MMISSION OF THE EUROPEAN COMMUNITIES

COM(92)480 final

Brussels, 23 December 1992

PLURALISM AND MEDIA CONCENTRATION

IN THE INTERNAL MARKET

An assessment of the need for Community action

Commission Green Paper

NOTICE TO THE READER.

On a number of occasions, the European Parliament has requested that the Commission should propose measures aiming to safeguard pluralism in view of mergers and acquisitions taking place within the media sectors. The questions arising as to the necessity and timeliness of such possible actions are both complex and sensitive requiring, prior to taking a final decision, the wide canvassing of views from interested parties as well as the initiation of a public debate. To these ends the Commission has decided to propose this Green paper.

The Green paper analyses the need for action and considers potential options. The Commission has not committed itself to any of these options to date and would be willing to consider others that might arise.

In addition to the views of the European Parliament and competent national authorities, the Commission seeks to receive the opinions of all interested parties and particularly the European organisations representing television broadcasters, radio broadcasters, publishers, journalists, audio-visual creative artists, audio-visual producers, satellite distributors, cable distributors and advertisers.

The Commission plans to invite these European trade organisations to a hearing on this issue in the spring of next year.

Written comments should be submitted before the hearing and mailed to the following address:

DGIII/F/5 - "Media and Data Protection" Unit,
N-9; 6/11
200 rue de la Loi
B - 1049 Brussels

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SUMMARY

The purpose of the Green Paper is to present an initial assessment of the need for Community action concerning concentration in the media (Television, radio, press) together with the different approaches which the Commission might adopt once it has consulted the parties concerned.

In recent years, Parliament has expressed its concern about this question on several occasions, in particular in its resolutions of 15 February 1990 and 16 September 1992, which call on the Commission to propose regulatory measures so as to restrict concentration in the media and safeguard pluralism.

In the light of the Community's objectives and powers, the results of this look into the need for action can be summarized as follows:

1. Protection of pluralism as such is primarily a matter for the Member States. In working towards its objectives and exercising its powers, the Community must, however, ensure that its own activities and those for which it has competence do not adversely affect pluralism. In this respect with regard solely to the objective of safeguarding pluralism, 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. Thus, should a broadcaster established in another Member State genuinely circumvent legislation on pluralism, the Member State of reception could, subject to observing the conditions laid down in the case law of the Court of Justice, restrict the free movement of such broadcasts. Similarly, where a merger declared to be compatible with the common market under the Merger Control Regulation is harmful to pluralism, the Member State would still be able to take appropriate measures to ensure that pluralism is protected.

2. This capacity of the Member States to safeguard pluralism through a national regulatory framework for mergers may, however, lead to interference within the area without frontiers consisting of the Community. Since the mid-1980s, laws on media ownership have been introduced and are developing in divergent ways. Such laws on pluralism, which consist in particular in limiting maximum holdings in media companies and in preventing cumulative control of, or holdings in, several media companies at once, must be distinguished from the discriminatory restrictions which limit ownership by foreigners and which are therefore incompatible with the Treaty.

3. Disparities between national measures aiming to safeguard pluralism may, at least potentially, impact upon the functioning of this area without frontiers :

- a Member State could possibly restrict the free movement of broadcasts in the event of genuine circumvention of one of these laws;

- the establishment of media companies in another Member State could be limited;

- restrictions and distortions of competition are introduced;

- uncertainty in the law, harmful to the competitiveness of companies, could result from diverging views on what constitutes circumvention;

- such laws limit access to the activities and to the ownership of the media, when access should be facilitated so as to permit the establishment of the single market and secure the competitiveness of media companies which pluralism requires.

4. The restrictions on ownership at the root of these effects are not, as such, incompatible with Community law. They are not discriminatory and pursue a public-interest objective associated with freedom of expression.

5. Restrictions on media ownership cannot be replaced just by applying general competition law and in particular, at Community level, the Merger Control Regulation. The latter can prevent mergers which adversely affect pluralism only in so far as they also affect competition, which is not always the case.

6. In the light of this analysis, there are three different options among which the Commission may choose and on which the Commission would like to know the opinions of the parties concerned:

(i) taking no action;

(ii) proposing a recommendation to enhance transparency;

(iii) proposing the harmonization of national restrictions on media ownership by

(a) a Council Directive, or

(b) a Council regulation, or

(c) a directive or a regulation together with an independent committee.

The Commission does not currently have a particular preference for, any one of these options and leaves open the possibility for other eventual alternatives. It wishes to know the views of interested parties on these options as well as on the questions posed in this Green paper which are summarised below:

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 above;

- 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 harmonization 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 harmonization 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 of these foreseeable options.

INTRODUCTION

Before taking up a position on the need for a Community initiative with regard to media (Television, radio, press) concentration, the Commission wishes to present its initial assessment and gather contributions from all interested parties.

The Green Paper is in response to the requests expressed over several years by Parliament, in particular in its resolution of 15 February 1990 on media takeovers and mergers,[1] in which it called on the Commission in particular "to put forward proposals for establishing a special legislative framework on media mergers and takeovers".

Parliament drew up a fresh resolution, adopted on 16 September 1992, which repeats this request.[2] This resolution refers to the effects of differing national laws on the operation of the internal market and calls on the Commission *"to submit, after consultation with the parties concerned, a proposal for effective mea*sures to combat or restrict concentration in the media, if necessary in the form of an anti-concentration directive...".[3]

The communication from the Commission to the Council and Parliament of 21 February 1990 on audiovisual policy[4] states, in the section entitled "Pluralism and mergers", that:

"On account of the importance it attaches to the objective of maintaining pluralism, the Commission is studying this question with a view to a possible proposal for a directive, whose aim would be to harmonize certain aspects of national legislation in this field".

1 OJ No C 68, 19.3.1990, pp. 137-8.
2 Resolution on media concentration and diversity of opinions, Resolution A3-0153/92/corr.
3 Paragraph 27.
4 COM(90) 78 final.

5 "Study on pluralism and concentration in media - economic evaluation", Booz-Allen & Hamilton; February 1992; This study will be made available by the Commission on request by fax or mail to the following address: Commission of the European Communities, DG III/F-5, Media and Data Protection Unit, N-9, 6/11; 200, rue de la Loi, B - 1049 Brussels, Belgium; Fax: 32-2-295 02 81.

Part One

OUTLINE OF THE ISSUE

The effect of concentration in the media on media pluralism can be understood only if one first defines what is meant by "pluralism".

I. THE CONCEPT OF PLURALISM

Outside the legal context, the concept of pluralism is used in a broad, general sense. Thus, reference is sometimes made to pluralism when it comes to justifying positive measures in support of freedom of expression and diversity of information sources, e.g. aid to the press or distribution systems. This kind of use is encountered in the general context of measures to assist the media; with its limits difficult to gauge since pluralism is easily invoked as soon as a problem involves the media.

Legal analysis provides some clarification, however, even if the term is not used in international statutes on basic rights. In national legal systems, the concept of pluralism is not explicitly recognized in constitutional statutes[6] but can be found in the rulings of the constitutional courts of certain Member States (France, Germany and Italy), which treat it as a constitutional principle. Other legislative statutes which refer to pluralism do not define the concept. The variety of expressions used containing the word "pluralism" - pluralism of the media, pluralism in the media, the pluralist nature of the expression of currents of thought and opinion,[7] pluralism of information,[8] pluralism of the press,[9] plurality of the media[10] - shows that there is no common understanding of the concept.

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6 Article 20(3) of the Spanish Constitution refers to "the pluralism of society".

7 The French Law of 30 September 1986.

8 Italy, Law of 6 August 1990; Spain, Law of 3 May 1990; Luxembourg, Law of 27 July 1991, Portugal, Law of 7 September 1990.

9 Luxembourg, Law of 27 July 1991.

10 Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings.

However, two common features do emerge from a legal analysis of the European Convention on Human Rights as interpreted by the European Court of Human Rights and of national laws:

- 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 the public.

1. The concept of pluralism serves to limit the scope of the principle of freedom of expression

While the principle of safeguarding pluralism has constitutional force in certain Member States, it does not as such constitute a human or basic right. The link between maintaining pluralism and the principle of freedom of expression is not such as to make the former a basic right. Both in statutes and case-law the link is one of derogation from the principle of freedom of expression. Like certain obligations relating to editorial content (morality, impartiality, taste and decency, etc.), the function of the concept is to limit in certain cases the application of the right to freedom of expression to a potential beneficiary. Thus, it is possible in the name of pluralism to refuse a broadcasting licence or permission for the takeover of a newspaper, a monolithic corporate structure, a holding in a media company, etc.

The fact that a derogation is involved is brought out both by the judgments of the European Court of Human Rights and the rulings of the supreme courts of certain countries.[11]

The European Court of Human Rights (hereinafter, the ECHR) takes the view that pluralism is an exception to the principle of freedom of expression, designed to protect the rights of others (Article 10(2) of the European Convention on Human Rights).

In the Groppera decision (28 March 1990), the ECHR links pluralism to Article 10(2) of the Convention (which provides for the possibility of restriction if the measure is prescribed by law, if it relates to a legitimate objective and if it is necessary in a democratic society), referring to the legitimate aim of protecting the rights of others (clause 70). The European Commission on Human Rights had not examined this point (it limited itself to the examination of the condition "prescribed by law"). However, the holders of these "rights of others" are not specified: are they the viewers, who have the right to a diversity of opinions, or are they other beneficiaries of freedom of expression, who have a right of access to such means of expression?

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11 In particular in France and Germany (see Annex). In the United States of America too, the Supreme Court has ruled that the right of viewers takes precedence over the right of broadcasters, and that the diversity of opinion on the airwaves serves First Amendment values. In Red Lion Broadcasting v the Federal Communications Commission (FCC) (1969), the Court made the explicit point, with regard to the First Amendment, that "it is the right of the viewers and listeners, not the right of broadcasters, which is paramount" (a concept which is close to the "rights of others" in the European Convention on Human Rights) and, since frequencies are limited, "no one has a First Amendment right to a licence". In Metro Broadcasting v FCC (27 June 1990), concerning the FCC's policy of promoting the racial and ethnic pluralism of programmes by increasing the diversity of radio broadcasting ownership through "minority ownership policies", the Supreme Court ruled that "the diversity of views and information on the airwaves serves important First Amendment values". Lastly, in Post Company National Citizens Committee for Broadcasting (12 June 1978) concerning a cross-media ownership rule of the FCC's (radio-TV/daily news in a same community), the Court held that the rule "did not violate First and Fifth Amendment rights of newspaper owners". As regards the cross-ownership rule which it drew up in 1975, the FCC explained that "the premise is that a democratic society cannot function without the clash of divergent views. (...) If our democratic society is to function, nothing can be more important than ensuring that there is a free flow of information from as many divergent sources as possible" (50 FCC 2nd, Par. 111).

2. The purpose of such limitation is to guarantee diversity of information for the public

The limit placed on the principle of freedom of expression, on the grounds of pluralism, is justified by the fact that the objective is to ensure diversity of information for the public. In the interests of access to such diversity of views, it may indeed be necessary, in certain cases, to limit application of the principle of freedom of expression because it would result in preventing another beneficiary of that freedom from using it. Such is the case, for instance, where there is a shortage of means of broadcasting or where access to them is limited.

In accordance with the interpretation placed on the European Convention on Human Rights,[12] the "information" whose diversity is sought must be understood as a generic term in the broad sense, i.e. not just newspapers or the news bulletin but all kinds of ideas, all types of programme, communication and content.[13] Only in supervising the lawfulness of the restrictions on freedom of expression may the differences in the nature of such information be accounted for.

12 As regards advertising, see in particular the judgment of the ECHR of 20 November 1989 in Markt Intern Verlag and Klaus Beerman v Federal Republic of Germany, series A, No 165, paragraph 26.

13 Thus, entertainment programmes could cause real problems of diversity of information if the only fictional works which the public could watch were ones in which the villains were always played by coloured actors.

Diversity of information can be achieved in one of two ways. A media operator can be asked to provide, in its communication activity, diversity of existing opinions (internal pluralism) or to make several media available to the public, the combination of which represents diversity, each medium being one element in that diversity (external pluralism). In the case of internal pluralism, the measures adopted relate either to the internal organization of the media company whose control structure will have to represent the various currents of opinion, or to the editorial content of the newspapers or broadcasts. In the case of external pluralism, the measures are directed at organizing relations between the various media companies so as to ensure a degree of autonomy between them (anti-concentration measures are part of these). Similar to this type of measure are those which are aimed at facilitating access to media activities, for instance by increasing the number of broadcasting licences (TV or radio) available on a particular territory and thus making it possible to increase the number of media available to the public.

CONCLUSION

The concept of pluralism can be defined both in terms of its function and in terms of its objective: it is a legal concept whose purpose is to limit in certain cases the scope of the principle of freedom of expression with a view to guaranteeing diversity of information for the public. In this report, the term "pluralism" will be used to mean the objective, that is "diversity of information" in the broad sense.

II. PLURALISM AND CONCENTRATION

Mergers in the media industry do not have, in themselves, a positive or a negative effect on pluralism. Such an effect can only be measured by reference to a general environment comprising the public concerned and the diversity of information offered to that public at a given place.

Depending on its impact on that environment, the merger may have a positive or negative effect on pluralism. The effect will be positive if the diversity of information offered to the public is increased, e.g. if the merger makes it possible to extend the geographical area served, or is preserved when it would diminish (if the merger prevents the disappearance of a media operator). On the other hand, the effect will be negative if the diversity of information offered to the public is reduced (if a merger leads to the disappearance of titles or channels). One and the same operation could have both consequences, depending on the public concerned: thus, the public in a media operator's new broadcasting or circulation area will take a positive view of a merger even though it restricts the choice of the public in the original broadcasting or circulation area covered by the media operators which were the subject of the merger.

To determine how far concentration may create problems of pluralism it is therefore necessary to define what is meant by diversity in the choice of information offered to the public at a particular place.

Diversity of information. Diversity can be assessed in many ways: according to the editorial content of the broadcasts or the press, according to the number of channels or titles, and according to the number of media controllers or owners. These three methods vary in importance. Diversity of content is the most logical criterion but it is also difficult to apply given the complexity of the analysis which it requires[14] and its subjectivity. The *number of channels* or titles is easily measurable as a criterion but not very significant as regards diversity of editorial content, which may remain weak and virtually controlled by a single operator. Nor does the criterion of the *number of media controllers* reflect editorial content, but it is a more sensitive indicator than the previous one since it lays stress on autonomy and structural independence among controllers, which, without being able to guarantee it, constitutes a minimum condition of the diversity of choice offered to the public.

14 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, 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.).

Control of a collection of media by a single person, even if the objective is only commercial, has the potential effect of making the spreading of ideas dependent on acceptance by a single person and of restricting alternative means. 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. Conversely, multiplying the number of alternative controllers increases the probability of diversity of information, even if this is not automatic. Economically speaking, effective competition among controllers may lead to qualitative differentiation between the products offered by each of them and, hence, favour editorial diversity.

Control. Since it may serve as a criterion for measuring the diversity of information, the question of control is essential, for it is necessary to know who controls what.

The controller. It is not possible simply to use the concept of owner or majority shareholder in a media company since, under the influence of anti-concentration rules, there may be several shareholders with the same proportion of ownership.[15] While the notion of controller is more suitable, it may also be difficult to identify clearly who is the controller with decisive influence.

Diversity of control. To assess choice in a given area, account must be taken of the consumption of all media, i.e. not just of each type (monomedia) but of all types. Consumption of the media indeed shows that one type may constitute an alternative and a substitute for another: since the large majority of individuals (except in Spain, Portugal and Greece) consumes three types of media every day - radio, television and the press (see Table 1) - somebody who is a reader and captive viewer of the products of the same controller may nevertheless listen to radio programmes broadcast by another controller. This highlights the problems of multimedia control, since if one controller dominates the three media there is no longer any alternative, either within one medium or between types.

15 In Spain, for example, Fininvest, Javier la Rosa and BOCE each have a 25% holding in Telecinco. In France, the Hachette Group and Reteitalia (Berlusconi) each had a 25% holding in La Cinq.

Reference to the public. Logically, everybody to whom the media are addressed should be taken as a reference (viewer, listener, reader) in order to determine the number of independent media offered to that person where he lives. As this is impossible, it is necessary to focus on the notion of consumption area and determine the choice of media offered in such areas (which may not be precisely delineated or homogeneous).

CONCLUSION

The effects of a media merger on pluralism must be assessed by reference to the environment in which it occurs. Mergers can have negative effects on pluralism, since they can limit the diversity of media controllers, one of the essential conditions for the diversity of information offered to the public.

TAB I

THERE IS A HIGH-LEVEL OF CERTAINTY THAT MULTI-MEDIA CONSUMPTION IS VERY COMMON IN THE NORTHERN COUNTRIES

APPROXIMATE MINIMUM PERCENTAGE OF POPULATION (OVER 13 YEARS) WITH MULTI-MEDIA REACH (DERIVED FROM MEDIA REACH DATA - 1989/90)

	TV AND RADIO	TV AND DAILY NEWSPAPER	RADIO AND DAILY NEWSPAPER	TV, RADIO AND DAILY NEWSPAPER
• Belgium	70	61	64	53
• Denmark	93	70	69	67
• France	85	50	45	43
• Germany	85	80	75	73
• Greece	37	26	18	0
• Italy	76	67	56	55
• Netherlands	55	61	76	51
• Portugal	65	17	13	0
• Spain	43	25	7	0
• United Kingdom	83	85	81	77

* Note: – All figures refer to weekly reach except Germany (bi-weekly), Netherlands and Spain (daily)
– 50% of unreached audience is assumed to overlap (after rounding up)

Part Two

THE LEVEL OF MEDIA CONCENTRATION

The level of concentration can be assessed using many different criteria, with the analysis then producing divergent results or no figures at all. To be able to draw on an economic analysis which addressed the problems of concentration and pluralism, the Commission ordered an economic study (see above).

I. GENERAL

In view of the problems which mergers raise with regard to pluralism in the media and which have been outlined in Part One, it is necessary to start from the effects of concentration on actual patterns of media consumption (see Tables I and II).

For the reasons already given, the study gives a picture of the diversity of media ownership by measuring the audience reached by media controllers in the Member States (see Table III). Though still imprecise, this method is appropriate to the objective of measuring the effect of mergers on pluralism, since it focuses on media consumption and provides an interesting comparison between Member States. It does not use the criterion of the number of media carriers (titles, channels, radio) owned by a single controller, which is not as such a sufficient criterion for assessing the impact on pluralism. In the United Kingdom, for instance, the two largest newspaper publishers hold only 2% of titles but account for 58% of circulation (see Table IV).

Taking the audience of the two largest controllers in each country, it is possible to make a comparison between Member States (see also Table V):

* Television.	Highest level:	P (100%), DK (95%), UK (89%)
	Lowest level:	(French-speaking) B (59%), D (62%);
* Press.	Highest level:	IRL (76%), GR (60%), UK (58%)
	Lowest level:	E (24%), F and D (33%);
* Radio.	Highest level:	UK (96%), D (93%), DK (88%)
	Lowest level:	GR (21%), F (43%), NL (51%).

- As regards the number of acquisitions of (minority or majority) holdings in the media industry, the study shows (Table VI) that between April 1990 and April 1991 there were 81 deals, 37 of them in the television broadcasting sector, 33 in production and 20 which were classified as "television monomedia"; there were only six multimedia acquisitions where the press moved into television broadcasting . The latter figure is the same as that for financial investors' operations in the television broadcasting sector.

- Another characteristic is that there were very few media takeovers by foreign operators (see Table VII), who most often acquired a minority interest only. The situation, therefore, is one where most large controllers (see economic study, Tables 4.14 to 4.20) focus their activities on a particular country. As regards television broadcasting, Spain is the only possible exception, where in two of the three new concessions Canal Plus and Fininvest play an important part. As regards operators, only Canal Plus (in E, B and D) and RTL (in B, D and NL) have opted for a more ambitious strategy on foreign markets. This prevalence of essentially minority holdings creates a dense, complex web of ownership, the principal consequence of which is to create a strategy of agreement and non-aggression rather than dynamic competition. Such a situation may prove to be precarious if one of the large groups breaks the status quo.

II. OBSERVATIONS BY TYPE OF MEDIA

1. Television/radio

- Contrary to what is sometimes maintained, the diversity of controllers increased between 1980 and 1990 in the television broadcasting sector (mostly as a result of new private entrants), except in Denmark and the United Kingdom (see Table VIII).

- "Public" controllers account for the majority of the audience in most of the Member States (see Annex I, Table 3.3).

  Television: P (100%), DK (93%), NL (76%), IRL (73%), E (71%), D (71%), Flemish-speaking B (53%), GR (50%), I (50%), UK (49%), French-speaking B (47%), F (38%);

  Radio: D (83%), DK (78%), French-speaking B (66%), Flemish-speaking B (64%), UK (64%), IRL (62%), P (47%), NL (42%), I (38%), F (22%), GR (19%), E (15%).

- The study shows that the restrictions on maximum shareholdings which exist in certain Member States do not prevent a single group from exercising a dominant influence. It emphasizes, in this respect, the importance of the concept of "controller" and the difficulty of defining it.

2. Press

In some countries, only a few groups control a large proportion of newspaper circulation, the two largest publishers accounting for more than 50% of the circulation figures. In certain specific markets, the market share of the two largest owners is bigger than their share of total circulation (D: Axel Springer Verlag has 32% of the total circulation but 82% of national dailies; E: Comcosa has 12% of the total newspaper circulation but 77% of the circulation of regional newspapers in the Basque Country).

III. OPERATORS' STRATEGIES

From the review above, three types of strategy emerge:

. Multimedia developments are due more to publishers investing in the audiovisual sector than to audiovisual companies investing in publishing. The interest of publishers in the television industry is attributable to the latter's growth prospects and to the value added which the multimedia represent for advertisers or the advertising industry and for programme suppliers (for instance, coverage of events by both press and TV can be a decisive advantage when acquiring exclusive rights to sports fixtures).

. Two strategies would appear to emerge in the television field: one is a strategy of vertical integration, the weakness of independent production pushing broadcasters into production; the other is a strategy of expansion with a view to reaching a certain critical size that can lead either to expansion at national level (resulting in monomedia concentration or multimedia activities) or, if the national scene is limited, to international expansion (a licence in another Member State or cross-border broadcasting). For instance, special-interest channels will naturally look to foreign markets to supplement their domestic "niche" market, which is necessarily limited.

. The role of institutional investors is considerable, probably in part because of the restrictions on media ownership which limit control and shareholdings and which make it necessary to find neutral financial partners (sleeping partners). Financial investors for their part are probably interested in the long-term prospects.

Conclusion

The media sector is characterized by a fairly high level of concentration compared with other sectors and by a complex web of shareholding and media ownership networks centred around a few large national operators. Although they often have minority holdings, the latter exercise control over media companies by forming alliances with sleeping partners. Large national operators generally focus their activities on a particular country and have minority holdings, with a passive role, in other countries. However, the status quo seems increasingly fragile given that operators, particularly in the television sector, are forced to expand and become active in other countries in order to create synergies.

TAB II

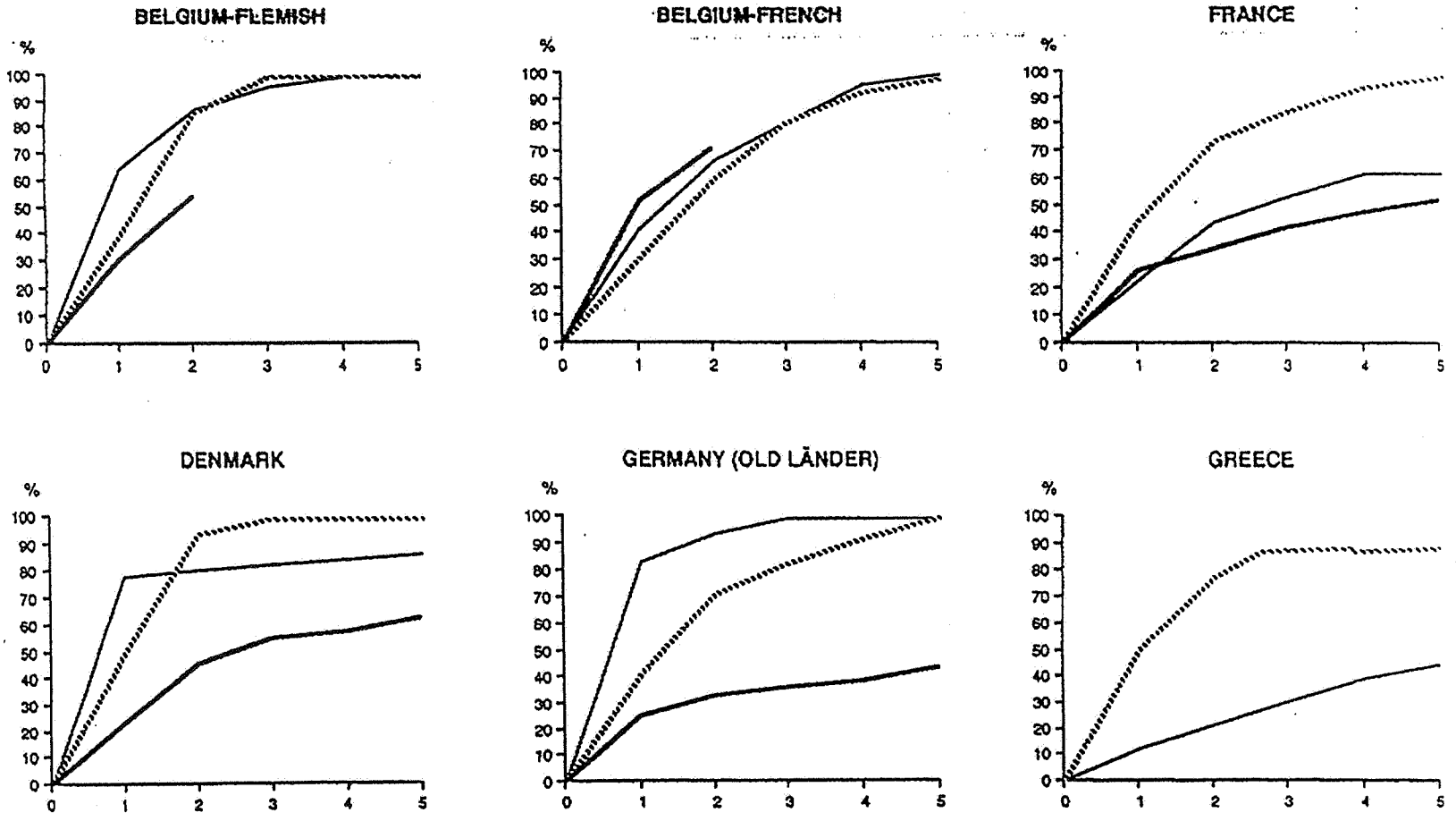
WHILE TV AND RADIO HAS A HIGH REACH ACROSS THE COMMUNITY, DAILY NEWSPAPERS HAVE A RELATIVELY LOW REACH IN THE SOUTHERN COUNTRIES

MEDIA REACH
1989/90

	TV	RADIO	ANY DAILY NEWSPAPERS	BASIS	SOURCE
BELGIUM	78.0	85.0	72.0	Weekly % of adults	CIM 1989-L'heure du temps, IBP 1989
DENMARK	96.9	95.2	71.6	Weekly % of adults	Brogger & Nygart
FRANCE	97.0	87.3	52.3	Weekly % of population	CESP 1990
GERMANY	96.8	87.3	82.1	Bi-weekly % of adults	MA '90/ Gruner & Jab
GREECE	64.3	55.0	44.3	Weekly % of population	Geo/Young & Rubican
ITALY	98.5 (monthly)	77.2	68.4	Weekly % of adults	ISPI/ISEGI/ Auditel/ Audiradio
NETHERLANDS	65.0	80.0	93.0	Daily % of adults	Het Media Institute/ Gear
PORTUGAL	83.8	77.5	23.8	Weekly % of adults	Team-Young & Rubican
SPAIN	85.5	50.0	31.5	Daily % of adults	E.M.G. May-June '90
UNITED KINGDOM	93.2	86.8	89.0	Weekly % of adults	BARB, JICNARS, JICRAR

TAB III

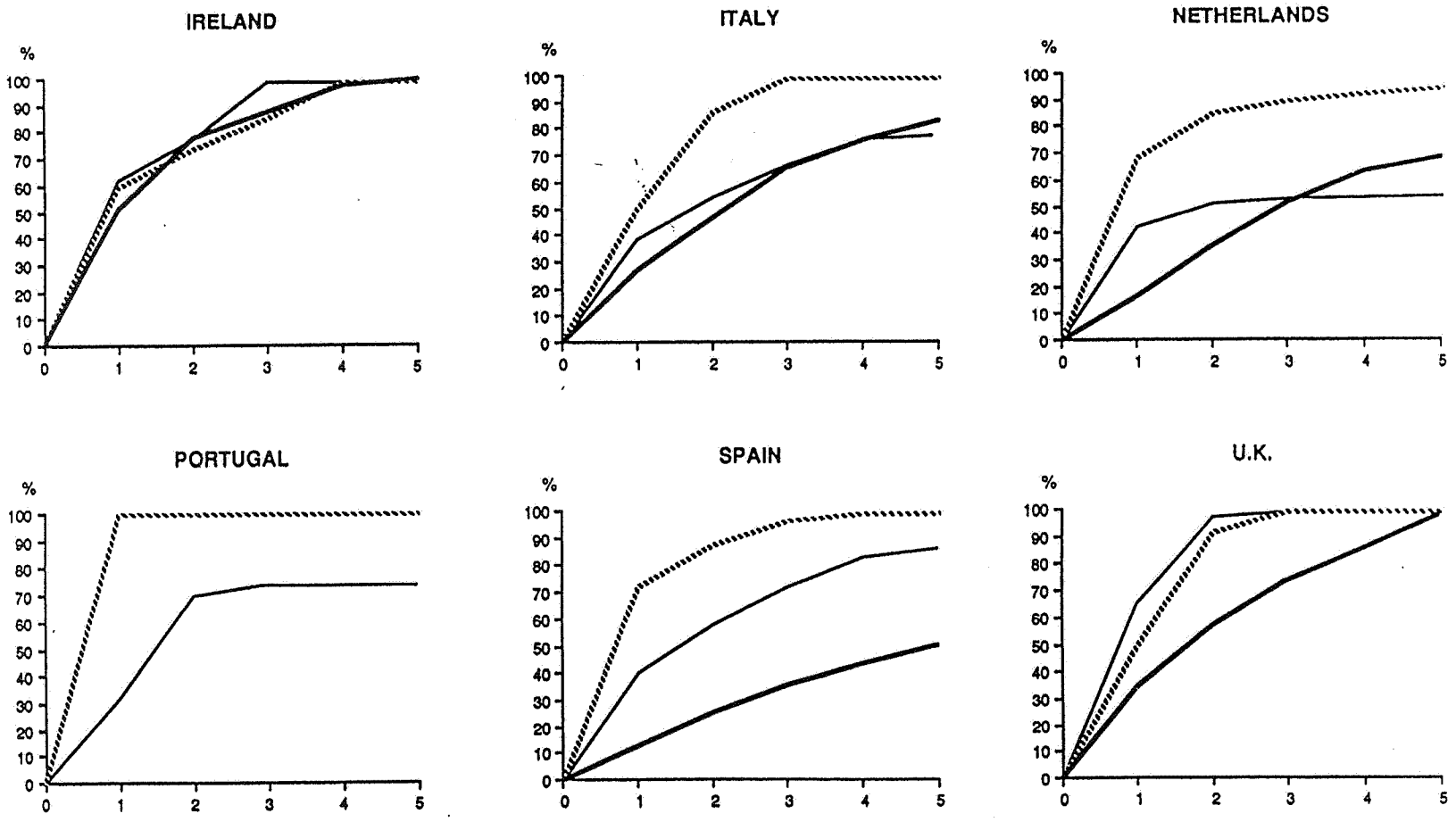
CUMULATIVE SHARE (%) OF CONSUMPTION BY TOP RADIO STATION/TV CHANNEL CONTROLLERS AND NEWSPAPER PUBLISHERS



Source: Project Database

TAB III (suite)

CUMULATIVE SHARE (%) OF CONSUMPTION BY TOP RADIO STATION/TV CHANNEL CONTROLLERS AND NEWSPAPER PUBLISHERS

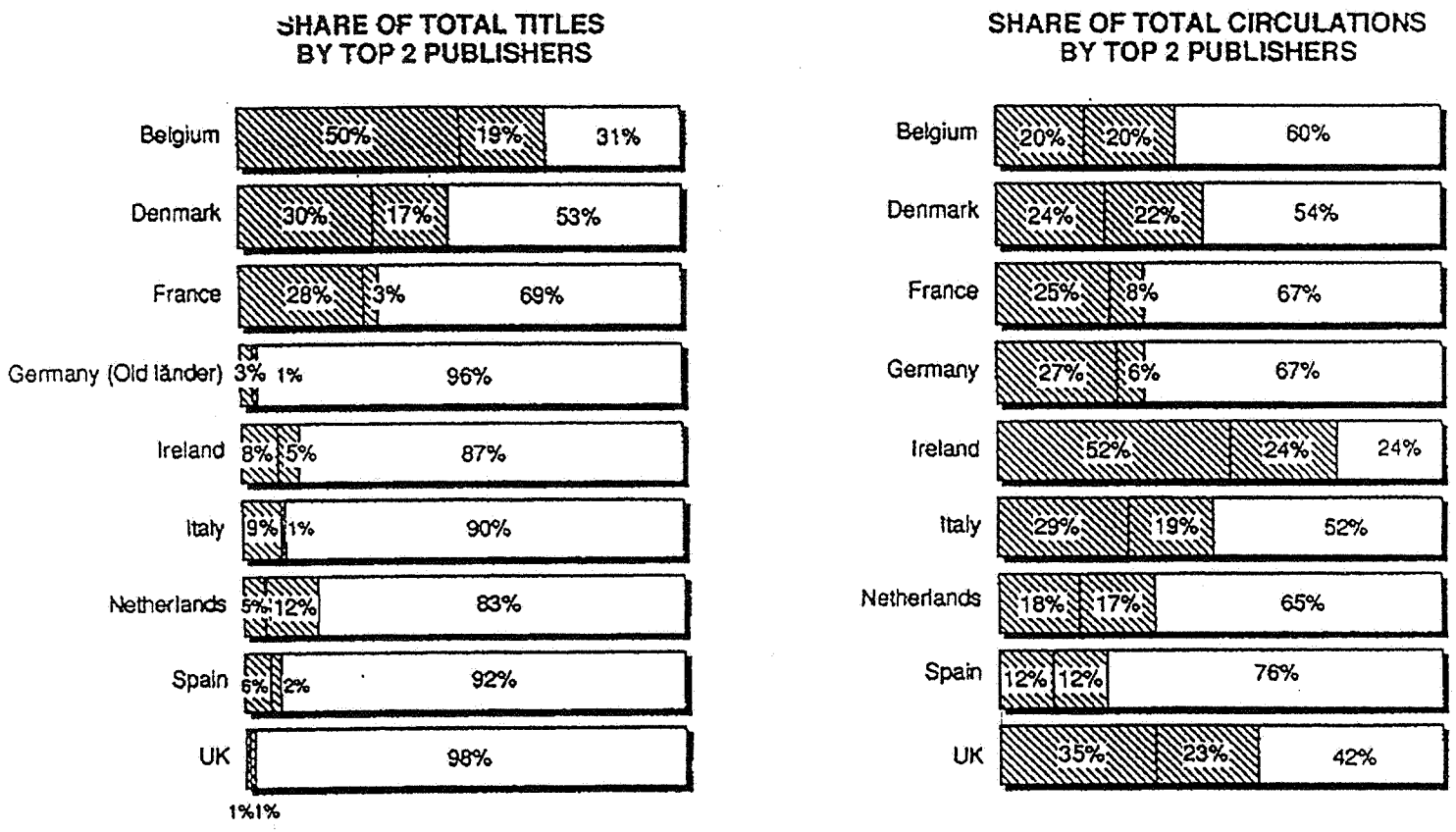


Source: Project Database

TAB IV

THERE APPEAR TO BE SIZEABLE INCENTIVES FOR SCALE IN NEWSPAPERS

CONCENTRATION IN DAILY NEWSPAPERS IN EXAMPLE EC COUNTRIES



Source: CARAT International 1990

TAB V

MEDIA CONCENTRATION IN THE COMMUNITY IS HIGH IF GOVERNEMENT-OWNERSHIP IS INCLUDED

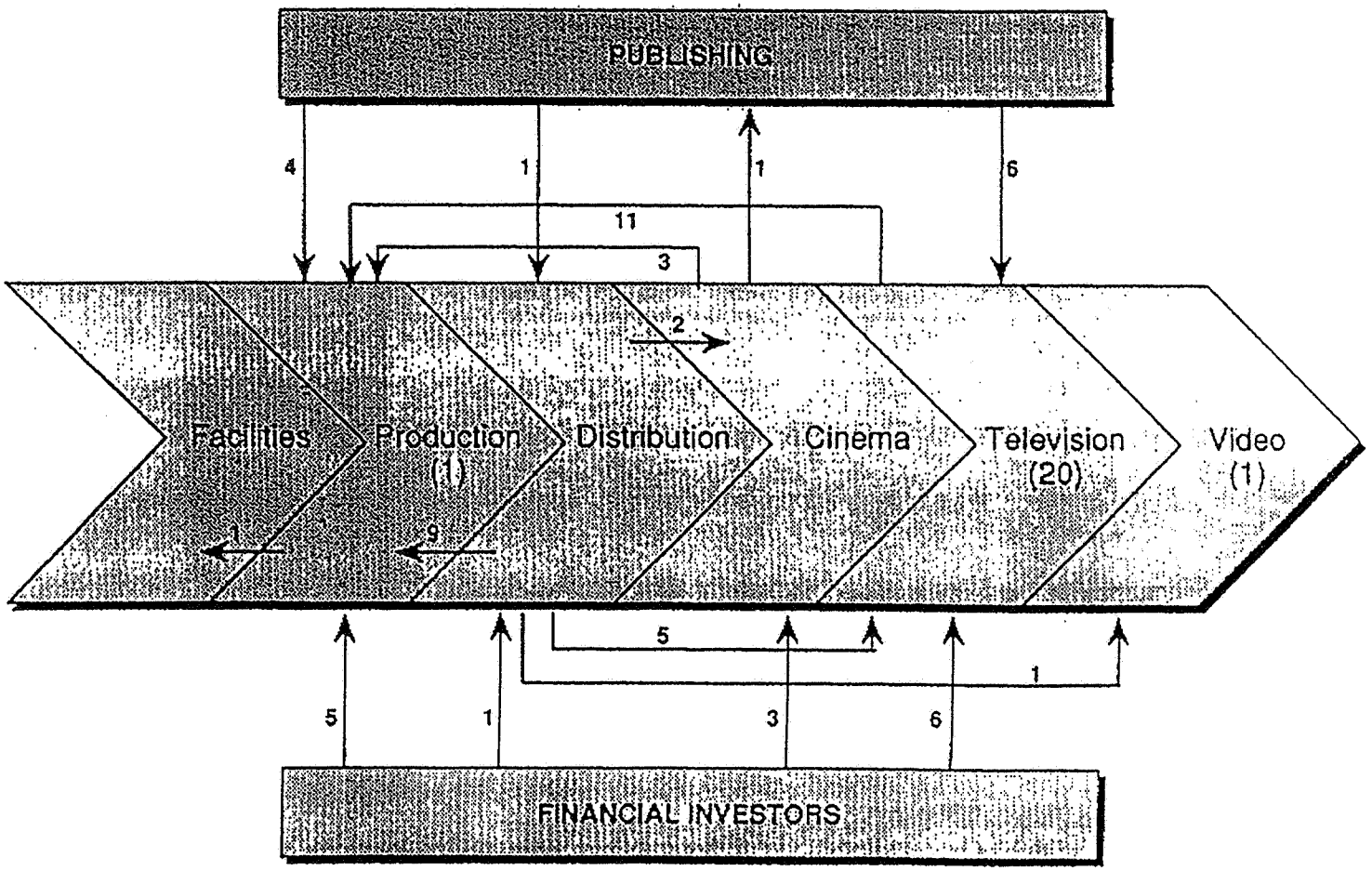
ANALYSIS OF CONSUMPTION-BASED CONCENTRATION IN THE EC MEDIA FOOTPRINTS

CONSUMPTION FOOTPRINTS	POPULATION (Million)	% SHARE OF CONSUMPTION BY TOP TWO MEDIA CONTROLLERS			NOTES
		TV	Radio	Newspapers	
• Belgium - French speaking	3.4	59	80	38	
• Belgium - Flemish	6.1	86	86	46	
• France	56.3	73	43	33	
• Denmark	4.2	95	88	46	
• Germany (Old länder)	61.4	*62	*93	33	ARD is composed of 7 independent regional broadcasters
• Greece	9.9	77	21	60	
• Ireland	3.5	73	77	76	
• Italy	57.4	86	54	48	
• Netherlands	14.9	86	51	35	
• Portugal	10.0	100	57	51	
Spain	37.7	87	58	24	
United Kingdom	55.6	89	96	58	ITV should perhaps be split into regions
AVERAGE		81	67	46	Weighted 79, 68, 41

TAB VI

IN ADDITION TO CONSOLIDATION, TV BROADCASTERS ALSO ACQUIRED TO INTEGRATE INTO PRODUCTION

NUMBER OF MERGERS AND ACQUISITIONS IN THE EC BY SECTOR
(based on an analysis of the publicly announced deals in 1989-1990)

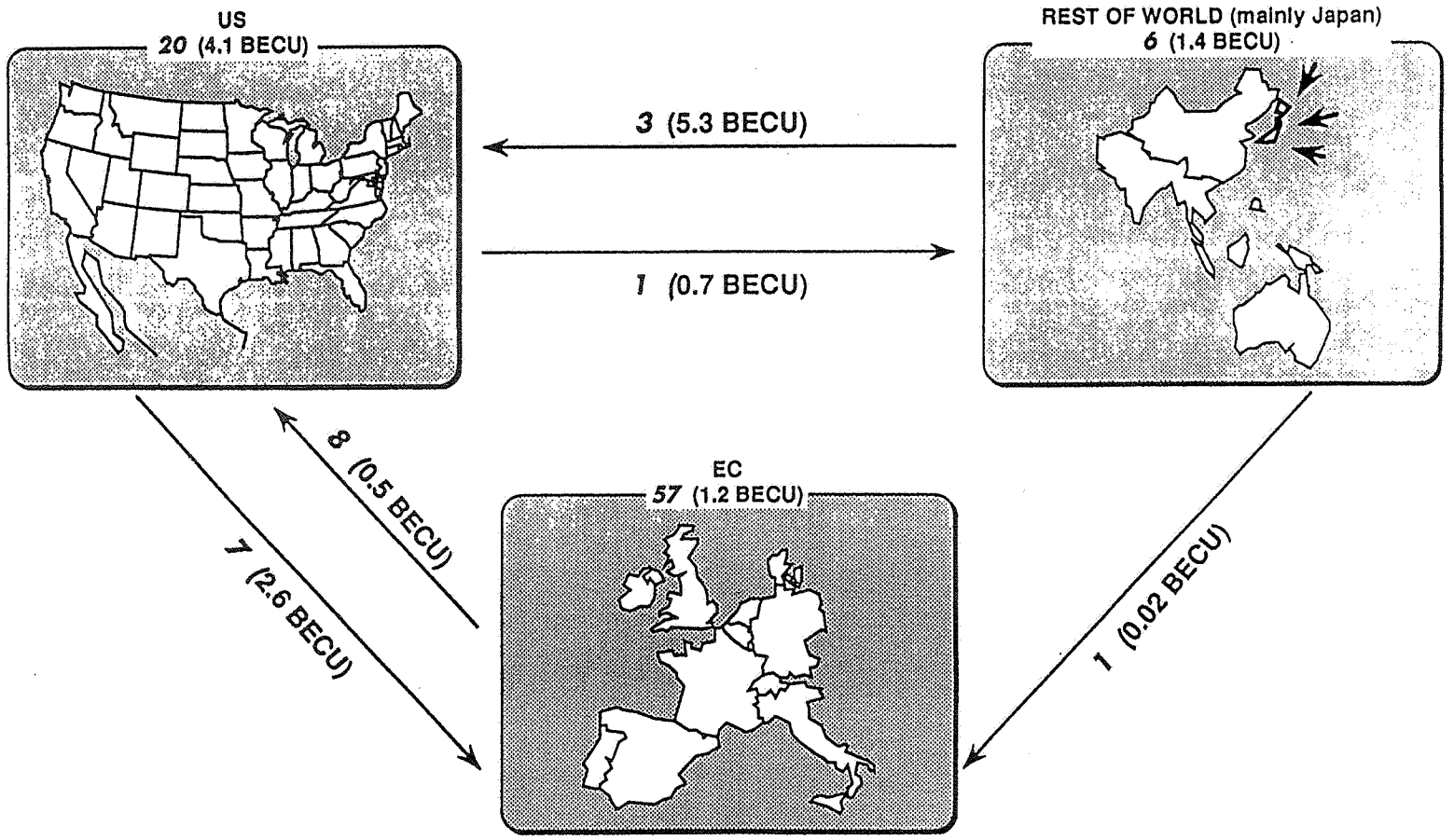


Figures in brackets indicate acquisitions within the sector by companies of the same sector

Source: Booz.Allen's Media Databank

WHILE THE LEVEL OF ACQUISITION ACTIVITY INITIATED IN EUROPE HAS BEEN SIGNIFICANT, IT IS DWARFED (IN VALUE) BY THAT FROM THE US AND JAPAN

NUMBER AND VALUE OF M&A TRANSACTIONS IN THE MEDIA INDUSTRY 1990



* One main deal involving MCA/Universal and a British consortium for an investment in studio facilities at Rainham Marshes in the U.K. accounts for most of the 2.6BECU (from U.S. to the EC)
Note: Value of declared bids equivalent to indicative figures only
Source: Booz·Allen M&A Database

TAB VII

CURRENTLY, THERE ARE ONLY A FEW ESTABLISHED CROSS-BORDER TV CHANNEL CONTROLLERS (THESE ARE HAVAS, CLT . AND FININVEST)

Country	TV Controllers in 1990	Channels
B (French)	• French authority • CLT • Canal Plus	• RTBF 1, Tele 21 (100%) • RTL-TVi (100%) • Canal Plus (33%)
B (Flemmish)	• Flemmish authority • VTM	• BRT 1, TV 2 (100%)
DK	• State	• TV 1 & 2 (100%)
F	• State • Bouygues • Havas • Hersant • CLT	• Antenne 2, FR3 (100%) • TF1 (25%) • Canal Plus (25%) • La Cinq (25%) • M6 (25%)
D	• State • Regional authorities (9) • L. Kirch • CLT • Tele Muuchen • G. Ackerman	• ZDF (100%) • ARD I, ARD III(100%) • Sat 1 (40%) • RTL Plus (46.1%) • Tele 5 (45%) • Pro 7 (51%)
GR	• State • Teletypos • ?	• ERTI 1, 2 & 3 • Megachannel • Antenna

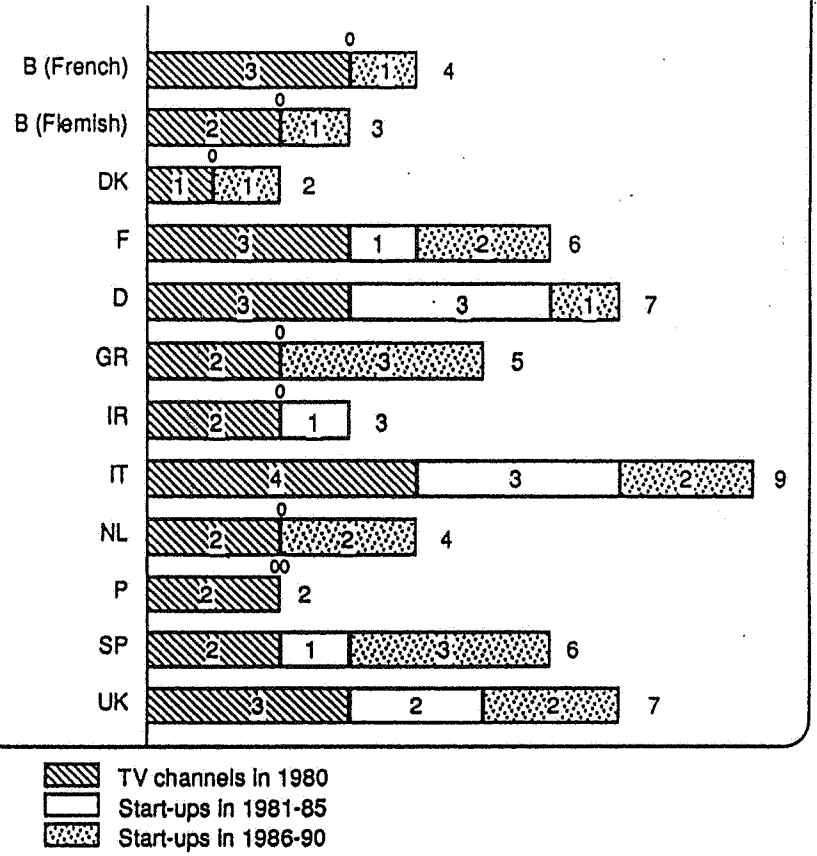
Country	TV Controllers in 1990	Channels
IR	• State • TVS	• RTE 1, Network 2 • TV-3
IT	• State • Fininvest • Globo • Parretti/Parini • Italia	• RAI 1, 2 & 3 • Canale 5, Italia 1, Rete 4 • TMC • Odeon TV • Independents
NL	• State (with several broadcasters on time share basis)	• Nederland 1, 2 & 3
P	• State	• RTP 1 & 2
S P	• State • Regional authorities • La Vanguardia • Havas • Fininvest	• TVF 1, 2 & 3 • TV-3, TVGa, ETB-1 & 2, Canal 9, Canal Sur, Canal 33, TM3, TV Murcia • Antenna 3 • Canal Plus (25%) • Tele 5 (25%)
UK	• State • Independents (incl. several UK media groups)	• BBC 1 & 2 • ITV regional channels

Source: Carat International

TAB VIII

THE ENTRY OF NEW — MOSTLY PRIVATE — CHANNELS HAS IMPROVED THE CONTROLLER TO CHANNEL RATIO, IN MOST COUNTRIES

NUMBER OF MAJOR CHANNELS



TV channels in 1980
Start-ups in 1981-85
Start-ups in 1986-90

CONTROLLER TO CHANNEL RATIO

	END 1980	END 1990	TREND
B (French)	0.67	0.75	↗
B (Flemish)	0.5	0.67	↗
DK	1.0	0.5	↘
F	0.33	0.83	↗
D	0.67	0.86	↗
GR	0.5	0.8	↗
IR	0.5	0.67	↗
IT	0.5	0.56	↗
NL	0.5	0.5	→
P	0.5	0.5	→
SP	0.5	0.83	↗
UK	0.67	0.57	↘

Note: 1. Regional returns are considered as one channel
2. While it is recognised that each regional channel has a separate controller (in UK, Germany and Spain) - one controller is assumed for these network as consumers in each region are only exposed to their main regional channel
3. NL - several broadcasters on time share basis on the state-owned channel

Part Three

REVIEW OF MEASURES TAKEN AT NATIONAL LEVEL

The measures taken by Member States to promote or safeguard pluralism take various forms and have various objectives. A distinction can be made between measures which are specifically intended to promote diversity in the media in view of concentrations and *related measures* with a wider objective, such as assistance for the sector (aid for production, distribution) or journalistic independence. The latter are of particular importance for the press sector since they can either facilitate the activities of media companies or guarantee certain editorial standards but do not in themselves ensure diversity in the media when mergers occur.

Measures specifically intended to safeguard pluralism may be aimed at either the *content of broadcasts* or the ownership structure of the companies. The rules on programme content applicable in the broadcasting sector are not intended to restrict mergers but to ensure that there is a degree of diversity of information within a particular medium, whether or not it is the result of a merger.

Finally, a distinction should be made between anti-concentration rules on pluralism and *discriminatory rules* which restrict access to media ownership by other Community nationals (still to be found in B, GR, P). The purpose of these rules, which are in breach of Community law (Articles 59 and 221 of the EEC Treaty), has no connection with the objective of safeguarding pluralism.

I. SITUATION IN EACH COUNTRY

The following tables have been drawn up on the basis of the study appended and are designed to give an overview[16] of the main features of national laws on company ownership.

16 These tables attempt to describe the main features of the legislative provisions but display certain inaccuracies inherent in this type of presentation and due also, in some cases, to the difficulty of obtaining or interpreting certain laws.

BELGIUM (French Community)

MEDIUM	CONSTITUT. PROVISIONS	KEY LEGISLATIVE PROVISIONS	MONOMEDIA RESTRICTIONS	CROSS MEDIA RESTRICTIONS	FOREIGN OWNERSHIP RESTRICT.	OTHER OWNERSHIP RESTRICTIONS	TRANSP. REQUIRE-MENTS
PRESS	Constitution of 7/2/1831, as amended, Articles 14, 18 and 98	Penal Code, Articles 299 paragraph 1, and 300 Law of 19/7/1979					
RADIO	Constitution of 7/2/1831, as amended Article 14	Law of 6/2/1987 Decree of 17/7/1987 as amended by Decree of 19/7/1991	* Individual/Cie cannot hold directly or indirectly >24% of capital in > 5 private radio stations, nor participate to the extent of >1/3 in management bodies of > 5 private radio stations, nor be a manager/director of > 5 private radio stations. The Executive may derogate from this principle in exceptional circumstances. * Individual or Cie cannot, within same geographical zone, hold directly or indirectly > 24% of capital in > 1 private radio station, nor participate to the extent of > 1/3 in management bodies of > 1 private radio station, nor be a manager/director of >1 private radio station.	<u>TV - Radio</u> Individual or Cie which holds directly or indirectly more than 24% of capital in a private TV station of French Community cannot hold directly or indirectly more than 24% of capital in more than 5 private radio stations. <u>Cable - TV</u> Distributor and his manager cannot hold together more than 24% of capital in a private broadcasting body, nor have a participation of more than 1/3 in management bodies, nor be a manager or director of a private broadcasting body or a local / Community TV station.	Application for private radio licence to be signed at least by two persons of Belgian nationality whose domicile is within the broadcasting zone of the radio station concerned.	Private radio station must be independent of bodies representing employers, workers or a political party. Public administrations cannot control directly or indirectly one or several private radio stations, nor their information content	All shares in private radio station must be nominative
TV			Individual or Cie which holds directly or indirectly > 24 % of capital in a private TV station of French Community cannot hold directly or indirectly > 24% of capital in another private TV station of French Community. In principle only 1 public local and Community TV station may be authorised within same administrative area. Where 2 adjacent areas have common cultural characteristics, the Executive may treat them as a single area so that they will not be covered by > 1 local and Community TV station of French Community. Public broadcasting bodies can only participate in capital/management bodies of private TV stations of French Community if their capital participation in these does not exceed 24 %.			* Public administrations and public interest bodies cannot participate directly or indirectly in capital or management bodies of private TV stations of French Community. Exception for distributors and for public broadcasting bodies whose capital participation in private TV stations does not exceed 24%. * A private TV station of French Community must have its Cie seat and its centre of operations in French Community/bilingual regions of Brussels-Capital. * A local and Community TV station must be incorporated in conformity with Belgian laws.	All shares in private TV station of French Com-munity must be nominative

BELGIUM (Flemish Community)

MEDIUM	CONSTITUTIONAL PROVISONS	KEY LEGISLATIVE PROVISIONS	MONOMEDIA RESTRICTIONS	CROSS MEDIA RESTRICTIONS	FOREIGN OWNERSHIP RESTRICTIONS	OTHER OWNERSHIP RESTRICTIONS	TRANSPARENCY REQUIREMENTS
PRESS	Constitution of 7/2/1831, as amended, Articles 14, 18 and 98	Law of 17/7/79 Article 299, paragraph 1 of Penal Code		<u>TV - Press</u> Private TV company serving whole Flemish Community must have a min. of 51% of its shares held by publishers of daily and weekly newspapers in Flemish language, established in Flemish Community or in bilingual region of Brussels-Capital. <u>TV - Cable operators</u> Participation by cable operators in capital of private TV Cie serving whole Flemish Community is restricted to less than 20%.			
RADIO	Constitution of 7/2/1831; as amended, Article 14	Decree of 6/5/82 Law of 6/2/87	Only one broadcaster serving whole Flemish Community can broadcast advertisements.				
TV (CABLE)		Decree of 28/1/87 Law of 6/2/87 Decree of 12/6/91 Decree of 23/10/91	1. Only one private company may broadcast to whole Flemish Community. 2. Same as for radio. 3. Only one private regional company may broadcast within each zone.		See Cross Media Restrictions: TV-Press 51 % restriction.	Only private cies established in Flemish Community or bilingual region of Brussels-Capital can broadcast. Regional private TV cies must: 1. be non-profit making; 2. have regional TV broadcasting as exclusive object; 3. operate a single regional TV service; 4. be independent of any political or professional group, or any commercial organisation.	* Private TV cie serving whole Flemish Community to notify the Excecutive of any changes in its capital structure. * Annual report to be presented to the Executive, indicating the manner in which it has complied with the legislation. * All shares in private TV Cie serving whole Flemish Community must be nominative. * Private TV cies serving a regional/local Community must submit annual report to the Executive, indicating the manner in which they have complied with the legislation.

DENMARK

MEDIUM	CONSTITU-TIONAL PROVISIONS	KEY LEGISL. PROVISIONS	MONOMEDIA RESTRICT.	MULTIMEDIA RESTRICT.	CAPITAL PARTICIPATION LIMITS	FOREIGN OWNERSHIP RESTRICTIONS	OTHER OWNERSHIP RESTRICTIONS	TRANSPARENCY REQUIREMENTS
PRESS	Constitution of 5/6/1953, Article 77	Law No. 533 of 1986						All Danish publications must print publisher's name. Periodicals must contain details of editor's name and place where printed.
LOCAL RADIO / LOCAL TV		Order No. 339 of 22/5/90			See Other Ownership Restrictions, point 3.	A majority of members of board of a company or association which has local radio or TV licence, must be resident in the locality.	1. Licences granted only to Cies or associations which have radio or TV activities as their sole object. 2. Licences may be granted to local authorities provided that their purpose in engaging in programme activities is solely to make available production and broadcasting facilities for citizens or to provide information concerning the local authority. 3. Commercial entities (with the exception of national and local newspapers) may not have a "decisive in-fluence" in local radio and TV organisations.	
CABLE RELAY		Order No. 339 of 22/5/90 Order No. 678 of 23/10/87 Order No. 651 of 22/9/86					Licences granted for SMATV/MATV systems only to : - regional PTT's - non-profit antenna societies - local gov't bodies - owners of appartment blocks	

FRANCE

MEDIUM	CONSTITU-TIONAL PROVI-SIONS	KEY LEGISLA-TIVE PROVISIONS	MONOMEDIA RESTRICTIONS	CROSS MEDIA RESTR. Authorisation for terr. radio/TV/cable net. given if no more than 2 of following holdings (by column) National	Regional	CAPITAL PARTICIPATION LIMITS	FOREIGN PARTICIPATION LIMITS	OTHER OWNER SHIP RESTR.	TRANSPARENCY REQUIREMENTS
PRESS	Article 11 of the 1789 declaration	Law n° : 86-897 of the 1/10/1986 completed by law n°: 86-1210 of 27/11/1986	No acquisition/taking control of a daily political or general newspaper when this gives an entity or group of entities possession or control of in excess of 30 % of diffusion in France of all daily papers of same type	daily political + general newspaper with 20% or more of total diffu-sion of similar pu-blications on national territory	1 or more daily newspapers national or not, distri-buted in the given zone		save for intern. or reciprocity undertakings foreigners cannot acquire shares if it brings holding directly or indirectly above 20% of social capital or voting rights of Cie publishing a paper in French language		1. Forbidden to lend name in obtaining shares 2. All shares to be nominative 3. Must print in all publica-tions: name of owner + editor, Cie seat, legal representative, objects 4. Readers to be informed of transfers involving 1/3 share or voting capital + transfer of titles
RADIO	'Pluralism' recognised by the Conseil constitutional as an objective of constitutional value, both in the press and audiovisual sectors	Law of the 30/09/1986 as modified by law n°: 89-25 of the 17/01/89	1 authorisation only at the national level (>30 Mio inhabitants) cumulable with: 1 or several authorisations where population served remains <15 Mio	Radio serving >30 mio	1 or more channels nat. or not, of which potential audience in given zone is > 10% of potential audience for similar service in that zone		Save for international undertakings: no foreign national (non EC citizen) can make acquisiton bringing total capital held by strangers to more than 20% of social capital or voting rights in a Cie with author. for hertzian radio + TV service in French language	Cies foundatio ns, and certain specified associatio ns only	Provisions relating to all auth. services * Prohibited lend name to applicant for authorisation * Shares in authorised society must be nominative * Auth. Cie must have available for public: - name of Cie owner/ - name, objects, seat, legal represent. + 3 principal associates - name of director of publication + editor - list of publications edited by the enterprise + other communication services provided by the firm
TERR. TV			- 1 authorisation only at the national level (>6 Mio inhabi-tants) or not cumulable several authorisations at regional level so long as service zone does not exceed 6 Mio inhabitants + only if in distinct zones - If holds > 15% and < 25% share-holdings/voting rights in 1 Cie cannot hold > 15% in a second. - If holds >5% + < 15% in 2 licensed Cies then can hold no more than 5% in others.	Terr. television serving > 4 mio inhabitants	1 or more terr. TV whether or not national in the given zone	National Hertzian TV > 6 Mio Cannot hold more than 25% of social capital- /voting rights of national TV licence holder hertz TV > 200,000 < 6 Mio no more than 50% interest in any Cie.	Foreign national: * individual of foreign nationality * Cie with majority of shares in non French hands. * Associations + foreign managers	Compani es only	
SATELL. TV			- 2 authorisations only - If holds > 33% and < 50% in one society can hold up to 33% in a second - If holds > 5% and < 33% in 2 societies then can hold no more than a 5% in others.			Up to 50% of social capital/ voting right		Compani es only	* all entities holding 20% of share capital or voting rights in authorised society must inform C.S.A. within a month of exceeding the threshold
CABLE NET.			More than 1 autho. possible where co-verage not >8 mio	cable net > 6 mio inhabitants	cable (s) networks in given zone			only Cies obtain authoris.	

GERMANY

MEDIUM	CONSTITU-TIONAL PROVISONS	KEY LEGISL. PROVISIONS	MONOMEDIA RESTRICTIONS	MULTI MEDIA RESTRICT.	CAPITAL PARTICIPA-TION LIMITS	FOREIGN OWNER. RESTRIC-TIONS	OTHER OWNERSHIP RESTRICTIONS	TRANSPARENCY REQUIREMENTS
PRESS	Article 5 Abs.1 Satz 2 of the Grundgesetz (Basic Law) of 23.5.1949 and : 6 rulings of the Bundesver-fassungsgericht (Constitutional Court) of 1961, 1971, 1981, 1986, 1987, 1991 Competence of the Länder	§ 22; 23; 24 of the Law against restraint of competition (competence of Federal Government)	Mergers of Cies dealing with publishing, production or distribution of newspapers and magazines can be prohibited when their turnover together is more than 25 Mio DM and the danger of a dominant position arises	<u>Press - Audiovisual:</u> no rules in the RuStV. But the Länder broadcasting laws e.g. in Bavaria, Schleswig-Holstein, Hessen have introduced provisions to prevent "double monopolies". The broadcasting licence may not be granted if applicant for a "full programme" within transmission area holds a dominant position in the daily press sector.			Can only be a private company	If the press company is a limited one , it is governed by the general provisions of the corporation Act (Aktiengesetz) Obligatory regular report of the Länder institutions for the media on the concentration tendencies: - between broadcasting and Press companies - between broadcasting companies - between international media companies
RADIO BROAD-CASTING		"Rundfunkstaatsvertrag" (RuStV) 31,8,1991 Treaty between all the 16 Länder,	Operator may disseminate throughout the entire federal area 2 radio programmes. Of these 2 only one may be a "full programme" or a "specialised programme" with priority in information				Licence for Broadcasting cannot be granted to local, public authorities, political parties Länder - Broadcasting-Law also:public broadcasters or their employees cannot be granted a licence. Broadcasting has to be free of state influence	Requirements in economic (federal) law: like press (see above) Requirements in broadcast (Länder-) law : Every change in capital participation has to be permitted by the Länder institutions for the media Satellite-TV: The Länder institutions for the media have to be informed about vacant satellite channels
TV BROAD-CASTING		§21 Abs.1 RuStV §21 Abs. 3 RuStV Procedure for distribution of vacant satellite channels: §§ 34 Abs. 3 Buchstabe c) u. d); 36 RuStV	- Operator may disseminate throughout the entire federal area 2 TV- programmes . Of these 2 only one may be a "full programme" or a "specialised programme" with piority in information (more specific restrictions in several Länder - Broadcasting Laws.) - Shareholders owning more than 25 % but less than 50 % of a full programme or "specialized information" programme can hold interest only in 2 other corresp. programme with less than 25 % and no important influence		No share-holder is allowed to own 50 % or more of social capital of a "full programme" or "specialised information programme"			
CABLE RELAY		see the Länder broadcasting laws Licence for cable transmission obligatory						

GREECE

MEDIUM	CONSTITU-TIONAL PROVISONS	KEY APPLICABLE LEGISLATION	MONOMEDIA RESTRICTIONS	Cross Media	CAPITAL PARTICIPATION LIMITS	FOREIGN OWNERSHIP RESTRICTIONS	OTHER OWNERSHIP RESTRICT.	TRANSPARENCY REQUIREMENTS
PRESS	Article 14 of the 1975 constitution	Law n°: 1806/1988 1746/1988						PRESS/RADIO/TV 1) Cie shared must be named and transfers notified. 2) Bank of Greece and deputy of the attorney of the high court can examine the finances of daily and periodical, press,radio and TV Cies. 3) Principal of banking confident-iality cannot be called in aid by certain key administrative figures, editors and directors of daily/periodical papers, radio and TV stations, nor by individuals/-Cies which have as their object the edition of daily periodical papers or the creation/running of radio and TV stations, nor by Cies in which the above-mentioned Cies or individuals hold at least 20% of the social capital 4) The entities in 3 above must declare annually the origin of their finances which have been used to participate in press/radio/TV enterprise
RADIO BROAD-CASTING	Article 15 of the 1975 constitution	Presidential decree n° 25 of 1988: Laws n°: 1806 of 1988 1746 of 1988	One local radio licence for a given individual or Cie. Individual/Cie not in receipt of radio licence can hold shares/act as manager or member of administration of only one licence holder or applicant			licenses can only be granted to: a) Individuals of Greek nationality b) Legal entities controlled by Greek citizens		
TV BROAD-CASTING May cover cable + satellite transmission facilities		Laws n°: 1730/1987 1746/1988 1806/1988 1866/1989	Individual/Cie cannot participate in more than one local TV station whether as * owner * shareholder or as member of the administration or manager		No shareholder can own more than 25% of social capital of a local TV channel. Totality of shares held by persons related to the fourth degree cannot exceed 25% of social capital	Foreign capital cannot amount in total to more than 25% of social capital	Local TV stations can be held by: a) limited liability co's b) local collectivities	RADIO 1. Publication of annual acounts required in 2 daily papers, one of which must be published in area covered by station and copy to special media service. 2. The national radio + TV council, substituted by the 89 legislation for commission for local radio can order an examination to establish whether there is a concentration in control of local radio stations by a single individual or Cie, or whether there has been an unauthorised regroupment. The inspection is to be carried out by the commissioner for accounts.

IRELAND

MEDIUM	CONSTITUTIONAL PROVISIONS	KEY LEGISLATIVE PROVISIONS	MONOMEDIA RESTRICTIONS	MULTIMEDIA RESTRICTIONS	CAPITAL PARTICIPATION LIMITS	FOREIGN OWNERSHIP RESTRICTIONS	OTHER OWNER. RESTR.	TRANSPARENCY REQUIREMENTS
PRESS	Article 40.6.1.i of the 1937 Irish Constitution	Mergers, Takeovers and Monopolies (Control) Act 1987 Restrictive Practices (Amendment) Act 1987 S.I. n° 17 of 1979	All mergers/takeovers involving Cies at least one of which is involved in printing/publishing newspapers must be notified to the Minister for Industry and Commerce who may call on the Director of Fair Trade to report on merger. The Minister may also call on the Director of Fair Trade commission to investigate apparent monopolies + report on whether these are against the "common good".					
RADIO		Broadcasting and Wireless Telegraphy Act 1988 / Radio and TV Act 1988	IRTC in awarding sound broadcasting licences " have regard" to desirability of allowing any person, or group of persons, to have substantial or controlling interest in an undue number of sound broadcast services.	Sound and TV contracts IRTC in granting both radio and TV contracts "to have regard" to the desirability of allowing any person, or group of persons, to have control of, or substantial interest in, an undue amount of communication media in the area of the contract			Licences may contain conditions prohibiting assignment or material changes in ownership; or, if none Commission's prior consent must be obtained.	* Licence issued by Minister to be open for public inspection at IRTC's registered offices. * IRTC has power to investigate financial or other affairs of radio/TV contractor
NATIONAL TV SERVICE		Broadcasting and Wireless Telegraphy Act 1988 / Radio and TV Act 1988	1 TV licence only to be awarded. Same restriction as for radio above.					
MICRO-WAVE RELAY		S.I. n° 39 of 1989	Minister in awarding licences have regard to desirability of allowing a person, or group, to have control of, or substantial interests in, an undue number of programme retransmission systems; multiple holdings have been allowed					Must furnish such information relating to the service as the Minister may require and allow inspection of records.

ITALY

MEDIUM	CONSTITUTIONAL PROVISIONS	KEY LEGISLATIVE PROVISIONS	MONOMEDIA RESTRICTIONS	MULTIMEDIA RESTRICTIONS	FOREIGN OWNERSHIP RESTRICTIONS	OTHER OWNERSHIP RESTRICTIONS	TRANSPARENCY REQUIREMENTS
PRESS	Articles 21, 41, 43, and 42 of the 1948 constitution	Law n° 416 of 5/8/81 as amended by Law n° 67 of 25/2/87 and Law n° 223 of 6/8/90	A) Transactions giving rise to "dominance" held to be null. Dominance occurs where firm owns or controls daily newspaper publishing Cie whose publications attain: 1) Circulation in excess of 20% of total circulation for all Italian daily newspapers. 2) > 50% of titles edited in a given region. 3) Circulation in excess of 50% of total circulat. of daily papers published in same inter regional area. B) See note C Multimedia Restr.	A) Daily newspapers - Nat. TV 1) No concession for nat. TV if "control" of firm publishing daily papers whose annual circulat. in the last year exceeds 16% of total daily paper circulat. in Italy. 2) One nat. concession only if "control" of firm publishing daily papers whose circulat. exceeds 8% of total circulat. of Italian daily papers. 3) max. two national TV concessions if "control" of firm publishing daily papers whose total circulation does not exceed 8 % of total circ.of daily papers in Italy. B) Local TV - Local Radio Holder of local TV licence can obtain local radio licence only if within same "basin" demands for radio frequencies are fewer than those available. Second additional licence may be obtained within same zone under the same conditions. C) Global Media Transfers, hire/management contracts, transfers of shares etc. between Cies active in mass media sector are void if directly/indirectly give to one person > 20 % of total revenues in mass media sector. Limit raised to 25 % where person raises at least 2/3 of his revenues from mass media sector.	'Foreign firms' cannot hold majority or "controlling" holding in Cie publishing daily newspapers. The same restriction applies to shareholding in firms which directly or indirectly control the publishing Cie	Trustee Cies prohibited from holding majority/controlling interest in firms publishing daily newspapers. Object must not be other than editing, publishing or activities relating to information.	Daily papers, periodicals + reviews (not foreign language, monthlies or with less than 12 issues a year) and national press agencies must be inscribed in national press register + details of owner, legal representative, other papers edited by firm + place of publication. Notification to the servizio dell'editoria - of: - shareholders' names + n° of shares held - share transfers of >10% (2% if listed)
RADIO		Law n° 103 of 14/4/75 Law n° 223 of 6/8/90	1) National concessions granted to a given entity cannot exceed 25% of number of national channels foreseen in overall frequency plan and in any case can be no more than 3. 2) Cannot obtain licences at both national and local level. 3) For local radio: only 1 concession in any "basin"; total of 7 concessions possible for contiguous "basins"; in total "basins" must have no more than 10 mill. inhabitants. 4) See note C, Multimedia Restr.		Holders of commercial radio + TV licences must be of Italian or European community nationality Majority shareholdings or controlling interests in radio + TV licencee or in Cie controlling licence holder cannot be owned by non-European Community nationals. Exception made for nationals of countries which offer Italy reciprocal rights.	* Persons disqualified from obtaining private radio/TV licence: 1) Cies not having as corporate object radio + TV broadcasting, publishing of information or activity relating to information + visual arts; 2) public Cies; 3) Cies having majority public shareholding; 4) credit institutions; 5) persons convicted under general law; 6) pesons from whom licence has been withdrawn. * Majority shareholding/controlling interest in radio/TV licencee (or controlling Cie) cannot be held by trustee Cies. * Commercial national radio + TV licences can only be granted to Cies or cooperatives having a specified min. capital. * For local radio + TV licences similar rules apply. These can be held also by individuals. * Community radio licences only granted to foundations, associations of cultural, ethnic, political or relgious groups, and cooperatives seeking to serve such ends.	National register kept of radio + TV firms: Ownership + extent of individual shareholdings must be notified. Share transfers of over 10 % (2% for listed Cies) must be notified. TV and radio news services must register under terms of 1948 Press Act with Chancellor of Tribune in area served.
TV		Law n° 103 of 14/4/75 Law n° 223 of 6/8/90	1) Same as for Radio 1 above. 2) Same as for Radio 2 above. 3) For local TV: only 1 concession in any "basin"; total of 3 concessions possible for different "basins" (which may be contiguous); in total basins must have no more than 10 mill. inhabitants (4 contiguous "basins" possible in southern region). 4) See note C, Multimedia Restr.				

LUXEMBOURG

MEDIUM	CONSTITU-TIONAL PROVISONS	KEY APPLICABLE LEGISLATION	MONOMEDIA RESTRICTIONS	MULTI MEDIA RESTRICT.	CAPITAL PARTICIPATION LIMITS	FOREIGN OWNERSHIP RESTRICTIONS	OTHER OWNERSHIP RESTR.	TRANSPARENCY REQUIREMENTS
PRESS	Constitution of October 1868, as amended Articles 19 and 24							
RADIO BROAD-CASTING		Law of 30th July 1991	- local radio: 1 authorisation - regional radio:share only in one company.		regional radio: no one can hold more than 25 %		- local radio:only non-profit making association - regional radio: only company	70% of shares in C.L.T. must be nominative and cannot be transferred without the consent of the Luxembourg government. Control right of an independent commission.
TV BROAD-CASTING		Law of 30th July 1991						

THE NETHERLANDS

MEDIUM	CONSTITUTIONAL PROVISIONS	KEY LEGISLATIVE PROVISIONS	MONO MEDIA RESTR	MULTI-MEDIA RESTRICTIONS	Capital partic. limits	Foreign Owner. Restric.	OTHER OWNERSHIP RESTRICTIONS	TRANSPARENCY REQUIREMENTS
PRESS	Articles 7 and 90-95 of the Constitution of 19/1/1983 Article 7(1) in particular	The Netherlands Media Act (21st April 1987) as amended by: * Decree of 19/11/87 * Law of 13/12/90 * Decree of 09/07/91 * Law of 18/12/91		Press - Audiovisual 1) Private commercial broadcasting licence refused where (i) Applicant holds directly/indirectly 25% or more of daily newspaper market; or (ii) Legal person holds directly/indirectly 25% or more of daily newspaper market and, individually/collectively, with/without agreement with others having voting rights, can either control more than 1/3 of voting rights at meeting of shareholders in applicant or can appoint/discharge more than 1/3 of Members of Board/Commissioners of applicant . 2) Private commercial broadcasting licence revoked where: (i) Commercial broadcaster holds directly/indirectly total share of 25 % or more of daily newspaper market during 2 consecutive calendar years; or (ii) same as 1) (ii) above. 3) Institutions having broadcasting time must not engage in any activities other than provision of their programme.Exception for government institutions, religious organisations, political parties and groups, and spiritual organisations. Restriction inapplicable to private commercial broadcasters. Cable: public - private broadcasters Public institutions, bodies having broadcasting time (excl.religious and philosophical associations), owners/-operators of cable networks and NOB are not authorised to provide programmes for broadcasting by cable. Limited exceptions.				
RADIO	Articles 7 and 90-95 of the Constitution In particular Article 7 (2).						Institutions having national broadcasting time cannot acquire the ownership of staff and equipment required for programme production. Exceptions: religious and spiritual organisations, political parties and groups, and broadcasting organisations which owned radio broadcasting studios on 15/2/85.	
TV	same as for radio						* Disqualified persons for private TV: 1. NL's Broadcasting Production Cie 2. Public authorities 3. Owners/operators of cable networks 4. Institutions having broadcasting time * Same restriction as for radio above.	Before applying for a private broadcasting licence or participating in a private commercial broadcaster, a body which has been allocated broadcasting time must inform the Media Authority

PORTUGAL

MEDIUM	CONSTIT. PROVIS°	APPLICABLE LEGISLATIVE PROVISIONS	MONOMEDIA RESTRICTIONS	CROSS MEDIA RESTRICT.	CAPITAL PARTICIPATION LIMITS	FOREIGN OWNERSHIP RESTRICTIONS	OTHER OWNERSHIP RESTRICTIONS	TRANSPARENCY REQUIREMENTS
PRESS	Articles 37, 38, 39 (as revised)	Law n°: 85-C/75	Generalised legislative condemnation of concentration in the press but as yet no specific legislation on this point.			1) Only entities of portuguese nationality, residing or with Cie seat in Portugal can own periodicals. 2) Foreign share in press Cies limited to 10% and must not give voting rights 3) Directors/-managers of press Cies must be Portuguese	Owners must have full civil and political rights Press agencies/-publishers, editing houses can only have "inherent or complementary' objects to their principal object	* Minister for social communication is to keep following registers: 1. Periodical publications + title, seat, owner, direction and management 2. Press Cies, 3. National press agencies, 4. Editing houses + various details as to seat management etc. 5. Foreign press agencies and seat , constitution + responsible person in Portugal 6. Journalists of the foreign press * Press council to provide annual report on state of Portuguese press * Shareholders + their holdings to be published each April in all periodicals owned by the Cie in question * Shares in press cies must be nominative, (applies also to partner companies) * Periodicals must have printed inter alia, names of director, owner + seat
RADIO		Law n°: 87/88 Decree law n°: 338/88	Positive factor for award of licence applicant is not an existing radio licence holder. Individual/Cie can only hold capital in one radio broadcasting Cie.	Positive factor for licence award 1) Majority share holding by professionals in communication field. 2. Company owning regional journal of at least 3 years standing	Company can only hold shares in one radio broadcasting Cie, and this participation cannot exceed 30% of social capital		Licences awarded to companies only	
TV BROAD-CASTING		Law n°: 58/90 TV Broadcasting may be by means of hertzian waves or cable networks: Art. 3-4	Individuals/Cies cannot participate in capital of more than one candidate society.	The sole object of a licence company must be: "TV activities".	Individuals or companies cannot hold shares in excess of 25% of capital of one candidate society	Licences granted only to Portuguese companies with head office in Portugal. Foreign capital participation in a TV operator cannot exceed 15% of total social capital	Licences only awarded to Cie with as sole object "TV activities". Such activities cannot be performed or financed by: - political parties or associations - local authorities - trade unions	- Shares must be nominative - Programmes to include indication of title, responsible person, cast, author's name, producer and director - Director General for social communication is to keep records of TV operators: inter alia Cie statute, capital participation in other mass media organisations and identities or persons responsible for programming - TV broadcasters are to record + make public time allowed for reply + for political response - TV operators to publish in a national paper each year Cie report and accounts, indicating origin of finance either from own operations of from external sources.

SPAIN

MEDIUM	MAIN CONSTIT. PROVISONS	MAIN LEGISLATIVE PROVISIONS	MONOMEDIA RESTRICTIONS	MULTI Media Restric.	CAPITAL PARTICIPATION LIMITS	FOREIGN OWNERSHIP RESTRICTIONS	OTHER OWNERSHIP RESTRICT.	TRANSPARENCY REQUIREMENTS
PRESS	Constitution of 1978 Articles 20, 128 and 149	Law n°: 21/1984 2nd August						
RADIO		Law n°: 31/1987 of the 18th December	A Cie can only hold 1) 1 radio concession for medium wave 2) No more than 2 for frequency modulation stations. Cie cannot hold majority participation in more than 1 station if substantial overlap in zone of service.			1) Concessionary must have Spanish nationality 2) Foreign investment limited to 25% of total capital (Restrictions not applicable to EEC citizens)		All shares must be nominative, as must those of companies owning shares in the concessionary. All alterations in shareholding or increase in Cie capital which changes existing ownership balance must obtain previous authorisation from the administration
TV		Law n°: 31/1987 of 18th December Law n°: 10/1988 of 3rd May	- 1 licence only. - No Cie can hold shares in more than 1 concessionary.	Licensed Cie must have sole object the management of a public TV service	Cies cannot hold more than 25% of the capital of a concessionary.	Holders of concessions must have Spanish nationality and be domiciled in Spain. Total foreign participation cannot exceed 25% of share capital. (Restrictions not applicable to EEC citizens).	Concessions granted only to Cies which have as sole object the management of a public TV service Min. capital of 1,000 mio pesetas	All shares must be nominative. Special register of concessionary societies established under Ministry of transport, tourism and communi-cations (TTC). All changes to Cie statute and administration must be notified to special register. All share transfers must have prior administrative authorisation.

UNITED KINGDOM

MEDIUM	KEY LEGISLAT. PROVIS.	MONOMEDIA RESTRICTIONS	PRESS - AUDIOVISUAL CROSS OWNERSHIP RESTRICTIONS	MULTIMEDIA RESTRICTIONS IN THE AUDIOVISUAL FIELD	FOREIGN OWNERSHIP RESTRICTIONS	OTHER OWNERSHIP RESTRICTIONS	TRANSPARENCY REQUIREMENTS
PRESS	Broadcasting Act 1990. Fair Trading Act 1973, as amended.	Transfer of newspaper or assets to newspaper proprietor whose papers plus the transfer paper have an average daily circulat. of 500,000 or more copies requires consent of Secretary of State.Provision made for reference to MMC to report on "public interest" of transfer	A) Proprietor of national or local newspaper cannot hold more than a 20% interest in Cie holding: 1. Channel 3 or 5 licence 2. national radio licence Does not apply to local papers + regional Channel 3TV service where no significant overlap in service area.				
RADIO		* Any one person can hold a max. of: - 1 national radio licence - 20 local radio licences - 6 restricted radio licences. * See provisions A &B relating to satellite below.	Provision applies vice versa to limit those with licences in categories 1 and 2 from holding more than a 20% interest in Cie running a national or local paper. Proprietor of a national newspaper who holds more than a 5% interest (and up to 20% interest) in Cie holding: 1. Channel 3 or 5 TV licence. 2. national radio licence, cannot hold > 5% interest in any other such Cie . Provision applies also vice versa. B) Restriction on local accumulations	A) Holder of licence for 1. regional/nat. Channel 3 or Channel 5; or 2. domestic satellite; or 3. national radio cannot hold > 20% interest in Cie holding licence for either of the other 2 categories. B) Holder of non-domestic satellite licence or foreign satell. broadcaster with service intended for general reception in UK cannot hold > 20% interest in Cie holding licence for any of categories A 1,2 or 3 above. Provision applies also vice-versa. C) Holder of licence for: 1. regional or nat.Channel 3 or Channel 5; or 2. national radio cannot hold > 20% interest in Cie holding satellite radio licence. Provision applies also vice-versa. D) Holder of licence for: 1. local delivery services; or 2. local radio; or 3. regional Channel 3 cannot hold > 20% interest in Cie holding licence for either of the other 2 categories if there is a significant overlap of zones.	Persons disqualified from holding ITC/RA licences: 1. Individual: not being EC national ordinarily resident within EC; nor ordinarily resident in UK/Isle of Man/ Channel Islands. 2. Cie: not formed under law of EC Member State with regd/head office or principal place of business within EC; nor incorporated under law of Isle of Man/Channel Islands. 3. body controlled by any one or more of 1 or 2 above. Disqualification does not apply to licences for: - local delivery services (cable and MVDS)- non-domestic satell. radio + satell. TV services; - licensable programme (i.e.non-TV) and licensable sound programme services; - additional services.	Persons disqualified from holding ITC/RA licences: 1) For radio only: body (other than local authority) receiving >50% of its income in last financial year from public funds; certain related bodies; Cies in which they have > 5% interest. 2) local authority & Cie in which it has > 5% interest. 3) body whose objects are wholly/mainly of a political nature; certain related bodies; Cie in which they have > 5% interest. 4) body whose objects are wholly/mainly of religious nature; certain related bodies; Cie in which they have > 5% interest. Disqualification does not apply to licence for non-domestic satelite service; licensable programme service; and non-national independent radio service where ITC/RA deems this to be appropriate. 5) Person subject to "undue influence" of local authority or political body and certain related bodies where ITC/RA deems this contrary to "public interest". For radio: disqualification applies also where such "undue influence" is exerted by bodies in 1) above. 6) BBC, Welsh Authority and certain related bodies. 7) Advertising agencies and certain related bodies; Cie in which they have >5% interest. 8) Secretary of State may disqualify nat. public telecoms operators + certain related bodies.	ITC has wide powers to obtain information from licencees. It may impose a licence condition requiring licencees to give advance notice of proposals affecting share-holdings or directors. RA also has wide powers to obtain information from its licensees. May also impose conditions requiring notification or proposals affecting shareholdings or directors.
TV		* Any one person can hold a max. of: - 2 regional Channel 3 licences - 1 national Channel 3 licence - 1 Channel 5 licence. * Holder of licence for : - regional Channel 3; or - national Channel3; or - Channel 5, cannot hold > 20 % interest in Cie which holds licence for either of the other two categories.					
SATELL. TV/radio (non dom/ domestic satell. service = TV)		A) Holder of satellite radio licence cannot hold > 20 % interest in Cie holding national radio licence. Provision applies also vice-versa. B) Holder of "domestic" satellite radio licence cannot hold > 20 % interest in Cie holding "non-domestic" satellite radio licence. Provision applies also vice-versa. C) Holder of non-domestic satellite licence or foreign satellite broadcaster with service intended for general reception in UK cannot hold > 20 % interest in Cie holding domestic satellite licence. Provision applies also vice-versa.	Proprietor of a local newspaper cannot hold more than a 20% interest in Cie holding licence to provide: 1. local radio service 2. local delivery service where there is a significant overlap of zones. Provision applies vice versa to limit those with licences in categories 1. and 2. holding > 20 % in a local newspaper Cie.				

II. OVERVIEW

The position regarding national laws on media ownership may be summed up as follows:

1. Aim of the measures: to regulate access to the capital of media companies

There are four types of restrictions on media ownership.

(a) Restrictions on multiple ownership in the same medium (monomedia)

In order to prevent a situation where a single business controls or influences several media of the same category (newspapers, radio, television) certain national laws prohibit the cumulation of radio (D, F, GR, I, L) or television (D, E, F, GR, I, UK) broadcasting licences, holdings in other broadcasters (D, E, F, I, P, UK), or circulation in excess of a certain market share for all daily newspapers (F, I) or require that prior consent be obtained before a particular circulation figure is exceeded (UK).

(b) Restriction on multiple ownership across several media (multimedia)

In order to prevent the same operator from controlling or influencing several media of different types, certain national laws prohibit the possibility of having a broadcasting licence or acquiring holdings in a broadcasting company if the applicant exceeds a certain press circulation figure (D, E, F, I, L, NL, UK). These restrictions also exist between television and radio in some countries (DK, B Fr. + Fl, E, F, I, P, UK).

(c) **Restriction to a fixed maximum level of the first holding in a broadcasting company**

Some laws restrict the maximum stake of one shareholder in a television (E, F, GR, P, D) or radio (D, GR, P) broadcasting company or prevent an operator from having a decisive influence (DK). This type of provision seeks to dilute the influence that a majority shareholder could have and to promote a diversity of shareholders which could be reflected at the programming level by a diversity of programme content.

(d) **Restriction on holdings in a broadcasting company because of the nature of the activities of certain licence applicants**

Some laws (B Fr., I, NL, P, UK) do not allow holdings in broadcasting companies by applicants whose activities could give rise to problems from the point of view of diversity of information or editorial independence (e.g. political parties).

(e) **Measures aiming to ensure transparency**

To complement these measures and ensure that they are properly applied, requirements regarding the identification of all the operators involved and of their activities are laid down, to varying extents, in most Member States.

2. Type of measures: regulations and powers of discretion

The anti-concentration regulations may either lay down maximum limits or specific conditions, or establish very broad criteria which leave wide-ranging powers of discretion to the authorities responsible for applying them. The latter type of regulation can be found in Ireland (press: "common good"; radio: "undue number of radio contracts"; multimedia: "undue amount of communication media"), in the United Kingdom (press: "public interest") and in Denmark (radio/TV: "decisive influence"). Outside those countries, the regulations lay down fairly specific rules, even if they leave a not insignificant role to the authorities responsible for interpreting them.

Moreover, more specific action on the part of the supervisory authorities may in some cases be aimed at finding an ad hoc solution to the question of the ownership structure of a company. For example, in the United Kingdom, the IBA and the ITC (its successor) intervened in December 1990, following the BSkyB merger (which constituted a breach of BSB's programme contract), calling for the setting-up of a specific decision-making structure consisting of two independent directors, one appointed by BSB, and the other by News International, who will have to be approved by ITC and will have a right of veto in the "Compliance Committee of the Board". Similarly, when the Hachette group acquired control of the French channel "La Cinq", the Conseil Supérieur de l'Audiovisuel gave its accord to the capital restructuring plan on 23 October 1990 subject to certain conditions, including an obligation to seek its authorization for any holding acquired in a radio station and to inform it in advance of any proposed holdings in companies in the communications sector.

3. The disparity of the measures: differences in scope and in the degree of the restrictions

The legislative provisions vary to a considerable extent (see table) particularly as regards the *type of restriction* (see section 1), the *scope of restrictions* on media ownership (particularly for the monomedia press or for the multimedia), the *degree of constraint* (number of licences or holdings that may be cumulated, possible percentages), the *methods of applying the restrictions* such as the reference basis (TV - satellite/terrestrial (F, UK), general/specialized information programme (D), national/regional (F, I, UK)) or assessment criteria other than the percentage levels (see section 2 above).

4. Origin of the measures: a recent legislative development

Laws on media ownership are a fairly recent phenomenon, their adoption having coincided with the liberalization of the audiovisual sector. This new generation of laws can be dated fairly definitely to the second half of the 80s (86: F; 88: E, GR; 90: I, UK, DK, P; 91: D, B,FR, L) and is still expanding (92: NL), with some Member States taking advantage of the amendments to their legislation on the audiovisual sector required by the transposition of the Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

In the case of the press, the rules on the multimedia belong to this same legislative movement, while the monomedia provisions specific to it cannot be attributed to a definite period: UK: 73; IRL: 78 (+ 87); D: 80 (+ 85); I: 81 (+87, 90), F: 86. This is because there was no "liberalization" phase in this sector.

5. Special cases: politically sensitive laws responding to specific circumstances

These regulatory measures often display the common feature of having been adopted in a politically charged context (as the debates in national parliaments reveal) and having been conceived in response to national circumstances of the moment. This clearly applies, for example, in the case of the French, Italian, United Kingdom or German laws which have been tailored to the circumstances of the main operators in those countries. The effect of this political dimension is to create regulatory frameworks which are sometimes difficult to administer, because of the very delicate and vulnerable balances which have been achieved, which are not always attuned to changes in the sector and differ significantly from one another because each deals with a specific situation.

Conclusion

Since the mid-80s, Member States have adopted a whole range of regulations restricting ownership of the media in order to safeguard pluralism. It is typical of these restrictions, which should not be confused with those which discriminate against Community nationals, that they differ widely.

Examples of disparities:
possibilities of controlling a Television Channel depending on the characteristics of the acquiring company*

Acquiring company	PRESS Circulation > 8%	PRESS Circulation > 20%	PRESS Circulation >25%	TELEVISION
United Kingdom	Channel 3 and 5: No Satellite: No restrictions	Channel 3 and 5: No Satellite: No restrictions	Channel 3 and 5: No Satellite: No restrictions	Channel 3: 2 Satellite: No restrictions
Italy	1	No	No	3
France	No restrictions	No restrictions	Terrestrial: 1 Satellite: No restrictions	Terrestrial: 1 Satellite: 2
Netherlands	1	1	No	No restrictions
Germany	Lgnder	Lgnder	Lgnder	2 (of which only one general or specialized information programme)

* Simplified presentation which does not take account of all the possible combinations, particularly at local level, and which relates only to restrictions on control (licence) and not to those on minority holdings.

Part Four

ASSESSMENT OF THE NEED FOR ACTION

The need for action by the Community has to be assessed in the light of Community objectives, the requirements flowing from them, and the principles of subsidiarity and proportionality.

Chapter I. COMMUNITY OBJECTIVES

The sole objective of safeguarding the pluralism of the media, as such, is 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. This situation does not, however, affect the other existing Community objectives and powers. A look therefore needs to be taken at those Community objectives which might be affected by questions of pluralism.

1. The completion and functioning of the internal market

One objective in this category is that of establishing the internal market, set out in Article 8a of the EEC Treaty and Article G § B 3 of the Treaty on European Union, since, in the media sector, it could be affected by national regulations brought in to safeguard pluralism of the media. This aspect was stressed in the Parliament resolution of 16 September 1992.[17] Moreover, the achievement of this objective could help to increase pluralism by providing opportunities for media companies.

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17 Resolution on media concentration and diversity of opinions, paragraph W: *"whereas differing national laws on media concentration can 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 on activities in the media;"*

II. Industrial policy

The objective of strengthening the competitiveness of Community industry was the subject of a Commission communication of 26 November 1991 on industrial policy and is expressly laid down in Article G § B 3 of the Treaty on European Union. In the case of the audiovisual sector, this objective is also referred to in the Commission communication of 21 February 1990 on audiovisual policy.

This objective is affected since the national regulatory framework for mergers influences the competitiveness of media companies. Moreover, the achievement of this objective can also contribute to pluralism in the media by fostering the competitiveness of media companies. In this respect, Parliament, in its resolution of 16 September, stressed the importance of having *"an economically viable media sector, permitting the formation and development of a variety of media companies of all sizes"*,[18] and of facilitating *"the formation and development of media companies at European level so as to promote pluralism by increasing the provision of information"*.[19]

18 Paragraph K
19 Paragraph M.

III. Audiovisual policy

In its communication on audiovisual policy[20] the Commission expressly stated that "the establishment of the European audiovisual space does not derive merely from its wish to promote the audiovisual industry but also from the importance attached by the Community to the requirements of a democratic society, such as, notably, the respect for pluralism in the media and for freedom of expression. The Community's audiovisual policy seeks therefore, also, to ensure that the audiovisual sector is not developed at the expense of pluralism ...". The objective of implementing audiovisual policy therefore requires that pluralism should not be affected. Parliament focused on this objective of safeguarding pluralism both in its resolution of 15 February 1990[21] and in that of 16 September 1992.[22]

IV. Respect of fundamental rights

Respect of fundamental rights is essential to the way in which the Community works. Article F(2) of the Treaty on European Union reaffirmed the case-law of the Court on 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 has thus explicitly ruled that fundamental rights must be protected within the framework of the structure and objectives of the Community.[23] Given the close links between the question of protecting pluralism and freedom of expression,[24] it is, then, an obligation which embraces the three previous objectives and which determines how they are defined and achieved.

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20 COM(90)78 final.

21 Resolution on media takeovers and mergers, OJ C 68, 19.3.1990; see paragraph B: "whereas restrictions on concentration 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".

22 Resolution on media concentration and diversity of opinions, paragraph C.

23 Case 11/1970 Internationale Handelsgesellschaft [ECR] 1970 1125.

24 See Part One above.

Chapter II. NEEDS IN THE LIGHT OF COMMUNITY OBJECTIVES

The need for action must be assessed in the light of the objectives set out above. These objectives can be grouped around, firstly, completion of the internal market (which includes industrial policy) and, secondly, audiovisual policy which seeks to ensure that the sector does not develop at the expense of pluralism.

The nature of these objectives differs: those associated with the single market, expressly set out in the Treaty on European Union, involve an obligation to eliminate obstacles to the establishment or functioning of the single market and to strengthen the competitiveness of industry in the Community; the objective linked to the safeguarding of pluralism, which is not mentioned as such in the Treaty on European Union, requires the Community to ensure, *within the limits of its powers,* that such pluralism is not undermined or indeed is promoted.

The distinction between these two types of objective does not, however, mean that they are necessarily conflicting. On the contrary, they may complement each other since the single market and industrial policy may contribute to pluralism by promoting the economic development of the media sector.

Making this distinction enables us to tackle the two questions that have to be answered in order to determine what action is needed at Community level:

- to what extent do media mergers and the regulatory framework governing them at national level have negative effects on the functioning of the single market?

- to what extent are there risks to pluralism which could be dealt with at Community level in the framework of Community objectives and powers?

This second question will be looked into first, given that it is the one of most concern to Parliament.

Section 1. IDENTIFICATION OF NEEDS IN THE LIGHT OF THE OBJECTIVE OF PLURALISM

In order to identify what measures might be needed, the present methods of limiting the effects of mergers on pluralism have to be assessed to see whether they show any shortcomings in terms of the Community framework. It is not a question of assessing in abstracto the qualities of protective systems but of determining to what extent the Community environment has an impact on their effectiveness in terms of safeguarding pluralism and could affect them.

To this end, the two existing levels of action to control mergers will be looked at: at national level, competition law and the anti-concentration rules specific to the media; at Community level, Community competition law.

Subsection 1. Effectiveness of national safeguards

A distinction has to be made between needs arising from any deficiencies in a national system for safeguarding pluralism and those arising from the fact that national systems cannot cover situations with a Community dimension. In the former case, the deficiencies are attributable to the choices which have been made by the national authorities themselves,[25] whereas in the latter, the deficiencies could be due to circumstances outside the national authorities' control. Only the latter will be considered here.

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25 Thus, the example occasionally referred to of the BskyB merger falls into the first category, since this merger is not in breach of the UK system introduced by the Broadcasting Act and cannot be considered as an example of the limits of the application of a national law alone. The recent dispute between Mr Berlusconi and Mr Benedetti also comes into the first category.

The Commission has not so far come across any obvious case where the application of national rules alone has not been sufficient to protect pluralism because of their purely national scope. However, reference is generally made to certain aspects to underline the virtual limits of national systems set up to safeguard pluralism in the face of concentration: the risks of circumvention, the impossibility of controlling mergers at the national level and the problem of transparency.

I. Risks of circumvention

The problem. It is theoretically possible that a media company would seek to circumvent the anti-concentration law of one Member State by establishing itself in another Member State and broadcasting programmes from there to an audience in the first State. To this end, it could invoke the principles of free movement of services and, in the case of television, the "Television without frontiers" Directive. For example, a broadcaster could establish itself in a country in which there are no anti-concentration rules in order to broadcast by satellite to another country in which it would not have obtained a licence, had it requested one, because it would have exceeded the limit for cumulating licences. Although such a case has never arisen, it is often referred to to underline the inadequacies of the protection granted by national laws. The press sector is less affected since the restrictions generally regulate the granting of broadcasting licenses.

Legal assessment. The situation in question must be assessed in the light of the principle of free movement of services laid down in Article 59 of the Treaty and in Directive 89/552/EEC "Television without frontiers". Television broadcasts from another Member State must be regarded as services normally provided for remuneration within the meaning of the Treaty.[26]

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26 See "Television without frontiers, Green Paper on the establishment of a common market in broadcasting, especially by satellite and cable"; COM(84) 300 final, part 5, A, 1; and Case 352/85 Bond van Adveteerders et al. 26 April 1988 [ECR] 2085.

A measure aimed at preventing the reception or retransmission of a broadcast originating from another Member State because it would be in breach of laws on pluralism would constitute a restriction on the free movement of services. It is therefore necessary to determine to what extent a Member State may restrict the free movement of services on grounds relating to pluralism. For this purpose, a distinction needs to be made between a discriminatory restriction, i.e. discrimination against the person providing the service on the grounds of his nationality or the fact that he is established in a Member State other than that in which the service is provided, and a restriction applied without distinction to both nationals and persons from other Community countries. The measure would be discriminatory if, for example, it restricted shareholdings by non-nationals or non-residents. The restriction would be applied without distinction if, for example, the limit on the shareholding applied to both nationals and foreigners.

§1. Discriminatory restrictions

A Member State may impose a discriminatory restriction in terms of nationality reasons only on one of the referred to in Article 56 of the Treaty (public policy, public security or public health) and even then subject to checks of its proportionality.[27]

27 Case 229/83 Leclerc [ECR] 1985, paragraph 30. The Court has already had occasion to rule, in relation to Article 36 of the Treaty, that "since it derogates from a fundamental rule of the Treaty, Article 36 must be interpreted strictly and cannot be extended to cover objectives not expressly enumerated therein".

Pluralism could not be invoked as a reason for discrimination, since it cannot be associated with any of these three reasons. In its Groppera judgment,[28] the European Court of Human Rights linked pluralism not to the requirements of public order or public security but to respect for the rights of others, which is not mentioned in Article 56 of the Treaty. As the Court of Justice stated in its judgment of 18 June 1991, "the limitations imposed on the power of the Member States to apply the provisions referred to in Article 66 and 56 of the Treaty on grounds of public order, public security and public health must be appraised in the light of the general principle of freedom of expression embodied in Article 10 of the European Convention on Human Rights" (Case 260/89, paragraph 45). This means that Member States cannot invoke grounds which would go beyond what is permitted by paragraph 2 of Article 10 and, in this case, could not therefore invoke public order which was not used by the European Court of Human Rights.

§2. Indistincly applied restrictions

In the absence of any harmonization of laws, a Member State could restrict a television broadcast from another Member State which would not conform to its rules on pluralism only if such a restriction is applied without distinction and if the following conditions are observed: the restriction is justified on imperative public interest grounds; the requirements which the relevant law meets are not already satisfied by the rules imposed on the provider of the services in his own State; and the restriction is not disproportionate to the objective sought (since the measure is likely to ensure that the objective is achieved and does not go beyond what is strictly necessary to that end).

In order to assess whether restrictions which are applied without distinction can satisfy these conditions, the measures giving rise to the restriction must be divided into those relating to the services themselves and those applied to the provider of the service.

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28 See Part One above.

A Measures relating to the provider of the service

(a) Restriction

The restriction would consist in applying to a broadcaster from another Member State the regulations on media ownership applicable to national broadcasters and preventing the retransmission of its broadcasts since it does not satisfy the conditions laid down by that legislation. For the purposes of measuring the level of concentration, the laws of some Member States put foreign broadcasters whose broadcasts are received on their territory on a par with national broadcasters.

In *Germany*, Article 21 of the Treaty of August 1991 concluded between the Länder on broadcasting in the unified Germany restricts to two the number of national programmes (of which only one general or special interest); it provides to this end that the other German-language programmes from the same broadcaster which can be received in the entire Federal area must be included in the count. Thus an Austrian broadcaster also broadcasting in Germany, without intending to circumvent German legislation (the programmes have an "Austrian" content for example), will none the less be counted for the purposes of monitoring compliance with Article 21 and, for example, will not therefore be able to have a second general channel retransmitted in Germany (with "German" content). Should a channel be involved which comes under the rules of a Member State and circumvention covered by the Van Binsbergen judgment does not occur, this provision might give rise to a restriction of the freedom to provide services.

In *France*, Article 41(3) of the Law of 30 September 1986 treats the operator of a satellite television channel broadcast from abroad and normally received in French on French territory in the same way as a licence-holder. This rule could possibly be invoked to restrict the retransmission of such channels where the position of the broadcaster was incompatible with anti-concentration rules such as those restricting the maximum shareholding by one person to 50% or limiting the number of licences for satellite channels to two. Similarly, the system of agreements set up for the cable retransmission of channels enables the CSA to impose obligations to safeguard pluralism.

In the ***United Kingdom***, the 1990 Broadcasting Act[29] subjects persons who have a satellite television channel broadcast on a frequency which has not been allocated by the United Kingdom and which according to the ITC is intended for general reception in the United Kingdom (even if it is also intended for reception elsewhere) to the same restrictions on the ownership of other channels as those applicable to "non-domestic satellite services". The channels of the other Member States could therefore be affected by the application of such a provision.

Apart from these cases, it is reasonable to assume that where there is no specific provision to this effect, the licensing authorities use their discretionary powers to take account of the applicant's position in respect of concentration. This might go as far as including media holdings and control in other States even if the media are not broadcast or circulated in the territory of the State granting the licence.[30] In this respect, an improvement in the exchange of information on cross-border concentration as called for by the Council of Europe[31] for example could assist such assessment.

(b) Absence of similar rules in the Member State of origin

This condition would probably be met in most cases because the laws on this matter differ and because national laws usually deal only with national situations.

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29 Schedule 2, Part III, paragraph 6(2).

30 This case does not appear to exist, at least not explicitly, in anti-concentration laws since they refer in most cases either explicitly to the country ("total print run of newspapers in Italy", for example) or to a reference area (local, for example) or, again, to the "national" character of the channel or distribution network.

31 Resolution adopted at the third European Ministerial Conference on mass communications policy, Nicosia, 9 and 10 October 1991.

(c) Imperative reasons of public interest

The objective of safeguarding pluralism may be one of the imperative reasons of public interest justifying restrictions applied without distinction. This may be deduced from the case-law of the Court in Strasbourg on Article 10(2) of the Convention for the protection of human rights and fundamental freedoms which includes pluralism among the legitimate objectives that may justify derogations to the principle of freedom of expression contained in Article 10(1). Moreover, in the two judgments of 25 July 1991[32] the Court of Justice of the European Communities held that *"cultural policy might afford an imperative reason of public interest justifying a restriction on the freedom to provide services. Indeed, the preservation of pluralism which the Netherlands' policy sought is related to freedom of expression, as upheld by Article 10 of the Convention for the protection of human rights and fundamental freedoms"*.[33]

In the case in question the Court did not accept the grounds invoked by the Netherlands Government not because of the objective pursued but because of the condition of proportionality.[34] Conversely, this means that the objective of safeguarding pluralism may justify non-discriminatory restrictions on the free movement of services as long as the measures which seek to achieve that objective do not create a disproportionately restrictive effect.

(d) Proportionality of the restriction

In order to be justified, the restrictive measure must be appropriate to the purpose of achieving the objective sought and not exceed what is strictly necessary to that end.

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32 Judgments of 25.7.91 in Cases 288/89 and 353/89, not yet reported.

33 Case 353/89, paragraph 30. The wording used by the Court might be taken to suggest that it is more cultural policy than the protection of pluralism which constitutes the public interest. Yet the next paragraph removes the ambiguity by stating that the measure in question "exceeds its aim of protecting freedom of expression" (paragraph 31).

34 See below.

Case-law of the Court of Justice. The two judgments of 25 July 1991 on the Dutch law on the media constitute, so far, the only cases examined by the Court in which pluralism was invoked to justify a restriction. In these two judgments the Court ruled that the condition of proportionality was not met because one of the provisions[35] subject to complaint exceeded the objective sought[36] and the other[37] was not appropriate to the objective.[38]

It is not possible to deduce from this particular case that, a priori, any restriction on the free movement of services with pluralism as its objective would be disproportionate and thus unjustified. In this case, the provisions in question were not specific to the preservation of pluralism (as on the ownership of the media, for example) but were rules on advertising aimed at preserving the non-commercial character of broadcasters. It was therefore difficult to claim that application of these provisions was appropriate to the objective of preserving pluralism.

The case where the restriction consisted in applying a provision specific to pluralism, such as that restricting ownership of the media, to a broadcaster from another Member State has not yet been examined by the Court. Having regard to certain national provisions,[39] it is not, however, impossible that such a case could one day be brought before the Court.

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35 On the obligation to use the services of the Bedrijf for the production of all, or part, of their radio or television broadcasts.

36 Since pluralism in the audiovisual sector of a Member State cannot in any way be affected by enabling the various national broadcasting organizations to call upon the services provided by persons established in other Member States (paragraph 31).

37 The conditions governing the structure of broadcasting organizations established in other Member States.

38 "In order to guarantee pluralism in the audiovisual sector, it is far from essential for national legislation to require broadcasting organizations established in other Member States to conform to the Dutch model [...]. For the purpose of guaranteeing the pluralism which it seeks to preserve the Netherlands Government could properly confine itself to formulating the internal rules of its own organizations in an appropriate manner" (paragraph 42).

39 See above.

Using the yardstick of proportionality, the restrictive effect caused by the application of national anti-concentration rules to a broadcaster from another Member State is difficult to justify.

- Proceeding on a case-by-case basis, it will be necessary to assess whether the restrictive measure is appropriate to the objective of pluralism. For example, this condition would be difficult to satisfy in a case where a Member State took account of the extent of ownership of media other than those broadcast or circulated on its territory. A foreign broadcaster would thus have his holdings in other Member States taken into account in any check on whether the limits laid down in the receiving State had been exceeded. Aggregating such holdings would rapidly lead to a situation where reception of foreign broadcasters was prevented in a particular State. Such a multiterritorial criterion should be regarded as unjustified since it is not apparent how the control of media in one State could affect pluralism in another when those media do not operate there.

Similarly, the condition of appropriateness would not be satisfied where the restrictive measure preventing the reception of a broadcast by a broadcaster established in another Member State also prevented that broadcaster from broadcasting programmes in the territory in which it is established or in that of other Member States. In such a case the measure could have the effect of preventing the broadcaster from contributing to pluralism in its own country or in others. Application of the national law is not, then, an appropriate means of preserving pluralism since it has the effect of restricting it in another State.

- It will also be necessary, still on a case-by-case basis, to assess whether the restrictive measure does not exceed what is strictly necessary.

This condition would not be easy to meet in a case where a Member State applied its rules to channels originating from other Member States which did not really threaten pluralism because of, for example, a very small actual audience, because of the language (or languages) used, or because of a programme's content that is not specifically geared to the general public. In such a case the measure would not be "objectively necessary"[40] to achieve the desired objective which is not to apply national legislation as such but to preserve pluralism.

In all these cases, the Member State of origin would actually be attempting to give an extra territorial effect to its conception of pluralism. However, there is no doubt that the monitoring of proportionality soon becomes a very delicate exercise because of the subjective element in the assessment that it requires and the difficulty of distinguishing it from cases which could be covered by case-law on circumvention in the strict sense of the term.

(e) Case-law on circumvention of legislation

In the light of the so-called "van Binsbergen" judgment,[41] the circumvention of anti-concentration law could, subject to the conditions laid down by the Court being satisfied, justify a restriction on the free movement of services.

According to this judgment, the *conditions necessary* for a restriction to be justified are as follows: the activity in question must be entirely or principally directed towards the territory of another Member State (objective condition), for the purpose of avoiding the professional rules of conduct which would be applicable in the Member State of origin (subjective condition), and the situation comes under the chapter relating to the right of establishment and not the one on the provision of services.

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40 Judgment of 26.2.1991 in Case 180/89 Commission v Italy, not yet reported, paragraph 17.

41 Case 33/74, [ECR] 1974, 1299, paragraph 13; see also the "co-insurance" judgment in Case 205/84 [ECR] 1986, 3755, paragraph 22.

The *legal basis* for this case-law is not explicit apart from the fact that it has to do with the dividing line between the right of establishment and freedom to provide services.[42] The basis may lie in the implementation of a general principle which would prohibit the abuse of a right, but also in the case-law on the actual definition of what is a service. In the former case, the basis would be purely judicial, while in the latter it would rest on the inapplicability of Article 59 of the Treaty since the situation could not be described as a service within the meaning of Article 60 of the Treaty because the condition relating to its cross-border character would not be met. In certain instances of circumvention of legislation it would be possibly necessary to consider that all the relevant elements had to be confined within the same Member State,[43] which, as the Court has ruled,[44] would prevent the application of provisions on the free movement of services. Such an approach would moreover complement that of the actual and permanent establishment developed by the Court in its Factortame[45] judgment on the right of establishment. However, as the Court has not yet applied this judgment to a specific case, this question remains open.

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42 As is confirmed, firstly, by the last part of paragraph 13 of the van Binsbergen judgment and, secondly, by the fact that in the same judgment the Court (contrary to its practice in subsequent judgments relating to Article 59) did not devote a special paragraph to the question of whether there was indeed a service within the meaning of Article 60; if this had been the case, it would have been possible to conclude that the question of circumvention is quite separate from that of the nature of the activity in question (whether or not it is a cross-border service).

43 Judgment of 18.3.1992 in Case 52/79 [ECR] 833, paragraph 9.

44 Idem and Judgment of 26.2.1991 in Case 198/89, Commission v Italy, not yet reported, paragraph 9.

45 Case 221/89, not yet reported; paragraph 20 states that the concept of establishment, within the meaning of Articles 52 et seq. of the Treaty, implies the effective exercise of an economic activity by means of a fixed establishment in another Member State for an unspecified period".

The *difficulties of interpreting* and applying this case-law are clear. The objective and subjective conditions give the Court wide discretionary powers, particularly the latter which requires the identification of intent,[46] i.e. the actual motive of the person providing the services. It would be necessary, in particular, to prove that the intention to circumvent anti-concentration rules, as such, and not other rules,[47] had played a decisive role in the choice of location. Moreover, the appraisal would have to take account of the fact that an operator may legitimately attempt to use the opportunities provided by the single market in the Community. Reliance on a set of indices will not prevent this control from being very discretionary in nature.[48]

B Measures relating to services

Compared with the measures relating to the provider of the services (rules on media ownership), those relating to the services themselves (rules on the content of broadcasts), the application of which to broadcasts from another Member State would give rise to the restriction, raise different questions. The "Television without frontiers" Directive already coordinates those areas relating to the content of broadcasts which, in accordance with the Debauve judgment, could have justified restrictions on the free movement of television broadcasts.

46 Even in a case which would involve identifying the cross-border nature of the service (and not abuse of a right) since the process of determining the State in which the "relevant elements" of the activity are confined or of the "effective exercise" (Factortame judgment, op cit.) of the latter could also cover the actual intentions of the person providing the services.

47 In particular if they do not pursue an objective in the public interest.

48 Apart perhaps from cases involving a broadcaster whose audience was entirely in the receiving country, whose programmes were prepared in the receiving country, whose management bodies were also located there and which had no other similar channels broadcast to other countries from the same country of origin. In this case one could dispute the existence of a cross-border service since all the relevant elements would in reality be in one and the same State.

The fact that provisions relating to pluralism such as obligations concerning neutrality, objectivity, the sharing of air time, political advertising, the ban on publishing or broadcasting opinion polls, etc. do not form part of these coordinated areas means that a priori they were not identified as being likely to give rise in practice to risks of restrictions on the free retransmission of broadcasts from another Member State which would have justified their harmonization.

However, this does not mean that these provisions could never justify certain restrictions in the light of Community law. As with measures relating to the provider of the services, the condition relating to the pursuit of a public-interest objective would be met. The condition concerning the absence of a similar rule in the State would also be met in most cases. The requirement that the measure must not be disproportionate would however make it unlikely that the programmes of a particular channel would be interrupted.[49] Certain obligations could not reasonably be imposed (threatening a ban on retransmission) on a cross-border channel, such as those requiring the various shades of opinion in society to be reflected. Moreover, only the particular programming complained of, such as a political advertising clip regularly broadcast over a fairly long period and aimed at a country in which it would be prohibited, could be the subject of an interruption.[50] It should be stressed that "circumventions" will be more blatant here than in cases involving rules on media ownership[51] and therefore the control of proportionality should be less difficult and give rise to fewer conflicts and less legal uncertainty.

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49 Article 10 of the European Convention on Human Rights would provide a very important framework for assessing the need for the restriction.

50 It would still be necessary to prove that this is the least stringent measure in relation to the interest to be protected and that the same measure would be applied to national broadcasters committing the same infringement. Moreover, if the clip was not intended for that country it would be disproportionate to prevent its retransmission when it could be authorized in the country at which it is aimed.

51 Since it will be easier to show that the particular programme is adapted to the receiving country because of the national character of political life in the Member States (publicity for a national political personality for example) and therefore that only a restriction on the programme in question is an appropriate means of putting an end to the situation. In the case of rules on media ownership it will be difficult to prove that the restriction is necessary to safeguard pluralism (see above) since the incompatibility resides in capital holdings and not in programming on the screen.

However, in practice the risk of a circumvention taking place is not great because the financial stakes are low[52] and because operators' strategy would generally seem to be dictated by commercial rather than political objectives.[53]

CONCLUSION

In the light of the legal assessment, Member States would be able, if certain conditions are met, to restrict television broadcasts from another Member State which would circumvent national rules to safeguard pluralism and would threaten pluralism. Apart from cases of circumvention in the strict sense, it would be more difficult (control of proportionality), although not impossible, for a Member State to restrict the retransmission of a channel from another Member State which was in breach of national rules on pluralism, albeit not intentionally.

However, giving practical effect to this possibility of restricting broadcasts could be a difficult matter where rules on media ownership are involved and could give rise to disputes because of differences in assessing a given situation. In this connection, particular attention needs to be given to two factors:

52 Contrary to broadcasts such as commercial advertising, programmes of a political nature which circumvented national rules would probably not generate enough revenue to make the risks worthwhile.

53 See "Study on pluralism and concentration in media-economic evaluation" cited on p. 10 above.

. *Uncertainties regarding the definition of circumvention*

The application of Court judgments on circumventions of the law will give rise to major problems of interpretation, since the same situation can be seen in different lights by the States in question. In particular, it will always be possible for the broadcaster to invoke the fact that it broadcasts to other countries to contest that circumvention has taken place. These other countries could also adopt the broadcaster's position and contest the fact that the State whose legislation has been circumvented should in the process challenge the State of establishment's approach to pluralism. Moreover, given that broadcasting is an activity which requires authorization by the public authorities, the State which had granted a licence would be indirectly involved in the event of a dispute. Therefore the discussion would concern the substance i.e. the ability of each system to genuinely protect pluralism.[54] This legal uncertainty is not a theoretical problem because even in areas already coordinated by the "Television without frontiers" Directive, fears of circumvention are sometimes invoked;[55] this will *a fortiori* happen even more frequently in areas of pluralism which are not coordinated by a directive.

. The difficulty of taking technical measures against an operator whose activities were circumventing a law. In the case of satellite broadcasting this aspect should not be overlooked, even if it would mainly concern cases of individual reception (cable networks being easier to *control). It is probable that in the event of a prolonged dispute as to whether legislation had been circumvented, the broadcaster would continue its activities because it would be materially impossible for the State whose law had been circumvented to stop them. The latter would have to make direct representations to the State responsible for the broadcaster and thus give the dispute a political dimension.*

54 Why should the restriction of cumulation to one national terrestrial channel as in France be more (or less) legitimate than a limitation to three as in Italy?

55 E.g. in the case of the plan to set up a Luxembourg French language film channel broadcasting by satellite.

II. Merger control at the national level

In competition law, too, Member States are legally entitled to defend themselves against operations with a Community dimension which may be covered by the Community principles of free movement: the fact that a merger has a Community dimension, and consequently falls within Community competition law rather than national competition law, does not prevent Member States from taking measures to protect pluralism at national level.

Article 21(3) of the Merger Control Regulation expressly allows Member States to go on taking appropriate measures to protect "plurality of the media" even where the Commission does not act against a merger. If no provision of this kind had been made, paragraphs 1 and 2 of the same Article would have deprived the Member States of authority over any merger within the scope of the Regulation; such mergers would have become a matter exclusively for the Commission and the Court of Justice.

The discretion given to the Member States by Article 21(3) is not unlimited, however, as the measures they take must be "compatible with the general principles and other provisions of Community law" (first subparagraph ofArticle 21(3)). This means in particular that the measures must not be incompatible with the principle of free movement enshrined in Article 59 of the EEC Treaty and in the "Television without frontiers" Directive. The reference to general principles is important; in the light of the case-law on fundamental rights developed by the Court of Justice, it means that any restrictions those measures may impose, being in the nature of exceptions to general rule (Part One), cannot go beyond the exceptions permitted by Article 10(1) of the European Convention on Human Rights.[56]

56 Judgment of 18 June 1991 in Case 260/89 ERT v DEP and Kouvelas, not yet reported, paragraphs 41 et seq.

The measures taken must be "appropriate measures to protect ... plurality of the media", which would appear to exclude measures which are not designed specifically for that purpose. So that, while rules on concentration which are intended specifically to safeguard pluralism in the media may provide a basis on which the national authorities may examine a merger which the Commission has found to be compatible with the common market, general competition rules which are not specific to this area would not do so.

Finally, it is important to note that Member States cannot take advantage of this possibility of national merger control in order to authorize a transaction which the Commission has declared incompatible with the common market. Article 21(3) is concerned only with the contrary case, that of a transaction which is compatible with the common market but incompatible with the national laws safeguarding pluralism.

III. Transparency

The need for transparency has been pointed out repeatedly, especially by theEuropean Parliament[57] and the Council of Europe.[58] But it is by no means clear that transparency as such raises problems which have to be dealt with at Community level. Two separate questions can be distinguished.

- **The collection and exchange of information**

. ***At Member State level,*** the authorities have access to certain kinds of information either because they have been given investigative powers or because certain classes of information have to be supplied to satisfy legal obligations. The volume of data collected and the amount of investigation which takes place vary from one Member State to another, depending in particular on whether there are authorities supervising the media and competition and what powers they have.

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57 Resolution on media concentration and diversity of opinions, 16 September 1992.

58 Resolution adopted at the Third Ministerial Conference on Mass Media Policy, held in Cyprus.

A distinction has to be drawn between broadcasting and the press. The fact that broadcasters must have prior authorization puts the authorities in a strong position to obtain the necessary information (no information, no authorization). This is not so with the press, except in some merger cases where the public authorities intervene on competition grounds.

The collection of information has also to be distinguished from the divulgation of information. Some data collected by competition authorities are confidential and are not accessible to the public. It does not follow that the national authorities are unable to obtain such information.

. ***At European level*** the question of obtaining information on an operator in another Member State has often been raised, particularly in the Council of Europe. The Resolution adopted at the Council of Europe's Third Ministerial Conference proposes that a mechanism be set up for consultation between states.

It should be pointed out that the authorities' need to exchange information hinges in the first place on their capacity to obtain information direct from the companies involved. In the case of broadcasting the fact that a company is based abroad will not necessarily be an obstacle, for the reasons already outlined.

The exchange of information between authorities will ultimately be restricted by the limits to their power to obtain the kind of information which a foreign authority might want and their willingness to do so. National authorities are likely to be interested primarily in information which is specifically domestic and which may not necessarily meet the requirements of foreign authorities. A difficulty of that kind could be overcome only by allowing an authority to have direct access to sources of relevant information located in another Member State, without having to pass through another authority. But the Commission has not been notified of any obstacles in this respect. In any event, if the need arose for an exchange of information between competition authorities, it appears that they would be able to make arrangements directly, without the need for any institutional mechanism.

- The use and processing of information

The purpose of the rules on transparency is to allow it to be established "who controls what". The real difficulty, then, is to define the concept of control, and to establish suitable tests. The problem is not specific to the media; it arises wherever there is any form of supervision of concentration. The task can be a delicate one, as account has to be taken both of the internal structure of the company and of shareholders' outside links.

Data may also be collected in order to monitor the development of concentration. With monitoring of this kind, which is undertaken for purposes of analysis, the question which arises is one of processing and of the establishment of a system of analysis suited to precise needs, rather than a question of the actual collection of data. There are already private firms, public authorities and institutes specialized in this type of activity. Lastly, monitoring the development of concentration does not in itself provide a solution to any problem of pluralism which may arise in the media.

In conclusion, transparency as such is not at present seen as a need which would justify specific action on the part of the Community, as long as there are no obstacles to exchanges of information between national authorities. But it is likely that the international dimension will be additional to the existing factors which sometimes make for less transparency.

Subsection 2. <u>The effectiveness of Community competition law</u>

Specific action to guarantee pluralism at Community level will be necessary only if the need to maintain pluralism cannot be met using Community competition law as it stands (Article 85 and 86 of the EEC Treaty and the Merger Control Regulation).

In its Resolution of 16 September 1992 Parliament took the view that "diversity of opinion and pluralism in the media cannot be guaranteed by current competition rules alone".

The relationship between competition law and pluralism can be described as follows.

1. **Convergence between the maintenance of competition and the maintenance of pluralism**

A competitive environment and a properly working market are good for pluralism, because the market will be open to new entrants - in this case new media enterprises - and because publishers and broadcasters will be encouraged to adopt distinctive approaches to editorial content and quality, and thus to broaden the diversity of information.

There is thus convergence between the objective of maintaining pluralism and the objective of maintaining competition. Competition law, and in particular Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (the Merger Control Regulation, hereinafter referred to as "the Regulation"), helps to provide an environment favourable to pluralism by preventing transactions which create or strengthen "a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it" (Article 2(3) of the Regulation).

A transaction of this kind is bad for competition, but it is also bad for pluralism. Indeed it is difficult to imagine a case in which what is bad for competition would be good for pluralism. This means that a merger which was found to be incompatible with the common market could not then be exempted on the ground that it had positive implications for pluralism (see above).

Some mergers which raise questions of pluralism, therefore, can be regulated by applying competition law. In the purchase of advertising space, for example, a merger might leave the media heavily dependent on a central buying agency. This could damage pluralism: by lowering the price of advertising space it could limit market access by new media enterprises by reducing the revenue available, and provoke a reaction in the form of further media concentration. Similarly, competition law might prevent a vertical link-up between a broadcaster and a satellite operator or a deal linked to the application of a new technology (e.g. access control systems) limiting access to the satellite channel market. The same would apply where an operator abused a dominant position on the market in the sale and acquisition of programme rights.

II. Limits to the convergence

Community competition law will serve the interests of pluralism only if the situation raises problems which can be expressed in its terms. But that is not always the case.

§1 Pluralism and competition: different criteria

Although there is convergence between them, competition and pluralism are fundamentally different things. Effective competition is concerned with the economic behaviour of undertakings, while pluralism is concerned with the diversity of information. Competition between undertakings may be reflected in competition between ideas, but the two approaches work on quite separate lines.

In order to apply the Regulation it has to be determined whether a dominant position is being created or strengthened, and whether effective competition would be significantly impeded.

An assessment of the effect on pluralism, on the other hand, has to be based on an analysis of the diversity of information available to the public affected, regardless of the competitive position of the undertakings concerned.

§2. The impossibility of applying competition law in certain situations where pluralism may be affected

Because of the difference in the nature of the two criteria, situations may arise in which pluralism is threatened without competition being significantly impeded in the common market or in a substantial part of it.

- Multimedia mergers

Multimedia mergers fall under the scope of the Regulation only if they raise a problem of competition on the relevant market or markets. With mergers of this kind the definition of the relevant markets can be a complex matter, and it appears difficult to focus on a multimedia market as such, with the possible exception of the sale of multimedia advertising space. An analysis would more probably have to be based on the competition problems arising within one of the submarkets, that is to say one medium alone. Thus a merger between a multimedia group and a monomedia group (a television group for example) might create a dominant position on the broadcasting market or its submarkets. It is the monomedia impact rather than the multimedia character of the group's activities which would be questioned.[60] In terms of pluralism, on the other hand, multimedia activity may raise difficulties even though it is compatible with competition law. From the point of view of a media consumer who listened to the radio in the morning, read the newspaper at lunchtime and watched television in the evening, a multimedia merger might have the effect that all the media he consumed would come to depend on the same controller even though the controller's market share in each of the media was not

60 This may reduce the scope for reference to a market in the sale of multimedia advertising space, since the creation or strengthening of a dominant position will most often be more clearly visible on a monomedia market. It appears very unlikely that a multimedia merger could create or strengthen a dominant position on the market in the sale of multimedia advertising space without doing so on a monomedia market.

sufficient to impede competition. Diversity of information and of media controllers has to be assessed not just within one medium but between different media as well, and given media consumer practices the convergence between the maintenance of competition and the maintenance of pluralism is weaker in the case of multimedia mergers than in the case of monomedia mergers.

- Monomedia mergers

Even a monomedia merger where no dominant position is created or strengthened, and effective competition is not impeded, may endanger pluralism nevertheless.

The Regulation applies only where a dominant position is created or strengthened, and it is probable that a situation where pluralism might be endangered will also involve a dominant position. However, the definition of the relevant market might cause difficulty, as it might mean that a situation with implications for pluralism would not be considered a dominant position. In a merger between a group operating a terrestrial network and another group operating a non-specialized pay channel, for example, the pay television market might be distinguished from the rest of the television market, because of the different nature of its resources, leading to the conclusion that there was no dominant position. But the same controller would now have a general channel on both markets, which seen from the information consumer's point of view might limit pluralism. The factors looked at for competition purposes may thus be different from those which are relevant for purposes of pluralism. In particular, the more the markets are fragmented the less easy it will be to take account of aspects involving pluralism.

Then there is the requirement that effective competition be significantly impeded in the common market or a substantial part of it: it would appear that this could limit the scope for applying the Regulation in cases where pluralism is an issue, since the mere fact that a dominant position is created or strengthened will usually be enough to raise a problem of pluralism, even if competition is not impeded. For purposes of pluralism, therefore, control would be tighter than for purposes of competition.

- The problem of thresholds

The three thresholds laid down in Article 1(2) of the Regulation limit the scope for applying the Regulation to the media. To date two media cases have been notified (Canal+/ESPN and Sunrise). The Sky/BSB merger, on the other hand, 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.

But the high level of the thresholds is not a justification for a specific Community measure; if the problem is one of thresholds, they could be lowered under Article 1(3) of the Regulation.

§3. The difficulty of a broad interpretation of competition law

It does not seem possible to overcome the difficulty of having two criteria of a different nature by applying competition law in a specific way. In the absence of any legal basis for doing so, an effect on pluralism cannot in itself be taken into consideration in merger control. The references in Article 2(1 b) to "the interests of the intermediate and ultimate consumers" and "the development of technical and economic progress provided that is to consumers' advantage" do not provide such a basis.

Article 21(3) expressly takes plurality of the media into the national framework; at least in spirit, this runs counter to the idea of interpreting the Regulation broadly so as to include considerations of pluralism.

The convergence of antitrust supervision and the monitoring of pluralism thus goes no further than the positive effects which competition policy may have on pluralism; competition policy cannot be made to include the maintenance of pluralism.

§4. Potential limits

The limits which have been identified here have not so far been tested in reality. This is partly because the Regulation has entered into force only recently, and partly because mergers of this kind have not arisen.

It is difficult to evaluate the possibility of such cases occuring in reality. One factor which might limit the prospect is that the newanti-concentration laws specific to the media may prevent mergers which would otherwise have been caught by the Regulation. It may be, therefore, that any such cases will arise in the Member States which have not adopted rules of this kind, or whose rules are not severe. As it is mainly the small countries which have little in the way of strict rules, because of the small number of private broadcasters there, it is probable that sensitive mergers affecting them would be a matter primarily for national competition law rather than for Community competition law.

CONCLUSION OF SECTION I

The objective of maintaining pluralism as it is defined in the various bodies of national law does not in itself seem to necessitate any specific Community action. The Member States are legally entitled to restrict the retransmission of broadcasts originating in another Member State if there is real circumvention of their laws on pluralism. Mergers which are compatible with the Merger Control Regulation but which raise difficulties of pluralism can be dealt with under the national measures safeguarding pluralism.

Community competition law does not provide a suitable instrument for maintaining pluralism, even though it may be of some assistance; but this is not enough to create a need for Community action.

In practice, however, the application of national rules on pluralism may run into certain problems of legal uncertainty, due to the difficulty of giving a legal definition of what constitutes circumvention and the consequent possibility of tension between national authorities.

Section 2. IDENTIFICATION OF NEEDS LINKED TO THE PROPER FUNCTIONING OF THE SINGLE MARKET

National anti-concentration laws specific to the media are not neutral in their effects on the single market. The laws are different from one country to another. The disparity itself is not necessarily a reason for action at Community level. But action would be needed if their effect was to create real obstacles interfering with the proper functioning of the single market as defined in Article 8a of the EEC Treaty and Article G § B 3 of the Treaty on European Union. Six classes of obstacle can be identified.

I. Restrictions on free movement of services imposed where there is circumvention of legislation

The disparity of national laws may lead to cases of restriction on the free movement of services which are justified in Community law (a legal analysis of cases in which the free movement of services is restricted was carried out in Section 1). This might happen especially where there is circumvention of national legislation on the ownership of the media, which would be covered by the judgment in van Binsbergen.[61]

61 See above, sub-section 1.

No such restrictions have been imposed hitherto. The danger of such restrictions arising cannot be ruled out, however, given the regulatory environment in the Community. An assessment of the danger of circumvention has to look at two factors: the difficulty of *entering the market* occasioned by anti-concentration rules and *the market's growth prospects* (economies of scale) and *economic attractiveness* - the more access to a promising market is impeded by stringent anti-concentration rules, the greater the danger of circumvention.

All the obstacles to market entry which are described below are also factors leading to a danger of circumvention. A system in which it is very difficult to obtain a licence (for a new channel, to renew an existing licence or to take control of an existing licensee) automatically creates a danger of circumvention. But the danger seems a more real one in broadcasting than it is in the press, because restrictions on media ownership are concerned not so much with the press as with radio and TV broadcasting and multimedia operations, and because the movement of broadcast programmes is more difficult to restrict than the movement of newspapers.

Circumvention is more likely to take place by means of satellite broadcasting than by terrestrial transmission. Countries which are heavily cabled or which have a high level of satellite dish ownership are most at risk (B, NL, D, UK).

II. Restrictions on the right of establishment

Constraints on media ownership in a Member State have a restrictive effect on companies wishing to establish themselves there. This is so particularly where the company is already established in another Member State and the levels of the candidates' holdings and control in other Member States are counted towards the limits, as is the case in France or Germany, for example.[62] An applicant for a licence who already operates a channel in another Member State which is retransmitted in the state in which the licence is applied for will in that case reach the concentration thresholds, and consequently be refused it, more rapidly. Applicants without channels in other Member States will have an advantage.

Restrictions which apply without distinction to nationals of the country and other Community nationals, as the restrictions aimed at maintaining pluralism do, are not in themselves incompatible with Article 52. The Court of Justice has held, notably in Case 221/85 Commission v Belgium, which concerned clinical biology laboratories, that Article 52 requires national treatment but nothing more; *only discrimination based on nationality* and disguised discrimination are incompatible with it, unless of course they are justified under Article 56.[63] Restrictions which apply without distinction to nationals of the country and to other Community nationals are not caught by Article 52 as the Court has interpreted it.[64]

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62 See Section 1.

63 The maintenance of pluralism is not a basis which can be invoked under Article 56(1).

64 The Court has sometimes left a little doubt on this point; see for example the judgment of 7 May 1991 in Case 340/89 Vlassopoulou, 1991, I, 2357.

Restrictions which are applicable without distinction are in themselves legitimate for purposes of Article 52, but that does not mean that they can be applied in order to restrict the movement of services originating in another Member State. As we have seen,[65] such a restriction would be incompatible with Article 59 since it does not satisfy the tests developed by the Court of Justice, particularly the presence of imperative reasons in the general interest and the requirement of proportionality.

III. Restrictions on competition

There are some methods of limiting concentration which might have the indirect effect of discouraging foreign investment in a Member State, and thus protecting operators already established in that state as compared with those from another Member State wishing to set up in the first state in order to have access to its market. Two examples may be given.

- In broadcasting, there are rules in France, Greece, Portugal and Spain restricting to 25% the maximum stake which can be held by an operator in a television channel; in Germany the ceiling is 50%.[66] Foreign operators may be reluctant to seek control of a television channel with a holding of only 25%, such fragmentation of the capital making the management's position weak. In these countries licensees have a measure of protection against takeovers. They are protected against both nationals and foreigners, but perhaps those who feel the effect most are operators in Member States whose legislation imposes no such restriction. In such countries companies may be taken over by foreign firms which are not there subject to any ceiling on their holdings, while the target company would

65 Section 1 above.
66 In Portugal there is a 30% restriction for radio.

have great difficulty in doing the same thing in Member States which do impose such ceilings. Against the background of current economic strategies, involving international cross-holdings between media, this imbalance or absence of reciprocity could be a source of real difficulty, and could upset the present status quo.[67] The ITV companies in Britain recently expressed concern at the ownership restrictions which exist in some countries at a time when a Community operator can acquire 100% of an ITV company in the United Kingdom.

- Another example is provided by the legislation which takes into account the activities of foreign broadcasters for purposes of the control of concentration; this may also have the effect of protecting established firms.[68] In Germany, for example, the Treaty between the Länder which includes foreign channels broadcasting in German on German territory in the calculation could have the effect of preventing these channels from establishing another German-speaking channel specifically for the German public, and thus from competing directly with domestic German channels, as the threshold of two channels would then be exceeded. The same problem could arise under French law, which contains a similar provision.

IV. Distortion of competition

Anti-concentration laws specific to the media impose limits on media ownership which vary from one Member State to another. The disparity in the ceilings imposed can have consequences of two kinds.

67 Part Two above.
68 Above.

- It may produce a drain of investment from countries with closed ownership access to countries with more open access. Concentration would thus rise to a higher level in countries with open access than it would in countries where access was relatively closed. Countries with open access might then react by imposing more restrictive systems themselves. An investment drain of this kind might occur particularly inside an area in which the language spoken is the same, always supposing that there is a wide disparity between the systems in operation. An investment drain is thus sometimes alleged in connection with the Hersant group's holding in the Belgian press.[69]

- It may simultaneously, in the opposite direction, enable operators established in an open-access country to build up a strong competitive position before entering the market in other countries. An example in broadcasting is Fininvest, which developed on an open domestic market.

V. Legal uncertainty regarding circumvention

In theory the circumvention of national rules on pluralism could lead Member States to impose restrictions which would be justified under Community law. But as we have seen[70] it will be very difficult in practice to say whether a restriction on free movement is indeed justified in the light of the case-law of the Court of Justice, particularly the principle of proportionality or the rules on what constitutes circumvention for these purposes. In addition to the implications for Member States, the consequence of this legal uncertainty as far as industry is concerned is that it constitutes a *barrier in the way of Community investment*. The danger that a Member State might invoke the circumvention argument against a firm which was in fact taking legitimate advantage of the opportunities

69 It is argued that the ceiling of 30% of the daily newspaper market laid down by French law led the Hersant group to prefer a 42% holding in the Belgian newspaper *Le Soir*.
Within the European Economic Area there could be an investment drain of this kind between Germany and Austria.

70 See above.

offered by the single market, and the risks of tension between Member States which have already been described, are liable to deter firms from entering the market, which they already regard as a risk area quite apart from this question of pluralism. A situation of that kind could not be reconciled with the industrial policy objective laid down in Article 130 of the Treaty on European Union, which is to encourage an environment favourable to initiative and to the development of undertakings throughout the Community.

VI. Obstacles to access to media activity in the Community

These laws by nature limit access to media ownership and thus restrict entry to the broadcasting and press market. Moreover, the disparity of national laws on media ownership has the effect of limiting access to media activity. In the internal market such obstacles may be contrary to the industrial policy objectives set out in Article 130 of the Treaty on European Union, which aims, in accordance with a system of open and competitive markets, at encouraging an environment favourable to initiative and to the development of undertakings while maintaining an open approach to markets.

(a) Restrictions on media ownership at national level

The anti-concentration rules specific to the media constitute a particularly strong barrier to entry, because they are concerned with the very principle of ownership, which is at the basis of all economic activity, and not solely with limits on the way in which economic activity is to be undertaken.

Broadcasting. National anti-concentration laws which are designed specifically to ensure pluralism in the media place restrictions on both of the only two ways of entering the broadcasting market: obtaining a licence in one's own right or taking a stake in a broadcaster who already holds a licence. The restrictions imposed weigh equally heavily on applicants for licences and on those interested in acquiring shareholdings; they derive from the following factors.

- The limited number of licences granted. The number of licences is limited in all Member States, but it is not necessarily set solely by reference to objective criteria, such as the shortage of frequencies, or on the basis of an assessment of the market; there may also be a measure of discretion which takes account of the media policy followed by the Member State. Paradoxically, this limitation is a factor which encourages concentration, because where there are no new licences the only course open to a new entrant is to take control of an existing licensee. Increasing the number of licences would reduce concentration by providing more opportunities for new entrants.

- The conditions to be met in order to qualify for a licence or for a holding in the capital of a broadcaster. Examples are conditions preventing any sort of holding, even a minority one; rules disqualifying certain persons (UK, I); limits on the maximum holding allowed; and conditions preventing or limiting monomedia or multimedia holdings by a licensee in another media enterprise. The conditions of access to the market may vary according to the type of channel concerned (e.g. special interest, local or cable). Measures dealing with multimedia concentration can produce greater obstacles to market access, because they broaden the number of operators potentially concerned.

Press. Access to press activities is more open than access to broadcasting, because:

- monomedia anti-concentration rules specific to the press exist in only five Member States;

- those rules are not based on a system of prior authorization or licensing;

- they are for the most part concerned only with daily newspapers, and leave scope in respect of other products such as magazines (business and finance, sport or women's magazines). It is worth pointing out that statistics show that it is precisely the category of magazines which is mainly concerned in cross-border transactions;[71]

- except in France and Italy they are not based on automatic thresholds, and thus leave greater scope for press publishing;

- in the case of the press the obstacles are mainly due to multimedia rules.

(b) Consequences of the disparity between limits at Community level

Apart from the restrictions on competition referred to under point III above, the effect on the industry will be to increase costs.

There will be ***an increase in the cost of research*** needed to develop strategies. The disparity of laws makes strategic planning more complex and risky, and thus requires substantial investment.

There are ***the costs of a constraint-based strategy***. The disparity between national anti-concentration rules may force operators to adopt a strategy which is not the most efficient one for the market, being to some extent dictated by the scope for access to national markets left by restrictions on media ownership. The constraints imposed by such restrictions may play a part in certain choices, such as:

71 European Advertising and Media Forecast, June 1991, p. 23.

Establishment/distribution strategies. Among a media enterprise's different development options, the disparity of restrictions may persuade it not to take the one of establishing itself in another Member State but instead to supply its services from across the border, even though this may be more costly and less selective. An operator unable to establish itself on certain closed national markets may find itself compelled either to fall back on one market or to follow a large-scale strategy. In the first case the scale effect of the single market is prevented; in the second case it would be difficult to exploit the specific features of the various national or sub-national markets. If there is open access to terrestrial broadcasting in a Member State a broadcaster can follow a more finely-tuned and selective strategy.

- *Monomedia/multimedia strategies.* The limits to development on markets in other Member States which are imposed by restrictions on media ownership might for example encourage monomedia companies to fall back on a multimedia strategy in their home country. This could be particularly damaging to the market in special-interest channels; given the limited public which will be available in any one country, their viability depends to a great extent on the scope for development in other Member States.

(c) Compatibility of these obstacles with Community law

The simplest way of removing these obstacles would be to dismantle the national restrictions on media ownership which cause them. As we have seen, however, these restrictions are not in themselves incompatible with Article 52, and cannot simply be removed.

Nor is it possible to invoke the second paragraph of Article 57 in order to contest the legitimacy of these restrictions. Article 57 states the objective of facilitating the right to take up and pursue activities as self-employed persons, but one cannot conclude a contrario that measures making such activities more difficult are necessarily incompatible with the Treaty.

Since the measures restricting media ownership cannot be removed, the disparity can be ended only by harmonizing them.

CONCLUSION OF CHAPTER II

In the light of the objectives of the Community and of the analysis carried out here the need for possible Community action can be described as follows.

1. The objective of ensuring pluralism, as it is understood and pursued by the Member States, does not as such create a need for Community intervention. The operation of the Community is not in itself a threat to pluralism; quite the reverse, it may have a positive effect on two factors which determine the level of pluralism: the number of broadcasters and newspapers and the diversity of their controllers. Member States have the legal capacity to safeguard pluralism, particularly where there is real circumvention. The only possible sources of difficulty are tension between national authorities regarding the definition of circumvention and questions regarding the transparencyof media ownership and control.

2. Among the methods used by Member States to safeguard pluralism, the disparity between the anti-concentration rules specific to the media constitutes an obstacle to the functioning of the single media market:

. it may result in restriction of the free movement of services where there is circumvention

. it may result in restrictions on freedom of establishment

. it may produce restrictions on competition

. it may distort competition

. it may cause legal uncertainty regarding the question of circumvention

. it limits access to media activity.

Any need for action on the part of the Community, then, has more to do with ensuring that the single market functions properly than with maintaining pluralism as such.

3. For the present the obstacles are for the most part potential obstacles, because the relevant laws are recent and the strategies adopted by operators are often still national.

4. Potential obstacles can be seen mainly in broadcasting, and particularly television broadcasting, which has the highest measure of regulation. The press is affected essentially by multimedia ownership rules rather than monomedia rules.

5. The restrictions on media ownership which underlie the obstacles identified are not incompatible with Community law.

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?).

Chapter III. NECESSITY FOR ACTION IN THE LIGHT OF NEEDS

Are the needs identified above of sufficient importance to justify action, particularly since the nature of the obstacles is if anything potential?

From the point of view of completing the single market, it should be noted that the questions raised here are not among the obstacles that were to be removed under the 1985 White Paper on the subject. The body of legislation that produced the restrictive effects did not start to develop until the mid-1980s. Nevertheless, from the point of view of the *functioning* of the single market, which the Commission must also help to ensure, restrictive effects have been identified which might affect the implementation of the single market in the media industry. The task is therefore to determine whether media enterprises are to benefit to the full from the opportunities created by the single market or whether this industry, like others, should not be the focus of specific measures.

Taking the sectoral policies launched by the Commission, the audiovisual sector and the media in general have been given clear priority by the Community, as is demonstrated by the "Television without Frontiers" Directive, the Commission communication on audiovisual policy the MEDIA action programme, the Council Directive on Standards for Satellite Broadcasting of Television Signals and the proposals for Directives in the field of copyright. Newspaper publishing is an industry concerned more by the application of general Community law, in particular competition law, than by specific measures.

Among the horizontal policies, the Commission's industrial policy as set out in its communication of 16 November 1990 is particularly relevant. The problems raised by concentration in the media are indeed typically problems of structural adjustment in an industry. These problems are directly linked to market structure because they relate to the very principle of access to economic activities (media ownership) and not to certain secondary conditions governing the pursuit of an economic activity, and because they are a reflection of radical change in an industry in the throes of liberalization. Against the background of liberalization, the disparity of anti-concentration regulations may be perceived as a brake on structural adjustment. An industrial policy approach requires that such structural adjustment be launched, encouraged and accelerated and, to help the process, that an enterprise-friendly, competitive and stable environment be created. Applied to the media industry, the implementation of industrial policy might justify a dynamic approach to secure the speedy elimination of obstacles to adjustment by harmonizing media-specific anti-concentration laws. The prospect of structural adjustment in the conditions governing access to media ownership is not new in itself since the 1984 White Paper "Television without Frontiers" explicitly provided for it.[72]

In the light of both the needs which have been identified and the horizontal and sectoral policies already launched by the Commission, a case is seen for action. However, the more important question is when any action should be taken. Since the restrictions are merely potential, measures adopted in anticipation might be premature or ill-suited because the situation was still fluid or not clear enough. Conversely, a wait-and-see attitude might cause the obstacles identified to become entrenched. This might happen as a result of the following factors.

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72 "Not until the provisions on right of establishment for broadcasting stations are made more flexible - for which Article 57(2) is of use as well as for ensuring freedom to provide services - will the harmonization of some provisions on the taking-up of broadcasting activities become essential. In the Commission's opinion, this should be the second step towards achieving the framework legislation demanded by Parliament. It is difficult to carry through before or at the same time as the first step. This would be asking too much of both the Member States and the Community" (p. 181).

. National laws will probably go on expanding, particularly in Member States which as yet have no specific, or only light, anti-concentration rules and which will want to guard against a drain of operators from closed countries to open countries.

. The European Parliament[73] and the Council of Europe[74] are also pressing for the formulation of national anti-concentration rules.

. The European activities of media operators are set to expand and may call into question the status quo concerning foreigners' holdings (usually minority, not controlling interests). The liberalization sparked off by the "Television without frontiers" Directive should strengthen the trend towards the Europeanization of activities as well as the Europeanization of economic activity and of the advertising industry.

The advantages and drawbacks of a wait-and-see attitude are analysed below (Chapter V).

CONCLUSION

Given the objectives of the single market and of the Commission's industrial and audiovisual policies, there would seem to be a case for action since needs such as those described above have been identified. However, the timing of any action raises questions.

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.

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73 Resolution of 15 February 1990 on media takeovers and mergers, point 4, and Resolution of 16 September 1992 on media concentration and diversity of opinions, point 7.

74 Resolution No 1 "Media economics and political and cultural pluralism" adopted at the Third Conference.

Chapter IV. NECESSITY FOR ACTION AT COMMUNITY LEVEL

Since there is no exclusive competence in the area of pluralism and concentration of the media, the principle of subsidiarity as set out in the second paragraph of Article 3b of the Treaty on European Union needs to be applied and hence the question asked at which level - Member State or Community - action must be taken to achieve the desired objectives. This means deciding (i) whether the objectives of the action cannot be sufficiently achieved by the Member States and (ii) if appropriate, whether they can be better achieved at Community level.

As the objective of possible action would be to remove the obstacles to the proper functioning of the internal market created by the disparity of national laws, it could not be sufficiently achieved by action solely at Member State level. Harmonization of restrictions on media ownership which would result from the purely voluntary amendment of Member States' laws seems unrealistic and ineffective. Even if formal consultations were to take place between Member States in order to lay down common rules, the absence of the institutional and legal framework provided by the Community legal system would render it ineffective and would deprive the industry of sufficient legal certainty. Therefore Community harmonization is the only effective way of achieving the objective of coordinating national laws in order to eliminate restrictive effects.

CONCLUSION

Since action to eliminate disparities between national restrictions on media ownerhip seems necessary, maximum effectiveness can only be achieved at Community level.

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.

Chapter V. THE TYPE OF ACTION IN THE LIGHT OF THE PRINCIPLE OF PROPORTIONALITY

The object of the action must be based on the principle of proportionality, as laid down in the last paragraph of Article 3b of the Treaty on European Union, which specifies that any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty.

In view of the needs identified and the proposals already made in other contexts, the object of the actions which might be envisaged from the start could be to resolve various questions.

1. Harmonization of restrictions on media ownership

A. Objectives of action

The general objective would be to enable media companies to benefit fully from the opportunities provided by the internal market. The sectoral objective of harmonization would be (i) to facilitate access to media activities and (ii) to guarantee the diversity of media controllers. The two aspects are inseparable: the first, by itself, would mean liberalization without a framework and would no doubt permit the emergence of new media but ones which might be dependent on the same controller, a dangerous situation from the point of view of pluralism. The second, by itself, would guarantee the independence of a number of media but would limit the arrival of new entrants even though these are essential in order to increase the diversity of controllers and therefore pluralism. Ideally,

harmonization should therefore seek to ensure that there is the greatest possible number of media and that these are independent of one another. In this way it would be possible both to remove the obstacles to the internal market and to promote pluralism.

B. Competence

The legal basis of Article 57(2) seems appropriate since the intrinsic object of harmonization is to make it easier to take up media activities. There is nothing on this basis which would prevent harmonization from placing limits on media ownership. As indicated in the 1984 Green Paper "Television without frontiers", *"'making it easier' means eliminating difficulties which arise from legal disparities, it means 'making such safeguards equivalent'* (see Article 54(3)(g)) in order to make possible and to promote the taking-up and pursuit of the relevant activities as self-employed persons throughout the Community under equivalent conditions" (p.155). The legal basis of Aricle 57(2) would mean use of the directive as a harmonization instrument.

Another legal basis could be Article 100a given the objective of the functioning of the internal market. This would allow, if the situation arose, for the adoption of a regulation as foreseen by certain members of the Parliament.

C. SCOPE

Substantive scope

Harmonization would focus on national, media-specific anti-concentration rules and not on the pluralism rules relating to programme content. The latter rules do not restrict the taking-up of media activities and could therefore continue to apply in the various Member States to broadcasters within their jurisdiction and provided that they were compatible with Community law.

Harmonization would cover both public and private broadcasters, since the former have to be included in the general quest for diversity of media controllers. However, this would have no effect on the principle of the existence of a public broadcasting sector subject to specific rules.

Harmonization would cover all restrictions on media ownership. This does not necessarily mean laying down restrictions of the same type as those existing at national level: these would be replaced by harmonization, even if it used restrictions of a different kind.

Geographical scope

Harmonization would also cover in all activities of media companies, whether local, national or transnational, since the anti-concentration rules cover them equally and therefore have implications for the taking-up of broadcasting activities. Local or regional activities, such as Channel 3 licences in the United Kingdom, may be of interest to operators from other Member States in the same way as wider markets, and would therefore need to be covered by harmonization.

Sectoral scope

The media types covered by harmonization could be defined pragmatically by reference to the restrictions existing in national laws. Harmonization should cover only those media subject to ownership restrictions under national laws. Here two variants may be envisaged.

VARIANT A

The scope of harmonization could be *monomedia television broadcasting, monomedia sound radio, and multimedia broadcasting/daily press.* The press sector would be dealt with only through the multimedia ownership rules, to the exclusion of monomedia press aspects. The taking-up of press activities is not as restricted as is broadcasting since there is no licensing system and there are fewer anti-concentration rules applicable to them than to broadcasting. Only two Member States (F, I) have automatic ownership limits on newspaper publishers. Other Member States (D, UK) have specific thresholds above which a merger or acquisition is subject to general competition law and to the relevant supervisory mechanisms.

VARIANT B

In contrast with Variant A the scope would be extended to the *monomedia daily press* in order to cover the restrictions in countries which have them.

D. General structure

In view of the principle of proportionality, the provisions of substantive law should reflect a balance between the objective of guaranteeing minimum media controller diversity and the objective of making it easier to take up media activities. For harmonization to be of maximum effectiveness it is essential that both objectives be achieved.

The principle of harmonization would be that Member States could not grant broadcasting licences or concessions if the harmonized conditions were not met. In exchange, Member States could not invoke other conditions relating to pluralism[75] in order to reject an applicant.

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75 Provisions relating to the maintenance of pluralism in programme content will always apply to broadcasting itself, but should not, prior to that level, govern the award of a licence.

The object of the substantive law provisions could be:

(a) to define the concept of controller,

(b) in view of the balance which needs to be struck, as mentioned above, to establish rules limiting the cumulation of stakes or controlling interests in several media at once; because of this balance, rules limiting the first holding in a medium (even if there is no cumulation of interests in several media at once) seem unnecessary,

(c) to specify the levels of media controller diversity, the chief point of reference being the service areas covered, the number of controllers present within those areas, and the media audience which they control,

(d) to identify disqualified persons who may not become media controllers,

(e) to establish transparency rules,

(f) to make provision for changes in the situation such as transfer of interests, change of controller, changes in diversity levels,

(g) to provide, if necessary, for a common statistical methodology for audience measurement.

Paragraph (b) proposes taking the audience as the main criterion for setting restriction thresholds. This method seems suitable because it would have two advantages. First, it takes the consumer as the point of reference and would therefore be of maximum effectiveness in relation to one of the objectives sought, namely that of serving the interests of the media consumer. Second, it does not use abstract criteria which, because they apply automatically and disregard the market, could penalize economic operators. Given the importance of audience measurement for other related matters such as copyright or advertising, the Commission has already launched a study programme on audience measurement in the Community.

The relationship with general competition law will also have to be clarified. Since competition law and ownership restrictions do not serve the same purpose, application of the latter should be without prejudice to the application of the former and vice versa.

QUESTION 4

The Commission would welcome the views of interested parties on the content of a possible harmonization 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.

II. Transparency

The object of action at Community level could also be to improve transparency, i.e. precise information on media ownership and control. Transparency rules are generally the corollary of the rules which limit media ownership. So, if there were to be harmonization at Community level, its implementation would require transparency measures.

But measures to promote transparency may also represent specific action in themselves, independently of the restrictions on ownership.

In its Resolution of 16 September 1992 on media concentration and diversity of opinions the *European Parliament* emphasized the importance of this objective and called for this responsibility to be assigned to a European Media Council.

In the *Council of Europe,* the Resolution of the third Ministerial Conference on Mass Media Policy also proposes that consideration be given to the establishment of a consultation mechanism providing for regular reporting by the participating Member States on the evolution of media concentration.

If there were really a need with regard to transparency, this would be to make it easier for information to be gathered and exchanged between the authorities concerned by means of a legal obligation on media enterprises to disclose information (so that, where appropriate, controlling interests can be identified) and on the competent authorities to communicate information to other authorities. For this purpose a recommendation could be proposed or, if necessary, a legal instrument. Indeed action confined to gathering information on a purely voluntary basis might not give rise to the required effects. Such an action should be complementary to rather than trespass on the work of research institutes or other institutions such as the European Audiovisual Observatory.

However, such legal action on transparency would raise problems with regard to the legal basis. It would be possible to rely on Article 57(2) or Article 100a of the Treaty only to the extent that the purpose of such action is to make it easier for persons to take up and pursue activities as self-employed persons (Article 57(2)), or to ensure the establishment or functioning of the internal market (Article 100a).

QUESTION 5

The Commission would welcome the views of interested parties on the desirability of action to promote transparency which would be <u>separate</u> from a harmonization instrument.

III. <u>Establishment of a special body</u>

The establishment of a special body is not, strictly speaking, a way of limiting concentration but is sometimes envisaged, as Parliament or the Council of Europe have done, as a measure which could be taken.

In its Resolution of 16 September 1992 on media concentration and diversity of opinions, ***Parliament*** proposes the setting-up of a European Media Council which, in addition to ensuring transparency as mentioned above, would be responsible for the submission of reports and opinions on proposed mergers with a Community dimension and the submission of proposals to the Commission on possible deconcentration measures.

In the ***Council of Europe***, the Resolution of the third Ministerial Conference also refers to the establishment of a consultation mechanism, which, as indicated above, would have duties relating to transparency in general and to ad hoc consultations on particular situations raised by one or more participating States.[76]

The duties mentioned in these proposals may be summarized as the exchange of information between members of the body, the settlement of conflicts and the provision of advice or opinions.

The case for setting up such a body, independently of a harmonization instrument, may be contested in view of the principle of maximum effectiveness. Such a body would do nothing to resolve the difficulties created by the disparity of national restrictions on media ownership.

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76 For the time being, work relating to this consultation mechanism does not seem to be moving towards the establishment of a formal body but instead towards duties being handled by the Council of Europe's Committee of Experts on media concentrations.

On the other hand, the establishment of a special body in the context of a harmonization instrument seems to be a possible option because it could assist in the implementation of harmonized provisions and would therefore indirectly serve the objective of eliminating obstacles to the functioning of the internal market. According to Parliament's resolution, such a body should not be of the same type as the committees provided for under the committee procedure in Community law, i.e. bodies consisting of government representatives, but instead should be of the "committee of wise men" type which is notable for the independence of its members. Such independent bodies are nevertheless not unknown to Community law, the proposal for a Directive concerning the protection of individuals in relation to the processing of personal data being one example. The advantages and drawbacks of such a committee will be considered below in Chapter VI.

QUESTION 6

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

Chapter VI. SUMMARY OF POSSIBLE OPTIONS

In the light of the above analysis as a whole, the decision which the Commission might have to take after consulting the interested parties could be on the lines of one of the three options set out below.

1. No specific action at Community level (OPTION I)

Presentation

The Commission's position might be not to propose any specific action at Community level at this stage. The objective of this position would be to leave it to Member States, in accordance with Community law, to deal with the subject of "pluralism and concentration of the media" either because the needs identified are insufficient to justify action, or because it is too soon to act now or because action does not have to be taken at Community level, since the national level is sufficient.

Arguments in favour

+ This option would permit a better assessment of whether obstacles really existed and, if necessary, a more fitting response;

+ It would enable an assessment to be made of whether disparity creates obstacles to free movement or solely distortions of competition which, in themselves, are not sufficient in all instances to justify Community action;

+ It would allow each Member State to impose its own restrictions in keeping with its national situation.

+ This option would make it possible to wait for contentious cases which demonstrated a real need for action.

Arguments against

+ It would not reflect the wishes of the European Parliament.

+ It would make it impossible to forestall any future difficulties due to such restrictions and to the malfunctioning of the internal market.

+ In the meantime obstacles could harm this market and influence the strategy of operators who already have to take account of the effects of such rules.

+ The obstacles could become worse as Member States might go on introducing and developing their national laws along dissimilar lines.

+ More and more obstacles will be put in the way of media companies, given that their European activities are set to expand.

+ Implementation of the "Television without frontiers" Directive could be made more difficult. It is precisely because the Directive has entered into force that it might be preferable to act rapidly, without delay, in order to make it easier to implement. For an operator, the Community regulatory framework seems imbalanced because it favours the "services" approach (broadcasting from one Member State to others) over the "establishment" approach (establishment in several Member States). In some cases, this imbalance could therefore push the market into the artificial and extensive use of the "services" approach as a substitute for an "establishment" approach, leading to borderline and conflictual situations such as the circumvention of legislation or moves to impose a system of supervision on broadcasts from another Member State.

2. Specific actions that might be envisaged at Community level (OPTIONS II to V)

OPTION II. Action relating to transparency

Presentation

The Commission's position might be to propose cooperative action between the Member States, the objective being to obtain greater transparency of media ownership and control in the Community. This action would relate solely to transparency and would be independent of any action to harmonize national restrictions on media ownership. It would involve a recommendation seeking to facilitate the disclosure and exchange of certain information concerning media ownership. If this recommendation were not to give rise to the sought effects, a legal instrument could equally be contemplated.

Arguments in favour

+ This option could facilitate the task of national authorities responsible for monitoring the application of anti-concentration laws;

+ it could create a degree of solidarity between national authorities;

+ it would help to improve knowledge of the level of concentration in the Community;

+ it would be a first stage before other Community action is taken.

Arguments against

+ This type of action would not solve the problems created by the effect which restrictions on media ownership have on the functioning of the internal market;

+ in the light of the subsidiarity principle it is not certain that it is necessary because at the moment the Commission does not know of a case in which it would have been impossible for national authorities to exchange information owing to the lack of a suitable Community instrument.

OPTION III. Action to harmonize laws

Presentation

The Commission's position might be to propose action with the objective of eliminating differences in national restrictions on media ownership. To this end three potential approaches can be envisaged.

Sub-option A : co-ordination of national legislations by means of a Council directive

A proposal for a directive harmonizing national laws on media ownership on the basis of Article 57(2). The purpose of the directive would be to establish common rules which would replace the national restrictions of the twelve Member States and which would strike a balance between the objective of guaranteeing ownership diversity and the objective of making it easier to take up media activities.

Arguments in favour

+ This option would eliminate the obstacles to the functioning of the internal market created by the differences in national restrictions on media ownership;

+ it would leave Member States some room for adjustment to national situations;

+ it would facilitate the tackling of the transparency question in terms of the legal basis.

Arguments against

+ This option might be considered premature;

+ it would not be effective enough because of the room for manoeuvre left to Member States;

+ it would be difficult to prepare, in particular to ensure that the content of the directive was balanced.

Sub-option B : approximation of the differing laws by means of a Council regulation

The Commission's position might be to propose action with the same objectives as the preceding option but with the difference that the instrument used would be a regulation and not a directive. The legal basis would be Article 100a.

Arguments in favour (compared with a directive)

+ Harmonization would be more effective because a regulation is directly applicable in the Member States and does not have to be transposed into national law;

+ the level of consumer protection would have to be high in accordance with Article 100a(3).

Arguments against (compared with a directive)

+ The substantive content would have to be more precise for it to be directly applicable.
+ the regulation would reduce the flexibility for measures at the national level.

Sub-option C : approximation of legislations accompanied by the establishment of an independent committee

The Commission's position might be to propose action at Community level, the objective being the same as under the last two options but with a difference, because in addition to harmonization (by directive or regulation) a body would be set up. It would consist of independent authorities from each Member State and its task would be to assist in implementing the harmonization instrument and to give opinions on questions relating to media concentration.

Arguments in favour

+ The national authorities would be in touch with one another and could exchange information and experience;

+ the knowledge and experience pooled in this way would be useful for the Commission in carrying out its task of guardian of Community law.

Arguments against

+ Under this option Member States would have to be asked to set up independent authorities competent for audiovisual matters; these do not always exist, and their creation would have far-reaching implications for the structure of national audiovisual systems, going beyond the anxieties connected with restrictions on media ownership;

+ the risk would be that the handling of questions which must be dealt with at national level in accordance with the general principles for the application of Community law would be centralized at Community level.

QUESTION 7

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