the UK Under Audience Share Analysis (1993/94)

Media Groups	*% share of audience*
BBC	19.7
News International plc	10.6
(ITV Network)*	9.4
Daily Mail & General Trust plc	7.8
Mirror Group Newspapers Ltd	7.6
United Newspapers plc	5.7
Carlton Communications plc	3.1
Channel 4	2.9
Total as a % of papers/TV/radio	**57.4**

Source: BMIG (February 1995), Robinson et al. [London Economics (LE)], 1995
Note: Radio down-weighted by 50%
* LE estimate using BMIG methodology

This last point however becomes a disadvantage when it comes to measuring aggregate shares. Robinson et. al. (1995: 59) argue that it is inconsistent to measure shares in the printed media market on the basis of circulation (which is essentially a household based measure) while using audience shares (which count individual viewers) for the electronic media. As the EC's consultants showed, it is more consistent to use readership figures when it comes to comparing different media.[36] Another problem with the study is that it does not give any weight to consumer periodicals. A further criticism to the share of voice approach is that it, including the BBC and Channel 4, underestimates the way the rest of Britain's media ownership is concentrated in so few private hands (Peak and Fisher, 1995: 227). The

36 Many economic consultants such as GAH Group, NERA and BMIG itself recognise that *newspaper readership* would be a theoretically better measure for the purposes of ensuring diversity of view. However, they all agree that *newspaper circulation figures* are a more established currency in the media industry. Moreover, not all European countries publish reliable readership figures. Anyway, percentage share of newspaper circulation is in practice not very different from percentage share of readership.

most serious problem with the BMIG approach though is their unreasonable decision to down-weight radio listening by 50% compared with the other media. It is true that radio lost much of its appeal after the appearance of television. It is also true that radio is mostly an entertainment medium and there has been a proliferation of music-based radio formats. It is finally true that radio can be listened to while people are engaged in other activities. All these points make radio seem as a 'secondary medium'. But they do not prove that radio is less influential and of less importance to diversity of news. The influence of news-based radio formats, broadcasting news, current affairs and other programmes devoted to commentary and opinions is considerable.[37] Even music-dominated radio stations have regular news bulletins normally announced every hour. No matter whether one accepts that the influence of radio is less than that of television or the written press, BMIG's proposal to down-weight its influence to 50% is both arbitrary and gives no objective justification.

There has been no objective basis so far for the choice of weights. It has proved difficult to identify satisfactory criteria for a measure which successfully *aggregates* media with very different patterns of consumption and use. This difficulty is inherent in another study, the Arthur Andersen's analysis, which uses a single unit of measurement for the cultural market. In order to measure company shares in that market, Shew used the *time* that the public actually spends on media. Here, the potential of the mass media to influence public opinion is

[37] The Greek national commercial news-based radio station *Sky*, for instance, currently attracting the largest audience share at 15.7% (ICAP HELLAS SA, April 1995), is said to influence a considerable section of the Greek population. Many are prepared to accept that the defeat of the conservative party on the 1993 general elections was due to the change of attitude of its owner Alafouzos (who also controls a large number of other national stations and titles) who decided to support the Socialists (see Papathanassopoulos, 1994: 245-98). Radio in Greece thus can set the political scene and is regarded as more influential than other media.

assessed best by examining how people distribute their time over them. Table 4.5 shows the results of applying this methodology. What is interesting is that the amount of time spent watching BBC and ITV is nearly twenty five times as great as that spent reading News International's newspapers. In fact, there is an obvious exaggeration of the impact of TV compared to the press, since no other press groups appear in the top seven.

Table 4.5
Media Concentration in the UK Under Time-use Analysis (1993)

Media Groups	*% of time spent 'consuming'*
BBC	44.1
(ITV Network)*	25.4
Carlton Communications plc	6.9
Channel 4	6.2
Granada Group plc	4.1
Capital Radio plc	3.4
News International plc	3.4
Total as % of the press TV & radio	**93.5**

Source: Shew (Arthur Andersen) 1994, Robinson et al. (LE) 1995
* LE estimate using Arthur Andersen methodology

In the Andersen's study each controller's individual share of the total media market is calculated as the share of his/her medium in the total time spent by the public consuming media. This definition may be both too vague and too limited. It is vague because it does not tackle the nature of the media consumed. For instance, how much of the time watching TV is spent viewing news and how much sports? Moreover, one could not treat equally time spent reading *The Guardian* and time spend reading *The Racing Post* (both national newspapers). A greater value should be added to the former title due to in-depth coverage of current affairs. Regarding the different media, it may also be false to use the time standard for assessing their impact on the public. One hour TV watching (which is normally passive) may not be comparable to one hour newspaper reading (which requires greater effort). It seems safe to argue that the influence of the latter is greater. Equally, it is hard to compare the influence of a 15-minute news bulletin with that of a newspaper headline on the same topic which is on display the whole day and can be read by thousands or even millions of passers-by. In the latter case, the item is most probably being watched for a fleeting moment, but its influence lies in the fact that it is being watched by many people. The analysis is also too limited. Although it includes reading periodicals, it excludes viewing of pre-recorded videos, which are a direct substitute to television viewing.

These fundamental problems aside, Shew argues that where there is cross-ownership of different media by the same controller, his/her share is arrived at simply by *summing* each of his/her channels' or titles' shares in the total time spent by the public consuming media. Therefore, if owner A controls both channel X and paper Y, which take up 20 per cent and 10 per cent respectively of the public's total time, then A's share in the hypothetical total cultural market is said to be 30 per cent. Similarly, in case he/she controls only a fraction of a channel or title, his/her share is calculated as that same fraction of the time devoted by the public to that particular channel or title, relative to the total time spent consuming media: if controller B has 25 per cent share in channel Z, which is found to account for 40 per cent of the public's total 'consuming media' time, then B is said to control 10 per cent of the total market for ideas.

This methodology is troublesome and biased towards both television relative to the press and national channels and titles relative to regional/local ones. It artificially inflates the market share of television and particularly of national channels, while it understates the relative importance of the press and of all regional/local channels and titles. This is because the average weekly hours spent watching TV are nearly seven times as great as those reading the press (according to the study, it is 24.1 hours for TV against 3.5 for papers), so the apparent market 'influence' of a TV controller will be vastly more significant than that of a newspaper publisher if measured in this way. If, in addition, the issue of the effective geographical coverage of a channel or title is ignored, it is hardly surprising that the total time spent with a regional/local channel by all viewers in a particular area will be small in relation to the aggregated time spent by a national audience watching a national channel. To illustrate, watching Carlton television is not an option for those who live outside the London area, and it is therefore meaningless to calculate Carlton's *national* market share as the time spent by anyone watching Carlton over the total time spent by the public consuming all media nation-wide. It is obvious that Carlton's share will be dwarfed relative to media with national coverage such as the BBC.

A partial refinement of the Arthur Andersen approach has been provided by London Economics.[38] That study attempted to weight the respective UK media shares by some measure of the inherent impact of the medium. The analysis proxies this by the amount that advertisers are prepared to pay to reach a consumer audience through a particular medium. It formed the following hypothesis: if advertisers pay

[38] London Economics, Pluralism and Concentration in the Media Sector, April 1995.

according to the relative impact they believe a particular medium has, then the relative price per consumption minute across media provides a market-based approach to cross-media weighting. This is shown in Table 4.6, where the analysis estimated the relative cost of advertising across media in Britain using relative advertising cost per viewer minutes spent on the media. The advertising-based weightings suggest that the printed media are significantly more important, and radio far less significant, than in the Arthur Andersen paper.

Table 4.6
Relative Advertising Costs in the UK Media Market (1994)

Medium	£ per hour* per capita
Television	1.16
Radio	0.22
Newspapers	2.52
Cinema	2.66
Magazines	2.82

Source: Advertising Association handbook, 1994; Arthur Andersen, 1994; London Economics analysis, 1995
* of viewing, listening to or reading advertisements. London Economics analysis makes the assumption that people spend the same time on advertisements for each hour of reading newspapers and magazines, as for each hour of viewing or listening to commercial television or radio

The London Economics study re-calculated the Arthur Andersen estimates of audience share using a methodology in which the time devoted to each media sector is given a weight which reflects its value to advertisers (as shown in the above table). The effect, as presented in Table 4.7, is to enhance the market share attributed to the press at the expense of television and radio. In particular, the BBC's share falls from 44.1% to 28.3%, Capital Radio's share falls from 3.4% to 0.3%, whereas News International's share rises from 3.4% to 12.5%. These results demonstrate how sensitive the final outcome is to input assumptions. This methodology however, as London Economics itself admits, remains subject to the basic objections made above to Arthur Andersen approach, namely the problems with product and market definitions. For example, the figure of Capital Radio would rise if the study took the London metropolitan area as the relevant market - which would be appropriate for Capital Radio, as metropolitan London is the limit of its broadcast range.

Table 4.7
Alternative Measures of UK Media Concentration

Media Group	Simple time use*	Weighted time use**
BBC	44.1%	28.3%
Carlton Communications plc	6.9%	9.8%
Channel 4	6.2%	5.5%
Granada Group plc	4.1%	6.9%
Capital Radio plc	3.4%	0.3%
News International plc	3.4%	12.5%

Source: London Economics, 1995
* Arthur Andersen analysis
** Using time data from Arthur Andersen paper modified to reflect the different value of time to advertisers in different media

4.4.5 Critique of all Audience-based Measures

Mono-media market measures

Overall, there are a number of aspects that should be considered in methodologies which set out to examine mono-media or multi-media cultural power in terms of audience. The relative influence of a communication vehicle depends on a number of different factors. It obviously depends on the number of people it can reach[39] - a newspaper sold to one million people will tend to have more influence than one which reaches only fifty thousand people. However, the fact that a newspaper is bought (something that can be measured) does not necessarily mean that it is read, or read by only one person (readership is much harder to measure than circulation). Furthermore, a title that is read carefully will have more influence than one which is merely skimmed, and whereas we can use surveys to find out how many people read each newspaper, it is impossible to know how carefully they read them, or what they read in them. Serious news, current affairs and political comment compete for the readers' attention with sport and the TV listings. Moreover, it is difficult to establish whether publications with more editorial content count for more influence. Some newspapers (particularly the Sunday titles) are fat because they offer readers a choice of specialist material which is not opinion-forming. Finally, there is the problem with the weekly and Sunday press. Should the latter be given one sixth the weight of the daily press, in proportion to the average daily reach of each? There are two problems with this assumption: first, weekly papers tend to have a longer read period; second, multiplying the circulation figures for daily newspapers by six to produce a weekly circulation figure and putting them together in terms of a weekly market (as the BMIG did), presupposes that daily and Sunday papers are entirely substitutable for readers. This however is a strong assumption to make. *The Sunday Times*, for example, dominates the UK Sunday quality newspaper market but its sister paper

[39] 'Reach' is the number of people who have a contact with a publication or channel within a certain time period. The measure is sensitive both to the length of time over which it is measured and to the definition of contact used. For instance, the weekly reach of a radio station is the number of people who tune in at least once a week, while daily reach or hourly reach is necessarily rather smaller. Reach of TV broadcasts is typically measured by counting contacts of at least fifteen seconds and reach for radio is typically measured by counting contacts of at least five minutes (see ESOMAR, 1994, 1995).

The Times has a much lower market share of the quality newspaper daily market (see ABC figures, June 1996).

Similarly for the TV programme to have any influence, the set must be switched on and tuned to the right channel, which can be measured electronically. In some countries, like the Netherlands, Germany and Britain, there are also surveys which establish who is watching it and for how long. But the degree of attention with which it is being watched is almost impossible to establish. Another dimension to the problem concerns who is in the audience. A programme or newspaper article that reaches a single person may have a lot more influence than one which reaches a million if the single person happens to be the President of the State. Programmes and articles which regularly reach opinion formers and policy makers such as members of the parliament, editors and journalists clearly have influence which cannot be measured just by counting heads. Thus what counts is not simply how many people watch (and read and listen) as the BMIG assumed, but who watches and what they watch.

'Reach' in general is less attractive as a measure of the influence of broadcast media. People who contact a broadcaster may rapidly switch away from it, in contrast to the press. People typically contact several TV channels or radio stations each day to find out what is on. That results in a measure that shows little difference from channel to channel. In addition, people spend more time with some channels than others in proportions that are not reflected in all national daily reach statistics. On the other hand, people have less opportunity to flick between press publications than between broadcast channels. Therefore, the total number of daily contacts for television and radio is much greater than the total number of daily contacts with the press. This does not reflect relative influence. What does reflect is the much shorter decision period the audience has in deciding where to spend its time in the different media.

Time spent consuming media is intuitively attractive as a measure of influence. The distinct advantage of this approach is that time use is a common denominator across all media. Thus if there is any validity in the basic proposition that the influence of a medium of communication is proportional to the time taken to absorb the message, the time use measure can be used to assess concentration across all media. Time can be used as a measure of market share in each medium, and by simply summing the time use across all media we can calculate an overall market share. Audience time may be suitable for the measurement of the broadcast media influence because programmes are viewed at the same speed by everyone, so that time may be a good indicator of content taken in. The problem is that the time that people spend to watch television or listen to the radio is certainly not the most suitable indicator to establish impact over them. Time spent watching or listening to the media does not necessarily reflects influence. Apart from this problem, which is common in all audience-based criteria, there is the issue that television and radio, in particular, can be a backdrop to household activity. High audience hours may arise as a consequence of the broadcast being used as background to other activities.

The methodological weaknesses of audience time measures are more apparent in the press for a number of reasons. Firstly, reading speed is variable, so that reading time becomes less attractive as a measure of the influence of the print media. Secondly, the newspaper reader can focus on what is of interest and value for him/her and ignore the rest. According to how much 'filling' the reader chooses to edit out, similar levels of 'influence' might be achieved in very different lengths of time spent with the publication. Thirdly, and according to Arthur Andersen study described above, the amount of time spent reading national newspapers is nearly seven times less than time spent watching TV. This figure may substantially exaggerate the impact of television compared to the printed medium. However, national newspapers have an impact that lasts longer than the time spent reading them. Newspaper headlines are seen by, and influence, millions of people who may not buy them. But it is the newspaper headlines that largely determine the current affairs agenda at the start of each day, and that influence persists even though news sources of information are obtained from television in the evening. There is indeed extensive discussion of press opinions in other media, perhaps because the press is permitted to give opinion whereas broadcasters (particularly public service broadcasters) are constrained to treat news 'impartially'.

Having explored, to some extent, the pros and cons of the audience-based criteria, our impression is that time measures are preferable for broadcast media than reach measures. The nature of TV and radio means that reach or contact with a station can happen almost incidentally as people switch between channels searching for one that captures their attention. Data for television viewing is readily available and reliable, whereas radio listening data are adequate for the majority of the stations in all European Union countries (see ESOMAR, 1995). Concerning the print media, daily reach might better reflect the influence of the press than time spent reading, as for the most part people buy newspapers with the intention of reading them. Also data on time spent reading is either non-existent or unreliable. The choice between circulation or readership as the reach measure is difficult. Arguably, the influence of newspapers depends more on the number of readers than on the number of copies sold, just as the influence of TV programmes depends more on the number of viewers than on the number of sets tuned. Therefore newspaper readership would be a theoretically better measure of influence of the printed media. Readership data though is not available for Portugal, Greece and Northern Ireland and is not collected on a regular basis for many regional titles. This would create insoluble problems in case we want to establish a Europe-wide regulation based on this criterion. By contrast, circulation data is the most robust and comprehensive audience measure for the press. It is thus a more established currency in the industry. In practice though, and as the GAH (1994), BMIG (1995) and NERA (1995) studies found, percentage share of newspaper circulation is not very different from percentage share of readership.

The aggregation of media market measures

Once a satisfactory method of calculating audience shares within each media sector has been devised, some method is required to compare audience shares across media. A likely policy aim of deregulating media ownership rules at national or even European levels is to allow cross-media ownership in a manner which is proportionate. Put it another way, the permitted holdings in one sector of the media would be subject to the size of holdings in other sectors of the media. However, there is no obvious solution to the problem of creating an overall market share. If a particular company has 15 per cent of the television market, 20 per cent of the press market and 5 per cent in radio, what is its share of the total media market? We have to devise a method of calculating an average market share of the whole media. If shares in each sector are measured in the same dimension, for example a consistent reach statistic (as recommended by the GAH Group), then there is a natural method of aggregation by adding all the shares. If, however, market shares within the media are measured in ways which are not directly comparable (and this would be wiser since, as we explained above, some measures are more suitable for the press and others more preferable for broadcast media), then a weighted average of all market shares must be constructed in order to arrive at a single figure for the media market as a whole.

A weighting can be based on some objective data which, one might assume, compares the relative influence shares of the media on an aggregate basis. A weighting could also be constructed on policy grounds, reflecting a policy view of the relative influence of the media, which may or may not be based on some objective information. As shown in great detail above, the BMIG falls down on the arbitrary nature of its weighting system. Their approach uses audience figures to calculate market shares for radio and television and circulation figures to calculate the market share for newspapers. They then construct an average share of the overall media market by assigning weights of one to television, national and regional newspapers, and 0.5 to radio. However, there is no objective justification for the arbitrary figure of 0.5, especially as it is far from obvious that radio has a low level of news and current affairs compared to other media. The London-based *Capital Radio FM* and the nation-wide *Virgin Radio*, for example, both music-based radio formats, have regular news bulletins as well as other programmes devoted to commentary and opinions. This is a pattern followed by most radio stations. The other problem with the approach is that it is not consistent to measure shares in the printed media market on the basis of circulation (which is basically a household-based measure) while using audience figures (which count individual viewers) for TV and radio.

As the European Commission's consultants stated, it would have been more consistent to use newspaper readership, rather than circulation, as the basis of comparison. So they recommended the use of daily average contacts as a measure of the overall market share. This method however results in a much smaller number of daily contacts for the press (see Table 4.3 above), which is not necessarily a measure of relative influence. A weighting could also be based upon the hours of use or audience time of the media (Arthur Andersen's approach). The idea of using hours of use as the basis of a weighting appears intuitively appealing until one sees what figures it implies (see Table 4.5 above). People spend very much more time with television and radio than with the press. Most people would not find it credible that the press has such small influence in relation to other media. In addition, the data for the average time spent reading the press is well known to be unreliable. But the major problem associated with this approach is that it seems intuitively unlikely that *time* spent consuming media directly proxies the *influence* of a particular medium. The influence deriving from the intrinsic impact of the medium and the influence due to the number of minutes for which the medium is consumed are being conflated.

It seems to us that a much more appropriate way of measuring overall market shares and possibly influence across media would be to weight the respective audience shares by advertising expenditure. By examining the behaviour of advertisers, that is, by examining how much advertisers are prepared to spend on which medium, we will have a more thorough picture of the relative influence of the media. Advertisers pay according to the relative impact they believe a particular medium has. They buy space in national and regional newspapers and time on television because of beliefs regarding the influence of those media. They also recognise that it is not just the number of viewers, listeners and readers that matters; it is who they are. Therefore, advertising expenditure on the media provides a reasonable market-based approach to cross-media weightings. This can be shown in practice. London Economics analysis, for instance, attempted to weight the respective time spent media shares (Arthur Andersen's approach) by the amount that advertisers pay to reach consumers through a particular medium. The chief merit of the London Economics approach, the results of which are shown in Table 4.7 above, is that it finds that the printed media are significantly more important than in the Arthur Andersen analysis. The time devoted to each media sector is given a weight which reflects its value to advertisers and the effect is the enhancement of market shares attributed to the press at the expense of the electronic media.

Data robustness

A necessary condition for using audience measures to assess concentration levels and pluralism within local, national or supra-national markets also depends on the quality and comprehensivity of the surveys in use. In an ideal world, surveys would measure every single television and radio channel, and every single newspaper title uniformly and with equal precision and accuracy across the European Union. The existence of regular surveys is hardly a problem as all EU Member States (with the exception of Luxembourg) possess their own national surveys for TV, press and radio. There is also a certain level of continuity of data collection in the EU, as all current TV surveys collect audience data on all days of the year, and the majority of press and radio surveys collect data across at least ten months of the year (see ESOMAR, 1994, 1995). But it is also essential that audience surveys are comprehensive in their coverage of the media. A specific limitation of television audience measurement is the restriction of almost all national surveys to measuring viewing in the home, although some (such as Italy and Sweden) measure guest viewing and treat it as a substitute for out-of-home television viewing in other TV homes. Regarding press readership surveys, their main drawback is their limited coverage of titles. In the case of newspapers, readership surveys invariably cover all the national distributed titles, but there are some big gaps in the coverage of regional titles in France (see ESOMAR, 1995). By contrast, circulation data are quoted for almost every newspaper and virtually all are audited.[40] Regarding radio surveys, the one instance where a radio survey appeared to give well below full coverage of stations was the Dutch Intomart survey, which excluded the non-commercial local stations (ibid.).

There is also the issue with the universality of coverage. Almost all national surveys measure media consumption across national universes. However, the Greek AGB Hellas (television) covers urban areas only, whereas the Portuguese Bareme (press and radio) covers mainland

[40] This is one of the reasons that many economic consultants such as GAH Group, NERA and BMIG prefer circulation figures to readership figures in studying levels of media concentration.

Portugal. Geographical restrictions, as between urban versus rural areas, could have a significant effect on measures of total audience, where significant variations exist in media availability that coincide with the geographic restrictions. The problem really only arises for some media in Greece and Portugal. In addition, there is the issue of harmonisation of measures. It is important for supra-national framework legislation that audience measures are comparable across borders. The GAH Group report concluded that comparability is not a significant obstacle for the construction of audience maps. The European Commission's consultants found that national surveys within each media category all employ the same fundamental concepts of media consumption, even where the methodologies vary (as with 'Recent Reading' and 'First Read Yesterday' measures of reading). And although TV surveys are divided between those which treat viewing as presence in room with TV set switched on and those which require individuals to be present and watching, the end differences are almost certainly negligible. So cross-border comparisons are broadly feasible.

In future though, with the expected increase in the number of media outlets, it is possible that the quality of the data will decline unless the industry spends more money on increasing the size of survey samples. Perhaps more crucially, as new opinion-formers operate through the Internet, it will become increasingly difficult to measure their 'audience'. While it is possible to calculate the number of 'hits' on an individual Web site or bulletin board, it would be quite unrealistic to know how long each hit lasted, or what percentage of them came from outside the country. As technology develops, cross-media measurement based on audience share will become more and more difficult to realise unless further research is conducted. There are some encouraging signs though. The Audit Bureau of Circulations initiated a plan in January 1996 to measure the readership figures for UK on-line titles and the results of its trials should come out later this year. The plan is to provide advertising agencies with a certificate showing how many people have registered for the site and how many have visited it in the last month. A bit of software, running on the same computer as the electronic publication, will make random checks and e-mail some of those who have registered to make sure they exist (see the Guardian, Monday February 5 1996, pp. 12-13). It remains to be seen whether the trials will succeed.

4.5 CONCLUSION - ALTERNATIVE PROPOSALS

In this chapter, we tried to analyse critically different methods of measuring media concentration and influence. The relevance of the existing counting criteria (i.e. rules based on the number of channels controlled by a single operator) was briefly reviewed, followed by an analysis of the audience and revenue-based units. Although it became evident that numerical rules are not appropriate on their own to measure levels of concentration in the multimedia era, it might not be right to abandon them altogether. Many, including the European Commission, argue that today it does not matter how many outlets one owns, but how much revenue or audience he/she reaches. However, we will agree with Steven Barnett that ownership still matters. It seems to us that it is not acceptable, from a pluralism point of view, for one owner having the majority of a country's opinion-forming TV channels broadcasting news bulletins or current affairs, even when these channels reach small audiences and obtain negligible amount of commercial revenue. This is because, under these conditions, the proprietor will be free to exercise excessive power to advance his/her own political and socio-cultural views. The controller of a large number of titles and/or channels disseminating political commentary can easily pursue the values and political beliefs he/she espouses. He/she may also be in a position to influence the outcome of an election, as the Greek example described above clearly indicates. In addition, he/she may cater only to bourgeois tastes and not to others so as the latter cannot gain public exposure.

Such influence may not only be dictated by political and socio-cultural considerations but also by commercial or other considerations. Monopoly or excessive control of a number of channels may allow proprietors to promote a particular economic philosophy (foster, for instance, positive attitudes towards free enterprise and unbridled competition). Although the question of whether media controllers' influence over what people think is much disputed (precisely because influence is hard to measure), another example may help us to form a clearer opinion of the matter. In 1989 in Britain, the Broadcasting Research Unit (BRU) examined some opinion data collected by the then Independent Broadcasting Authority (now Independent Television Commission) on whether people thought the licence fee was the proper way of paying for the BBC. Murdoch's newspapers (and *The Sun* in particular) opposed the BBC and its licensing system. They did so because Murdoch was preparing to launch his satellite channel BSkyB at that time and wanted as few competitors as possible in order to provide a major boost to News International's UK television interests. The BRU found big differences in opinion between readers of News International newspapers and non-readers: 37% of News International's readers approved of the BBC's funding system while 56% disapproved;

but amongst non-readers, the position was reversed [nearly half approved (49%), whereas 44% disapproved]. According to Barnett (1993: 17) one cannot be absolutely sure that the result was due to Murdoch papers' editorial line which developed a general feeling of opposition to the licence fee between their readers. Barnett however adds that such enormous differences can scarcely be coincidental.

Media concentration in political coverage and commentary (where pluralism matters greatly), but also in philosophy and opera criticism, science and business, entertainment,[41] etc. is thus not tolerable. Performances in the media affect such varied aspects of national life as dress codes, political opinions, religious beliefs and so on. At least potentially, undue concentration in cross-media ownership might lead to an over-enthusiasm for particular parties, or to excesses of approval or disapproval of particular forms of dress, among other things. Television, radio and the press have a unique role in the free expression of ideas and opinion, and thus in the democratic process. The main objective must therefore be to secure a plurality of sources of information and opinion and a plurality of editorial control over them. Public policy has to ensure that viewers, listeners and readers benefit from the multi-media revolution and that a provision of a number of opinions from different sources are available. Ownership restrictions should thus be maintained. It is imperative though that they are supplemented with audience and/or revenue-based measures, since

[41] Many would argue that the owner of a large number of thematic channels providing light entertainment, music or sports does not represent a threat to pluralism. It is true that in this case the issues are different because the reasons for not having monopoly or excessive control are largely economic (i.e. unfair competition, exclusive rights) rather than cultural/political. Anyway, since we expect packages of thematic channels to develop, consisting of both light entertainment and opinion-forming channels (Murdoch's strategy, for example), we believe that ownership restrictions should be maintained and enforced.

using the number of channels or titles as a sole criterion is meaningless without some consideration of coverage or financial strength.

The two different sets of methods illustrated above (audience and revenue -based) are said to correspond to two levels of measurement of concentration in the information market: the political/cultural or pluralism and the economic or concentration of resources. It has been put forth that revenue-based methods are close to the traditional systems of concentration measurement which permit assessment of the existence of a dominant position (concentration of resources), whereas audience-based methods are coherent with the cultural/political standpoint and can be held to be most effective for measurement of pluralism. However, due to the close relationship between economic power and pluralism, audience figures could also measure market power. In fact, audience-based measures are a form of market share measurement, which is a classic economic measurement. 'Audience' are the equivalent of measuring sales (i.e. market share), which is a classic economic measure of power. Therefore, the distinction between economic measures and cultural/political measures is irrelevant. Both sets of media market measurement assess market power. In the absence of a direct way of establishing 'impact', crude measures based on market power (i.e. criteria about market structure) are used instead. And what the audience and revenue-based methods are doing is in fact that - they evaluate market power.

The search for the 'best' criterion for measuring concentration levels in the media sector has been centred on structure and not on content. Neither financial data nor audience figures and certainly not the number of media outlets controlled by the same entity are fully reliable indicators of the controller's impact on public opinion. Such an impact depends to a large extent on the content of the channel/title, which is not taken into account by either of these methods. Ideally, pluralism would be best assessed if account was taken of the editorial characteristics of the medium in question (type of programme or column, editorial opinions, etc.) and studies were conducted to evaluate whether the citizen-consumer genuinely benefits from such diversity. However, it would not be possible to assess the content of different media and consequently their impact on pluralism/diversity. Studies that measure content quantitatively and qualitatively in order to assess whether content is balanced and whether it is pluralistic or biased are not readily available. Given the complexity of these analyses, it would be a very costly and time-consuming exercise (let alone subjective) to carry them out for the special use of the media authorities. Disaggregating media concentration by content area (i.e. classifying individual programmes by type or subject matter) is also impractical since most individual media vehicles present content covering a broad range of issues. Thus, in the absence of such studies, pragmatic solutions based on already available data have to be found and enforced.

Having made that clear that neither end-use based indicators nor revenue-based ones can directly measure media firms' impact on public opinion, the question is whether it is possible to isolate one of these measures and use it as a single unit that would best determine media companies' market power (and possibly reveal their impact on public opinion indirectly). The currently favoured audience share measure is not a subtle measure of cultural power. The GAH study prepared for the Commission is flawed because, although it offers a useful summary of the availability of audience measures across the European Union, it does not assess the suitability of audience share data as a measure of 'influence'. The problems with the approach of setting uniform Community-wide thresholds based on the as yet untested new concept of audience share are with the definitions of the relevant market and with market share. Regarding the relevant market, audience share cannot effectively compare media with entirely different intentions and market segments such as a racing magazine and a political commentary. In addition, audience share cannot extend to all substitutable products - time spent watching pre-recorded videos can be as important as time spent viewing scheduled television. Finally, audience share cannot compare media with differing geographical reaches - measured on a local level the market share of a local TV company can dwarf the local share of a national TV channel.

Regarding market share across media, it is very difficult to compare the relative significance of many shares in several different media or different media organisations with high shares of a smaller number. It might be the case that an individual has a high aggregate market share which is spread across many media. This however will cause no concern on behalf of the competition or media authorities, since he/she does not have formal control over any of the separate media. Secondly, media with relatively low audience shares could have higher impact than media with high audience shares. The London *Financial Times,* for instance, with a national daily circulation of just under 300,000, is regarded as more influential than, say, *The Sun,* with a national daily circulation of more than 4,000,000 (Audit Bureau of Circulations, January 1995). Thirdly, audience shares are constantly changing, and therefore no single limit could be applied with any degree of accuracy in practice (BBC, 1995).

Thus audience shares criteria are not a priori better indicators for measuring media concentration than revenue-based ones. The use of revenue market shares of whatever kind (advertising, subscriptions, sales, grants, licence fees, etc.) seems to be less problematic since it avoids the need to find practical solutions to the various problems arising from the use of audience data. Audience data are neither fully harmonised nor equally reliable across Europe (see ESOMAR'S 1994 and 1995 reports). On the other hand, common accounting principles already exist. Financial data for different media sectors are easily comparable. A system based on financial data would make it easier to achieve closer co-operation and synergy effects between the authorities responsible for competition and those in charge of the media. Instead of building up two completely separate systems, this approach would at least make it easier to collect data and to enforce transparency rules.[42] It should also be mentioned that financial data have the advantage of reflecting media consumption - the higher the audience ratings, the greater the revenue from advertising; the larger the number of subscribers, the greater the revenue from pay-TV fees.

The main advantages of applying a revenue-based measure are firstly that it is a long established and tested method for measuring market concentration, and secondly that it provides a common currency of measurement across media. However, the NERA 1995 study pointed

[42] As indicated above, the Commission argued that criteria based on company share holdings are used by competition law in order to assess the behaviour of proprietors among themselves. The application of this standard for measuring media concentration and pluralism would thus duplicate the efforts of competition law (COM (94) 353: 42). According to EBU (1995) however, the fact that competition law and media law have different objectives, does not automatically imply that they have to use different criteria and methods of measuring market shares.

out a number of reasons why revenue may be an inappropriate measure: a) *excludability.* The capability of an enterprise to earn revenue depends upon the degree of control it can exercise over those who consume it. Most radio and TV broadcasts do not require the audience to pay, but rather rely on advertising income or taxation, thus not obtaining most of the consumer value of their product. The available technology for making broadcast audiences pay is at an early stage of development and is still quite expensive. The problem of excludability is not present in printed publications, since people usually pay a small amount to buy a newspaper or magazine; b) *advertising potential.* Broadcasts and publications which cover a wide area, or are targeted at a general audience, earn less income per unit audience than narrow area and special interest broadcasts, because they are less well targeted. This distorts the comparison between different types of supplier in all media. TV advertising revenue is determined, in part, by limits on the number of channels permitted to supply advertising time and by limits on the amount of advertising per hour; c) *cost structure.* Different media have different underlying costs, and unless supply is heavily constrained (as in the case of television) revenues will, as a broad approximation, tend towards costs through the process of competition; d) *choice of influence over income.* A proprietor may decide deliberately to forgo income in order to obtain greater influence. A media product which is less suited to high value entertainment might earn less, despite having much influence; and e) *relative wealth.* A publication aimed at wealthier classes or provided in a wealthier area of a country might earn more than others, without reflecting any greater influence (NERA, 1995: 13-4).

Establishing a method of measuring multimedia concentration on the basis of a single unit seems impossible. Some indicators (end-use based) come a bit closer to the concept of pluralism since they focus on the citizen consumer, while others (revenue-based) correspond more with the ways of concentration used in other sectors. But a single audience or financial criterion is hardly conceivable. Apart from the problems that each criterion pose on its own due, this is mainly because none of them has been tested yet for measuring influence. It might be 'safer' then if we took both criteria into account at this stage. The difficulty in finding a system that is applicable to all information services with their different characteristics, leads us to the conclusion that a mix of the two methods described above could provide a valuable alternative. Combining the two types of measurement depending on the configuration of the media in question might provide a quite valid method. A combined test involving advertising and/or subscription revenues and audience shares (together, of course, with ownership restrictions) could effectively measure market power and possibly reveal influence on total media consumption. Regarding commercial broadcasting, for example, the main measurement of market share is by advertising revenue. However, the audience share should also be used as an additional measure, since the revenue by advertising and the prices for advertising spots almost entirely depend on the share of audience for a channel or a certain programme.

That both methods are needed for an overall and accurate picture of concentration in the market-place for ideas could be shown through the following example. Let us consider the radio medium whose production and distribution costs are obviously lower than those of television. Assuming that both media vehicles attract the same audience, the first method, based on end-use (audience), will attribute the same degree of market power to both media and consequently the radio contact will have identical value to television contact. The second method, based on monetary measurement, will attribute varying levels of market power to media having the same number of contacts (radio contacts will have a lower value than television ones). The two different methods thus come up with different measurements of the market position of the media. The combination of the two methods of measurement (the 'middle way' as we may call it) would eliminate this discrepancy and provide an avenue to arrive at a more or less accurate picture of concentration levels in the mass media field.

The fact that a monetary-based measurement is by itself insufficient to reveal the exact level of media market power can be shown through another example. Revenues, which is the unit of measurement most heavily used in competition policy, is clearly related to economic power. A company which has a large share of revenues is likely to invest a larger portion of its resources in improving the quality of its product in order to stay ahead of its competitors. If the investment is successful, then the improvement in product quality can result into higher market share. In the media domain, a firm must be capable of retaining and therefore influencing its audiences, in addition to commanding its resources. However, the relationship between revenues and influence is far from straightforward and varies across different media. Consider a case of a newspaper which cuts its cover price. It will increase its circulation and hence its influence, but may reduce its revenue (depending both on the elasticity of sales and the importance of advertising revenue with respect to cover price). A powerful newspaper proprietor with deep pockets, like Rupert Murdoch, who is determined to get his message across at any cost, could simultaneously reduce his market share and increase his audience by reducing the cover price of his newspapers.[43] Measuring Murdoch's shares only in terms of revenue will probably not reveal the exact strength of his market position. But by adding another dimension (i.e. measuring his audience share), a more accurate picture of his market position will come up.

Marrying time use data with advertising expenditure data provides a more concrete example of our 'middle way' proposals. Advertising expenditure is the amount that advertisers pay for advertising, rather than the amount the media receive from it, since the former reflects the value to purchaser. The difference includes agency commission and the costs of producing advertising copy. As Arthur Andersen analysis indicated, time spent on television is over seven times more than time spent on newspapers. However, advertisers in Britain in 1993 were prepared to spend £1.2 billion on national newspapers and £2.6 billion on television advertisements (Advertising Association, *Advertising Statistics Yearbook 1994*). So although TV is much more important than newspapers in terms of time use, advertisers only regard it as roughly twice as important. Advertisers also consider it essential who is in the audience, in addition to how many watch, read or listen. The

[43] As stated elsewhere, Murdoch decided in 1993 to cut the cover price of the *Sun* from 25p to 20p and the cover price of *The Times* from 45p to 30p. Further cuttings followed. Newspaper company results make it difficult to divine exactly how much circulation revenue each one has lost since the price war began. Anyway, a cut of just 1p would cost the *Mirror* roughly £10 million, whereas a 5p cut at the *Telegraph* would cost £13 million (see the Guardian, Monday July 15 1996, p25). These estimates do not take into account the enormous sums spent on promotion and the crippling effects on newspapers which have been forced to absorb additional costs rather than risk price rises. So although we cannot calculate the exact Murdoch's loss, the fact that he increased *The Times* to 30p in two 5p rises in July and November 1995 together with the closure of *Today* indicate huge losses in revenues across his newspaper industry. By contrast, the circulation trend of his empire has been more than encouraging. *The Times* has doubled its sales from 1993 to 1996 (selling 724,839 copies in June 1996 compared to 362,428 in June 1993), while the *Sun* was selling 3,970,155 copies in June 1996 compared to 3,464,950 in June 1993 (ABC, 1996).

Independent, for instance, is a serious newspaper read by many influential people in business, the City, Whitehall and Westminster. So although space in the *Independent* is cheaper than space in the *Sun* (because there are far fewer readers), the cost per reader of advertising in the *Independent* is much higher than that of advertising in the *Sun*. This is illustrated by the advertising rate cards shown in Table 4.8. The amount that advertisers are prepared to pay to reach the highly influential *Financial Times* reader would buy access to no less than fourteen *Sun* readers.

Table 4.8

Advertising Ratecard Costs of Selected UK National Newspapers

Newspaper	£/page	£/000 adult readers
The Sun	28,000	2.84
Daily Mail	22,680	4.80
Independent	14,000	12.20
Daily Telegraph	34,500	12.71
Sunday Times	47,000	13.28
Financial Times	29,568	39.69

Source: BRAD, 1994; London Economics, 1995.

These considerations reinforce the attractions of combining different measures for assessing media concentration levels and possibly establishing impact. The relationship between money and influence is certainly imperfect; however, monetary-based measures do at least take into account, in a way that head counts cannot, the fact that the influence of any medium depends on who it reaches in addition to how many it reaches. Advertising expenditure is thus an important candidate dimension in order to calculate influence shares. Nevertheless, although it gives us some indication of the influence of radio and TV compared to the press, it is hard to construct a consistent statistical measure of influence. The exercise is heroic because print is bought by the column inch or page part while radio and television is bought by the second. Another point that must be borne in mind when making such attempt is that television (and therefore advertising in television) may be more influential at prime-time (usually between 8 to 11 pm), when the audiences are huge, rather than in day time. And space in newspapers may be more influential on some pages than others. We also have to make the assumption (as the London Economics study did) that people spend the same time on advertisements for each hour of reading the press as for each hour of viewing or listening to commercial television or radio. All these factors must be taken into account by authorities wishing to adopt this model.

Another possibility in relation to complex combinations of media would be to set a percentage of market share in terms of revenue as a threshold for further examination of the position. This approach is taken in UK monopoly legislation in relation to newspaper ownership. Should a media controller breach the pre-determined revenue threshold, the argument follows, an audience share test will apply to determine whether he/she attracts a high percentage of consumers as well. This undoubtedly gives more weight to the economic criterion of revenue. The reason why it is considered here is that the sources of bias and error are potentially so many in all audience-based measures of shares in the aggregate media sector, that policy decisions based on such measures alone should be made extremely carefully. A long established, crude method for measuring market concentration such as revenue may moderate potential inaccuracies of the newly-conceived audience-based methods.

Finally, a system which can combine different measures such as numerical criteria, revenue, audience share and audience time spent consuming a medium has been proposed by the British Broadcasting Corporation (BBC, 1995; Andrew, 1995). According to BBC, a weighted points system which combines several measurement criteria may represent the most reasonable approach. It should have the following characteristics: a) the points system could award a certain number of points per channel or title owned according to the particular relevant market; b) the weighting by points would allow channel/title ownership to be informed by other criteria, rather than being applied as a sole criterion; c) the number of points would reflect the revenue, audience share and audience time spent which channels/titles in a given market typically command; d) it would be important for the points system to be adjustable over time in order to take account of the changing impact of different media; e) points thresholds should be set to provide an indication of whether organisations are moving into positions from which they might have the potential to abuse pluralism, and to instigate an in-depth review; and f) the thresholds should be designed so as to limit the share of commercial revenues for single media (30% of revenues) together with a lower limit (20% of revenues across the relevant sectors) for cross media ownership. BBC stated that, used in this way, the lack of sophistication of the measure used is less of a concern for regulators, since more detailed information can be taken into account in the review itself.

In any case, we are still a bit away from constructing a single indicator capable of assessing effectively multi-media concentration. Both the Commission and several European countries which are in the process of changing their national media ownership rules (i.e. Germany, Great

Britain) are aware of the need to examine more thoroughly certain questions concerning content before any initiative is presented. Germany's example, where until recently there seemed to be a clear preference for a new system based on audience data while there is now a consideration of a model based on commercial revenue, is an indication of the confusion over the 'best' possible measure of media concentration and influence. There are many possible different ways of measuring share of the market. Each one of these measures conveys some important information about the markets and the degree of influence of each firm within them; however, none is so perfect to assess the exact level of influence shares in the media industry. This is precisely the reason why we propose the use of a combination of measures. An over-reliance on one of the measures may lead to flawed policies. The media regulator must gather as much information as he/she can about a company's market share; he/she then must compute all of the different measures (or those he/she deems necessary to build up a complete picture of the market) and examine them carefully. By this way, he/she will be able to come to a definite conclusion about a potential excessive influence of the company in question.

Finally, the regulator must ensure that the framework for media ownership regulation is clearly set out and not affected by day to day fluctuations in companies' shares. Audience shares, circulation, shares of revenue and so forth all very materially from day to day or month to month, something that may present difficulties. A firm may find itself in line with a proposed threshold one month but it may exceed it next month, simply owing to its own success relative to its competitors. It would not be right if media controllers were required to divest because, owing to their own market success, they have crossed some line, quite possibly temporarily. One approach to such a problem would be to have delays built in to the rules. If an enterprise crosses some pre-determined line, action would only be taken if it were still over the line some period later. This would mean that action was not taken on temporary fluctuations. It would also give media controllers the ability to take corrective action of their own during the delay period. A second approach would be to have two limits, a lower one which may trigger a discretionary power, and an upper one which automatically triggers action or divestment. A third approach, suggested by NERA (1995), is to establish that the rules as to what was allowed would only come into play at times when mergers and acquisitions are proposed, and when licences are applied or re-applied for. So, for instance, if a media owner wished to acquire another newspaper, this would be prevented if it took him/her over the limit. If a TV licence owner went over the limit during the course of the licence, he/she would be prevented from reapplying.

Chapter 5

Final Conclusions

This work was initiated by the perception of a number of problems arising from the regulation and measurement of the media concentration phenomenon for the purposes of safeguarding the public interest in the media industry. The problems identified are: the de-regulatory moves of the 1980s did not acknowledge sufficiently the historic importance and effects of the public interest tradition in the media field; media concentration has reached an unprecedented level in the Western world under the free market philosophy. That poses a danger for the diversity of views and opinions expressed by the media; there is great difficulty in assessing accurately the level of media concentration in the current multi-media era; none of the proposed methodologies of measuring media concentration can effectively assess 'influence' and establish 'impact' in the market place for ideas; different indicators of assessing concentration are likely to lead to disparate conclusions of its level in a given market; a system that is applicable to all information services with different characteristics is hardly conceivable. These problems were aggravated both by the convergence of the communication technologies and the further moves at both national and European levels to relax rules concerning media ownership. The purpose of the work was to explicate and clarify these problems by investigating the historical background and the relevant present situation in the media concentration area. The following pages contain the conclusions of the research undertaken and the contribution of the thesis to the body of knowledge.

In Chapter one, we analysed the way in which the public interest[1] in communications is affected by developments in the mass

[1] As already explained, this concept is critical as there is no such thing as an objective public interest. The public interest is a hold-all term, which is a value judgement that can be used, as a rhetorical symbol, to justify widely differing policies. At the lowest common denominator, the public interest

communication field. The mass media in the past, particularly the electronic ones, were subject to a complex system of regulation on grounds of a supposed public interest. They were among the industries being recognised in law and custom as 'business affected with a public interest', and public regulation was often applied to ensure equity, efficiency, fair and adequate provision to all at reasonable prices. The technology of telecommunications in both Europe and the United States was regarded as natural monopoly and as a public good, and governments emphasised the importance of the penetration of the technology in assuring access to all citizens at low costs. Broadcast media in both continents have taken a similar path of development, following the adoption of radio in the early 1920s as a means of communication to the general public. Access to the use of the airwaves and the permitted uses to which radio (and later television) could be put were governed by law, licence or regulation, even where the free market resigned, as in the USA. The reasons are many and vary: technical reasons and arguments about efficiency and the need to manage national resources have played a large part; there has also been the widespread assumption that these media have great power in respect of the morals of the young, public decency and order; there have also emerged the views, as the political and social significance of television became appreciated, that access to limited airwaves (as sender or receiver) should be allocated in an equitable manner.

For all these reasons, the communication model widely developed in the past in Europe was that of a national media system in which citizens were largely dependent on the same, relatively limited, supply of news

may be considered as referring to a common set of values which the state, legitimated by democratic elections, promotes and protects.

and culture which was distributed from a centralised metropolitan centre. Communication however, once carried out by the state or a handful of small firms operating in the context of a single country, has today transformed into a global industry characterised by rapid growth in the production and distribution of information, opinion and entertainment. A complex mosaic of technological, economic, political, cultural and even legal forces have undermined the traditional regulation of the electronic media and led in the 1980s to the process of deregulation, that is, the dismantling of regulatory controls and the introduction of competition and of market forces in the media industry. The supporters of deregulation (or light touch regulation) in the media have put forward the argument that free market conditions can serve best the public interest in communications by guaranteeing freedom from state control and coercion and by maximising consumer choice. In several ways, the media market works towards meeting many of these claims. In theory, the free operation of supply and demand could provide for access for all 'voices' which can pay for it and for the supply of content that satisfies all consumers. Market mechanisms can also lead to a continuous process of trial and error, innovation, product improvement and flexible response to potential communication needs. The market system can thus reflect the demands of would-be receivers, whether they are expressed directly by the audience (subscription) or indirectly through the advertising market. The market model can also stimulate the growth of new channels and new audience markets. The outcome can be increased numerical diversity, that is, more channels and more choice for consumers.

From this account, it seems that a well-functioning market will maximise the benefits of both senders and receivers. In practice though, the interests of the audience and senders do not always coincide. The direct media consumer market (which relies on sales or subscription for income and profit) is likely to produce a differentiated pattern which caters best (in volume and choice) for higher income groups. It is only in cases where less commercial media, with 'idealistic' communication goals and no profit motive can survive on the basis of a small but committed support from their audiences, that this 'bias' can be eliminated. The advertising-based variant of the market model also operates best in the interests of some categories of the audience, since it is inclined to follow lines of income and locality. Advertisers choose vehicles for their messages in order to reach diversified target groups in a way which suits their own needs. They often neglect the poor or marginal groups of media consumers who are not very interesting economically. Accordingly the market model is likely to reduce the chances for certain kinds of provision, especially content of a specific local and regional kind (e.g. in a minority language), content dealing with minority problems, or content serving less wealthy target groups (including children, old and poor). LeDuc (1982), Hoffmann-Riem (1987) and many other scholars, reflecting on the new abundance of channels and the process of media deregulation in Europe and the USA, are very sceptical about the market having delivered any significant increase in alternative programming options for the audience.

Mainly, though not only, because of the limitations described, public policy has often aspired to equalise chances of media access, to encourage fairer representation and to limit some of the imperfections or 'biases' of the market. The aims of public intervention are divergent: either to encourage media proprietors to overcome the effects of fundamental inequalities in the society; or to ensure a diverse and representative media supply. The forms taken by public policy interventions on behalf of diversity vary according to local priorities and political cultures. In general, the broadcasting model (described in Chapter one), especially in its public service variant, was developed in order to promote regional, linguistic, political, cultural and in taste levels diversity under conditions of limited channel capacity. Press systems have been less open to direct intervention, but measures to encourage press diversity are not uncommon. As explored in Chapter one, these measures usually involve economic support for new or financially weak publications and also the setting of limits to private monopoly. Sometimes intervention is openly applied on behalf of groups which, for economic reasons, are unable to gain adequate access to the media system. In these cases, the intended beneficiaries of public intervention are usually political and social groups with less power in the market place. Thus communication policy for diversity is often an adjunct of wider social and cultural policy, aiming to secure not only better access conditions for 'senders' but also a more universal and diverse supply for audiences than the market, left to itself, would be likely to deliver.

Diversity as access means that the various media provide adequate channels through which all legitimate 'voices' (i.e. groups and interests which make up the society) can speak to the wider public and express and keep alive their own cultural identity. This kind of access allows different, critical and oppositional voices to be heard, something that is essential to culture, change and choice in a society. As Garnham (1990: 162) stated, 'it is access to distribution which is the key to cultural plurality...power in the cultural sector clusters around distribution, the channel of access to audiences'. Media access can also help people to communicate among themselves and therefore keep cohesion and unity, especially where members of the same group live far apart. Mass media provision cannot of course be a substitute for autonomous and informal networks of interpersonal communication. But the media touch us closely because they remain a relatively constant part of our life experience. Other institutions may have a more powerful impact but not a more persistent and lasting one. Family affiliations and friendships change as an individual matures and ages. School occupies a limited length of our life-time. Only a minority of the population are faithful churchgoers. In contrast, the media are part of everyday life from early childhood until death and thus establish a pervasive intimacy. Furthermore, they have a universality that is absent from other institutions. The mass media provide a common set of ideas and images which make up the culture that one nation shares.

Focusing on diversity as access, the central performance question can be summarised as 'who receives access to what channels, in what degree and on what terms' (McQuail, 1992a, 1992b). The answer depends first of all on the number of independent media channels that can be reached by the population in a media system. The more such channels operating in each region, the more access opportunities for different groups. Then the quality of access offered must be looked at. Where, for example, different channels are under the same ownership or editorial control (thus less independent), or where the programming schedule of the channels is filled up with repeats and cheap foreign imports, there is little access potential. Unbridled competition, as we have seen, encourages these trends and therefore limits the range of access diversity. Under free market conditions, the channels of communication give disproportionally less access and attention to some topics, groups, actions and institutions on grounds of significance and financial earnings. In addition, much depends on the terms under which access is given. Some political parties or social groups may get a fair share of attention but not on favourable terms. There are two separate matters: one of access/attention in terms of media space and time; another of quality of treatment. The second refers to the balance, objectivity, impartiality and fairness in the presentation of social interests. Even if numerically equal or proportional access and attention is achieved, the implicit balance of evaluation in content may be one-sided.

The practice of objective reporting of news and current affairs must lie at the heart of journalists' task because absence of objectivity often results in inaccuracy and tendentiousness. According to Boyer (1981) objectivity has the following six elements: balance and even-handedness in presenting different sides of an issue; accuracy and realism of reporting; presentation of all main relevant points; separation of facts from opinion; minimising the influence of the writer's own attitude, opinion or involvement; and avoiding slant, rancour or devious purpose. However, the journalists' role may conflict with two other goals: that of playing some active or advocative part in society, and that of providing some interpretation of the events. Other familiar conditions of news reporting set limits to the degree of objectivity which one expects. There is an enormous volume of potentially relevant information (requiring selection more than collection) which has to be processed under tremendous pressure of time. Sources may not readily supply information and there is often intense competition with other journalists for the same information. Information has also to be selected and presented to please consumers and to attract attention, thus emphasising form more than content. The bureaucratic structural organisation of the modern commercial media enterprise can also set barriers to objectivity. Within a media organisation nobody advises the new employees what to do and how to behave; instead, there is a cumulative process of attrition, a sort of self-regulated socialisation which makes journalists obedient to the rules set by the 'gatekeepers' (i.e. those who decide what is going to be published and what not) (White, 1950; McQuail, 1969; Serafetinidou, 1991). In cases where journalists have to conform to the rules set out by the keepers of the gate, the objectivity and balance in the presentation of information may be eliminated.

The impossibility of complete objectivity has been argued on several grounds. One is that the unavoidable process of news selection must also entail subjective judgement, of which journalists themselves may be unaware (White, 1950). Another is that all events and reports of events which are candidates for treatment as news have to be placed in wider frames of reference which give them evaluative meanings (McQuail, 1992). Thirdly, the omissions, gaps and silences which are unavoidable may also be eloquent, reflecting implicit and subjective judgements about relevance and assumptions about society and its values. Finally, news is always produced within a context of numerous and powerful external and internal pressures which might deflect journalism from any ideal goal of presenting 'truth'. As we all know, the main sources of commercial media finance come from owners or controllers and would-be advertisers or sponsors. Proprietorial influence on content may conflict with media claims to offer fully disinterested truth or independent opinion (Meyer, 1987). There may also be objections on grounds of resulting political bias, particularly bias towards business interests and right-wing government. Dependence on advertising revenue, or on direct or indirect sponsorship, places media under a potential obligation to major commercial interests (The European Institute for the Media, 1993).

One possible solution to these problems would be to provide financial measures that would strengthen media organisations and therefore guarantee their independence. Subsidies may sometimes be received from public funds, either in the form of exceptional economic help for financially weak publications (tax relief, loans and grants, direct payments, etc.) or (as with many public broadcasting bodies) as general income from taxation or licence fees raised from the public. Other sources of income, for instance from political parties, churches, educational institutions, minority groups, etc., might even be more helpful, as long as the connection between outside interest and the medium is made clear. In such cases, 'sponsors' and media public are assumed to have a shared interest. We may go even further by arguing that editorial statutes safeguarding editorial independence need to be established in all European media. These statutes should give journalists and editorial departments a certain degree of independence vis-a-vis interests of the company and the advertising department. With editorial statutes journalists will have the right to maintain basic standards of reporting. Editorial judgements will not be subordinated to economic pressures, whether from proprietors, advertisers, sponsors, or other financial sources (for example, other business interests of a media firm). Whether there is potential influence from financial source on content this should be controlled and revealed. This can be achieved by a clear separation of advertising from editorial content, or by reporting sponsorship, or by general openness about vested interests. In a highly concentrated media market, where few operators control the flow of information, editorial statutes at least guarantee a certain level of balance in the reporting of news. We therefore fully endorse the resolution of 20 January 1994 (OJ C 44, 14-02-1994), passed by the European Parliament which, not only called on the Commission to act in the field of concentration of media ownership but also called for 'a proposal for a European framework directive safeguarding journalistic and editorial independence in all media'.

Another major theme of the public interest which relates to the media is diversity as variety and choice for the consumer-citizen. According to the market-based model of communications, diversity is essentially a matter of degree of real choice available to the public. This version of the concept is central to the problems surrounding media monopoly and is increasingly relevant to the current expansion in the number of television channels. The principle of freedom of communication presupposes an abundance of channels and choices as desirable conditions for a free and democratic society. Proponents of free market arrangements claim that the market, left to itself, will deliver such benefits (Peacock, 1986; Veljanovski, 1989). Critics reply that channel abundance is no guarantee against the trends towards globalisation and concentration of ownership or against homogeneity of content, resulting from competition for the same, more or less, audience. The relevant question that should be asked is about the relationship between choice of channels of communication and choice of content offered by these channels. We cannot of course assume that a larger number of newspaper titles or television channels available will automatically offer more variety of content than a system with limited channels.

There are a number of reasons, already explained in Chapter one, that warrant this statement. Commercial broadcasting is based not on the sale of programmes to audiences but on the sale of audiences to advertisers. Thus the introduction of more competitors reduces advertising revenues both by spreading them between a greater number of channels and by splitting potential audiences into even smaller groups. As the main incentive remains the attraction of the largest possible audience, the competing channels, less constrained by regulation to produce a variety of programmes, tend to show more of the same or similar programmes (Curran and Seaton, 1991). Here arises the issue of duplication of news content. The more the channels of communication are competing for the same 'market' of people or region at the same time, the more we should expect duplication of content. Evidence concerning American and British television news, under conditions of competing services, support this statement (see, among others, Glasgow Media Group, 1976; Morrison and Tumber, 1988; London Economics, 1995). The rules of the market can also lead to the lowering of the standards to produce an improved product, since it is cheaper for organisations to buy an internationalised soap opera than make their own drama. This results in less variety in the kind of programmes that are not likely to attract top audience ratings.

Thus the victims of media deregulation are choice, access, creativity and quality in product output. This situation is becoming even worse because of the increasing tendency towards concentrated ownership across the media industry. The current trends in media structure and organisation are likely to lead to the loss of diversity in access, choice and in taste levels. Chain ownership of newspapers, cross-ownership between different media and many inter-lockings between the media and other industries are familiar processes in an unregulated world and have as a result the creation of a certain amount of standardisation and homogeneity in media products. A process of global horizontal and vertical integration, described in detail in Chapter two, has led to large software media enterprises being taken over by large electronic hardware firms or by companies outside the media sector. The motives of such a process were the gaining of straight market power and profits, the gaining of economies of scale, the gaining of 'synergy' resulting from interaction among differing technology within an enterprise, or even the desire to build an empire for prestige purposes. The proliferation of broadcasting channels in the hands of a small band of operators, 'liberated' by government policy from the obligations of public service variety, have a negative effect on diversity and on political depth. As the different media are converging on each other, as they compete for much the same market, it becomes harder for them to give attention to world affairs, domestic politics, or minority programming. Access to information is becoming more and more harder to achieve, sufficient balance in the representation of news or current affairs programmes is not safeguarded, whereas 'choice' has proved to be a myth as the market does indeed deliver more, but more of the same.

The threats to diversity of public expression arising from deregulation and emerging patterns of media ownership and control urgently require policy responses. An argument could be made here that, whereas a commercial media company has to put profits first, a public service broadcaster can pursue other objectives, including the objective of providing a neutral forum for the discussion of political, cultural and social issues. In this role it has clear advantages compared with a profit-seeking firm. Where it is entirely owned by the government, it is immune to take-over; if some private shareholding is allowed, a blocking 'golden share' can be held by the government and therefore the immunity can be maintained. Its journalists need therefore not feel intimidated by proprietors or management, or required to adjust their political statements to meet the proprietors' wishes. Moreover, when it comes to reporting and analysing controversial issues which, for example, affect their own profits, privately-owned media companies are unlikely to be objective. But a public sector broadcaster with non-market funding can try to present all sides of the case. In addition, commercial broadcasters in an unregulated world would decide the balance between news coverage and the rest of their programming by the profit criterion; a public service broadcaster can instead try to provide a news service that is both comprehensive and accurate. An appropriate mix of news and other programming can thus be achieved.

A public service broadcaster which could be required, by statute, to encourage the honesty, transparency and diversity of the socio-cultural and political debate, could thus provide a valuable alternative. The main policy response to the digital revolution should be to maintain positive encouragement of universally available public service broadcasting, which would aim to fulfil the following criteria: reflect and promote national culture; provide independent news and current affairs programmes; expand the interests of audiences, especially in the arts and sciences; make available to the entire population important national and local events; provide educational programmes for all ages;

provide worthwhile programmes for children; and aim at the highest standards of decency. The maintenance of a healthy public sector broadcaster, however important it is, is not of course the only solution to the problem of loss of diversity. The second purpose of regulation should be to prevent undue concentration of influence at any stage of the process of conveying material to viewers, listeners and readers. If the market place for ideas (ideas being broadly interpreted to include all types of content) is to succeed, we must ensure that a balanced content (including both mainstream and unpopular programming) has some way of entering the mass communication flow. This balance in Europe has historically been achieved not only through regulation but also through competition.

As explained in Chapter three, competition policy in general is concerned firstly with preventing agreements between undertakings that reduce the effectiveness of the competitive process, secondly with controlling mergers that increase the probability of exercising undue market power, and thirdly with anti-competitive behaviour that enables companies either to acquire market power or to increase barriers to entry. Competition policy rules ensure (or should ensure) that the competitive process is not threatened by either market structure or the conduct of firms. Its application though to the media industry cannot always safeguard other values and objectives such as diversity and freedom of expression. Media policy has encompassed a much wider range of public values and objectives than the efficient functioning of private markets. The media play a central role as a disseminator of information, opinions and culture, and policies are often founded on broad principles governing the circulation of ideas and information that are fundamental values for pluralistic democratic societies.

Precisely because of the nature of the media industry, competition policy objectives are not enough for preserving other policy objectives. This is not to say that competition policy does not have a role to play in the cultural field. Policies promoting efficient competition may limit concentration of media control and at the same time they may also promote the presentation of diverse points of view. However, the safeguarding of a competitive environment and the promotion of diversity are different (although sometimes overlapping) objectives. The latter can only be fostered by specific media rules on either content or ownership.

The current position of the Commission of the European Communities for addressing this issue is to apply measures tackling the structure of the communications industries. The proposal, expressed in the 1992 Green Paper on 'Pluralism and Media Concentration in the Internal Market', is to limit the number and size of the media operations that any one person or group can control. Diversified ownership and harmonisation of national restrictions in the area of media concentration, the argument runs, will both establish a 'level playing field' and eliminate the threat to diversity of information. The Commission's main objective though is not to maintain pluralism and diversity in the media, but to ensure the proper functioning of the internal market. The craving for the harmonisation of national media ownership rules has more to do with ensuring the smooth operation of the single market rather than safeguarding media diversity as such. The apparent favour on the part of the Commission for harmonising media ownership restrictions is not surprising, as it is fully in line with its position in other areas: indeed, the Commission is known to regard competition in the market for corporate control as a natural expansion of competition in product, labour and capital markets.

Although ownership restrictions are certainly needed for the pursuit of diversity, there are a number of problems with their suitability to deliver this desirable goal. There are doubts on the enforcement of ownership control rules, as these may be easily bypassed through, for example, inter-lockings, 'sleeping partners', etc. This leads us to the problem of identifying accurately the notion of the 'media controller', extensively analysed in Chapter four. It is imperative to extent the 'media controller' concept so as to encompass influences exerted by companies upstream and downstream, advertisers, managers, and so forth. In addition, any examination of media diversity cannot confine itself to concentration at the delivery stage, as the 1992 Commission Green Paper stated. The creative stage should also be taken into consideration since some companies may exercise a monopoly in the supply of products to channels. Disney, for instance, has a monopoly in the supply of cartoons to almost all major European channels. ITN exercises a near monopoly in the supply of news to ITV network. Independent TV producers in recent years are supplying more and more material to broadcasters. Therefore, it is not always the owner of the distribution mechanism who decides what the viewer watches. In this sense, regulations that are tailored specifically to the 'controller' of the medium (the Green Paper's favoured term) may not capture entirely the true extent of media concentration.

Apart from the problem of the enforcement of potential ownership rules, there is the whole question of whether European regulation can ever be a reality in this area. National restrictions on media ownership (as the Commission recognises at pages 55 and 56 of its 1992 Green Paper) are diverse and inconsistent. As we have seen, several Member States are planning to amend or introduce new regulations to control concentration patterns in the media. There are proposals for new anti-concentration rules in Germany, France, the Netherlands and Italy, whilst Greece has already amended the national rules on media ownership and the United Kingdom is about to do so. Individual national problems and local pressures are determining the pace of change and encouraging the creation of new national legislation on the already shaky framework of diverse and sometimes discriminatory national rules. In Germany, for instance, the impetus for change appears to derive from the dissatisfaction of both broadcasters and regulatory authorities with the current provisions on media ownership, as they are felt to be vague and unworkable as between the German States. The stimulus for change in Britain appears to be driven by the level of dissatisfaction with current rules, mostly expressed by the independent broadcasters who argue that the rules deny them the opportunity of achieving economies of scale and chances to compete in the global media market. Proposals for changes seem to be based on different objectives and perceptions in each Member State. It therefore appears highly unlikely, given the history of media regulation in Community countries and the different pressures for change, that individual Member States will voluntarily legislate to approximate or harmonise their laws.

There are also serious doubts about Community competence to regulate in the area of media concentrations and pluralism, since the Commission has itself stated in its Green Paper that the objective of safeguarding media pluralism as such is neither a Community objective nor a matter within Community jurisdiction. This may prevent the Commission, contrary to the wishes of the European Parliament, from approaching the issue of media concentration from the cultural and human rights perspectives and from tackling it in an all-encompassing way. As indicated elsewhere, the European Parliament's view is that any legislative act on media concentration must take into account not only the economic dimension but also the cultural dimension, the social impact and the moral and political implications. Only in this way pluralism will be guaranteed. As far as possible however, the Commission will leave measures relating to media pluralism and diversity to the Member States. The subsidiarity principle of the Maastricht Treaty on European Union requires this. In choosing a harmonisation instrument, the Commission must also carefully motivate its competence on the basis of the EEC Treaty to prevent that the harmonisation measures will be held to be inoperative (particularly on the basis of Article 190 EEC).

If, nevertheless, the Commission decides to regulate in this area, another important question concerns the interactive services. Should they be included in a potential action on behalf of the European Union? Harmonised rules on media ownership and control would not make sense if they did not cover multi-media concentration (cross-media ownership). The digital revolution and the convergence of information technology, telecommunications and broadcasting will bring the different media sectors closer together. In the information society, programme material will be increasingly designed/created for multi-media use and service providers will offer multi-media packages. Therefore pluralistic safeguards have to cover all media sectors, including radio, TV, free papers, periodicals, etc. Accordingly, new interactive media, particularly those which are of relevance for public opinion forming, should not be exempted. It is true, however, that interactive services are not yet a reality and no one knows how fast they will develop. At least in the initial phase, they will have only a marginal impact on public opinion. Nevertheless, allowing this sector to come under the influence of one or a few media conglomerates could have far-reaching and almost irreversible effects for pluralism in the future media landscape. Applying media ownership limitations only to a part of the media would also distort competition between the different media sectors. Distortions within the Internal Market could arise from the fact that in some countries interactive services are covered by the same media ownership rules as broadcasting, while in others no limitations apply.

A possible solution would be to specify that Member States have to ensure equivalent safeguards for pluralism with regard to interactive media (e.g. video on demand, electronic publishing), at least when such services have attained a considerable share of the overall media market. Harmonisation of the criteria applied to interactive services (e.g. audience measurement) could then be left to a future review of a Community instrument. Flexibility in forming any regulatory framework is indeed crucial. Regulators, whether at national or European Union level, will have to get used to shorter life-cycles of regulatory framework in rapidly changing environment, to avoid legislation becoming out-dated. An example of this is the 1990 British Broadcasting Act, widely acknowledged to have been designed with the old BBC/ITV duopoly in mind and clearly already out of date in the new multi-channel environment. All regulatory activity should be against an evolving technical backdrop, so as to allow an effective mechanism to adapt to technical progress. The 'new media' must thus be included in a potential harmonisation instrument. Unless they are, not only will the new proposals become rapidly out of date, but the very same distortions set up by the 1990 Broadcasting Act (which excluded non-domestic satellite from the restriction of cross-ownership) will be created afresh.

The most serious problem though concerning the establishment of a Europe-wide legislation is the measurement problem, which is discussed in great length in Chapter four. The definition of the relevant market in a multi-media context is not a straightforward task, and therefore the measurement of market shares is also problematic. The difficulty here is that the outcome is extremely sensitive to the specific way in which these restrictions are formulated. In particular, the choice between restrictions on *total audience reached, share of ownership in a channel or title, share of industry revenues,* etc., is crucial and leads to different results as the examples provided in Chapter four clearly show. In general, there are a number of issues that should be considered when measuring multi-media concentration. Firstly, relevant markets must be defined with great caution. The comparison between national and regional channels could lead to false results as the Arthur Andersen's study in particular allowed to be seen. Distinctions would have to be made with regard to different distribution areas. It would not be possible to apply the same audience or financial thresholds in different contexts. In smaller countries and restricted language areas, for example, there may be room for one or two generalist TV channels whereas in large markets an audience share of, say, 25% would appear high. The definition of relevant products and the search for close substitutes is the second task. Even within one and the same media sector, crucial decisions have to be made. For example, should videos or pay-TV be included when considering the television market?

Having considered these issues, the regulator must then choose the appropriate unit for measuring media concentration. As already said, possible measures suggested for establishing a method of assessing multi-media concentration levels include advertising revenue/ expenditure, time spent consuming media, circulation, etc. There are a number of reasons why none of these measures alone could be used to measure concentration levels and establish impact: a) they give radically different results. For example, radio generates relatively little revenue but it listened to for many hours. It would therefore appear small on one measure and large on another. The 'objective' result, as we proposed, would be for both measures to be taken into account, as each measure provides some important information about the influence of different companies; b) particular results are favoured by particular groups. For instance, News International (through the Arthur Andersen study) supports the measurement of 'influence' by using the criterion of time spent. In contrast, the British Media Industry Group, representing Associated Newspapers, Pearsons, the Guardian and the Telegraph group, favour what it calls 'share of voice', which is in fact share of audience/circulation. The results are sharply different. The first makes News International look relatively small, whereas the second does the same for the BMIG (see Tables 4.5 and 4.4 above respectively). Such results clearly coincide with the interests of each of the groups that have suggested them. Moreover, both News International and the BMIG include public service broadcasters in their measures. This has the effect of making both groups look much smaller than would otherwise be the case and of making the BBC appear particularly large. As we have argued elsewhere however, public service broadcasters should be excluded from any potential initiative to regulate media ownership due both to their obligation to provide internal pluralism (i.e. a range and diversity of material and views within their output) and to the fact that public channels are not available for sale or take-over.

The contribution of this study rests on the development of better measures capable of both assessing accurately the degree of concentration in a given market and protecting best desirable social objectives such as diversity of access and content. Its originality reposes on the fact that while accepting the urgent need for new standards to measure media concentration and pluralism in the media market, it concludes that the proposed units are not sufficient to capture 'influence'. None of the above described measures alone can effectively assess pluralism, measure 'influence' and establish the impact of media controllers on the diversity of views in a society. The variety of possible measures combined with different results makes it highly unlikely that any search for a single 'objective' measure will succeed. Alternative proposals are thus put forward in an attempt to develop a better measure which takes into account a large number of public interest issues. In the absence of a direct measure of influence, the study concludes that it is necessary to develop an approach combining the various sets of methods and use it as an alternative technique to establish impact indirectly.

The propositions include a combined test involving advertising and/or subscription revenues and audience shares, the setting of a percentage of market share in terms of revenue/expenditure as a threshold for further examination of the position, and an approach combining more measures such as numerical criteria, revenue share, audience share and audience time spent consuming a medium. What all these suggestions have in common is that they attempt to mix different measures and develop an approach which is applicable to all information services with different characteristics. This is because establishing a method of measuring multimedia concentration on the basis of a single unit is impossible. Combining different types of measurement is more likely to provide a valid method. The use of a combination of measures is essential since no single measure captures both the quantity and the quality of consumption which will tend to determine the degree of influence exerted and the extent of access and of content diversity offered. In the final analysis though, it is the duty of a regulator to use the measurement approaches he/she deems necessary to build up a complete picture of the market and the actions required to ensure the outcomes the regulation aims to achieve. But the more information about the market position of media firms a regulator has, the less disputed his/her judgement will be. Just as the Chancellor of the Exchequer receives a wide range of information to decide whether inflationary pressures are sufficient to justify a rise in interest rates, so any media regulator will need a great deal of information extracted from a wide range of indicators to help him/her decide whether the influence of a particular company is a cause of concern.

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APPENDIX I
MEDIA OWNERSHIP RULES IN SELECTED EU COUNTRIES

COUNTRY	Limitation of combined ownership in the same sector (press)
Belgium	Newspapers or newspaper publishing chains owned by one and the same natural or legal person holding more than 50% of the shares cannot make separate claims for direct press aid unless they can show that each paper or publishing chain is an independent editorial unit.
France	A natural or legal person or group of persons cannot own or control, directly or indirectly, or publish daily publications devoted to general or political news if the circulation exceeds 30% of the total national circulation of all the daily publications of the same nature.
Germany	Provisions of combined ownership in the press sector are laid down in the Act Against Restrictions of Competition. Special reduced reference thresholds apply to merger controls for newspapers and magazines (DM 25 million turnover per annum).
Greece	With Law 2328/1995, a natural or legal person cannot own or control, directly or indirectly, more than one national morning, evening and weekly daily publications. He can however own up to 2 local non-dailies, provided that he does not own more than 2 national dailies. These restrictions apply to all kin (up to forth degree of kinship) provided that they cannot prove financial independence.
Italy	The position of an undertaking or person is considered dominant if the undertaking or a person publishes or controls companies which publish daily newspapers whose circulation during the previous year exceeded a certain percentage (20% at national level, 50% in any one inter-regional area). This principle also applies in the case of publication (or control of companies which publish) of more than 50% of the newspapers published in the same region (if there is more than one newspaper), or where links are established with companies publishing daily newspapers whose circulation exceeded 30% of the total circulation of daily newspapers in Italy during the previous year.
The Netherlands	There is no press concentration regulation at the time of writing. There is though an on-going political debate on such regulation. Limits of 25% or 33% of the market have been proposed during this debate.
United Kingdom	The prior consent of the Secretary of State for Trade and Industry is required for the transfer of ownership of newspapers (or their control following such a transfer) to a person or legal entity which already controls papers with an average circulation of 500,000 or more copies.

APPENDIX II
MEDIA OWNERSHIP RULES IN SELECTED EU COUNTRIES
(continued)

COUNTRY	Limitation of combined ownership in the same sector (radio)
Belgium	In the French Community of Belgium, a natural or legal person cannot hold, either directly or indirectly, more than 24% of the capital of more than 5 radio stations, nor hold more than one-third of the shares in the management bodies of more than 5 private radio stations, nor manage more than 5 private radio stations. In Belgium's German-speaking and Flemish Communities, where the operation of local radio stations is restricted to associations, no association may operate more than one such station.
France	A person (company, association or foundation) owning a national Hertzian network serving more than 30 million people may only obtain new Hertzian sound radio licences if the population served on the basis of these new licences does not exceed 15 million. In the field of cable radio broadcasting, combining services is lawful up to a population of 8 million.
Germany	Regarding the private broadcasting sector, a broadcaster may only broadcast up to 2 nation-wide radio programmes (one of which must be a full programme and the other specifically concentrating on news). Account must be taken of the broadcaster's other German-language programmes which can be received nation-wide and of the natural or legal persons with whom the broadcaster is connected. The Land laws may lay down additional limitations for programmes covering the Land territory only.
Greece	With Law 2328/1995, a natural or legal person cannot hold more than one radio station. The same rules apply to all kin (up to forth degree of kinship) provided that they cannot prove financial independence.
Italy	Operating licences for national radio services granted to the same person or group may not exceed 25% of the total number of national networks and may in no case exceed 3. Operating licences for local radio services may not exceed 1 per broadcasting zone or 7 for all the broadcasting zones, on the condition that they do not cover a population of more than 10 million.
The Netherlands	There is a strict division between the public and private broadcasting domains. A public broadcasting organisation cannot obtain permission to run a commercial station and cannot participate in a commercial broadcasting organisation.
United Kingdom	Under the 1990 Broadcasting Act, the maximum number of licences a person can hold at any one time is: 1 for national radio services, 20 for local radio services and 6 for restricted radio services. However, the government plans to raise the limit on the joint holding of local radio licences from 20 to 35 in the short term and abolish the numerical limits on the number of radio licences held in the longer term.

APPENDIX III
MEDIA OWNERSHIP RULES IN SELECTED EU COUNTRIES
(continued)

COUNTRY	Limitation of combined ownership in the same sector (national television)
Belgium	The French Community's public service broadcasting body (RTBF) may not hold more than 24% of the capital of private TV services. Further, a natural person holding more than 24% of the capital of one French Community private TV service, either directly or indirectly, may not hold more than 24%, either directly or indirectly, of another. Finally, a tele-distributor and his manager may not jointly hold more than 24% of the capital of a French Community private TV service, nor hold more than one-third of the shares in the management bodies, nor manage a French Community private TV service or a local or community television service.
France	- A natural or legal person cannot hold more than 49% of the capital of a nation-wide television station. The authorisation to operate a TV service with nation-wide coverage excludes any other authorisation for a national television service broadcast by terrestrial Hertzian waves; - The combining of 2 satellite television services is lawful. A service broadcast by terrestrial Hertzian waves and transmitted simultaneously by direct broadcasting satellite is regarded as a single service broadcast by Hertzian waves.
Germany	Regarding the private broadcasting sector, a broadcaster may only broadcast up to 2 nation-wide TV programmes (one of which must be a full programme and the other specifically concentrating on news). In one of them, he/she may own up to 50% of the capital of the medium. Account must be taken of the broadcaster's other German-language programmes which can be received nation-wide, and of the natural or legal persons with whom the broadcaster is connected.
Greece	With Law 2328/1995, a natural or legal person cannot hold more than 25% of the capital of a nation-wide television station. The same rules apply to all kin (up to forth degree of kinship) provided that they cannot prove financial independence.
Italy	Operating licences for national television services granted to the same person or group may not exceed 25% of the total number of national networks and may in no case exceed three. The rules enable a media firm to own up to 100% of a television channel.
The Netherlands	There is a strict division between the public and private broadcasting domains. A public broadcasting organisation cannot obtain permission to run a commercial station and cannot participate in a commercial broadcasting organisation.
United Kingdom	Under the 1990 Broadcasting Act, the maximum number of licences a person can hold at any one time is 2 for the Channel 3 services and 1 for Channel 5. Under the new bill though, which is expected to become law in summer 1996, the rule that no company can own more than 2 regional licences will be abolished. In future, broadcasters will be able to expand to up to 15% of total TV audience share.

APPENDIX IV
MEDIA OWNERSHIP RULES IN SELECTED EU COUNTRIES
(continued)

COUNTRY	Limitation of combined ownership in the same sector (local and regional television)
Belgium	There are no restrictions concerning this area.
France	The combining of local and regional television services is authorised for a population of up to 6 million. However, a company may only have one television service in any geographical area. The combining of services is lawful up to 8 million inhabitants for cable television.
Germany	The Land laws may lay down specific conditions and limitations for regional and local television services.
Greece	There is no regulatory framework covering this area.
Italy	Local television service operating licences granted to the same person may not exceed 1 for any broadcasting zone or 3 for different broadcasting zones. These zones may be adjacent, provided that their joint populations do not exceed 10 million.
The Netherlands	Only public broadcasting is allowed at the local and regional levels.
United Kingdom	Under the 1990 Broadcasting Act, the maximum number of licences a person can hold at the same time is 2 for the Channel 3 regional services. Under the new bill though, which is expected to become law in summer 1996, the rule that no company can own more than 2 regional licences will be abolished. In future, broadcasters will be able to expand to up to 15% of total TV audience share.

APPENDIX V

MEDIA OWNERSHIP RULES IN SELECTED EU COUNTRIES (cont.)

COUNTRY	Limitation of combined ownership in different sectors (written press and broadcasting)
Belgium	There are no restrictions concerning this area. Publishers have thus unlimited access to television.
France	At a national level, no licence for operating a radio station, Hertzian television station, or radio and TV cable distribution network may be granted to a person publishing or controlling one or more daily publications which print general and political news and whose circulation is more than 20% of the national total, if that person also owns: one or more television services serving 4 million people, or a radio service serving more than 30 million, or one or more television or radio cable networks serving more than 6 million. Limitations of the same kind exist at the regional and local levels.
Germany	Regarding programmes covering only the territory of a Land, the Land broadcasting laws limit the shareholdings of press companies in the broadcasting sector.
Greece	With Law 2328/1995, the owner of one or more national or local publications may not be a shareholder with more than a 25% interest in a national or local TV company, but can own a national or local radio station. In general, a natural or legal person can participate to up to two media sectors.
Italy	It is forbidden to own: - a nationwide TV channel in the case of a company which publishes or controls daily newspapers whose circulation during the previous year exceeded 16% of the total circulation of daily newspapers in Italy; - more than one nation-wide TV channel in the case of the publication of daily newspapers whose circulation exceeds 8% of the total; - more than two nation-wide TV channels in the case of the publication of daily newspapers whose circulation is less than 8%.
The Netherlands	Permission to operate a national commercial broadcasting station will be refused when the applicant, or one or more of the corporate bodies or companies with which the applicant is connected, hold either alone or together, a 25% share of the market in national daily newspapers.
United Kingdom	The 1990 Broadcasting Act sets out that: - the owner of a national or local newspaper may only be a shareholder with more than a 20% interest in a company with a Channel 3 or Channel 5 licence or a national radio service (the provision also applies conversely); - the owner of a local newspaper may only be a shareholder with more than a 20% interest in a company holding a licence for a local radio or cable service (the provision also applies conversely); - the owner of a national newspaper with a holding of more than 5% but less than 20% in a company holding a Channel 3, Channel 5 or national radio service may not be a shareholder with more than a 5% interest in another similar company (the provision also applies conversely). But the government proposes to establish a circulation threshold, below which newspaper groups will be free to own outright TV and radio broadcasters, and vice versa. Newspapers below the 20% national circulation threshold will be able to apply for approval to expand to control up to 15% of the total TV market (by audience share). They will also be able to apply for approval to control radio stations and vice versa. Only one national radio licence could be controlled, and approvals for local radio licences would not be given for newspapers with more than 30% of the circulation in the particular locality.

APPENDIX VI
MEDIA OWNERSHIP RULES IN SELECTED EU COUNTRIES
(continued)

COUNTRY	Limitation of combined ownership in different sectors (radio and television)
Belgium	A natural or legal person holding more than 24% of the capital of a French Community private television service, either directly or indirectly, may not hold more than 24% of the capital of more than 5 private radio services.
France	At a national level, no licence may be granted for the operation of a radio, Hertzian television or radio and TV cable distribution network to a person who is in more than two of the following situations: - holds one or more licences for a television service covering more than 4 million people; - holds a licence for a radio station serving more than 30 million; - holds one or more licences to operate radio and TV cable distribution networks serving a population of more than 6 million; - publishes or controls one or more daily papers printing political or general news, whose circulation is more than 20% of the national total. Limitations of the same kind exist at the local and regional levels.
Germany	Regarding the private broadcasting sector, a broadcaster may only broadcast up to 2 nation-wide TV or radio programmes. Regarding programmes covering only the territory of a Land, the Land broadcasting laws limit the shareholdings of radio companies in the television sector and vice versa.
Greece	With Law 2328/1995, a broadcaster may only own one national or local radio station, and may not be a shareholder with more than a 25% interest in a national or local TV company. In general, a natural or legal person can participate to up to two media sectors.
Italy	Anyone who has been granted a licence for a local television service may also be granted a local radio service licence, provided that the number of radio service licence applications for the same area does not exceed the number of frequencies to be allocated. However, no one may be a licensee or franchisee for a sound radio and television service both nationally and locally at the same time.
The Netherlands	A public broadcasting organisation cannot obtain permission to run a commercial station and cannot participate in a commercial broadcasting organisation.
United Kingdom	The current restriction of television companies owning radio stations has been explored above. The British government has however decided to allow TV companies to own radio broadcasters (and newspaper companies) subject to a maximum share of 15%. It should be noted though that it will continue to apply the present ban on common ownership of Channel 3 licences or cable companies and local radio stations in areas where there is significant overlap in population served.

Source: Committee of Experts on Media Concentration and Pluralism (MM-CM (93) 6, MM-CM (94) 6); Media Ownership: The Government's Proposals (Cm 2872, 1995); The Guardian (16-12-1995); Financial Times (16-12-1995); The Greek Broadcasting Bill (2328/1995); To Vima (13-08-1995); Media View (April 1995); Kagan World Media (1995); Media Map (1995).

APPENDIX VII
MULTIMEDIA ALLIANCES
Software production/content ownership alliances

Acclaim Entertainment/Lightstorm Entertainment
Acclaim has exclusive option to produce video games based on Lightstorm movie properties
Apple/Time Warner Interactive
Joint development of multimedia software
AT&T/Paramount Communications
joint development of interactive TV programming
AT&T/PF Magic
joint development of networked video games
IBM/Boss Films
joint special effects development
JVC Entertainment/Luc Besson
joint movie production
JVC Entertainment/Jim Jarmusch
joint movie production
JVC Entertainment/Tribeca
joint movie production
Largo Entertainment/Total Vision
joint development of multimedia software
New Line/Virtual World Entertainment
NLC has first-look deal for movies based on VWE game properties
Paramount Technology Group/Spectrum Holobyte
joint development of multimedia software
Philips POV/Propaganda Films
joint development of multimedia software
Polygram/Egg Pictures (Jodie Foster)
joint movie production
Polygram/MFP
joint movie production
Sega/Walt Disney Computer Software
joint development of multimedia software
Sega/Shochiku
joint development of multimedia software based on Shochiku movie properties
Working Title/Havoc (Tim Robbins)
joint movie production

Distribution/software delivery alliances

Apple/Ameritech/BellSouth/US West
collaboration on communications development of Apple Newton technology
AT&T/PF Magic/Sega
joint development of networking facility for Sega video games
News Corp/BT
exploring digital distribution opportunities
Polygram/MGM
MGM/UA to distribute major films releases for Polygram Filmed Entertainment
TCI/Fox
F/X US basic cable network

Key technology alliances

3DO/American Laser Games
joint development of 3DO arcade games
3DO/Atari Games
joint development of 3DO arcade applications

3DO/Sanyo
Sanyo a 3DO hardware licensee
Apple/Matsushita (Kyushu)
licensee of Apple Newton technology
Apple/Sharp
licensee of Apple Newton technology
Apple/Siemens
licensee of Apple Newton technology
Apple/Toshiba
joint development of 'Sweet Pea' CD-ROM reader
AT&T/Viacom Cable
AT&T providing computer server for video-on-demand tests in Castro Valley, California
BT/Olivetti
partnership for development of video conferencing systems
BT/Motorola
joint development of video conferencing chip-set, in conjunction with VideoLogic
Canal Plus/Bertelsmann
joint approach to digital TV development
AT&T/Pacific Bell
AT&T supplying equipment for Pacific Bell's 'superhighway'
Bell Atlantic/Stet
BA helping Italian PTT with video-on-demand trials
DirecTV/Compression Labs
CLI supplying encoders and decoders for DirecTV digital DBS
DirecTV/Thomson
Thomson supplying receivers for DirecTV digital DBS
DirecTV/News Datacom
ND supplying digital encryption system for digital DBS
EMC3/Goldstar/Hitachi/Daewoo/Samsung
development of VCRs with EMC3 time-compressed video-on-demand feature
General Instrument/Intel/Microsoft
joint development of 'smart' digital cable box and user interface
General Instrument/MIT
joint development of digital HDTV systems
General Instrument/Samsung
collaboration on manufacture of Digicipher equipment
General Instrument/Toshiba
joint development of digital HDTV VCR
GO/EO/Matsushita
Matsushita manufacturing EO personal communicators
IBM/ICTV
joint development of video-on-demand cable system (with New Century Comm)
IBM/R Greenberg Associates
joint development of digital imaging techniques for Power Visualisation System
IBM/Video Logic
joint development of multimedia PC chips
LucasFilm/Avid Technology
jointly developing digital editing system
News Corp/Comstream/NTL
Comstream and NTL contracted to develop digital TV system for BSkyB
News Corp/BT/Cellnet
exploring opportunities arising from digitisation
News Corp/Kirch Group
joint approach to digital TV development
NYNEX/Liberty Cable
video-on-demand trial in New York with Time Warner Cable
Philips/Broadband Technologies/Compression Labs

developing technology for transmitting compressed video via telecoms networks
Philips/Kodak
joint development of Photo CD standard
Philips/Motorola
joint development of CD-I chip-sets
Philips/Xing Technology
Philips Semiconductors working with Xing on chips for compressing video with PCs
Pioneer/NEC
Pioneer LaserActive system incorporates NEC Turbo Graphics games system
Pioneer/Sega
Pioneer LaserActive system incorporates Sega game capability
Scientific Atlanda/Motorola/Kaleida/Labs/Time Warner Cable
joint development of 'smart' digital cable box and user interface
Scientific Atlanda/NTL
joint development of broadcast video compression systems
Sega/Amstrad
Amstrad making PCs incorporating Sega game drive
Sega/Hitachi
joint development of next generation video games machine
Sega/Virtuality
provides key virtual reality technology for development of Sega VR arcade systems
Silicon Graphics/Avid Technology
joint development of random access editing systems
Silicon Graphics/Nintendo
joint development of next generation video games machine
Time Warner Cable/Silicon Graphics
SG is providing computer video server for TWC video-on-demand tests
Your Choice TV/TCI/Cablevision Systems/Continental Cable/TWC
cable groups have committed to testing Discovery's YCTV user interface and menu-based software (other doings so include Cox Cable, Newhouse, Times Mirror Cable, Comcast)
Zenith Electronics/LSI Logic
joint development of integrated circuits for digital cable TV boxes

Source: Screen Digest, January 1994

APPENDIX VIII

COMPETITION LAW IN SELECTED EU COUNTRIES

COUNTRY	Control of mergers, takeovers and integration operations (competition law)
Belgium	The law of 5 August 1991 on the protection of economic competition (which came into force on 1 April 1993), subjects integration operators above a certain level to the prior approval of the Competition Committee (i.e. operations relating to the integration of companies with a turnover exceeding 1 billion Belgian francs and which have joint control of more than 20% of the market concerned). Approval may be given on certain conditions and may impose certain obligations.
France	Media firms are subject to the supervision of the Competition Council. The Conseil Superieur de l'Audiovisuel (CSA) informs the Competition Council of such abuses of dominant positions and of such practices hindering the free exercise of competition as may come to its notice in the audio-visual sector. It may advice the government for the development of competition in audio-visual communication.
Germany	Media sector companies are subject to the provisions of the Act Against Restraints of Competition. Because of the particular nature of the newspaper market, special reduced reference thresholds apply to merger controls for newspapers and magazines (DM 25 million rather than DM 50 million turnover per annum).
Greece	Media sector companies are subject to the provisions of law 703/1977 (as amended by law 2296/1995) safeguarding competition and the market which regulate concentrations and abuse of dominant positions. Concentrations must be notified to the Competition Committee if: - the combined aggregate worldwide turnover of the undertakings exceeds 50 million ECUs, and the national turnover of each of at least two of the undertakings is more than 5 million ECUs; or - if a 25% share of the national market is created or increased.
Italy	Media sector firms are subject to provisions of legislation safeguarding competition and the market, which regulate concentrations and abuses of dominant positions. For firms in the media sector, these regulations are implemented by the Broadcasting and Publishing Guarantor.
The Netherlands	Media sector companies are subject to the provisions of general legislation on competition. Under the law on economic competition, the Minister of Economic Affairs may declare some agreements affecting competition to be wholly or partially inoperative if he considers them to be against the public interest. He may also impose obligations on firms occupying a dominant position which is contrary to the public interest.
United Kingdom	Existing United Kingdom competition law provides for case by case investigation of mergers, monopolies and anti-competitive practices and restrictive agreements. Separate roles are given to the Director General of Fair Trading (DGFT), the Monopolies and Mergers Commission (MMC) and the Secretary of State for Trade and Industry. A merger qualifies for investigation by the MMC if the value of the assets taken over exceeds £70 million or if a 25% share of the market is created or increased. The DGFT advises the Secretary of State, who decides whether to refer a merger to the MMC. In practice, only a small proportion of qualifying mergers is referred to the MMC. If (and only if) the MMC finds that the merger would operate against the public interest, the Secretary of State has powers to enforce remedial action including banning the merger. Special rules apply to newspaper mergers, where a reference to the MMC is usually necessary. The monopoly and anti-competitive practices legislation follows a similar model. The DGFT may make references to the MMC where a firm has a 25% share of a particular market. The MMC investigates and reaches a judgement on the public interest, and, if the MMC's finding is adverse, it is for the Secretary of State to decide what remedial action to take. The system thus gives the authorities wide discretion.

Source: Committee of Experts on Media Concentration and Pluralism (MM-CM (93) 6, MM-CM (94) 6); Media Ownership: The Government's Proposals (Cm 2872, 1995); The Greek Competition Law (703-1977 as amended by 2296/1995).

APPENDIX IX

Pluralism and Media Concentration in the Internal Market
Questionnaire No I
concerning a possible initiative on media ownership

QUESTION 1: The Commission would welcome the views of interested parties regarding the needs for action, and in particular on:
- any cases where the Community dimension of media activity has meant that restrictions on media ownership imposed for the purpose of maintaining pluralism have become ineffective, for example because they are circumvented or because of transparency problems;
- the existence of restrictions or restrictive effects other than those identified here;
- practical instances where ownership restrictions have actually impeded the activity of economic operators in the sector;
- the sectors and activities which are especially affected by restrictions on ownership (for example, is the press subject to restrictive effects not only in respect of multimedia aspects but also in respect of monomedia aspects?).

QUESTION 2: The Commission would welcome the views of interested parties on whether the needs identified are of sufficient importance, in the light of Community objectives, to require action in the media industry and, if so, when such action should be taken.

QUESTION 3: The Commission would welcome the views of interested parties on the effectiveness, in the light of Community objectives, of action which would be taken solely at Member State level.

QUESTION 4: The Commission would welcome the views of interested parties on the content of a possible harmonisation instrument as envisaged above, and in particular on the two variants for its scope, on the use of the real audience as a basis for setting thresholds, on the demarcation of distribution areas, on any other possible references, and on ways of defining the concept of controller.

QUESTION 5: The Commission would welcome the views of interested parties on the desirability of action to promote transparency which would be separate from a harmonisation instrument.

QUESTION 6: The Commission would welcome the views of interested parties on the desirability of setting up a body with competence for media concentration.

QUESTION 7: The Commission would welcome the views of interested parties on each these foreseeable options.

APPENDIX X

List of non-confidential written comments on the Green Paper

- Comments from European federations or associations

Association des Television Commerciales Europeennes (ACT)
European Association of Advertising Agencies (EAAA)
Association Europeenne des Radios (AER)
European Advertising Tripartite (EAT)
European Committee of Trade Unions in Arts, Mass Media and Entertainment (EGAKU)
European Publishers Council (EPC)
Federation Europeenne des Radios Libres (FERL)
European Group of the International Federation of Journalists (IFJ)
World Federation of Advertisers (WFA)
Comite des Industries Cinematographiques et Audiovisuelles des Communautes Europeennes et de l'Europe extracommunautaire (CICCE)
European Broadcasting Union/Union Europeenne de Radio-Television (EBU/UER)
AMARC-EUROPE
European Newspaper Publishers' Association (ENPA-CAEJ)
Europaische Grafische Foderation

- Comments from interested parties other than federations or associations

Broadcasting Entertainment Cinematograph & Theatre Union (BECTU)
Channel Four Television
Europaisches Medieninstitut
Editoriale l'Espresso
ITV
Institute for Information Law (IVIR)
New International plc.
Pearson plc.
Zweites Deutsches Fernsehen (ZDF) / Arbeitsgemeinschaft der offentlichrechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (ARD)
Independent Television Commission (ITC)
Fininvest Comunicazioni
British Sky Broadcasting Limited (BSkyB)
Verband Privater Rundfunk und Telekommunikation e.V. (VPRT)
Federazione Italiana Editori Giornali
RTL plus Deutschland Fernsehen
Federazione Radio Televisioni (FRT)
Reuters
RCS Editori "Rizzoli Corriere della Serza"
Bundesverband Deutscher Zeitungsverleger e.V.

APPENDIX XI

Complementary Questionnaire

relating to the Green Paper 'Pluralism and Media Concentration in the Internal Market: an assessment of the need for Community action', of 23 December 1992 (COM (92) 480 final)

QUESTION A. New technologies

A.1 Identify the new technologies or those under expansion which will affect the market (distinguishing namely between those which, from the point of view of the consumer, will replace existing technology and those which will be of a more complementary nature, giving details of the expected time scale for implementation of these technologies).

A.2 What economic impacts will be foreseeable at the Community level, in particular on the market structure and on the strategy of operators within the internal market? This evaluation will not have to be all encompassing but should be carried out on a technology by technology basis. It is important to give precise information about the access costs to these technologies, in particular for the consumer and the operators.

A.3 What impacts will be foreseeable on the national statutory arena in regard to media ownership? Does current national legislation covering media ownership permit, or, on the contrary, limit, the development of these new technologies (explain the effect of any limitations)?

A.4 To what degree could the new technologies develop conditions for the granting of authorisations or licences applicable to television or radio operators? In particular, which conditions, besides those relating to pluralism, could be envisaged?

QUESTION B. Potential development of national legislations

B1. Are you aware of any proposals for new anti-concentration rules, in the Member States, specific to the media? What is their origin and objective?

B.2 Would you welcome a change in the applicable regulatory framework?

B.3 What factors could change the national regulatory framework in the future (new broadcaster authorisations, case law developments, political debates, ineffectiveness of national rules, over stringent rules, etc.)?

B.4 How long did it take to draw up the current regulations and were you involved in this process?

B.5 Could these possible changes accentuate or attenuate the regulatory disparity between the Member States of the Community?

QUESTION C. Possible use of the audience criterion

C.1 Given that a criterion of potential audience (like the population covered by a satellite footprint) would be too restrictive, what type of audience measurement might be utilised, in particular for multimedia and monomedia concentration of radio and television enterprises (for example, "audience share" for television, "daily share" for radio, number of dailies sold for newspapers)?

C.2 With reference to criteria used in national arenas, namely the number of channels, will the audience criterion offer more opportunities to access the market, namely for thematic channels (by reason of their weak audience)?

C.3 What might the necessary conditions be to make a system using thresholds based on audience levels workable (compatibility, comparability, equivalence, etc......)? Is it possible to have a single audience criteria applicable to multimedia or is it necessary to have several distinct criteria applicable to each media or combinations of media?

C.4 Might it be deemed necessary to have complementary criteria such as, for example, that of language of the media, that of the type of radio station or TV channel concerned, that of the number of licenses granted at the same time, etc...?

C.5 Should the fixing of thresholds leave a discretion to the member States to set stricter limits for operators established on their territory?

QUESTION 4. Possible use of the media control criterion

D.1 Is it necessary to go further than existing company law to define media control in specific rules?

D.2 What comments can be made on the definitions used for media controllers in current national regulations?

D.3 What elements should a definition contain bearing in mind the objectives of effectiveness, adaptability to the Community framework, and compatibility with existing systems as well as the economic and technological effects that could result?

APPENDIX XII

Replies to the Complementary Questionnaire

- Comments from European federations or associations

Association des Televisions Commerciales Europeenes (ACT)
Association Europeenne des Radios (AER)
European Broadcasting Union/union Europeenne de Radio-Television (EBU/UER)
Federation Graphique Europeenne (EGF)
European Group of Television Advertising (EGTA)
Association Europeenne des Editeurs de Journaux (ENPA)
European Publishers Council (EPC)
Federation des Associations d'Editeurs de Periodiques de la CE (FAEP)
Federations des Editeurs europeens/Federation of European Publishers (FEE/FEP)
Groupement europeen des Societes d'Auteurs et Compositeurs (GESAC)
International Federation of Journalists (IFJ)

- Comments from interested parties other than European federations or associations

Bertelsmann AG
Channel Four Television
Fininvest Comunicazioni
Federazione Italiana Editori Giornali
FUNK Fragen Unabhangiger Neutraler Kommunikation
Global Media Italia SRL
ITC Independent Television Commission
ITV Network
L'Espresso
News International
OLON Organisatie van Lokale Omroepen in Nederland
Pearson plc
RCS Editori
RTL Pluls Deutschland Fernsehen
VDZ Verband Deutscher Zeitschriftenverleger e.V.
Zweites Deutsches Fernsehen (ZDF)

APPENDIX XIII

Pluralism and Media Concentration in the Internal Market

Questionnaire No III

concerning a possible initiative on media ownership

QUESTION A. The need for Community action

A.1 Can you comment (giving practical examples, etc.) on the analysis of the need for a Community initiative set out in the communication?

A.2 Have you any specific comments to make on the analyses presented in Part III.A of the communication of the impact of establishing a set of Community ground rules?

QUESTION B. Scope of a possible initiative

B.1 Are new interactive services already covered by the national rules on media ownership that concern you? (If so, please describe the relevant provisions).

B.2 If not, is any draft regulation under consideration or is the possibility of applying rules on media ownership to interactive services under discussion?

B.3 Should a possible Community initiative cover new interactive services? If so, why?

B.4 Should a possible Community initiative cover concentration between press enterprises? (Please give reasons).

B.5 Would it not be sufficient to apply (national or Community) competition law, with specific notification thresholds where appropriate?

B.6 If concentration between press enterprises were to be covered, what type of publication should be included (e.g. all daily press, the daily newspapers, magazines)?

B.7 Should public channels be fully or partly subject to the same conditions governing access to media ownership as private channels? (Please give reasons).

B.8 Could certain channels be excluded on the basis of the programmes they broadcast (specialised, general-interest, news-only, etc.) or other criteria such as the language in which they are broadcast?

B.9 Do the specific rules and regulations on media ownership which are designed to safeguard pluralism and which concern you cover operators (in the production, distribution, cable distribution, etc. sectors) outside the traditional media (television, radio and newspapers)?

B.10 Would it be necessary for rules on pluralism (not competition rules) to cover non-media enterprises or vertical integration itself? If so, why?

QUESTION C. Principles underpinning the internal market

C.1 Could the place of establishment of a media enterprise be used to determine which State is responsible for supervising it and which law it is governed by (jurisdiction criterion)?

C.2 If it were decided to opt for Community harmonisation, which type of harmonisation should be chosen: complete or minimum?

QUESTION D. <u>Conditions governing access to media ownership to be included in a possible initiative</u>

D.1 Are there, in the Member State which concerns you, any new rules (dating from after the December 1992 Green Paper), planned measures or discussions on the conditions governing access to media ownership thought necessary in order to safeguard pluralism? If so, what is the approach taken: tighten the limits, relaxing or liberalising the regime to take account of new technologies, increasing effectiveness, etc.?

D.2 What is your assessment (effectiveness, implementation, suitability for the information society, etc.) of the criteria used in existing or planned rules and regulations on pluralism with a view to limiting media concentration (limitation of the holding that can be acquired in the capital of any one television channel; limitation of the number of channels; limitation by reference to the public served; limitation by reference to market share; etc.)?

D.3 What type of conditions and what type of criteria should be used in a possible Community initiative on media ownership in order to safeguard pluralism? (Please give reasons).

D.4 On what analysis (of the impact on pluralism and of the economic impact) do you base your appraisal of the conditions and criteria? (Please present the analytical method).

QUESTION E. <u>Criteria for defining the media controller</u>

E.1 Please describe briefly the definition(s) of media controller used in the rules on access to media ownership that concern you. You are welcome to comment on the analysis made in the study.

E.2 Should a possible Community initiative define <u>de facto</u> control or it be confined to <u>de jure</u> control? Where appropriate, how could <u>de facto</u> control be defined in a possible Community initiative?

E.3 Please comment on the four criteria identified in the study: ownership links, links with employees, financial links and contractual links (supply, distribution, etc.).

E.4 How should these criteria be spelt out, in particular the criterion of contractual links which should make it possible to cover cases of vertical integration?

E.5 If several criteria were to be used for identifying the media controller(s), what should be the relationship between them:

- criteria to be ranked by order of importance, or some criteria having subsidiary status;
- criteria to be applied cumulatively without any order of precedence;
- assessment on a case-by-case basis at the discretion of the national authorities?

E.6 To what extent do you consider that the vertical integration of functions such as broadcasting and conditional access will affect pluralism as well as competition?

E.7 Should family links be taken into account in identifying the media controller? If so, how: up to what degree? Should a link constitute merely an indication or a presumption? Under what circumstances should the presumption be dropped or be deemed irreputtable?

E.8 Should a change of media controller be subject to prior authorisation or merely to notification?

QUESTION F. Criterion of actual audience

F.1 Could the audience criterion be used, for the purposes of safeguarding pluralism, to measure the level of media concentration? Please comment on the attached study on the feasibility of using audience measurement.

F.2 What conditions would have to be satisfied for it to be feasible to use the audience criterion?

F.3 Should the audience criterion be used in conjunction with other additional criteria (number of channels, revenue, restrictions on holdings, etc.)? If so, why?

F.4 Within the area in which the channel is broadcast, should it not be possible to waive application of the thresholds where they are exceeded only in a small or sparsely populated area? If so, on what basis should such an area be defined: size or population?

F.5 What reference period should be taken for audience measurements (e.g. the most recent twelve-month period for which data are available)?

F.6 What type of audience measurement should be used? What is your opinion on the types of measurement envisaged in the conclusions of the study:
- *monomedia television concentration: Audience share: share of total TV viewing time;*
- *monomedia radio concentration: Listenership share: share of daily average reach-the average number of listeners listening to a station at least once a day;*
- *monomedia newspaper concentration (if the case arises): Circulation share: share of daily average number of copies of each issue circulated to the public;*
- *multimedia concentration: Daily average contact (radio = listenership share; TV = daily average reach (the average number of viewers viewing a channel at least once a day); newspapers = daily average readership (the daily average number of readers per issue))?*

F.7 Should there be a single overall multimedia limit or several cumulative limits according to the type of concentration (monomedia television/monomedia radio/multimedia)?

F.8 Should a distinction be drawn between the type of channel concerned (specialised, general-interest, news-only, etc.)?

F.9 To what extent could multi-channel television broadcasting be taken into account?

F.10 Should the types of measurement (mentioned in question F.6) be defined and spelt out in the directive and, if so, to what extent?

F.11 What could be the thresholds above which a media concentration could be limited in the interests of pluralism? (Please specify the type of criteria and the reasoning on which you base these thresholds).

F.12 On what analysis (of the impact on pluralism and of the economic impact) do you base your view of these thresholds? (Please present the method of analysis).

F.13 What effect should exceeding these thresholds have (prohibition of the concentration, presumption against it, further examination of the case, flexibility in other respects, etc.)?

QUESTION G. Disqualified persons

G.1 What are the rules restricting or preventing the access of certain persons to media ownership in the Member State(s) which concern you?

G.2 What types or categories of person should be denied access to media ownership by a possible Community initiative, and why?

QUESTION H. Transparency and exchange of information

H.1 For what types of information should disclosure to the competent authorities be made mandatory?

H.2 What types of information should be confidential?

H.3 How could the direct exchange of information between the national authorities be organised and facilitated?

H.4 Should information on operators who have been granted an authorisation or licence be systematically published?

QUESTION I. European committee

I.1 What advantages could a European committee offer compared with a situation where only the national authorities were involved and co-operated directly with each other? How could such a committee ensure that a possible initiative was applied more effectively?

I.2 What could be the composition and terms of reference of a European committee?

I.3 How could the independence of such a committee be ensured?

QUESTION J. Type of Community instrument

J.1 What type of legal instrument should be chosen for a possible Community initiative: a directive, a regulation, a recommendation or any other type of measure (please specify)?

APPENDIX XIV
'MEDIA CONTROLLER' DEFINITIONS IN SELECTED COUNTRIES

France
The legislation controlling ownership of the written press refers to control as defined in Article 355-1 of the French Company Law (and as modified on July 12 1985). Article 355-1 is translated as follows:
' [...] a company is considered as controlling another company where it:
- holds, directly or indirectly, a percentage of the capital giving it a majority of the voting rights at shareholders' meetings of the second company;
- has, alone, a majority of the voting rights in that company pursuant to an agreement entered into with other associates or shareholders which is not contrary to the interest of the company;
- determines in fact, through the voting rights it holds, decisions made at shareholders' meetings of that company'.

A company is presumed to exercise this control where it holds, directly or indirectly, more than 40 per cent of the voting rights and where no other associate or shareholder directly or indirectly holds more voting rights.

In addition, 'control' exists 'in any situation in which a physical person or a legal entity or a group of physical persons or legal entities would place a publication under its authority or its dependence'.

In relation to the audio-visual media the 'control' criteria are not used. Instead, legislation provides that the same physical person or legal entity may not hold, directly or indirectly, more than a certain percentage of the capital or voting rights of a participant media undertaking. The level may vary according to the type of media. The percentages are as follows:
- national broadcast television companies:
  (i) 25%; or 15% if that person already owns more than 15% of another national broadcast television company; or
  (ii) 5% if already owns more than 5% in two other national broadcast TV firms.
- regional broadcast television companies: 50%
- satellite television companies:
  (i) 50%; or one third if that person already owns more than one third of another cable television company; or
  (ii) 5% if already owns more than 5% in two other satellite TV firms.

Germany
The State's Treaty on Broadcasting distinguishes between full programmes and programmes with an emphasis on information (news channels) on the one hand and special interest programmes on the other hand.

In the first case, the broadcaster must be a joint venture in which no shareholder holds more than 50% or more of the capital or voting rights or exerts any other form of dominant influence. If somebody holds an interest of 25% or more, but less than 50% of such a channel, this person or company may hold an interest in only two further broadcasters of corresponding programmes to an amount equal to or less than 25% of their capital or voting rights. In all cases, a 'de facto' dominant influence fulfils the same criteria even if the shareholder holds less than 25% (or such other mentioned threshold) of the capital or voting rights.

Italy
'Control' for the purposes of the Italian broadcasting legislation is as defined in Article 2359 of the Italian Civil Code. The following are considered to be 'controlled firms':

1. firms in which another firm holds the necessity majority to adopt resolutions at 'ordinary' shareholders' meetings;
2. firms in which another firm holds enough voting rights to exercise a dominant influence at 'ordinary' shareholders' meetings; and
3. firms which are under the dominant influence of another firm by virtue of special contractual links with the latter.

For the purposes of 1. and 2. above, votes held by controlled firms, trust firms and intermediaries are counted. Votes held on behalf of third parties are not counted.

Pursuant to Article 37 of the Broadcasting Law, a 'dominant influence' (for the purposes of Article 2359 of the Italian Civil Code) is presumed whenever there are financial or organisational relationships which allow any one of the following:
- communication of profits and losses;
- co-ordination of the broadcasting business with other businesses in order to achieve a common purpose or in order to limit competition;
- the distribution of profits or losses in a manner which differs from that which would have otherwise prevailed in the absence of the relationship in question;
- obtaining more power than would otherwise result from the number of shares held; and
- granting to entities, other than those that would otherwise be entitled to them based on the ownership structure, powers in the selection of directors or managers of broadcasting firms, or editors in chief of the programmes.

The same definitions are used in Article 1 of the Italian Newspaper Publishing Law.

The United Kingdom

Schedule 2 of the 1990 Broadcasting Act (now under review) asserts that a person controls a body corporate if:
1. he holds, or is beneficially entitled to more than 50% of the equity share capital, or possesses more than 50% of the voting rights in that body corporate; or
2. he is liable, by virtue of share ownership or voting rights, to ensure that the affairs of the business are conducted in accordance with his wishes; or
3. he has the power, by virtue of the articles of association or any other corporate document, to ensure the affairs of the company are so conducted.

The provisions of the 1973 Fair Trading Act relating to newspaper mergers provide that a newspaper proprietor 'includes (in addition to an actual proprietor of a newspaper) any person having a controlling interest in a body corporate which is a newspaper proprietor, and any body corporate in which a newspaper proprietor has a controlling interest'. A 'controlling interest' exists where a person can, directly or indirectly, determine the manner in which one quarter of the votes at general meetings may be cast.

Under the merger reference provisions of the Fair Trading Act reference is made to the fact that 'a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body corporate, or the policy of any person in carrying on an enterprise, but without having a controlling interest in that body or enterprise, may ... be treated as having control of it'. These statutory provisions still leave room for debate over the meaning of 'control'. That is why the government has decided to clarify the definition of 'control' in the 1990 Broadcasting Act, to ensure that the intention of the legislation cannot be circumvented by institutional arrangements which, while they allow for control in practice, do not technically breach the statutory definition of control (Cm 2872).

Source: *Media Ownership (Cm 2872 ,1995); Pearson plc (1994); EIM (1994).*