



DEVELOPMENTS IN DIGITAL TELEVISION IN THE EUROPEAN UNION

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1. THE IMPLICATIONS

1.1. What it means for the telecommunications industry

One of the main features of digital television is its efficiency as far as taking up band space is concerned. A channel that is used to carry a single analogue service can carry up to seven higher quality digital services by satellite or cable or 4 terrestrially-broadcast programmes. Digital television therefore opens up the possibility of a more rational use of the frequency spectrum. A study carried out in the United States estimated that the implementation of digital terrestrial television will free a bandwidth of 138 MHz, which, when used by other telecommunication services, could bring between USD 40 and 50 billion into the American coffers..¹

1.2. What it means for the electronics industry

Digital television as it is developing in Europe, is based on a series of standards laid down by the Digital Video Group (DVB). These standards are in turn based on European expertise and patents. The international success of the European standard has major implications for the European industry. Some non-European states (Australia, Singapore, India) have recently adopted the DVB-T standard for their terrestrial digital television. Argentina is currently reviewing its choice of America's ATSC and their decision could have a knock-on effect across the whole of South America. Collaboration is also under way between China and the DVB Group.

The development of digital transmission provides a welcome boost for the consumer electronics industry by opening up the vista of replacing all existing television receivers within the foreseeable future, at a time when television sales are flat and virtually dependant on the 16/9 receivers.

The EACEM does not for the moment have any assessment of the actual market that is represented by the 140 million TV-owning households in the European Union, but it does claim that the replacement of existing sets by advanced-feature receivers (notably Internet hook-ups) is an industry priority.

Digital products in general offer the possibility of relaunching the consumers electronic industry. After several years of negative growth, the turnover of this industry in Europe has been characterised by a significative growth in 1998, reaching 31.1 billions EURO. But, according to the most recent estimates, 1999 should again be a year of negative growth (29.7 billions, i.e. - 5 %).²

An evaluation study of the market for integrated televisions was recently published by IDATE³. The study sets out to assess the world-wide market for digital televisions for 2005, with the appearance of two markets that would initially be fairly small-scale:

- A top-range television system spread around the house, with the use of display systems (plasma or LCD flat screens), different media (DVD, hard-discs, PCs, set-top boxes, TV, etc.), hooked up through a high bandwidth domestic network.

¹ Quoted in the report of the AGENCE NATIONALE DES FREQUENCES, *Etude sur la planification des fréquences pour la television numérique de terre – DVB-T*, Paris, 3.10.1998. Etude (Accessible on the Internet: <http://www.anfr.fr/fr/textedoc/television.html>).

² GfK data, quoted in *Le Monde*, 5 septembre 1999.

³ Digital TV receivers and video terminals in 2005, *IDATE, Montpellier, July 1999*. You can see the synthesis on: http://www.idate.fr/maj/qdn/an-99/if109-1992906/index_a.html

- A low-cost solution for receiving digital television, based on a PC, a digital television reception card, and a television screen (cathode tube or flat screen, or an analogue television set)

Table 1. ASSESSMENT OF THE INTEGRATED DIGITAL TELEVISION-SET MARKET FOR 2002 AND 2005 (in million units)

	Japan	USA	Europe	World-wide
2002	1.1	0.8	1.1	3.0
2005	5.8	13.3	12.5	31.6

Source: IDATE

Digital television also represents a potentially large market for manufacturers of trade material and equipment (especially the construction of networks, cable and satellite network equipment etc.)

1.3. What it means for the audiovisual sector

The development of digital television also represents an important opportunity for the whole of the audiovisual industry (broadcasters, production companies, regulatory bodies) as it is liable to cause upheaval in the strategic and economic structure of the sector.

- economic implications: growth of competition, rapid development of forms of financing, problems of breaking into the market, the growth of the royalties market, the development of the programme industry, the protection of production companies' economic rights, etc.
- Political and legislative outlook: the development of the regulatory role of the public authorities, harmonisation of national legislation, playing level field, problem of concentration coming up against pluralism, the change in the relationships between local, regional, national, European and international sectors, the role of public-service broadcasting, etc.
- cultural implications: growing commercialisation of the sector, development of a European creative centre, protection of creators' moral rights, etc.;
- international implications: setting out an international framework for audiovisual trade, trade imbalances.

1.4. What it means for the advertising industry

The increased fragmentation of viewing audiences caused by digital television fits in with targeted communication strategy of certain advertiser categories. Regional windows and the use of "virtual advertising" could provide the technical means to take advantage of this increased segmentation.

However, what is sometimes referred to as the "end of mass communication" could mean for others advertisers increasingly complex media planning and cost overruns. The use of automatic advertising filters could soon come and join the current practice of zapping to avoid advertisements.

1.5. What it means for viewers, citizens and consumers

The advent of digital television will indisputably benefit television viewers: increased programme choice, new services (pay-per-view, near-video-on-demand, electronic programme guides, interface with the Internet, etc.) and better picture quality, etc.

This larger choice does, however, put an extra burden of cost on the consumer (new equipment, subscriptions, increase in licence fees to finance the construction of new

networks). The introduction of digital television might well widen both the gap between those who can and cannot afford access to information and culture, as well as the statutory differences in access to technology.

Digital television also offers possibilities for the development of local services, open channels, along with channels for ethnic, religious and sexual minorities. However, the impact the new technology will have on audience fragmentation and therefore on the public at large will once again bring up the question of the break-up of society, a theme dear to American sociologists in the 80's, when cable theme channels first came upon the scene.

2. EUROPEAN ACHIEVEMENTS IN THE DEVELOPMENT OF DIGITAL TELEVISION – TECHNOLOGICAL ACHIEVEMENTS

2.1. A set of technical standards adopted by the different parts that make up the European industry

The development of digital television in Europe sprang from the work carried out within the DVB Group (set up in September 1993) by its 200-plus member-companies representing the different types of operators involved (manufacturers, broadcasters, programme-makers, network operators, regulatory bodies, etc.). The DVB group laid down the technical specifications in preparation for a European digital television market.

One of the DVB Group's pivotal choices was to adopt the MPEG-2 standard for audio and video coding. The DVB Group also set out the standards for digital satellite broadcasting (DVB-S) (December 1993), digital cable broadcasting (DVB-C) (March 1994) digital terrestrial broadcasting (DVB-T) (December 1995).

Other achievements of the DVB Group include laying down the technical specifications for MMDS and SMATV, the definition of a common scrambling algorithm to develop interoperability systems for receiving encrypted programmes and the setting-out of technical specifications for a common interface allowing, for example, different access-control systems to be connected up within a single terminal. The Group also put forward technical solutions for interactivity management (return way) and network interfaces for linking up with telecommunications systems.⁴

The main specifications were normalised by the ETSI (European Telecommunications Standards Institute), while European Directive 95/47 on the transmission of signals by cable and satellite made their use obligatory within the European Community.

2.2. The objective of rationalising the frequency spectrum

One of the main advantages of digital television is how it can rationalise the use of the frequency spectrum. The setting-up of digital broadcasting – by satellite, cable or terrestrial networks – comes within the scope of a European telecommunications policy and consequently required considerable work on strategic definition and planning by the various bodies responsible for defining spectrum management (UIT, CEPT), the laying down of the principles for a European telecommunications policy (European Union), the strategic development of the new networks (satellite, cable and terrestrial network operators).

Satellites frequencies: the decisions of WARC -77 and the "heavenly peace" between EUTELSAT and the SES

Digital satellite broadcasting needed no new frequency allocation. European operators can broadcast within the same wavebands as those laid down by the UIT for analogue broadcasting:

- 0.7 to 11.7 GHz for Satellite Fixed Services (SFS), often referred to as "telecommunications satellites"
- 11.7 to 12.5 GHz for direct broadcasting satellites (DBS), laid down by WARC-77.
- The bandwidth allocated to DBS was subsequently opened up by the UIT to services other than DBS, due to the failure of the first-generation DBS satellite systems. For digital broadcasting, the 11.7 to 12.5 waveband has the advantage of the higher satellite-to-ground transmitter power allowed by the UIT.

There has been a dispute since 1996 over the launch of digital television services, between the two major European satellite operators EUTELSAT and the Société Européenne de Satellites (SES), with both organisations wanting the 28.2° East position for broadcasts over

⁴ For more information of the DVB Group, click onto their Internet site <http://www.dvb.org>

the 11.7 – 12.5 waveband. The dispute put a brake on the development of the two companies and had a knock-on effect on broadcasters' plans for digital services.

The protagonists have now managed to work out a solution to the conflict. The 8 June 1999, EUTELSAT and Société Européenne des Satellites (SES) have reached a comprehensive intersystem co-ordination agreement which will optimise the use of the scarce natural resource of satellite broadcasting frequencies over Europe⁵. The agreement, which was achieved with the active involvement of Deutsche Telekom AG (DT AG), covers the current and planned use of certain orbital positions in the respective Ku frequency bands over Europe.

The aim of the intersystem co-ordination agreement between Europe's two leading satellite operators is to create new business opportunities for both organisations. The agreement continues to ensure - in the best interest of millions of European satellite users - interference-free satellite broadcasting skies over Europe. According to the two operators, it also favours competition in the satellite communications sector and enhances the long-term competitiveness of satellite transmissions over alternative distribution means.

According to the intersystem co-ordination agreement, SES, in addition to the continued provision of services in the BSS band (11.70 to 12.50 GHz) at 28.2 degrees East, will also use frequencies in the FSS band (10.70 to 11.20 GHz) for Direct-to-Home Services. EUTELSAT will use at 28.5 degrees East the frequencies in the FSS band (11.20 to 11.70 GHz and 12.50 to 12.75 GHz), in particular to ensure the continuation of services currently carried on DT AG's DFS Kopernikus satellite at that orbital location. SES will use frequencies from 12.50 to 12.75 GHz at 28.2 degrees East for operations outside of Europe. The Agreement also extends to mutually interference-free operations within the arc 16 degrees East to 21.5 degrees East for both operators.

Terrestrial frequencies: DSI Phase II and the Chester agreement (1997)

The European Radiocommunications Office (ERO), the permanent office of the European Radiocommunications Conference (CEPT-ERC), with its 43 Member States, undertook an extensive survey of the wavebands between 29.7 and 960 MHz. The survey was completed in March 1995 and gave rise to a series of recommendations with a call for comments. They are described in the *Results of Detailed Spectrum Investigation – DSI Phase II: 29-7-960 Mhz and Call for Comments*.⁶

Recommendation 11 suggests that, while the switch-off between analogue and digital television is not yet completed, the 470 – 862 MHz waveband should be used solely for digital television, given that no channel that might become available in the short or medium term can be used for analogue broadcasting networks. Once it becomes possible, broadcasts on the 47-68 MHz waveband will be halted.

Recommendation 13 put forward the following timetable for the introduction of digital television:

- Early 1997: approval of the planning parameters
- Early 1998: CEPT meeting to plan for the introduction of digital television
- Fin 1998: introduction of digital television
- UIT conference to:
 - work out future requirements for digital television
 - review the 1961 Stockholm agreement
 - plan for the end of analogue television.
- from 2008 onwards: phasing-out of analogue television
- from 2020 onwards: review of the use of the 174-216 MHz and possibly the 470-510 MHz wavebands for other services.

⁵ Joint press release, Paris/Betzdorf, 8 June 1999.

⁶ Document accessible on the ERO website:

<http://www.ero.dk/EROWEB/DSI2/COMMENTS/DSIRECS.HTM>

This 10-year programme set ambitious objectives that met with a certain scepticism. France's National Frequencies Agency considered that more time would certainly be needed to carry through a complete switch-off in Europe from analogue to digital broadcasting.⁷

The recommendation is still being weighed up. The ERC said that "while it accepts the principle of the DSI II recommendation, it does not think it would be realistic to revise the Stockholm Agreement, or the 1984 Geneva Agreement at a single UIT conference. It says that the FM group is carrying out studies that include the timetable and options for the introduction of DVB-T. It also notes the long transition period recommended (25 years) for phasing out analogue broadcasting; it thinks that 7 to 12 years would be needed."⁸

The telecommunications authorities belonging to the CEPT met in Chester in July 1997 for an extraordinary meeting of the FM group to discuss and set the technical criteria, co-ordination principles and procedures for the introduction of digital terrestrial video broadcasting (TNT). The meeting was followed by a multilateral meeting of the authorities, who signed the multilateral agreement based on the results of the work carried out by the FM⁹. This agreement set up the DVB-T standard as the European standard. The agreement also laid down:

- the frequency bands
- the technical criteria to be used for the introduction of DVB-T
- the conditions of compatibility with the other radiocommunication services,
- the rules of procedure for the co-ordination and analysis of compatibility, register structures, etc.

Different working parties (ERO's FM PT 24, ERC's FMWG) worked alongside the EBU's technical department on detailed aspects of the co-ordination of frequencies. A CEPT working party was also appointed to prepare the European contribution to the next UIT Conference, which is due to examine the question.

The implementation of the Chester Agreement within the EBU is being monitored by a BMC project group (B/CAI) (CT The EBU "Broadcasting System" management committee)¹⁰

⁷ AGENCE NATIONALE DES FREQUENCES, *Etude sur la planification des fréquences pour la digital television de terre DVB-T*, Paris, 3.10.1998 (Accessible over the Internet: <http://www.anfr.fr/fr/textedoc/television.html>).

⁸ ERC Response to the Recommendation of DSI Phase II – ERO Lettre du 9 décembre 1997.

⁹ CEPT, *The Chester 1997 Multilateral Co-ordination Agreement relating to technical Criteria, Co-ordination Principles and procedures for the introduction of Terrestrial Digital Video Broadcasting (DVB-T)*, Chester, 25 July 1997. Available on the ERO web site (<http://www.ero.dk>).

¹⁰ See the presentation on the EBU web site: http://www.ebu.ch/bmc_bcai.htm

3. ENTITLEMENTS AND EUROPEAN DEBATES ON THE REGULATORY ENVIRONMENT

Developments in digital television in Europe should be analysed within the framework of the implementation of existing legislation, as well as the different consultation processes under way both within European institutions and international organisations.

3.1. The regulatory environment for the circulation of television services

The two European legal texts ("Television without Frontiers" Directive, European Convention on Transfrontier Television) setting out the framework for the free circulation of television services have been amended.

3.1.1. The directive "Television without Frontiers"¹¹

The "Television without Frontiers" directive (89/552/EEC), adopted on 3 October 1989 by the Council and amended on 30 June 1997 by the European Parliament and the Council Directive 97/36/CE, establishes the legal frame of reference for the free circulation of television broadcasting services in the Union in order to promote the development of a European market in broadcasting and related activities, such as television advertising and the production of audiovisual programmes.

To this end it provides for the Community co-ordination of national legislation in the following areas:

- law applicable to television broadcasts;
- promoting the production and distribution of European works;
- access of the public to major (sports) events;
- television advertising and sponsorship;
- protection of minors;
- right of reply.

The Directive is a Community instrument that is generally well regarded by all concerned and essential for the development of the industry.

According to Article 2 of Directive 97/36/EC, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the revised Directive not later than December 31, 1998.

According to article 3(a)(2) of Directive 89/552/EEC (as amended by Directive 97/36/EC) Member States shall notify the Commission of all measures taken or to be taken concerning the exploitation of exclusive broadcasting rights to events of major importance for society.

The Directive provides amongst others that the Commission establishes two types of reports: the first covers, according to Article 26, the application of the Directive in general, while the second, according to Article 4 (3), monitors the application of Articles 4 and 5 of the Directive (European works, independent producers).

An article 23 a of the revised Directive has established a Contact Committee which is composed of Member State representatives and chaired by a Commission representative and charged with guiding the implementation of the Directive to practical solutions.

¹¹ For more details, see CEC-DG X website: <http://europa.eu.int/comm/dg10/avpolicy/twf/twf-en.html>

The European Convention on Transfrontier Television¹²

This Convention, adopted the 5 May 1989 and entered into force the 1st May 1993, is the first international treaty creating a legal framework for the free circulation of transfrontier television programmes in Europe, through minimum common rules, in fields such as programming, advertising, sponsorship and the protection of certain individual rights.

It entrusts the transmitting States with the task of ensuring that television programme services transmitted comply with its provisions. In return, freedom of reception of programme services is guaranteed as well as the retransmission of the programme services which comply with the minimum rules of the Convention.

The Convention applies to all transfrontier programmes regardless of the technical means of transmission used (satellite, cable, terrestrial transmitters, etc.).

Its main provisions cover:

- freedom of expression, reception, and retransmission;
- right of reply (transfrontier character of this right and other comparable recourse);
- pornography, violence, incitement to racial hatred, etc. (it forbids such acts), and youth protection;
- the screening of European works, for a majority of screen time, where practicable;
- the screening of cinema films (normally not until 2 years after first showing - 1 year in the case of films co-produced by the broadcaster);
- advertising standards (e.g. prohibition on the advertising of tobacco and medicines and medical treatments available only on prescription, restrictions on the advertising of certain products such as alcoholic beverages);
- advertising time (normally not more than 15% of daily transmission time and not more than 20% of any one hour period);
- advertising breaks (for example, twice during a ninety minute feature film, none during a news or current affairs programme lasting less than 30 minutes);
- programme sponsorship rules.

A Standing Committee composed of representatives of each Party is responsible for monitoring the application of this Convention. Proceedings of conciliation and arbitration are also provided for.

The Convention is registered by the Council of Europe. It is currently in force in 21 States. In the States, member of the European Union, the Convention is pre-empted by the directive "Television without frontiers".

The Convention was amended on 1.10.1998¹³ with the aim notably of making sure it was in line with the revised Directive, that it included the new technical and economic developments and the emergence of new services. By 11.8.1999, no State had as yet signed the protocol.

3.2. The Communication of the Commission to the European Parliament and to the Council of Ministers "Audiovisual policy: the next steps"¹⁴

In this document adopted on 14.7.1998, The Commission's view is that the current regulatory needs of the audiovisual industry are already catered for at Community level by a number of

¹² For further details, see the du Council of Europe web site: <http://www.coe.fr/eng/legaltxt/132e.htm>

¹³ Protocol amending the European Convention on Transfrontier Television, <http://www.coe.fr/eng/legaltxt/171e.htm>

¹⁴ Final COM (1998), 14.07.1998 http://europa.eu.int/comm/dg10/avpolicy/key_doc/next-intro_en.html

Directives (and, in one case, a Recommendation) that have either been recently adopted or are in the legislative process. These are:

- The new "television without frontiers" Directive, which came into force on 30 July 1997 and which must be implemented into national legislation by 31 December 1998, and on which the first evaluation report is due in 2001¹⁵;
- The Directive on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission for which the implementation date was 1st January 1995 and on which the first evaluation report is due not later than 1.1.2000¹⁶;
- The European Parliament and Council Directive amending for the third time Directive 83/189/EEC laying down a procedure for the provision of technical standards and regulations, which extends to "Information Society Services" the regulatory transparency mechanism set up in 1983, and which was adopted on 29 June 1998¹⁷;
- The proposal for a European Parliament and Council Directive on the legal protection of services based on, or consisting of, conditional access, on which the Council adopted a Common Position on 29 June 1998. (The Directive has been adopted the 28 November 1998)¹⁸;
- The Directive on the use of standards for the transmission of television signals¹⁹ which will shortly be the subject of a first implementation report accompanied, if necessary, by proposals for adaptation of the Directive;

The proposal for a European Parliament and Council Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society²⁰.

This series of Directives and proposals for Directives, based on well proven Internal Market principles, was added to by the adoption by the Council on 28 May 1998 of a Recommendation "on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a

¹⁵ Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, Official Journal L 202, 30/07/1997 p. 0060 – 0071, http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397L0036.html. According the XVI Report on monitoring the application of Community law (COM(1999)301 final, 9.07.1999), by 31 December 1998 most of the Member States still had to notify the Commission of their national transposal measures. Several infringement proceedings are in motion against Belgium, Finland, France, Greece, Italy and Luxembourg.

¹⁶ Council Directive 93/83/EEC of 27 September 1993 on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, Official journal NO. L 248, 06/10/1993 P. 0015 – 0021, http://europa.eu.int/eur-lex/en/lif/dat/1993/en_393L0083.html

¹⁷ COM(96)392.

¹⁸ Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access, Official Journal L 320, 28/11/1998 p. 0054 – 0057. http://europa.eu.int/eur-lex/en/lif/dat/1998/en_398L0084.html

¹⁹ Directive 95/47/CE of the European Parliament and of the Council of the 23 November 1995. Implementation in national law is not fully accomplished. According to the XVI Report on monitoring the application of Community law (COM(1999)301 final, 9.07.1999, eight Member States (Denmark, Finland, Germany, Ireland, Luxembourg, Portugal, Spain and the United Kingdom) have notified national measures transposing the Directive. Infringement proceedings against the other Member States that were opened in 1997 continued in 1998 with reasoned opinions.

²⁰ COM(97)628, 10.12.1997

comparable and effective level of protection of minors and human dignity"²¹. This Recommendation marks an important development in that it is the first Community Act that concerns the content of on-line information services, notably those available on the Internet, and is based on a self-regulatory approach.

3.3. The consultation process on convergence

The 3 December 1997, the European Commission has officially launched the debate on the convergence by publishing the *Green Paper Convergence of the Telecommunications, Media and Information Technology Sectors*²². The Green Paper drew attention to the significant economic and social implications of the convergence phenomenon. In terms of economic development, job creation, cultural identities and social impact, the stakes for Europe are high. The telecommunications sector is widely regarded as being the single most important contributor to economic growth in the Union, whilst the socio-cultural impact of the audiovisual sector, in particular broadcasting, is without parallel. Creating an appropriate regulatory framework for the sectors concerned is therefore of the utmost importance if technological developments are to lead to economic growth and job creation and to allow Europe to take advantage of its rich cultural diversity.

3.3.1. The Public consultation

The first stage: December 1997 – May 1998.

The public consultation was carried out in two stages, the first of which was summarised in a Commission Working Document adopted in July 1998. Its main conclusion was that the convergence of technological platforms and network infrastructures was already a reality, and that similar regulatory conditions should therefore apply to all such infrastructures, irrespective of the types of services carried over them. This so-called "horizontal" approach to the regulation of infrastructure was complemented by a more vertical approach to that of services, the regulation of which would continue to be determined by the specific nature of a given service.

The opinion of the Community institutions on the Green Paper.

In the meantime, the Economic and Social Committee, the Committee of the Regions, and more recently the European Parliament issued broadly favourable opinions on the Green Paper. They underlined the importance of maintaining European competitiveness in the face of the rapid technological and market change leading to realisation of the Information Society, and saw the need for an appropriate regulatory environment as an essential part of this trend. They confirmed the separate approaches to regulating infrastructure and content services, but considered that any regulation should take due account of the public interest and of Europe's unique cultural environment.

The second stage: July-November 1998.

The Commission's July Working Document also launched the second stage of public consultation by posing questions on what the Commission perceived as three key areas: (i).access to networks and gateway facilities; (ii).investment, innovation and content production, and (iii).balancing regulation between public interest and competition considerations.

²¹ Council Recommendation of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity. *Official journal* NO. L 270, 07/10/1998 P.0048 – 0055

²² COM(97)623. The various documents related to the Green paper are available on Internet: <http://www.ispo.cec.be/convergencegp/>

Responses were received from over 80 organisations, most of them concerned with access issues as a critical factor in securing effective competition. New on-line service providers wanted regulated access to networks, whereas incumbent operators thought that such regulation would discourage investment in infrastructure. Traditional broadcasters called for open access to networks and gateways for the provision of digital television and other services. Many commentators feared that vertically-integrated operators might abuse their market power and control of access to one or more elements of the value chain in order to foreclose market entry by others. The divergence of views was illustrated by calls from some parties for detailed regulation of certain bottlenecks and from others for a lighter touch and a more flexible regulatory environment. Openness was recognised as a long-term goal, but most commentators acknowledged that this should be a market-led process. There were also divergent views on the respective roles of regulation and competition law, although most commentators saw a continued, albeit transitional role for regulation as the convergence of technologies and markets leads to increased competition.

On the second question of how best to encourage investment and innovation in the new environment, the need to adapt current measures to the new environment was highlighted. Views on regulatory measures aimed at promoting European content lent in the direction of investment- rather than time-related quotas. Strong copyright protection was seen as an important factor. Many thought that programmes such as a MEDIA III were to be encouraged, and that fiscal incentives and financial guarantees for investment in content production should be considered. Finally, adherence to open interoperable standards was viewed as essential to foster the growth of a wide range of content services over a similarly wide range of delivery media. With regard to the second part of this question – how to take account of the level of investment – most thought that no special measures were needed beyond a secure and predictable regulatory environment. Some parties called on competition authorities to properly reflect investment risk and uncertainty in formulating definitions of relevant markets.

With regard to the third question on ensuring a balanced approach to regulation, no particular contradiction between public interest and market considerations was seen. Rather there was an overlap in which market forces were viewed as a necessary but not sufficient condition for fulfilling some (though not all) areas of public interest. Many views highlighted the importance of the proportionality principle, though few attempted to outline specific criteria in this regard, and there were mixed views on how public broadcasting fitted into the new environment. Self-regulation was seen as a useful mechanism for most content-related matters and for developing open standards, but not particularly for dealing with market power problems.²³

3.3.2. *Key messages*

According to the Commission, the key messages emerging from the consultation are:

1. With regard to the role of regulation, affirmation of the continuing need to meet a range of public interest objectives whilst recognising the need to promote investment, in particular in new services. The need for transparency, clarity and proportionality with regard to rules and to distinguish between:
 - regulation imposing positive and negative obligations in the public interest,
 - sector-specific regulation complementing case-by-case application of competition rules,
 - promotional measures ensuring outcomes according to specific policy objectives.
2. Separation of transport and content regulation, with recognition of the links between them for possible competition problems. This implies a more horizontal approach to regulation with:
 - homogenous treatment of all transport network infrastructure and associated services, irrespective of the types of services carried;

²³ COM(1999) 108 final. Available on <http://www.ispo.cec.be/convergencegp/>

We reproduce the executive summary of this communication as available in the first pages of the document.

- a need to ensure that content regulation is in accordance with the specific characteristics of given content services, and with the public policy objectives associated with those services;
 - a need to ensure that content regulation addresses the specificity of the audiovisual sector, in particular through a vertical approach where necessary, building on current structures;
 - application of an appropriate regulatory regime to new services, recognising the uncertainties of the marketplace and the need for the large initial investments involved in their launch while at the same time maintaining adequate consumer safeguard.
3. A balanced solution as to how public broadcasting can be best integrated into the new environment, which should:
 - respect Member State competence by defining the remit of public service broadcasting in accordance with Protocol 9 annexed to the Amsterdam Treaty;
 - encourage those organisations vested with public broadcasting obligations to exploit new technologies and new ways of reaching their audiences;
 - require such broadcasters to distinguish clearly between defined public broadcasting activities and activities lying in the competitive domain.
 4. Effective application of the competition rules; an increased reliance on those rules, accompanied by gradual phasing-out of sector-specific regulation, as the market becomes more competitive
 5. Actions aimed at promoting premium European content.

3.3.3. *Next Steps*

The Communication brings to a close the consultation process associated with the Convergence Green Paper. The Commission now intends to draw on this process to develop proposals for action on regulatory reform. Such proposals will be underpinned by a coherent set of regulatory principles which will be the subject of a forthcoming Communication. Following the approach emerging from the consultation, the proposals will cover:

- reforms in the regulation of infrastructure and associated services will be proposed as part of the 1999 Communications Review, a process already foreseen in current community telecommunications legislation;
- those in the regulation of content services will be covered either by adjustments to existing legislation at an appropriate time, or by the introduction of new measures.
- A number of flanking actions in both content and infrastructure areas are also foreseen.

Actions relating to content include:

- Verification of the transposition and actual application by the Member States of the second Directive on Television without Frontiers
- Proposal on measures for the promotion, production and distribution of European works in the audio-visual sector (MEDIA III programme)

Actions relating to infrastructure include:

- Report on the implementation of Directive 95/47/EC on the use of standards for the transmission of television signals and verification of the transposition of this Directive by the Member States, and an assessment of the need to amend the Directive.
- Communication on the public consultation on the radio spectrum Green Paper

3.4. The Green Paper on Policy on the radioelectric spectrum ²⁴

On 9 December 1998, the European Commission launched a new consultation process, publishing *The Green Paper on Policy on the radioelectric spectrum, taken within the context of Community policies on telecommunications, broadcasting, transport and research and development*.

From a European Community perspective, policy objectives associated with the availability of and access to radio spectrum include:

- to allow the development of new services to meet consumer and governmental demands for radio services;
- to foster the development of the internal market for and competition in radiocommunications equipment and services, in particular in the context of the deployment and operation of pan-European and global systems and services;
- to meet public policy objectives with regard to considerations such as safety, cultural and social aspects etc;
- to safeguard the Community's interests in multilateral and bilateral negotiations where radio spectrum is discussed;
- to stimulate technological innovation and support European competitiveness
- more broadly to develop economic growth, create employment, and promote general welfare.

Bearing these general objectives in mind, certain key issues need to be considered in relation to the way in which radio spectrum is made available:

- ✓ to secure radio spectrum availability for pan-European radio systems, services and equipment;
- ✓ to ensure the appropriate balancing of commercial and public interest in radio spectrum policy;
- ✓ to reflect the economic value of radio spectrum as a scarce commodity;
- ✓ to provide legal certainty as regards radio spectrum availability and use;
- ✓ to ensure open, transparent, objective, and non-discriminatory procedures in support of the competitive provision of radio services and equipment;
- ✓ to ensure the efficient use of radio frequencies;
- ✓ to ensure that radio spectrum regulation encourages competition and technological innovation;
- ✓ to support the development of economies of scale for the introduction of new equipment which matches the needs of users;
- ✓ to ensure coherence between radio spectrum and standardisation policies.

²⁴ COM(1998)596 final

The report contains the following observations on terrestrial digital broadcasting (DVB-T and DAB):

"The digitalisation of terrestrial broadcasting would potentially allow for reduced radio spectrum occupancy for existing broadcast services, thereby freeing up radio spectrum. However, it is very likely that in many countries, a lengthy transition period to digital will be needed. Consumers will need time to replace their radio sets. They will also need to purchase one or more decoders to upgrade their analogue TV sets or to buy one or more new integrated digital TV sets. A period of "simulcasting" will therefore be necessary (of anything up to 15 years) and this will in fact put additional strains on the availability of radio spectrum. Moreover, the range of broadcast services is already increasing rapidly, with more NVOD, thematic channels and interactive TV becoming available. On the other hand, as TV broadcasting develops from its origins (a few public terrestrial channels) towards pay TV and transactional, retail style delivery of programmes "on demand", and as wireless communications evolves towards multimedia, the terms for access to spectrum which terrestrial broadcasters currently enjoy are increasingly being called into question by economic actors in other sectors (...).²⁵

European Community policy on advanced television and digital broadcasting aims at facilitating the market-led introduction of digital and wide-screen television²⁶. It has both a regulatory and a promotional strand. The Directive on the use of television transmission standards²⁷ set up a light regulatory framework to support the launch of digital television services, providing certainty for investors, and ensuring that public interest requirements are met.

On the promotional front, the Commission has supported the activities of the Digital Video Broadcasting (DVB) group. The group has defined the European digital broadcasting standards for cable, satellite and terrestrial television which are increasingly being used all over the world. In addition, the Union launched a four-year Action Plan in 1993²⁸ to overcome the market failure that had prevented the introduction of wide-screen television in the 16:9 format. Wide-screen is now an established part of the broadcast services and TV set markets, ready for an increasing role in digital TV markets."

A new framework for electronic communications

On 10 November 1999 the Commission adopted a package of four Communications to launch a review of the current regulatory framework for electronic communications. This process will be the cornerstone for maintaining and improving Europe's competitive position in the Information Society. The packages includes²⁹ :

- Communication on a New Framework for Electronic
- Communications Infrastructure and Associated Services – The 1999 Communications Review
- The Fifth Report on the Implementation of the Current Framework
- Report on Digital Television in the EU

²⁵ The Commission is currently dealing with complaints involving non-transparent and potentially discriminatory attribution of radio spectrum in this sector.

²⁶ See Council Decision on an Action Plan for the Introduction of Advanced Television Services in Europe, 93/424/EEC, OJ No L196/48 5.8.93. This Action Plan has facilitated the market introduction of the 16:9 wide-screen format ready for digital TV.

²⁷ European Parliament and Council Directive 95/47/EC of 24 October 1995 on the use of television transmission standards OJ 95/L28/51, 23.11.1995.

²⁸ Council Decision 93/424/EEC of 93/424 of 22 July 1993 on an Action Plan for the Introduction of Advanced Television Services in Europe, OJ L281, 23.11.1995. The Council Decision made available up to 228 MEURO over 4 years, ending on 30.06.1997

²⁹ Documents are available on <http://europa.eu.int/comm/dg13/electrocomm.htm>

- Communication on Next Steps in Radio Spectrum Policy

The Summary of the report on development of digital television provide the following conclusions

▼ The Directive's regulatory framework has had important benefits

It has contributed to the global success of the Digital Video Broadcasting Group's transmission systems, thanks to their highly developed user requirements, which draw on Europe's own diversity for their range. This contrasts with the earlier European model, driven by technology and extensive regulation.

▼ The Directive has underpinned regulatory certainty in mature pay-TV markets

The Directive has provided some certainty for the first phase of the digital TV market, which is dominated by pay-TV. In those Member States where digital television is now well-established, development of the range of digital television services has depended on a strong pay television market. The range of services has developed rapidly towards transactional services and new services, including internet and home banking in particular where there were competing pay television platforms. New business models have also emerged.

▼ Competition law has also played a strong role

The strength of free-to-air services in certain Member States has made it hard to launch digital television through pay-TV. The extensive investments considered necessary have led to powerful ventures which pose a high risk of market foreclosure. The structure of most broadcasting markets makes it hard for competition authorities to accept any new combination of existing players to address new markets.

▼ The interrelationship between regulation and competition law must be constantly monitored

Their interplay must ensure a coherent approach to changing market structures. One key issue is whether competition law alone provides enough certainty to enable investment. The relationship between infrastructure competition and service competition is also important.

▼ The need for a broader approach to infrastructure, transmission and access

New decoder functions will play an increasing role. Access to cable television networks has been a significant bottleneck for pay television operators in markets where cable is the dominant means of delivery. Both lie outside the scope of Directive 95/47, implying a need for a broader approach to access issues in line with the convergence phenomenon, taking into account relevant general interest objectives.

▼ Digital switch-over must be realised in a competition neutral way

The switch-over from analogue to digital television is a positive development in respect of increased spectrum efficiency. This process should not prejudice consumer choice however, given that consumers will have to buy new receiving equipment as a consequence. It should also be made in full compliance with competition rules.

▼ Guaranteeing the consumer interest needs a new approach

Digital television is a richer, but more complex environment than analogue television. Consumers will therefore need time and high quality, transparent information in order to take empowered decisions that have traditionally been made by other market actors and regulators. Regulators will need to ensure that general interest objectives are still met. Interoperability and openness remain important targets. The increasing role of software provides a new, positive element of flexibility for achieving them.

▼ Implications of digital television for the structure of broadcasting

Pay television has provided the major impetus for the early stages of the digital television market. How far this will modify the relative market positions of free-to-air television and pay television in the longer term is uncertain. Various market forecasts confirm that pay television subscription revenues are growing faster than advertising revenues. In this context, the principle that regulation should be limited to what is indispensable is particularly relevant: regulation should not hinder market development, notably of innovative new services.

▼ The future of Directive 95/47

Digital television markets and technology have evolved beyond the scope of the Directive. The 1999 Communications Review considers the case for combining access and interconnection rules in a single Directive which will cover all electronic communications infrastructure, transmission and access services.

The Council is expected to come up with a resolution to allow the Commission to continue its work.

3.5. The consultation processes under way within the Council of Europe

The Council of Europe considers that the development of new communication technologies and services, such as digital television and on-line newscasting is one of the most important factors affecting the right to free expression and information in the years to come. Although these technologies and services will help broaden communication and thereby foster the plurality of opinions and culture in Europe, they might also cause new problems over human rights and democratic values to crop up (public, operator and pan-European access to new communications technology, the right to free expression and information through new communication services, political and cultural pluralism, etc.), as well as questions concerning the legislative framework applicable to communication activities.

These questions were considered by the 5th European Ministerial Conference on Communication Policies (Thessalonika, 11-12 December 1997). The policy papers adopted by the Ministerial Conference laid down a certain number of basic guidelines for new communication services, that Member States need to follow. The papers (documents MCM (97) 15) are available from the Council of Europe Media Section.

Following the ministerial Conference, the Mass Media Steering Committee (MMSC) asked its Group of Experts on new communication technologies (MM-S-NT) to develop the principle of "community universal service" as adopted by the Conference, the aim of which is to ensure each individual's right to gain access to such services, given that home-based access will not be possible for everyone in the immediate future.

The Group also decided to plan for a proposed Recommendation on these questions, and to prepare a guide to the various initiatives of the Member States so as to encourage public access to the new communication services.

The MMSC also decided to set up a new Group of Experts for an initial 2-year period, starting in 1999, to look into the impact of digital developments in the media sector (MM-S-AD). The Group will be studying the effect of network convergence and globalisation on the regulation of public communication media, including both traditional and new media services.

Another Group of experts (MM-S-CA) was started in 1999 to set up a draft Convention on the legal protection of conditional access services (encrypted radio and television services, on-line conditional access services).

The Group of Specialists on media pluralism (MM-S-PL) is also looking at the effect of the development of new communication technologies and services on media pluralism.³⁰

³⁰ See also the report entitled "Pluralism in the multichannel market: paths to be explored with regard to regulation." by Chris Marsden (revised version)". Note of the General Secretariat prepared by the Human Rights Department, MM-S-PL (99) 12 rev., Strasbourg, 15 July 1999. Document awaiting approval.

Also: *Etude d'un consultant sur l'impact des nouvelles technologies de la communication sur la concentration des média et le pluralisme*, Rapport de MM. Prosser, Goldberg et Verhulst, MM-CM(96)3def; Conseil de l'Europe, Strasbourg, 26 août 1996.

4. RECENT DEVELOPMENTS IN THE TRANSMISSION MARKET

4.1. Increase in competition and the trend towards the privatisation of transmission companies

Back in the days when television was a public-service monopoly, the transmission sector belonged in essence to the public sector. Terrestrial transmission networks belonged either to state-owned broadcasters (such as the BBC, the RAI, RTE, RTBF and VRT) or to special state-owned terrestrial transmission companies (TDF, Nozema, Retevision, etc.) or to state-owned telecommunications operators (Deutsche Telekom, etc) or, rather less frequently, to regulatory bodies (the IBA in the United Kingdom).

The situation was not immediately affected by the advent of cable networks, which were often built through publicly-owned or semi-public companies (intercommunal in Belgium, Deutsche Telekom, France Telecom), or sometimes by the broadcasters themselves, as in Ireland. The first satellites used for television were also the result of initiatives led by state-owned national telecommunications companies (France Telecom, TDF, Deutsche Telekom, etc.) or European companies, such as Eutelsat.

The early 90's saw the arrival of private operators, with the setting up of the Société Européenne de Satellites, which quickly provided competition for Eutelsat. The British and French cable sectors also attracted private investment, as did the German one, although to a lesser extent. In Italy and Greece, and partially in Germany, the new private television channels brought with them their own transmission networks, although in France and Spain, the operators (TDF, Retevision), retained a virtual *de facto* monopoly on terrestrial networks.

The last few years have seen an increase in the privatisation of the transmission sector, driven both by the European Commission, with the aim of increasing competition in the telecommunications sector, and by the economic implications of the development of the new technologies, especially in the digital field.

4.2. Privatisation or statutory reform of terrestrial transmission

The trend towards privatisation of public bodies and, more recently, the prospects opened up by terrestrial digital broadcasting have given rise to important changes in the status of transmission organisations.

A number of networks have been fully privatised:

- Retevision, the Spanish state broadcasting corporation, was sold off to a consortium headed by Telecom Italia.
- In 1997, the BBC's network, BBC Transmission, was sold to Castel Transmission Services (Holdings) (a consortium led by TDF) for GBP 244 million, which were immediately invested in new digital services. Similarly, the BBC World Service network was sold to Merlin Communications for GBP 17 million.

In other countries, the networks were transferred to newly-formed subsidiaries or to publicly-owned companies.

- In 1992, in Sweden, the network which belonged to Televerket, the public telecommunications corporation, was transferred to an independent, publicly-owned company (Telia).
- In Finland, to prepare for the launch of terrestrial digital television, YLE transferred its transmission assets to Digita Ltd., one of its subsidiaries. The shareholding of this company will be opened to private investors.
- In the Netherlands, NOZEMA's status is currently under review.

- In Ireland, the RTE wants to set up a semi-public corporation, where it would have a 40% stake, for digital transmission and subscription management. The company would be jointly run with private operators.

The changes in the status of transmission corporations is obviously of considerable significance for the launch of digital terrestrial television. One possibility that cannot be discounted is that of publicly-owned companies selling blocks of their shares to private partners to help finance investment and also to set up joint platforms between the private and public sectors.

4.3. The EUTELSAT privatisation process

EUTELSAT was set up in 1977 as an intergovernmental organisation and recently decided to enhance its commercial dynamism by changing its statutes. At its Cardiff meeting on 18 – 20 May 1999, hosted by the British government, the Assembly of Parties brought forward the date by which it would adopt a fully commercial structure.³¹

EUTELSAT's Assembly of Parties, at a meeting in Cardiff from May 18 to 20 hosted by the British government, has advanced the date by which it will adopt a fully commercial structure.

The Parties agreed by consensus that the assets and activities of EUTELSAT will be transferred on 2 July 2001 into a private company under French law. Should two thirds of member states ratify the necessary legal texts before the end of the year 2000, the transformation may take effect even earlier. This agreement means that the creation of the new private company will take place sooner than the end 2001 goal declared by EUTELSAT's member governments in Estoril in May 1998.

The new company, Eutelsat S.A. will be based in Paris and comprise a Directorate and a Supervisory Board. It will initially consist of shareholders that are the current Signatories of EUTELSAT. A small intergovernmental body will ensure that Eutelsat S.A. continues to observe basic principles such as pan-European coverage.

4.4. Impact of the Community Policy in the cable sector

In the cable sector, the Commission has been working to increase competition in telephony by authorising cable operators to provide voice telephony services. The Commission also urged publicly-owned telecommunications companies to formalise the separation of their telephony and teledistribution businesses.

Pursuant to Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services, as last amended by Directive 96/19/EC(2), Member States were required to lift special and exclusive rights for telecommunications services and infrastructures by 1 January 1998, subject to additional transition periods for some Member States. In particular, Article 4, as amended by Commission Directive 95/51/EC(3), required Member States to "abolish all restrictions on the supply of transmission capacity by cable TV networks and allow the use of cable networks for the provision of telecommunications services, other than voice telephony", and to "ensure that interconnection of cable TV networks with the public telecommunications network is authorised for such purpose, in particular interconnection with leased lines, and that the restrictions on the direct interconnection of cable TV networks by cable TV operators are abolished".

Directive 95/51/EC addressed two problems concerning undertakings to which Member States have granted the right to establish both cable TV and telecommunications networks. First, it stated that these undertakings are in a situation whereby they have no incentive to attract users to the network best suited to the provision of the relevant service. It was pointed out that the introduction of fair competition will often require specific measures that take into

³¹ Press release of 21 May 1999

account the specific circumstances of the relevant markets. At the time of the adoption of Directive 95/51/EC, the Commission concluded that, given the disparities between Member States, the national authorities were best able to assess which measures were most appropriate, and in particular to judge whether a separation of these activities was indispensable. Secondly, the Commission concluded that detailed control of cross-subsidies and accounting transparency are essential in the early stages of liberalisation of the telecommunications sector. Article 2 of Directive 95/51/EC therefore required Member States to ensure in particular that telecommunications organisations providing cable TV infrastructures kept separate financial accounts as regards the provision of public telecommunications networks and cable TV networks as well as their activities as telecommunications service providers. It was also stated that while Member States should at least impose a clear separation of financial records between those activities, full structural separation was preferable.

The 23 June 1999 the Commission has adopted *Commission Directive 1999/64/EC of 23 June 1999 amending Directive 90/388/EEC in order to ensure that telecommunications networks and cable TV networks owned by a single operator are separate legal entities*³² This Directive is based on the assessment carried out by the Commission pursuant to Article 2 to Directive 95/51/EC. In preparing that assessment, two studies³³ were commissioned on the competition implications in telecommunications and multimedia markets of, on the one hand, joint provision of cable and telecommunications networks by a single dominant operator and, on the other, restrictions on the use of telecommunications networks for the provision of cable TV services. The studies concluded in particular that the joint ownership of telecommunications networks and cable TV networks by a single enterprise, without a high degree of competition in the local access markets, slows down the development towards a full multimedia infrastructure to the detriment of consumers, service providers and the European economy as a whole.

Privatisation of the public networks

The Commission's action here has already had effects on the structure of the cable market and will doubtless also have an impact on the development of the audiovisual scene in two of the larger Member States: in France, France-Telecom, the public telecommunications operator has sold its networks, partly to US operators. In Germany in January 1999, the publicly-owned operator, Deutsche Telekom, set up a subsidiary to which it transferred all the group's cable assets. This was to pave the way for opening of the equity regional cable network subsidiaries to private operators. Deutsche Telekom intends to keep 25.1% of its shares in the 9 networks to be sold off and set 20 August as the date for receiving offers of partnership. Five companies are on the list: Mannesmann, UPC, a consortium of German banks, led by the Deutsche Bank, EWT / TSS, Callahan Associates International.

Increasing importance of the new services for the cable industry

The possibilities opening up for cable operators to provide new services (voice telephony, Internet, etc.) mean that their core business focus might change extremely quickly. One example comes from the United Kingdom, where telephone services have been the main source of revenue for cable operators since 1992. A recent CIT study indicates that by 2008, telephony services should represent the largest source of revenue for Belgian, Dutch and French cable operators.³⁴

³² Official Journal L 175, 10/07/1999 p. 0039 – 0042

³³ *Cable review - Study on the competition implications in telecommunications and multimedia markets of (a) joint provision of cable and telecoms networks by a single dominant operator and (b) restrictions on the use of telecommunications networks for the provision of cable television services*, Arthur D. Little International, 1997

Study on the Scope of the Legal Instruments under EC Competition Law available to the European Commission to implement the Results of the ongoing review of certain situations in the telecommunications and cable television sectors, Coudert, 1997.

³⁴ CIT, "Cable telephony to take off in France and Benelux", Press information, 12.7.1999.

American operators begin to move into the European cable sector.³⁵

Given the current situation, a number of American cable groups (NTL, UPC, Ameritech), as well as software giant Microsoft are beginning to invest heavily in European cable networks.

- The British market, which was de-regulated in 1991, was the first country to experience the influx of American investment: the main British cable operators are now dependent upon American companies and capital: NTL (1.6 millions subscribers), Telewest (1.4 millions subscribers), Cable & Wireless Communications
- The UPC group, set up in the Netherlands in 1995 by the American group United International Holdings, associated with Phillips, bought out the Dutch company's shareholding in 1997. Since then, it has been increasingly active in the take-over market in Europe and now has offshoots in Austria, Belgium, France, Hungary, Malta, Norway, the Czech Republic, Rumania and Slovakia. In July 1999, UPC has taken over Stjäm TV, the third Swedish cable network. UPC has 3.7 million subscribers and is currently the second-biggest European cable network operator, behind Deutsche Telekom. It has also applied in August 1999 to buy the German corporation's networks.
- Apart from the British networks, NTL took over the leading Irish network, Cablelink, in May 1999. In the same month, NTL also bought five out of the nine first-generation France-Telecom networks. NTL may become the only important operator in UK, as in July 1999 it has accepted to take-over the networks owned by Cable Wireless Communications (CWC) and as negotiations are in process for a merger with Telewest.
- In Denmark, Ameritech took a controlling interest in Tele-Denmark the country's leading network.
- Microsoft's European strategy is also revealing: apart from the fact the company holds stakes in various American groups (30% of Telewest, 5% of NTL, 8% of UPC), Microsoft is also beginning to buy into European companies, with the acquisition of 2.5% of Portugal Telecom's Portuguese operator subsidiary, TV Cabo, in March 1999. Although its name has been quoted in the press, Microsoft has not yet officially declared its interest in buying Deutsche Telekom's networks.

As *La lettre du CSA* emphasises, the current wave of acquisitions and investments cannot be overlooked by the regulators, both with regard to the questions they raise and to the companies providing the capital. *"Cable-operators, in virtually every case, hold a local monopoly, which gives them total power to decide how much capacity to allocate between telecommunications and television services and, for the latter, to decide which TV channels they would be offering their subscribers and to set the technical and commercial conditions for the packages. It does not take much effort to imagine that if future network revenue derives mainly from e-business, television programmes will be taking a back seat in the order of priorities, like cultural products on supermarket shelves: loss leaders for high added-value telecommunication services, or as promotional supports for tele-shopping or advertising."*

³⁵ For recent developments, see the article published in *La Lettre du CSA*, Paris, July 1999.

Changes in the marketing of television services distributed by the cable operators ?

The advent of digital should bring about a change in the marketing of television channels. The Belgian press³⁶ reports that Belgian cable operators, especially Electrabel (the leading Belgian operator and number 3 in Europe in terms of subscribers), are considering changing their way of marketing television channels. The idea is to cut down on the number of channels included in the basic packages (fifteen, instead of thirty). The price of the basic package would come down, but the other channels would be transmitted digitally, at a higher, optional, charge. Remuneration of broadcasters whose channels are carried on the networks would also change as a result. The Belgian cable operators carried out a number of market surveys in 1999 to get a clear picture of viewer needs.

Should this idea turn into practice, then the problem of consumer consultation over the make-up of the basic package will certainly crop up. The new Danish law on radio and television broadcasting, for example, obliges cable operators to consult subscribers over the choice of services to be offered.³⁷

4.5. Convergence and competition between the different transmission systems

The interoperability between transmission networks offered by the MPEG-2 standard, along with the impact of de-regulation and the convergence of audiovisual services, meant increased competition between the different broadcasting systems.

This competition differs according to the national markets, which are in varying stages of development of satellite and cable reception and there are a number of different local situations:

- satellite operators vs. terrestrial operators (as in the United Kingdom)
- satellite operators vs. cable operators (as in France, although there is a certain complementarity here, due to cross-ownership)
- terrestrial operators vs. cable operators (in the Netherlands, digital television is being considered as a way of opposing the monopoly of the cable operators).

Some operators are concerned about this situation and have asked the European Commission to lay down common "horizontal" rules between the different broadcasting systems.³⁸

4.6. Heterogeneity of national legislation on transmission / broadcasting vertical integration.

There is considerable heterogeneity between national regulations – and, consequently, the situations in the markets – with regard to the relationship between transmission and content (broadcasting or service publishing)

- In the United Kingdom, the same operator is not allowed to run a satellite transmission business at the same time as a terrestrial digital network. He can, on the other hand, act as a transmission operator, packager and broadcaster all together
- In Germany, the same operator (Deutsche Telekom) acts both as a terrestrial network, a cable network and a satellite operator. It has also announced it would be positioning itself as a packager

³⁶ *De Standaard*, 30.1.1999, *Le Soir*, 4.2.1999

³⁷ *Radio and television law* n°208 6 April 1999, quoted in *IRIS*, June 1999, vol.V, n°6. A consultation has been organised in July 1999. See *Screen Digest*, August 1999.

³⁸ See the arguments presented by the European Cable Communications Association at the consultations over the "Convergence" Green Paper and the "Spectrum Management" Green Paper.

- In France, the same group (such as CANAL+ or the Lyonnaise des Eaux) can be the owners of cable networks, a major shareholder in digital companies (respectively Canal Satellite and TPS) and a publisher or major shareholder in programme companies.
- In Belgium, cable operators cannot get involved in television programme-making.

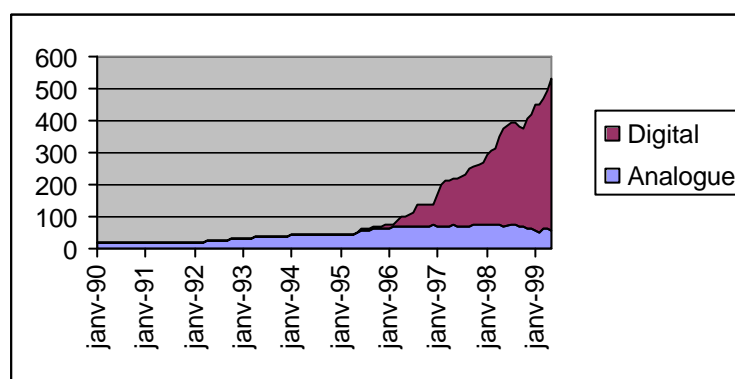
To the best of our knowledge, there have not been any recent in-depth legal and/or economic reports on the topic, the impact of which on internal market development is liable to be high.

5. THE IMPACT OF DIGITAL TELEVISION ON REGULATION – NEW PROBLEMS FOR THE REGULATORS

5.1. The multiplication of channels – The question of licences and the identification of the legal status of broadcasting bodies.

The impressive increase in the number of channels made available by digital technology has thus far been mainly due to the increase in the transmission capability of the satellite operators. According to the Observatory's estimations, in January 1999, there were 429 channels being broadcast by satellite from one of the 34 Member States of the Observatory. Apart from these, there are also a large number of national channels that also broadcast by satellite on top of their terrestrial analogue broadcasts, as well as those channels that can also be received in Europe from other countries. Most of the satellite broadcasting is in digital mode and, as shown in the graph below, supplied by EUTELSAT, satellite analogue transmission has been largely overtaken in the last three years.

Graph 1. CHANGE IN THE NUMBER OF TV CHANNELS TRANSMITTED BY EUTELSAT (1990-1999)



Source: EUTELSAT

The increase in network capacity has not done away with the problem of granting broadcasting licences, but it has certainly changed the manner. Article 2 of the Television without Frontiers Directive in the 30 June 1997 version³⁹ assumes that the countries where

³⁹ Article 2

1. Member State shall ensure that all television broadcasts transmitted by broadcasters under its jurisdiction comply with the rules of the system of law applicable to broadcasts intended for the public in that Member State.
2. For the purposes of this Directive the broadcasters under the jurisdiction of a Member State are:
 - those established in that Member State in accordance with paragraph 3;
 - those to whom paragraph 4 applies.
3. For the purposes of this Directive, a broadcaster shall be deemed to be established in a Member State in the following cases:
 - (a) the broadcaster has its head office in that Member State and the editorial decisions about programme schedules are taken in that Member State;
 - (b) if a broadcaster has its head office in one Member State but editorial decisions on programme schedules are taken in another Member State, it shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the television broadcasting activity operates; if a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in each of those Member States, the broadcaster shall be deemed to be established in the Member State where it has its head office; if a significant

the broadcasting organisations have their central administration are clearly identified, according to set rules. The increase in the number of channels has made this article difficult to enforce, especially with regard to satellite-broadcast television channels.

It is not difficult to track the television channels broadcast by satellite. Satellite operators regularly publish line-ups detailing the occupation of their repeaters. Observer networks also keep updated web sites giving the day-to-day changes on satellite repeaters.⁴⁰ These lists of channels broadcast by satellite can be compared with the lists supplied by the regulatory authorities. There appear to be an increasingly large number of channels being broadcast without having received licences or possibly without Member States being aware that they are actually in their countries. Identifying the country where the channel has its central administration is made more difficult by the absence of any address or by the fact that the satellite operators themselves have no direct contact with the broadcasting authorities, inasmuch as the satellite transmission facilities are marketed through intermediate companies.

It is tempting to consider that the problem is a minor one inasmuch as the main broadcasting channels are well known and that their legal status with regard to the Directive is properly identified, although there are a number of disputed cases.⁴¹ It should, however, be noted that these so-called "marginal" channels often specialise in sensitive areas such as pornography, fundamentalist religious movements or sects, tele-shopping, etc. Also, adopting a free and easy approach to these minority channels could risk setting a precedent which might well subsequently be exploited by operators seeking to take advantage of de-localisation to develop more significant markets.

part of the workforce involved in the pursuit of the television broadcasting activity operates in neither of those Member States, the broadcaster shall be deemed to be established in the Member State where it first began broadcasting in accordance with the system of law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;

- (c) if a broadcaster has its head office in a Member State but decisions on programme schedules are taken in a third country, or vice-versa, it shall be deemed to be established in the Member State concerned, provided that a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in that Member State.
4. Broadcasters to whom the provisions of paragraph 3 are not applicable shall be deemed to be under the jurisdiction of a Member State in the following cases:
 - (a) they use a frequency granted by that Member State;
 - (b) although they do not use a frequency granted by a Member State they do use a satellite capacity appertaining to that Member State;
 - (c) although they use neither a frequency granted by a Member State nor a satellite capacity appertaining to a Member State they do use a satellite up-link situated in that Member State.
 5. If the question as to which Member State has jurisdiction cannot be determined in accordance with paragraphs 3 and 4, the competent Member State shall be that in which the broadcaster is established within the meaning of Articles 52 and following of the Treaty establishing the European Community.
 6. This Directive shall not apply to broadcasts intended exclusively for reception in third countries, and which are not received directly or indirectly by the public in one or more Member States.

⁴⁰ The most thorough and the most ergonomic in our opinion is: Satellite Lyngemark Chart (<http://www.lyngsat.com>) which gives daily updates on television satellite occupation throughout the world.

⁴¹ In particular the case of VT-4, which has a British licence given by the ITC, but which, according to the Flemish-speaking Community of Belgium, is not actually established in the country. In June 1999, the Commission gave formal notice that, following a decision of the Vlaams Commissariaat voor de Media that VT-4's Head Office was in the Flemish Community, the channel should come under the jurisdiction of the Flemish Community (*IRIS*, July 1999, Vol.V, n°7).

It is not the Observatory's mission to give an opinion on whether it is worth keeping a licensing system for broadcasting or not, but the topic is sure to be widely debated sooner or later.

The European Audiovisual Observatory has a statutory remit to contribute to the openness of the European audiovisual market, and could be asked to manage a data base on television channels that can be received in Europe, in collaboration with the various bodies involved (the Member State authorities responsible for granting licences, the Contact Committee of the directive "Television without frontiers", the permanent Commission for the Transfrontier Convention, satellite operators and organisations such as EPRA, ACT and EBU)

5.2. Licensing systems

The actual way in which licences are granted by Member States is not up for review. Several States have already amended their legislation to allow for the advent of digital television. According to the country, those regulations are related to terrestrial digital television or to the introduction in national law of the EC Directive 95/47 on transmission of signals by cable and satellite⁴²

- AT – Austria: *Bundesgesetz, mit den Bestimmungen über die Veranstaltung von Hörfunk- und Fernsehprogrammen in Kabelnetzen und über Satellit sowie die Veranstaltung von Fernsehprogrammen auf terrestrischem Wege erlassen werden (Privat-Rundfunkgesetz – PRG)* (adopted 28.1.1999).
- BE – Belgium
Flemish Community: Arrêté du Gouvernement flamand relatif à l'utilisation de normes pour la transmission de signaux de télévision (13.10.1988, M.B., 19.11.1998)
French Community of Belgium: Décret modifiant le décret du 17 juillet 1987 sur audiovisuel et assurant la transposition de la Directive 97/36/CE du 30 juin 1997 et de la Directive 95/47/CE du 24 octobre 1995 (adopted 4.1.1999, M.B., 11.2.1999)
German-speaking Community: Décret sur les médias (adopted 26.4.1999, published 17.7.1999).
- DK – Denmark: *Loi sur la radiodiffusion et la télédiffusion* n°208 du 6 avril 1999.
- ES – Spain: *Ley 66/1997, de 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social. Disposición adicional cuadragésima cuarta. Régimen jurídico de la radiodifusión sonora digital terrenal y de la televisión digital terrenal.*
- FI – Finland: *Act on Television and Radio Operations 744/1998* - (adopted 8.10.1998).
- GB – The United Kingdom: *Broadcasting Act 1996* (Chapter I deals with digital terrestrial television).
- GR – Greece: *Loi 2644/1998 sur les Services de Radio et de Television à péage* (O.J. A' 233 du 13 octobre 1998).
- IT – Italy: *Legge 29 marzo 1999, n. 78 "Conversione in legge, con modificazioni, del decreto-legge 30 gennaio 1999, n. 15, recante disposizioni urgenti per lo sviluppo equilibrato dell'emittenza televisiva e per evitare la costituzione o il mantenimento di posizioni dominanti nel settore radiotelevisivo"* (Gazzetta Ufficiale n. 75 del 31 marzo 1999)
- SE – Sweden: *Radio- och TV-lagen* (1996:844)

Legislative reforms are under way in other countries.

⁴² The list is indicative and not necessarily comprehensive.

- DE – Germany: agreement on the amendment of the Inter-Länder Broadcasting Treaty. A new draft law to amend the Inter-Länder Broadcasting Treaty (Rundfunkstaatsvertrag – RfStV) – on 31 March 1999
- FR – France: The draft law to amend law no.86-1067 of 30 September 1986 is currently being examined. (the first reading went through the National Assembly on 27 May 1999. An amendment on digital television could be brought in on the second reading.
- IE – Ireland: A Bill put forward by the Government in May 1999 on digital terrestrial television is currently being examined and should be adopted by the end of 1999.
- IT – Italy: Bill 1138 on radio-television broadcasting is currently going through the Senate. An amendment on digital terrestrial television has been brought in, proposing the year 2006 for the switch-off..

It would be worthwhile carrying out a legal survey to compare the way in which problems specific to digital television are dealt with in the new legislation: the legal definition of what a "packager" actually is,⁴³ the granting of channel-per-channel or multiplex licences, access control, media concentration, etc.

It is interesting to note that, following the Green Paper on convergence, a Europe-wide debate has got under way over the possibility of auctioning broadcasting service licences. A seminar organised by the European Audiovisual Observatory, in collaboration with the Institute for Information Law (Ivir – University of Amsterdam) and IteR, revealed the difficulties of such a system.⁴⁴

⁴³ By "packager" we mean those companies that put various television channels together to market them as a single satellite-transmitted package, such as TPS, Canalsatellite, Via Digital, D+, Stream, Sky Digital, or transmitted by cable (the cable operators) or by terrestrial digital transmission multiplex operators). The legal definition given in the Broadcasting Act 1996 is *multiplex services and digital programme services licensee*. Current wording in French is "ensemblier". The French draft law amending law no. 86-1067 of 30 September 1986 relating to free communication, as passed on the first reading on 27 May 1999, contains the notion of "distributeur d'offres groupées de services de télévision mises à la disposition du public par satellite, câble ou tout autre moyen de télécommunication". (See also article 4a).

⁴⁴ See conclusion in Annex of this report. Also published on the Observatory website:
<http://www.obs.coe.int/oea/docs/00002289.htm>

5.3. The problem of compliance with obligations regarding the broadcasting of European and independently produced programmes

Articles 4 to 9 of the Television without Frontiers Directive, 30 June 1997 version, set out the obligations of the broadcasting bodies with regard to the broadcasting of European and independently-produced programmes⁴⁵. On 3 April 1998, the European Commission also

⁴⁵ Article 4 Promotion of distribution and of production of television programmes

1. Member States shall ensure where practicable and by appropriate means, that broadcasters reserve for European works, within the meaning of Article 6, a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.
2. Where the proportion laid down in paragraph 1 cannot be attained, it must not be lower than the average for 1988 in the Member State concerned. (...)
3. From 3 October 1991, the Member States shall provide the Commission every two years with a report on the application of this Article and Article 5.

That report shall in particular include a statistical statement on the achievement of the proportion referred to in this Article and Article 5 for each of the television programmes falling within the jurisdiction of the Member State concerned, the reasons, in each case, for the failure to attain that proportion and the measures adopted or envisaged in order to achieve it.

The Commission shall inform the other Member States and the European Parliament of the reports, which shall be accompanied, where appropriate, by an opinion. The Commission shall ensure the application of this Article and Article 5 in accordance with the provisions of the Treaty. The Commission may take account in its opinion, in particular, of progress achieved in relation to previous years, the share of first broadcast works in the programming, the particular circumstances of new television broadcasters and the specific situation of countries with a low audiovisual production capacity or restricted language area.

4. The Council shall review the implementation of this Article on the basis of a report from the Commission accompanied by any proposals for revision that it may deem appropriate no later than the end of the fifth year from the adoption of the Directive.

To that end, the Commission report shall, on the basis of the information provided by Member States under paragraph 3, take account in particular of developments in the Community market and of the international context.

Article 5

Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, or alternately, at the discretion of the Member State, at least 10% of their programming budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to broadcasters' informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production.

Article 6

1. Within the meaning of this chapter, 'European works' means the following:
 - (a) works originating from Member States;
 - (b) works originating from European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of paragraph 2;
 - (c) works originating from other European third countries and fulfilling the conditions of paragraph 3.

Application of the provisions of (b) and (c) shall be conditional on works originating from Member States not being the subject of discriminatory measures in the third countries concerned.

brought out the 3rd report on the implementation of articles 4 and 5 of the Directive, in its old form.⁴⁶ The report covered the period of 1995-1996 and therefore could not assess the impact of digital television. However, we consider it worthwhile reiterating here the main conclusions of the report, inasmuch as it is probable that the observations made by the Commission for 1995-1996, a period of rapid expansion for analogue channel packages, foreshadow the observations that could be made as to the channels that have appeared for inclusion in digital channel packages.

Compliance with the obligation to reserve a majority proportion of broadcasting time for European works

Following a country-by-country analysis of the compliance or non-compliance of programming obligations, the Commission summarised as follows the reasons for channels' failure to comply with the obligations:

"To make the arguments clearer and single out some points which are more concise than the national reports, it is possible to draw up a summary table of the reasons put forward by the Member States for failure to comply with the majority quota requirement. The main reason which is seen as an obstacle to achieving the quota is the fact that a channel is new. This is an argument which the national reports put forward to excuse a large number of recently-

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2. The works referred to in paragraph 1 (a) and (b) are works mainly made with authors and workers residing in one or more States referred to in paragraph 1 (a) and (b) provided that they comply with one of the following three conditions:
 - (a) they are made by one or more producers established in one or more of those States; or
 - (b) production of the works is supervised and actually controlled by one or more producers established in one or more of those States; or
 - (c) the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.
 3. The works referred to in paragraph 1(c) are works made exclusively or in co-production with producers established in one or more Member States by producers established in one or more European third countries with which the Community has concluded agreements relating to the audiovisual sector, if those works are mainly made with authors and workers residing in one or more European States.
 4. Works that are not European works within the meaning of paragraph 1 but that are produced within the framework of bilateral co-production treaties concluded between Member States and third countries shall be deemed to be European works provided that the Community co-producers supply a majority share of the total cost of the production and that the production is not controlled by one or more producers established outside the territory of the Member States.
 5. Works which are not European works within the meaning of paragraphs 1 and 4, but made mainly with authors and workers residing in one or more Member States, shall be considered to be European works to an extent corresponding to the proportion of the contribution of Community co-producers to the total production costs.

Article 7

Member States shall ensure that broadcasters under their jurisdiction do not broadcast cinematographic works outside periods agreed with the rights holders.

Article 9

This Chapter shall not apply to television broadcasts that are intended for local audiences and do not form part of a national network.

⁴⁶ This report COM(98)198 is available over the Internet:
http://europa.eu.int/dg10/avpolicy/twf/art45/art45-intro_fr.html

established channels. The arguments they put forward are purely economic, to the effect that new stations, in the first few months, or even years, of their existence, opt for inexpensive, immediately available programmes, which in most cases are not European, and that they only start turning to European-made programmes and putting their own investment into productions originating in Europe once they have attained a certain "maturity" threshold on the market.

A second line of argument in relation to special-interest channels is that it is difficult to find European works on the market which match the specific criteria of their target audiences. The case most often put forward is that of film channels like CANAL +, where the broadcasting of European works is closely tied to the screening of the works in cinemas.

A third reason is that it is difficult to find competitively priced European works. This is an argument which is forever coming up in the Member States' reports. Another variant is that it is difficult to acquire the broadcasting rights for recent European works.

The reports also touch on the question of subsidiaries of companies from non-EU countries which may have to broadcast programmes based for the most part on what the parent companies have in stock.

Various other reasons mentioned by only a few of the Member States include the smallness of the national advertising market and competition from certain productions (Brazilian in the case of Portugal) which have already covered their costs when they arrive on the reference market, and are therefore more competitive than home-grown productions. Some reports draw attention to the special problem of countries which produce very little broadcasting material and whose language is not widely spoken. One national report draws a distinction between the general programme put out by a particular channel and first televised transmissions, in respect of which the majority quota does apply. Reports also refer to the expiry of contracts on commercial agreements with a producer of European origin.

Compliance with the obligation to use independent productions.

The Commission report that the findings in the national reports as regards compliance with Article 5, concerning independent productions, "are on the whole satisfactory":

- In Belgium, the quota for independent productions was met, all in all. The percentage achieved in 1996 was in most cases (seven out of a total of twelve) between 20 et 44%.
- Finland filled the required quota in 1996 – one channel, TV2, more than trebled its output between 1995 and 1996.
- In Denmark, with the exception of one channel, which also failed to meet the European works quota, the percentage requirement was met by a good margin.
- Only two channels in Germany failed to meet the objective, and one channel failed to supply the figures. The figures for most of them went well beyond the requirements of the directive, varying between 36.4 and 100% in 1996 (10 channels out of 19). The percentage put out by ten of the channels went up year on year.
- In Greece, the quota set by the directive was not met in three cases out of eleven, while the figures for the remaining stations were between 13.7 and 54% in 1996. There was a slight increase in the figure for most of these channels.
- In the case of Spain, most of the channels for which figures were supplied met the Article 5 objective. Many of them showed a very slight rise in the percentage output between 1995 and 1996.
- In France, the quota was achieved in all cases (except for one channel which did not supply the figures) and went beyond what is required by the directive: 11 channels out of 18 achieved results of more than 37%. However, the figures for certain channels put out on cable almost halved between 1995 and 1996.
- Ireland met the requirements of the directive by a wide margin.
- Luxembourg achieved the objectives of the directive by a wide margin, except for one channel. In this case the report says that the reason was the new format for the new 1995 broadcasting season. The findings as regards progress were mixed: while half the

channels showed a considerable rise in output from 1995 to 1996, the figures for the other half went down.

- The Netherlands complied with Article 5, apart from one channel specialising in repeats of old television series. The trend was upwards.
- Austria gave details of two channels which achieved results in line with the aims of the directive, although the figures went down over the reference period.
- Portugal gave details of five channels which filled the quota, with the exception of one channel; here the report stressed that progress was being made, though that was not what was shown by the table for 1995-96. Overall the report drew attention to the special problem of countries which produce very little broadcasting material and whose language is not widely spoken.
- Sweden submitted a report showing that all channels, except for Adult Channel, which supplied no information, were well in line with the requirements of the directive. It is difficult to pick out any general trend, as the figures are down for four of the channels and up for five others.

Two Member States, the United Kingdom and Italy, stood out from the others in that their results were modest or incomplete.

- The United Kingdom submitted a report giving extremely varied figures for independent productions. Many channels met the required quota, while the rest were below 10%, and 17 of them actually scored zero per cent. There was a slight change in the figures year on year, which would suggest that trends are comparatively static (except for NBC, whose percentage went up from 19 to 55, and TNT, which dropped from 33 to 5%, and some others). The reasons given by the UK are contractual and economic, with recently established channels unable to invest in production owing to tight budgets.
- Italy supplied no figures the output of independent productions by most of the channels. As for the rest, the figures are well in line with the directive.

An attempt at channel typology

At the end of its Communication, the Commission put forward a typology for the channels, which we think is worth repeating here as market developments following the advent of digital will make this typology even more relevant.

"Now that Articles 4 and 5 have been in effect for six years and three monitoring reports have been produced, this is a good time to try to classify the channels to get a better picture of who is and is not meeting the targets, on a different basis than the figures reported by the Member States. The national reports clearly show that the channels not meeting the quotas, particularly the quota for European works, fall into certain categories.

Several of the channels not meeting the quota are special-interest channels, i.e. ones that broadcast only particular types of programmes. The type of programme they specialise in may affect their ability to comply with the Directive, since there may simply not be many European works of that type available. This problem is faced, for example, by channels that specialise in soap-operas or science fiction.

Another type of channel having difficulty in meeting the quota is paying film channels. They are to a certain extent dependent on what is being shown in cinemas or at least their scheduling reflects box-office successes, but European films do not account for the majority of films shown in cinemas anywhere in the European Union.

Channels that have only recently been launched may make up a further category. This is widely quoted as a reason in the national reports. It may also explain why certain channels' figures have been improving, for it seems that channels that have been around for some time tend to improve on their proportion of European works, unless they are special-interest channels, in which case the reasons set out above apply. This trend rather puts paid to the idea that public channels comply with the Directive better than private ones, since several

private channels have improved their figures considerably once they have been operating for a few years. The German market provides some good examples of this.

There is a further distinction, which the Commission already drew in the previous reports, between general-interest terrestrial channels that have been operating for several years and have no difficulty meeting the quota, and other channels, such as satellite channels, which account for the vast majority of new channels over the last three years. The Commission proposal on the review of the Directive⁽⁸⁾ set out to resolve this dichotomy by offering the possibility of investing in European works to channels which had difficulties fulfilling broadcasting obligations because of their type or specialisation. But this part of the Commission proposal was not taken up in the new Directive.

This difference between types of channel may partly explain why the average figure for compliance with Article 4 went from 66.6% in 1992 to 62.7% in 1996. This does not mean that there was less compliance with Article 4 all round, but rather illustrates the impact of the new channels of a different type, affecting the overall figure. Here the Commission would like to stress the limits of what can be concluded just on the basis of these figures, when the flexible nature of Article 4 and the bases the different Member States use for calculating the proportions make it difficult to compare the data for the purposes of producing an overall economic assessment. The Commission is therefore carrying out additional studies in parallel, taking account of the situation as a whole and the particular characteristics of the existing legislation.

The Commission notes the argument put forward by certain channels that they are unable to broadcast a majority of European programmes, because their schedules are filled mostly with programmes from their holding company (large production studios). However other channels of a similar type have managed to broadcast mostly European programmes, which puts this argument into perspective."

Foreseeable impact of the development of digital on the broadcasting organisations' ability to fulfil their obligations under articles 4 and 5 of the "Television without Frontiers" Directive.

The Commission also states that the development of digital services will need a change in the methods of monitoring the implementation of articles 4 and 5 of the directive. It recently published a document offering guidelines for the fifth report which will cover calendar years 1999 and 2000.⁴⁷

However, the problems raised by the increase in the number of channels are not just of a technical nature. There is every reason to believe that the reasons put forward by the Member States and by the broadcasting organisations to explain the failure to comply with the operations will become even more relevant over the next few years. As digital provides the opportunity for a multiplication in the number of pay-to-view film channels, theme channels and channels linked to a production studio (generally American), it is highly probable there will be the same cause and effect combination, resulting in an increase in the number of channels failing to comply with the obligations. It will also be interesting to see if the channels that used their relatively youthful status in 1995-96 to explain the failure will manage to fulfil their obligations in 1997 – 1998.

The data collected by the European Audiovisual Observatory and its partners on European film and audiovisual markets, independently of the monitoring process for articles 4 and 5 of the Directive, hardly encourage optimism.⁴⁸

⁴⁷ European Commission, *Suggested Guidelines for the Monitoring of the Implementation of Articles 4 & 5 of the Television without Frontiers Directive*, Brussels, 11 June 1999.

⁴⁸ See chapter 9, below.

5.4 Implementation and limits of the competition law in the regulation of the audiovisual sector

Parallel to the increase in competition in the audiovisual market, we are also witnessing the increasingly important role, both at community and national level, of competition law in the regulation of the audiovisual sector. This bolstering has however been limited by two dispositions that have been included in the Treaty: article 87§3d of the Maastricht Treaty and the Protocol of Amsterdam on the public broadcasting.

5.4.1. Limits to the implementation of the Community competition law in the audiovisual sector

- Article 87§3d of the Maastricht Treaty

Article 87§3d says that as can be considered as compatible with the common market, namely "aid intended to promote culture and the conservation of heritage when it does not adversely affect the conditions of trade and competition within the Community to an extent detrimental to the common interest". This article is of special importance for the support to the film and TV production. This article is commented as follow by the Commission in the First Report on the consideration of cultural aspects in European Community action⁴⁹:

"The Member States promote the development of their audiovisual industries in various ways, particularly through direct grants for specific film productions, tax incentives for investment in companies in this sector, funding of training and support for film festivals. Such measures are generally consistent, as regards their objectives, with the Community's own audiovisual policy, which seeks, inter alia, to promote the competitiveness of the European programmes industry.

Support measures may be local, regional or national. Insofar as they do not distort competition or affect trade between Member States to any significant extent, Article 87 of the Treaty establishing the European Community, which provides rules for aid granted by States, does not apply and the Commission has no cause to intervene.

However, as economic players on the relevant market frequently find themselves in competition, certain aid measures for the film and television production sectors may have an appreciable effect on competition and trade between Member States. Already in the past, the promotion of cultural diversity has been accepted by the Commission as a justification for state aid to the film industry and the production of television programmes, provided the aid did not cause undue distortion of competition.

The Treaty on European Union, in Article 3 (q), provides that "The Community shall contribute to the flowering of the cultures of the Member States". In application of this principle, Article 92 (3) (q) was included in the EC Treaty together with Article 128. However, this does not necessarily imply a fundamental shift in policy. Article 87 (3) provides that aid to promote culture and heritage conservation, where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest, may be regarded as compatible with the common market. The Commission had already taken such consideration into account when assessing aid in this sector. In its future assessment of state aid to the audiovisual sector, the Commission will continue to seek a balance between the requirements of cultural and heritage promotion, the openness of trade and competition in the single market and the need to avoid undue distortions."

⁴⁹ First Report on the consideration of cultural aspects in European Community action
<http://europa.eu.int/comm/dg10/culture/cult-asp/en/index.html>

- *Amsterdam protocol on public broadcasting*

Adoption in 1997 by the Member States of the Protocol 109⁵⁰ to the Amsterdam Treaty, related to public broadcasting in the Member States constitute one of the important achievements for the transition to the digital area. This protocol recognises indeed the legitimate for Member States to supply financial means for the public services organisations "insofar as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account."

The Amsterdam Protocol, which in reality is an interpretation of the Treaty itself, came in force, as the Treaty, the 1st May 1999.

5.4.2 *Application of the Community competition law to the audiovisual sector*

Apart from the European Court of Justice⁵¹ and the Commission, there are several unofficial contributions from officials in DG IV that provide a useful backdrop to the debate: they consist of guidelines or contributions that reflect only the opinions of the authors and are not the official viewpoint of the Commission.⁵²

⁵⁰ Treaty of Amsterdam amending the treaty on European Union, the treaties establishing the European Communities and certain related acts - Protocols

C. Protocols annexed to the Treaty establishing the European Community (...)

PROTOCOL ON THE SYSTEM OF PUBLIC BROADCASTING IN THE MEMBER STATES

THE HIGH CONTRACTING PARTIES,

CONSIDERING that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism;

HAVE AGREED UPON the following interpretative provisions, which shall be annexed to the Treaty establishing the European Community,

The provisions of the Treaty establishing the European Community shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account.

⁵¹ As for the decisions of the Court in the cultural field, see Chapter VII "Culture in the Judgements of the Court of Justice" of the *First Report on the consideration of cultural aspects in European Community action* <http://europa.eu.int/comm/dg10/culture/cult-asp/en/part1/chap7.html>

⁵² See especially:

AUBEL, M., "L'application du droit communautaire de la concurrence et le contrôle des concentrations et des alliances dans l'audiovisuel", *Cahiers juridiques et fiscaux de l'exportation*, CFCE – December 1998. <http://europa.eu.int/comm/dg04/speech/eight/fr/sp98061.htm>

PONS, J.-F., Deputy Director General of DG IV, *La politique européenne de concurrence et l'audiovisuel: ententes, alliances et concentrations*, Conférence organisée par LEGAL EUROPE, Paris, 21 janvier 1999 (published on the CCE-DG IV web site): <http://europa.eu.int/comm/dg04/speech/1999/fr/sp99001.htm>

This chapter looks at the broad lines of the speech

PONS, J.-F., *The application of competition and antitrust policy in media and telecommunications in the European Union*; International Bar Association, Vancouver, 14 September 1998.

The implementation of community competition law to the audiovisual sector covered, among others, the following points:

- the application of the rules of competition to audiovisual programmes, a document for which was published by the Commission in June 1998⁵³;
- anti-trust control. The most significant case in the digital television sector concerned Bertelsmann-Kirch, British Digital Broadcasting (B.D.B.), British Interactive Broadcasting (BIB) and Television par Satellite (T.P.S.)⁵⁴;
- the problem of State funding for audiovisual companies, especially for public-service broadcasting authorities (implementation of articles 86, paragraph 2, 87 and 88 of the EC Treaty CE in the broadcasting sector).

The application of the competition law to the audiovisual programme market

An overview of the problem

The digital revolution has brought with it a more and more pressing need for more programmes to supply the ever-growing number of channels, especially theme ones. This applies for both films and sports events. Some sports, such as football and Formula 1 are particularly popular and there is fierce competition between the channels (including pay-TV channels) which has led to the explosion in prices, much to the benefit of sports clubs and federations.

Sport on television has special features that make it a highly specific product:

- First of all, it is only of immediate interest and often only appeals when the event is broadcast live.
- Demand is somewhat inelastic. Viewers wanting to see a given match will not be happy seeing a different event.
- The concentration of rights in the hands of certain federations means that there are a fewer number of rights available, while contracts are often signed on an exclusive basis for a very long period and for a large number of events.

According to J.-F. Pons, Deputy Director General of DG IV, there are all the ingredients needed to produce conditions opposing competition. The Commission is currently examining thirty or so cases involving broadcasting rights for sports events covering these questions. A lot of the cases feature complaints, which shows that there are genuine problems of competition in the sector, which the authorities cannot ignore.

With the amounts at stake and the need for the operators to have a clear idea of the Commission's intentions on the field, DG IV published a reference document in June 1998

UNGERER, H. *EU Competition Law in the Telecommunications, Media and Information Technology Sectors* Fordham Corporate Law Institute 22nd Annual Conference on International Antitrust Law & Policy, Fordham University School of Law, New York City, 27/10/1995
<http://europa.eu.int/comm/dg04/speech/five/en/sp95041.htm>

See also *European Competition Policy. Report 1998*, European Commission, DG IV, Brussels, 1999.

⁵³ WACHTMEISTER, A.M. "Broadcasting of Sports Events and Competition Law", *Competition Policy Newsletter 1998* - number 2 - June
<http://europa.eu.int/comm/dg04/speech/eight/en/sp98037.htm>

⁵⁴ Not forgetting Endemol Entertainment Holding BV vs Commission of the European Communities, Court of first instance of the European Court of Justice, 28 April 1999. The Court recognised the validity of the decision of the Commission that held the Holland Media Groep joint-venture involving RTL4 SA, Veronica and Endemol Entertainment to be incompatible with community law.

concerning the implementation of competition in the sector, following wide consultation with other departments within the Commission, as well as with national competition authorities.

The document was designed to take stock of the different issues affecting competition law. It also separated the areas in which national or community authority prevailed. It also showed that the solutions needed to be applied on a case-by-case basis. J-F Pons claims that there is not a general, automatic and systematic solution.

The relevant market

The definition of the relevant market for the purchase of films follows the general methodological rules as set out by the Commission in a communication in December 1997.

- For films, first of all, it should be remembered that broadcasting rights are granted on a national basis by the film production companies, and according to a sequential distribution. There are different distribution windows, starting with theatre exhibition, then pay TV and then traditional channels. When examining the Kirch-Bertelsmann concentration, the purchase of rights by pay-TV channels was regarded as forming a separate market. The definition as used in merger monitoring can also perfectly easily be used in the application of articles 81 and 82.
- Sports broadcasts, and their broadcasting rights, can also be regarded as a separate market. More often than not and especially for the more popular sports such as football, each sport constitutes a distinct market, as the demand is inelastic.

Exclusive Rights

With regard to sport, the Commission has already stated that exclusivity contracts covering a sports season do not, in theory, infringe competition law. The problem starts when there is a long period of exclusivity and when the scope of the rights is wide, as this prevents competitors gaining access to the rights. A long period of exclusivity can be justified, however, when there is large investment and high financial risks. An example is the 1993 BSkyB – Premier League agreement (5 years exemption)

Remedies for exclusive rights

It should be kept in mind that the Community or national legislator can put a limit on the scope of the exclusivity. Article 3A of the Television without Frontiers directive obliges Member States to ensure that operators do not use their exclusive broadcasting rights to deprive a large proportion of the public access to major sports events that are of importance to society. Each Member State has to draw up a list of events for free television coverage.

Secondly, competition law might require a few changes to dampen some of the negative effects of exclusivity, such as the system of sub-licensing, the terms and conditions of which need to be closely looked at. The Commission has asked the EBU, in the 1993 exemption decision, to change its sub-licensing so as to improve competitors' access to broadcasting rights.⁵⁵

Joint purchase and sale of broadcasting rights

The higher the cost of broadcasting rights, the more disputes there are over the ownership of these rights. This question arises typically from laws regarding ownership in each country and it is not up to the Community to intervene in the affair.

On the other hand, the joint sale of rights may come under article 85. To know if the conditions laid down in article 85-3 have been met, analysis should not be restricted to economic considerations, but should also include all the underlying features relating to the

⁵⁵ The document *Sublicensing rules relating to the exploitation of Eurovision rights on pay-TV channels (1999C 24805)* has been published by the Commission the 1.9.1999.

sports organisation. It must be kept in mind here that the law in some countries recognises that the federations fulfil a public-service mission, such as is the case in France. The need to help smaller clubs finance their activities and even their very existence should not be forgotten either. There is also the need to provide training for younger players to ensure the future of the different sports.

All in all, what needs to be checked is the principle of proportionality and the actual necessity for the restrictions. The procedure undertaken in the case of the sale of the broadcasting rights to Formula 1 and of DFB will provide the opportunity to settle jurisprudence over the limits of what is or is not acceptable behaviour.

With regard to the joint purchase of broadcasting rights, the circumstances of each case need examining individually. Firstly, the question of whether or not a purchase is restrictive will depend on the position that the parties to the agreement occupy in the market. The stronger their positions, the stronger the possibility that such a move will be anti-competition. The duration of the exclusive rights agreement will then need to be looked at, along with the scope of the rights.

In a large number of cases, such agreements should not pose any problem of competition. An example of this would be when a number of operators who would not individually have the required financial resources join together to purchase the rights, which is entirely pro-competition.

J.-F. Pons considers that economic reality means that to face up to the widespread practice of joint selling, joint purchasing is often a necessary, and even economically vital solution. This is why in 1993, the Commission granted exemption from the rules to Eurovision, the buying group of the European Broadcasting Union. The decision was annulled by the Court of First Instance as it considered that rules governing membership of the EBU were not sufficiently justified. New rules have been drawn up by the members of the EBU and a formal decision by the Commission to clarify the situation is being awaited.

Alliances and concentrations

The problem in general

The reasons for the increase in projected alliances and concentrations in the television sector, especially in digital television, are well known: heavy investment (in technology, as well as in films and sports rights) and therefore high financial risks. The Commission has to remain vigilant so as to prevent companies reaching positions of such strength in the markets concerned (which are generally of national dimension) that they constitute barriers preventing new competitors from entering the markets.

There are a number of cases that brought forward a decision or a communication in 1998 under article 19 § 3 of Regulation no. 17 of the Council, that provide a good illustration of the Commission's competition policy in the audiovisual sector. Examples include Bertelsmann/Kirch/Première and Deutsche Telekom/Beta Research ⁵⁶(concentrations) and TPS ⁵⁷, BDB ⁵⁸, et BiB ⁵⁹ (article 85).

⁵⁶ Decisions of the Commission of 27/5/98.

⁵⁷ Communication 19 § 3 of 25.09.1997. Decision of the Commission (3 March 1999) related to a procedure of application of article 85 of the EC Treaty – (IV/36.237 – TPS) (registered under number C(1999)387, Official Journal L090 of the 02.04.1999, p.0006-0022.

⁵⁸ Communication 19 § 3 of 28/02/98

⁵⁹ Communication 19 § 3 of 21/10/98

J.-F. Pons considers that an analysis of the Commission's assessment of these cases shows that the Commission's competition Policy in the audiovisual sector encourages alliances or concentrations in a sector which is seeing the emergence of new products and services that should contribute to the development of the information society in Europe, while at the same time continuing to maintain competition in the market.

The application of articles 86 (paragraph 2), 87 and 88 of the EC Treaty to the broadcasting sector

it was in 1992 that the first complaint regarding the financing of public broadcasting organisations was submitted to the Commission. The complaint came from the private Spanish channels, Telecinco and Antena 3. Similar complaints were also submitted by private French (1993), Italian (1996), Portuguese (1993 and 1997) and Greek (1997) channels.

According to these complaints, the use of "double" financing systems by public broadcasting organisations (in other words the use of both commercial revenue and public funds in various forms) infringe the rules on State funding. In each case, the plaintiffs complain that the public broadcasting authorities have been using public funds or State guarantees to slash advertising prices or to force up the price of programme rights.

The Commission has only reached a final decision in a single case, concerning RTP, the Portuguese public broadcasting organisation. The Commission concluded that the funding was a compensation of the costs incurred by the organisation to fulfil tasks of general interest assigned to it by the Portuguese government. RTP has implemented an analytical accounting system, which allowed the Commission to identify the extra costs incurred for each task imposed upon the channel by the State. Following an appeal lodged by the plaintiff before the European Court of First Instance, the affair is still awaiting a final decision. The plaintiff also submitted a new complaint concerning the new "Agreement on the service

Following the complaints submitted by private broadcasters concerning either double funding (licence fee and advertising) or the subsidies that certain public broadcasting organisations allegedly received in France, Spain and Italy, the Commission's directorate in charge of competition (DG IV) set out to lay down general rules to serve as guidelines to analyse the various issues. A discussion paper, which soon became known as the "Van Miert memo" has been introduced the 20 October 1998.⁶⁰ This paper, while confirming Member States' authority to decide on public service funding, put forward the idea of competition between the private and the public sectors where public funding would only be used for those programmes clearly defined as being of general interest. Following consultations, the organisations involved and the EBU, stated they could not accept the guidelines and the Governments came out against the Commission's proposal. The attempts to arrange a common approach to funding public-service broadcasting ended in failure. Following a meeting of experts held with the Commission on 20 October 1998, the majority of Member States gave the thumbs down to a common approach and supported a case-by-case process.

However, on 15 September 1998, the European Court of Justice found against the Commission for having failed to follow up a complaint submitted by the Spanish company Gestevisión Telecinco SA against the subsidies given to Spanish public television channels.⁶¹

⁶⁰ Discussion Paper, application of Articles 90, paragraph 2, 92 and 93 of the Treaty in the broadcasting sector. See also *The European Competition Policy. Report 1998*, European Commission, Brussels, 1999, p.92..

⁶¹ Case 95-96, Gestevisión Telecinco SA vs Commission of the European Communities, *Judgement of the Court of First Instance* (Third Chamber, Extended Composition) 15 September 1998 Accessible on <http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=fr>

Called to order by the Court, the Commission also undertook to follow up other complaints of a similar nature, on a case-by-case basis. On 3 February 1999, the Commission asked the French, Italian and Spanish governments to provide information as to how they funded their public broadcasting organisations (respectively RTVE and the autonomous channels, RAI and France 2/France 3). The Commission considers that it has not had access to detailed information over these issues. The actual remit of the public service channels has not been set out in France, Spain and Italy as clearly as in Portugal and it is extremely difficult to work out the related extra costs, even more so as none of the three organisations involved have a separate accounting system (as recommended by the high-level group on Audiovisual policy). Should the analysis conclude that the funding is actually "existing funding", the Commission can invite the Member States to take the necessary steps to ensure that the funding does not hinder the development and functioning of the common market, allowing especially for the fact that while the broadcasting market used to be a reserved monopoly, it has now been opened up. The Commission also asked Member States to provide information on how the public-service remit is defined along with the related costs and updated financial data on the broadcasters.

As things stand, the Commission's appraisal will not be covering funding accounting (in other words the proportionality of the repayment and the costs related to public-service obligations) but only the question of whether the funding is actually "existing funding". Funding accounting systems will only be examined if the Commission decides that the funding cannot be qualified as "existing funding".⁶²

On 20 July 1999, the Commission announced it would be holding an enquiry to see if the subsidies and recapitalisations granted to French (France 2 and France 3) and Italian (RAI) public television channels were justified or, conversely, if they were in fact providing unfair competition.⁶³

By leaving out the issue of licence fees from the enquiry and restricting it to the Italian and French channels and thereby not including Spain (where public-service television funding was set up before Spain's membership), the Commission appears to be seeking to restrict the debate to the question of extra funding and not addressing the whole topic of public-service finding.

5.4.3. Application of national legislation with regard to competition – The collaboration between the various national regulatory bodies.

Restrictions on concentration

A number of European states have provisions for restricting concentration in the media sector. For the television sector, these provisions generally date back to the "all analogue" period. The provision vary from one country to the other, covering:

- A restriction on the number of terrestrial channels that can be controlled by a single operator (Spain, Italy, Portugal, Sweden)
- The audience market share that can be controlled by a single operator (Germany, France, the United Kingdom).
- The cross-ownership of various kind of media.

Case law of competition law in the audiovisual sector

Jurisprudence adopted in several Member States has emphasised the growing importance of the application of competition law to the broadcasting sector. Without claiming to be comprehensive, we will quote some examples.

- DE – Germany

⁶² Press release of the Commission, IP/99/79, Brussels, 3.2.1999

⁶³ *Le Monde*, 20 and 22 July 1999

- The 4 April 1999, the Bundeskartellamt has authorised the take-over of Premiere by the Kirchgruppe, considering that it would improve competitive conditions on the German television market.
 - In May 1999, the Kommission zur Ermittlung der Konzentration im Medienbereich (Commission on media concentration) (KEK) decided that the televisions controlled by the KirchGruppe and the affiliated group ProSieben were on the verge of being in a dominant position. The maximum audience share for a single operator cannot go over 30% and in April, the channels controlled by KirchGruppe and the ProSieben group (run by Thomas Kirch, Leo Kirch's son) reached 28.3%. The KEK considered that this should not stand in the way of ProSieben being granted a licence to set up a news channel, called N24, to broadcast over the whole of the country.
- ES – Spain

The Tribunal de Defensa de la Competencia had to take action in several occasions on competition cases related to the audiovisual industry. Decisions were on the following topics:

- Exclusivity rights for sports programmes ⁶⁴
- Theatrical distribution of films ⁶⁵
- Rate card of copyright organisations for broadcasting activities ⁶⁶
- Double financing of TV channels of the Autonomic Communities ⁶⁷
- Competition between two local TV stations ⁶⁸
- Strategic alliance agreement between the public operator of telecommunication and a broadcaster ⁶⁹
- Recommended price for sales of videocassettes ⁷⁰
- Non inclusion by an audience measurement company of TV local station in its panel for market share measurements ⁷¹
- Distribution of videocassettes ⁷²

⁶⁴ Resolucion 319 (Antena 3 vs Liga Nacional de Fútbol Profesional, Dorna S.A. y FORTA), 10 de junio 1993.; Resolucion n° 310 (Expte.310/92 Derecho Imagen Futbol Italiano, 12 de septiembre 1994); Resolucion; Recurso n°209 (Expte. R209/97 Fútbol Televisado (1)) et Recurso n°214 (Expte. R214/97 Fútbol Televisado (2)) 9 de julio de 1997.

⁶⁵ Recurso n°68 (Expte.r.68/93 vs Distribuidores de Cine, 21 de enero 1994)

⁶⁶ Resolucion n° 330 (Expte. 330/93 Tarifas TV SGAE, 12 de julio de 1994); Recurso n°224 (Expte; R 224/97, TVG / SGAE), 23 de octubre de 1997.; Resolucion 430, Exte 430/98, Onda Ramblas/AGEDI, 14 de diciembre de 1998).

⁶⁷ Recurso n°63 (Expte. 130/95 TV Autonomicas, 12 de diciembre de 1995); Recursos n°291 y 292 (Exptes R 291/98 y R 292/98 TV Autonomicas, 12 de junio de 1998

⁶⁸ Recurso n°53 (Expte. R 153/96, Television Burgos, 20 de junio de 1996)

⁶⁹ Recurso n°154 Expte r.154/96 Cablevision (1) et Recurso n°157 Exte r. 157/96 Cablevision (2), 14 de noviembre de 1996.

⁷⁰ Resolucion 387 (Expte. 387/96, peliculas Video), 11 de mayo de 1998.

⁷¹ Recurso n°289 (Expte. R 289/98 SOFRES), 30 de julio de 1998.

⁷² Recurso n°354 (Expte. R 354/99 Videoclub), 8 de junio de 1999.

- FR - France:
 - in June 1999, the Paris Court of Appeal found CANAL+ guilty of abuse of a position of superiority in rights acquisition⁷³. This judgement has established a distinction between the pay-TV market and the pay-per-view market for film rights.
- GB - United Kingdom:
 - in 1996, the Office of Fair Trading carried out a Review of the Wholesale Pay-TV Market⁷⁴. The Office partially succeeded in forcing through, on a case-by-case basis, the principle of debundling in the marketing of channels offered on top of basic services. BSkyB decided to put a stop to its full line forcing policy, which obliged consumers to subscribe to certain channels if they wanted to access others.
 - In April 1999, the British Minister of Trade and Industry blocked the proposed take-over of Manchester United football club by BSkyB, arguing that it would be restricting competition as regards the broadcasting rights for Premiership football matches⁷⁵.
 - At the end of July 1999, the judgement on certain restrictions in the Football Association Premier League's (PL) rules and in its broadcasting agreements with BSkyB and the BBC was handed down by Mr Justice Ferris at the Restrictive Practices Court in London. The restrictions enabled the PL to sell television rights on a collective and exclusive basis to BSkyB and the BBC. The Court ruled that the 20 league club that make up the Premiership were not acting as an illegal cartel in selling live rights to BSkyB and highlights to the BBC. The Court's ruling is important in three aspects. Firstly the Court has found in favour of the clubs selling collectively through the Premier League and also has judged this to be the best way to maintain competitive balance between the clubs, which is the key to the success of the Premier League. Secondly, the Court held that the arrangements encourage competition in the television industry. Acquiring rights on an exclusive basis allows broadcasters to make their programming distinctive and attractive to viewers. Thirdly, the Court held that the television revenues from selling rights on an exclusive basis had enabled the clubs to invest in their stadia and players.⁷⁶
- IT – Italy

The Autorità garante della Concorrenza e del mercato⁷⁷ had to rule on several occasions on cases related to digital television:

- The 10 July 1997 it has communicated to the Parliament an advise on the fact that it was considering the authorisation of digital platform jointly proposed by RAI, Stet, Mediaset and CANAL+ and foreseen in the bill on the creation of the Authority for the Guarantee of Communications and Broadcasting would have been a source of substantial distortion of competition.
- The 28 December 1999, it ruled that agreements between RAI, RTI and Cecchi Gori Communications on purchase of football rights were restrictive of competition and broadcasters have been condemned.

⁷³ Paris Court of Appeal, 15 June 1999, SA Sté Canal+ c/ SNC Television par satellite (TPS) FR (IRIS 7/1999)

⁷⁴ *Review of the Wholesale Pay-TV Market*, Office of Fair Trading, London, 1996.

⁷⁵ Press release of the Department of Trade and Industry, P/99/309, 9 April 1999. (*IRIS*, June 1999, Vol. V, n°6).

⁷⁶ In the Restrictive Practices Court, The Hon. Mr Justice Ferris. Judgement handed down on Wednesday 28 July 1999. <http://www.courtservice.gov.uk/pljmtint.htm>

⁷⁷ The Authority press releases are available on its website: <http://www.agcm.it>

- The 16 July 1999, the Authority ruled on the collective sales by the Lega Nazionale Professionisti for the matches of series A and B of the football Cup to the pay-TV channel Telepiù. It has decided that such a sale was a distortion of competition by a cartel of 38 professional club.
- The 28 July 1999, the Authority has rejected the request for exemption introduced by Telepiù regarding the agreement passed with the football club Regina. This agreement would have given to the pay-TV channel the control of 61,1% of the matches of Serie A when the authorised ceiling is 60%.

Co-operation between the regulatory authorities

The increasing use of competition law in the broadcasting sector means that co-ordination is needed between the various regulatory authorities.

Recent examples have shown the risks of conflicts of jurisdiction that could arise when there is no co-ordination.⁷⁸

Joint initiatives undertaken by the three British authorities (ITC, OFT and OFTEL) are good examples of how this co-ordination can work: on 28 May 1998, the three authorities announced they would be working closely together to "Resolve communications issues which cross regulatory boundaries".⁷⁹ In April 1999, the ITC and OFTEL issued a "joint consultation document on bundling of television and telephony".⁸⁰ The ITC has also been seeking to clarify its way of handling competition-related issues.⁸¹

International co-operation of national bodies in charge of competition seems also necessary to avoid that national contradictory decisions create different conditions on the internal market.⁸²

5.4.4. Towards a European problematic of the "must carry rules"?

The growing number of channels available raises the problem of how the transmission companies choose the channels, as, even after digital is introduced, capacity will still be limited.

⁷⁸ For example, in November 1998, the divergences between KEK and KDLM over the KirchGruppe's position in the television market for the granting of a licence to Discovery Channel." KDLM gibt KEK Gelegenheit zur Stellungnahme im Zulassungsverfahren "Discovery Channel", ALM press release of 7.9.1998. <http://www.alm.de/presse/KDLM0709.HTM>

⁷⁹ Joint ITC/OFT/OFTEL statement "Resolving communications issues which cross regulatory boundaries", London, 21 May 1998.

⁸⁰ Press release ITC / OFTEL, "ITC and OfTel issue joint consultation document on bundling of television and telephony", London, 20 April 1999.

⁸¹ Press release ITC, "ITC Consults on Competition Policy Procedures", London, 5 May 1999.

⁸² A call on this issue has been launched by Commissioner Van Miert in its *Foreword to the European competition policy*, Report 1998, European Commission, DG IV, Brussels, 1999, p.3

Cable

Currently, "must-carry" transmission regulations that oblige cable operators to carry specific channels already exist in Belgium, Denmark, France, the Netherlands and Sweden⁸³.⁸⁴ In Germany rules vary according to regional laws adopted at the level of the Länder. In the issue of the distribution of the capacity of the cable networks, once up-graded for the transmission of several digital multiplexes, the DLM seems to have gone for self-regulation by the cable-operators. The 28 October 1999, the DLM has adopted the plan proposed by Deutsche Telekom AG for sharing the capacity of the bandwidth in up-graded digital networks.⁸⁵

A debate on the need to harmonise the principle of these regulations will probably follow the debate on convergence.

There are two recent cases of jurisprudence to illustrate this problem.

- In Belgium, the three Brussels-based cable-operators, Coditel, WoluTV and TVD Radio Public (an affiliate of the American UPC group) went to the Council of State to contest the validity of a "bi-community" decree that obliged them to carry the CANAL + pay-TV channel. The Brussels Court of Appeal ordered them to comply with the decree, in its ruling of 28 January 1999.
- In the Netherlands, in a ruling handed down on 28 January 1999, the president of the Amsterdam Court of Instance ruled that the refusal by a cable-operator (the A2000 network in this case) to include in a contract signed with a pay-TV channel (CANAL+ in this case) a clause allowing for changes in the contract in the event of a must-carry legal obligation to be neither fair nor reasonable..⁸⁶

Following these rulings, the European Cable Communications Association (ECCA), at its 45th annual Conference stated its hope of seeing the must-carry obligations diluted.⁸⁷

The issue of carrying public-service channels on digital packages

A similar kind of problem is that of the possible obligation for satellite-carried digital packages to include public-service channels. The problem has already arisen in France; with France-Télévision, the public television corporation, being a shareholder in the TPS digital platform, TPS has won exclusive rights to digital satellite broadcasting of France 2 and France 3. The issue of the inherent non-exclusivity of the public service was raised both in the press and

⁸³ The list is not complete. We do not have a recent comparative study on the subject.

⁸⁴ A policy debate on the conditions of access to cable networks is currently taking place in Germany. The Directorate of the regulatory authorities' conference (DLM) looked at the issue at its meeting of 23/30 June 1999. Cable operators were invited to say how they intended to use the digital capacities of the hyperband, in compliance with article 52 of the new State Treaty on broadcasting. The authorities want the operators themselves to choose which services will be broadcast, while reserving a third of the channels for a diversified programme offer (non-commercial general-interest channels, theme channels, foreign-language channels). Cable-operators have been asked to outline their position on 7 September 1999.

The new media law passed on 19 July 1999 by the Baden-Wurtemberg Land (*Landesmediengesetz Baden-Württemberg (Lmedieng)* vom 19.Juli 1999) introduced must-carry-related provisions.

⁸⁵ See Pressemitteilung 24/99 <http://www.alm.de/presse/p281099.htm>

⁸⁶ President Rechtbank Amsterdam, 28.1.1999, *CANAL+ vs A2000*, Mediaforum 1999-3, n°18 (Quoted in *IRIS*, March 1999, Vol.V, n°3)

⁸⁷ "(The ECCA) Welcomed the initiatives of the Commission with regard to 'must carry' and other restrictive regulations which impede the development of cable. The ECCA regards 'must carry' provisions as an undue interference in the business of cable operators and sees them as being inappropriate and outdated in a digital environment."

also by TPS' competitor, Canalsatellite. The bill passed on first reading by the National Assembly on 27 May 1999, aims, through its article 48-1 to prevent this kind of situation and to establish an obligation to carry the public-service channels.⁸⁸

⁸⁸ "Article 4bis (new)

After article of the same law, an article 48-1 A, the text of which follows, has been inserted:

Art.48-1 A National programme companies and La Cinquième-ARTE cannot in any way grant exclusive transmission rights for their terrestrially-broadcast programmes to a distributor of bundled television services though satellite transmission or any other form of telecommunication.

Any television-service distributor must make available to the general public, the services of the national programme corporations and La Cinquième-ARTE, to comply with their remit as laid out in article 45, which are broadcast unencrypted by terrestrial transmission. The transmission costs are to be born by the distributor and the programmes are made available free of charge to all subscribers." (unofficial translation)

6. NATIONAL PARAMETERS FOR THE INTRODUCTION OF DIGITAL TELEVISION

Seven main parameters govern the national conditions for the introduction of digital television:

- the size of the national market,
- the state of health of the national market (which can possibly be assessed through criteria such as the GNP, the mean GDP per inhabitant, average spending per inhabitant on TV, the share of TV expenditure in the GDP, etc.)
- the current configuration of reception systems,
- the state of competition between the different players (transmission network operators, broadcasters and also the written press, programme production companies, rights holders, etc),
- the kind of audiovisual policy adopted by the authorities (*laissez-faire*, restrictive regulation of some degree, industry self-regulation, etc.)
- broadcasters' investment resources,
- how well the operators can give viewers the services they are looking for.

6.1. The size of the market

Studies carried out by CDG and Arthur Andersen ⁸⁹ show the differences in relative cost of the various systems of digital television broadcasting according to the size of the markets. Digital terrestrial television is the cheapest system in the smaller countries, while for the larger countries, if satellite capacity increases and repeater costs go down, satellite transmission will become the cheapest method.

> 20 million TV households	DE, FR, GB, IT
10-20 million households	ES
5-10 million households	NL
2-5 million households	AT, BE (CFB), DK, FI, GR, PT, SE
< 2 million households	BE (VLG), BE (DSG), IE, LU

For broadcasters, it is worth considering market size from the linguistic and cultural angles. Some digital packages are already being sold outside their country of origin – TPS in the French-speaking community of Belgium, DF1 in Austria, Sky Digital in Ireland, etc.). Multilingual versions of the same channel are now being used by certain channels (for example CANAL+ Gul in Scandinavia, some Via Digital channels in Portuguese, etc.)

German-speaking area	Ca.44 million TV households
English-speaking area	Ca 26 million TV households
French-speaking area	Ca 25 million TV households
Italian-speaking area	Ca.21 million TV households
Iberian area	Ca.15 million TV households
Scandinavian area	Ca.14 million TV households
Dutch-speaking area	Ca. 9 million TV households
Greek-speaking area	Ca.3.5 million TV households

⁸⁹ CDG, 1997.

Arthur Andersen, *The impact of digital television on the supply of programmes*. A report for the European Broadcasting Union, Arthur Andersen, London, December 1998.

6.2. The state of health of national television markets

According to the European Audiovisual Observatory, there is no recent comparative study that gives a thorough and satisfactory picture of the television economy and consumer expenditure. This is due to a number of methodological issues:

- the differences in several countries between the amount represented by the radio / TV licence-fees paid by the inhabitants and the net revenue of the broadcasting organisations that receive them;
- the income statements of a number of public-service organisations do not show radio and TV revenue separately;
- no thorough study has been made of viewer's expenditure on radio-television licence-fees, cable subscriptions and pay-TV;
- the accounts of a number of television corporations cannot be examined, other because the companies are not bound to publish them or because they do not comply with their obligations.

In chapter 8 of this report, we will be examining how the different funding resources available to European televisions have developed.

6.3. Heterogeneity of television reception systems

Current reception systems in the various European States are highly heterogeneous and this, naturally enough, affects the way in which digital television is beginning to be introduced.

An overview can be given by splitting the market up into 4 categories according to state of development:

- countries where cable is the main form of television reception (> 80% of TV households with cable subscriptions): Belgium, the Netherlands;
- countries where, as well as cable reception, there is also a significant growth in satellite reception (> 50% of multichannel households): Austria, Germany, Denmark, Ireland, Sweden;
- countries where cable and satellite reception are still in the development stage (between 15 and 50 of households are "multichannel") and where terrestrial reception is the only television reception system for 50 to 85% of households: Spain, Finland, France, the United Kingdom, Luxembourg, Portugal;
- countries where growth in cable or satellite reception remains insignificant (> 5%) and where terrestrial reception is the only main form of reception: Greece, Italy.

In theory, it can be supposed that consumer interest, and therefore operator interest, for digital terrestrial television should show where cable / satellite reception is at its lowest, in other words the two latter categories.

Table 2. RECEPTION IN THE HOUSEHOLD (*situation end 1998*)
Provisional data (in thousands)

	<i>TV households (est.)</i>	<i>Cable-connected households (1)</i>	<i>% TVH</i>	<i>Households with cable subscriptions (1)</i>	<i>% TVH</i>	<i>DTH Households SMATV (2)</i>	<i>% TVH</i>	<i>Households with terrestrial reception only (3.) % TVH</i>	
AT	3 150	1 700	54.0%	1 100	34.9%	1 170	37%	880	28%
BE	4 178	4 000	96.0%	3 860	92.0%	140	3%	178	4%
DE	38 700	33 300	86.0%	18 700	52.7%	10 450	27%	9 550	25%
DK	2 447	1 665	68.0%	1 350	55.2%	300	12%	797	33%
ES	12 000	1 000	8.3%	430	3.6%	1 600	13%	9 970	83%
FI	2 260	1 300	57.5%	906	40.1%	170	8%	1 184	52%
FR	22 500	7 727	34.3%	2 662	11.8%	2 070	9%	17 768	79%
GB	24 239	11 904	49.1%	3 995	16.5%	4 400	18%	15 844	65%
GR	3 400		<1%		<1%	180	5%	3 220	95%
IE	1 200	596	49.7%	596	49.7%	60	5%	544	45%
IT	21 500	963	4.5%	72	0.3%	1 100	5%	20 328	95%
LU	150	50	33.3%	41	27.6%	20	13%	89	59%
NL	6 692	6 300	94.1%	6 000	89.7%	250	4%	442	7%
PT	3 000	1 803	60.1%	569	19.0%	280	9%	2 151	72%
SE	4 000	2 600	65.0%	2 000	50.0%	690	17%	1 310	33%
EUR 15	149 416	74 908	50.1%	42 281	28.3%	22 880	15%	84 255	56%

(1) Source: ECCA. Situation on 1.1.1999

(2) Source: Eutelsat. Situation mid-1998

(3) Households with no cable subscription or with DTH/SMATV. OBS estimation

Source: European Audiovisual Observatory

6.4. The competitive environment and the choice of audiovisual policy

These are the two parameters that the analyst has the most difficulty with: the developments or upheavals in the political situation can mean a changearound in audiovisual policy, the competitive framework can change very quickly according to the choice of audiovisual policy, court rulings can change jurisprudence, alliances in the corporate market can be made or broken, industry leaders can choose the path of consensus or confrontation, investment strategies can be re-focused, etc.

Certain countries offer a relatively stable competitive framework (e.g. the United Kingdom, Finland). In most countries, the competitive environment can change very quickly.

- in Germany, the decisions of the Bundeskartellamt and of the European Commission have had an important effect on corporate merger strategies
- in Italy, the present "pax televisa" between the RAI and Mediaset could be upset by the policy debates on the new legislative framework and on the introduction of digital television;
- in Spain, the two competing platforms, Canal Satéllite Digital and Via Digital have been operating a balancing act between open war and merger
- in France, the competitive environment laid down in 1997 (alliance between TF1, M6 and France-Television against CANAL+) could change according to decisions to be taken over the obligation to carry the public-service channels on the two platforms, the funding of public-service broadcasting, the role of the regional press in possible terrestrial digital regional televisions

Policy choices could also turn out to be decisive for how digital television is introduced, good examples of which are to be found in several countries:

- in Germany, the national regulatory authorities, aware of the de facto weakening of their powers in the wake of digital television, have invited cable operators to be self-regulatory in how they choose to allocate their digital capacities.
- in Austria, a debate began in Summer 1999 over the 3rd terrestrial network and whether it should be used for analogue-broadcast private channel or whether it should be set aside for the analogue/digital simulcast phase
- in France, the public authorities have been consulting sector professionals over the introduction of digital terrestrial television in what appears to be hesitation over a voluntary policy and a more experimental "step-by-step" policy
- in Italy, there is an ongoing debate over the timetable for implementing the provisions included in the draft law 1138 (currently in lecture in Parliament) on the timetable for the two major operators to free up the two terrestrial networks. They will be obliged to put their third channel on a satellite
- in the Netherlands and in Belgium, the launch of digital terrestrial television is seen as a possible way of putting an end to the cable distributors' monopoly. Such a decision, however, is liable to run up against opposition not only from the cable distributors, but also from other local interests involved in the cable industry.
- in the United Kingdom, the Commission's report on the financing of the BBC, which had included a proposal for a digital licence-fee whereby only those viewers receiving digital would finance the new terrestrials networks used by the BBC, ran into opposition from the different private companies.

6.5. Broadcasters' investment capacity

For existing broadcasters, the switch-off to digital involves a number of new costs:

- the simulcast phase will mean increased transmission costs (double analogue / digital broadcasting, either terrestrial or by satellite),
- the launch of new services (new TV channels, pay-per view services, Internet services,...),
- increase in programming budget.

This increase in costs needs an increase in investment capacities, which means turning to the capital markets, which vary across the different countries:

- new partners and restructuring of alliances (restructuring of the Fininvest group, restructuring of the equity of CANAL+ with the upsurge of the Vivendi group, merger between CLT and Ufa, News International's acquisition of a stake in Stream...);
- concentration (concentration of regional televisions in the United Kingdom, Nethold/CANAL+ merger, DF1/Premiere merger, agreements Kirch/Mediaset and Kirch/News International, etc.);
- acquisition by telecommunication operators of stakes in digital platforms (France-Telecom in TPS, Telefonica in Via Digital, Telecom Italia in Stream, BT in Sky Digital, Deutsche Telekom's platform project, etc.) or in television channels (Telefonica in Antena 3);
- flotation of groups traditionally shy of the stock-market (Mediaset, Sogecable, Groupe AB, SIC, and probably Kirch Group);
- increasingly important role of the banks to help with long-term investments (e.g. BSkyB, Premiere World).

The problem of how to increase investment capacity also applies to public-service corporations, due to:

- the limited possibilities of increasing public-sector resources (especially the licence-fee);
- a drop in advertising revenue either due to lower audience shares, as in Germany and Spain), or due to ceilings on advertising revenue, as in Italy with RAITre, the Trautmann Bill in France);
- limited possibilities for breaking into the pay-TV and pay-per-view markets.

6.6. Differences in packages and segmentation in the potential markets

The situation in national markets with regard to current channel offer and consumption is another factor for heterogeneity in the market of the European Community. It is difficult to make a comparison between the size of the offer in the different markets, with the notion of how varied the channel offer may be differing according to the number of households with cable and satellite reception.

Comparing market-share fragmentation between the different European countries also raises a number of methodological problems (relative size of the "others" category, counting the video audience in some countries). It is, however, possible to draw up a typology for the markets to include:

- the degree to which the markets are open to foreign channels,
- the relative strengths of the public and private sectors,
- the audience concentration on a given number of channels.

As to the degree to which the markets are open to foreign channels, three categories of countries can be identified:

- the "closed" markets "where the market share held by foreign channels is under 5%: the United Kingdom, Germany, Italy, France, Spain, Portugal, Finland, Greece;
- the "moderately open" markets where foreign channels have between 20 and 40% of the viewing audience: Sweden, the Flemish-speaking Community of Belgium, Denmark, Austria, and the Netherlands. It should be kept in mind that in these markets, foreign channels' market shares are actually made up for the main part of audiences for channels broadcasting from abroad but targeting those particular markets: TV-3 in Sweden and Denmark, VT-4 in the Flemish-speaking Community of Belgium and the Austrian versions of private German channels for Austria;
- the "very open" markets where foreign channels account for over 40% of market share: Luxembourg (share of the national channel: 58%), Ireland (share of the national channels: 56%), French-speaking community of Belgium (share of the national channels: 46%).

Countries can be split into 4 categories for the public-service sector:

- those markets where the public service remains dominant in terms of audience market-share: Austria, Sweden, the United Kingdom (including Channel 4 in the public service sector), Ireland, Spain (including the autonomous Communities);
- those markets where the public service, although not dominant, still has large audience figures (between 38 and 48%): Italy, Finland, France, Germany, the Netherlands;
- those markets where with under 34% of market share, the public service is being sidelined: Portugal (34%), Denmark (32%), Flemish-speaking Community of Belgium (27%), French-speaking community of Belgium (21%) and Greece (11%).
- Luxembourg is a special case as it does not have a public service sector as such. The national private channel, RTL Letzbuerger, has certain public-service obligations and had a 58% market share in 1997-98.

A further criterion for market differentiation is the degree of audience concentration on a given number of channels. We propose measuring this concentration by taking the accumulated audience market shares of the four leading channels. This gives three different market categories:

- the highly concentrated markets where the 4 leading channels account for over 80% of the total market: Finland (97%), Portugal (94%), Sweden (89%), Denmark (89%), France (88%), Spain (86%), the United Kingdom (83.4%),
- the fairly concentrated markets where the 4 leading channels account for between 75 and 80% of the total market: Greece (76%), Ireland (76%), Italy (76%),
- the markets with low concentration, where the 4 leading channels account for under 75% of the total market: Austria (73%), Luxembourg (73%), Flemish Community of Belgium (71%), French Community of Belgium (68%), the Netherlands (57%), Germany (55%).

This degree of concentration reflects, in most cases, how long the various countries have gone in terms of encouraging competition. The advantage for viewers in digital television should be proportionally as great as the market concentration in their respective countries.

A market with low concentration generally means that viewers split their viewing-time between ten or so channels, while in a fairly concentrated market they only watch about 4 or 6 channels.

Generally speaking, it will be more difficult to bring a new channel, especially a pay-channel, into a less concentrated market. Viewers in that market will have a wider choice of channels that also offers a larger time-band for audience-drawing programmes for pay-channels (films, sports, kids' programmes). For example, one of the major obstacles facing the launch of pay-TV in Germany is the large number of unencrypted films shown on existing channels.

Table 3. THE FRAGMENTATION OF THE EUROPEAN MARKETS

	Multi-channel households			
	>80%	50-80%	15-50%	<15%
> 20 million TV households		DE	FR, GB	IT
10-20 million households			ES	
5-10 million households	NL			
2-5 million households	BE (VLG)	AT, DK, SE	FI, PT	GR
< 2 million households	BE (CFR)	IE	LU	
	Domestic channels' share			
	>95%	60-80%	60%>	
> 20 million TV households	DE, FR, GB, IT			
10-20 million households	ES			
5-10 million households		NL		
2-5 million households	PT, FI, GR	BE(VLG), SE, DK, AT		
< 2 million households			BE(CFR), IE, LU	
	Public service market share			
	>50%	38-50%	<34%	
> 20 million TV households	GB	IT, FR, DE		
10-20 million households	ES			
5-10 million households		NL		
2-5 million households	AT, SE	FI	GR, PT, DK	
< 2 million households	IE		BE (CFR)	
	Market share of the 4 leading channels			
	>80%	75-80%	75%>	
> 20 million TV households	FR, GB	IT	DE	
10-20 million households	ES			
5-10 million households			NL	
2-5 million households	FI, PT, SE, DK	GR, IE	AT, BE (VLG)	
< 2 million households			LU, BE(CFR)	

7. STATE OF DEVELOPMENT OF DIGITAL TELEVISION IN EUROPE

The heterogeneous nature of the national markets means that the introduction of digital television could follow a number of different paths.

7.1. Satellite broadcasting

With the upgrading of EUTELSAT, SES, INTELSAT and national operators' satellites, the move towards satellite digital transmission was able to get under way very rapidly from 1996 onwards.

The marketing of satellite-broadcast digital packages began in 1996 in Germany and subsidiarily, in Austria. In 1997 and 1998 marketing of digital packages started in Spain, France, Italy, Portugal and Scandinavia. In early 1999, Sky Digital was launched in the United Kingdom and, subsidiarily, in Ireland. The launch of the Y 2000 package is due in Greece in 2000. Marketing of direct-reception satellite packages in Belgium, the Netherlands and Luxembourg is so far insignificant, due to the small size of the markets and the strong growth of cable.

7.2. The switch from cable networks to digital

A *Screen Digest* study⁹⁰ shows that 8 European States, including 6 from the European Union have already started the digitisation process and, by the end of 1998 they accounted for a million TV households equipped with a digital decoder.

Table 4. DIGITISATION OF THE CABLE NETWORKS (END 1998)

	Conditional access	Operating System	Subscribers end 1998
BE	Mediaguard	Mediahighway	11 993
DE	Irdeto	d-box	479 600
DK	Viaccess	Open TV	47 000
FR	Viaccess Mediaguard	Open TV Mediahighway	157 083 61 644
GB	Nagravision Nagravision	DTV Navigator Power TV	0 0
IT	Irdeto	OpenTV	130 000
NL	Mediaguard	Mediahighway	30 000
SE	Viaccess	Open TV	30 000
CH	Nagravision		0
NO	Viaccess	Open TV	0
TOTAL			947 320

Source: *Screen Digest*

The cable networks of TV Cabo in Portugal are due to be providing digital services as from October 1999.

⁹⁰ "European Cable Television on the Way to Digital", *Screen Digest*, London, March 1999.

7.3. Terrestrial digital television ⁹¹

Terrestrial digital broadcasting began in the United Kingdom in October 1998 and in Sweden in early 1999. Licences were granted in June 1999 for Spain (launch due in November 1999) and in Finland (launch due in 2000). The legislative process is under way in Ireland, Italy and France. In the other countries, the issue is being examined (Austria, French-speaking Community of Belgium, Denmark, the Netherlands). Testing has taken place in Germany, Denmark, France, Italy, and the Netherlands.

Some States have already fixed (often in an indicative manner) the date of the “switch-off” of the analogue terrestrial transmission:

- DE – Germany 2010 (review in 2003)
- ES – Spain: 2010
- FR – France: 2010
- IT – Italie: 2010
- NL – Netherlands: 2010 (in consideration)
- SE – Sweden: 2010

In the United Kingdom the date for the “switch-off” has not yet been fully decided.

⁹¹ For more details, see “Digital Terrestrial television: Threshold of the global launch”, *Screen Digest*, London, October 1998.

Table 5. THE DIGITAL OFFER

	D-SAT (start of the digital satellite offer)	D-C (start of the digital offer)	DTT (launch)
AT	1996 (DF1)	2000	Under discussion
BE	1998 (TPS)	1999	Under discussion
DE	1996 (DF1, ARD)	1996	Under discussion
DK	1998 (Canal Digital)	2000 ?	Under discussion
ES	1997 (Via Digital), 1998 (Canal Satélite)	2000 ?	Nov. 1999
FI	1998 (Canal Digital)		2000
FR	1996 (TPS), 1998 (Canal Satellite)	1997	Under discussion (2000 ?)
GB	1998 (BBC) 1999 (Sky Digital)		1998
GR	2000 (Nova)		
IE	1999 (Sky Digital)		Under discussion (2000 ?)
IT	1995 (D+, Stream)	1998	Under discussion (2006 ?)
LU			
NL		1997	Under discussion
PT	1998 (TV Cabo)	1999	
SE	1998 (Canal Digital)	1998	1999

Source: European Audiovisual Observatory

Table 6. TV HOUSEHOLDS WITH DIGITAL RECEPTION (situation mid-1999)
Provisional data (thousands)

	TV households (est.)	Digital households				% TVH
		D-SAT	D-C	DTT	Total	
AT (1)	3 150				0	0
BE	4 178		17		17	0.4%
DE (1)	38 700		900		900	2.3%
DK	2 447		47		47	0.0%
ES	12 000	1 055			1 055	8.8%
FI	2 260				0	0
FR	22 500	1 900	250		2 150	8.4%
GB (2)	24 239	1 200		247	1 447	6.0%
GR	3 400				0	0.0%
IE (2)	1 200				0	0.0%
IT	21 500	600	220		820	3.8%
LU	150				0	0.0%
NL	6 692		30		30	0.4%
PT	3 000	29			29	1.0%
SE	4 000		30	1	31	0.8%
EUR 15	149 416	4 784	1 494	248	6 526	4.4%

(1) Austrian subscribers to DF1 are included with German subscribers

DF1 and Premiere Digital subscribers can also be D-SAT subscribers

(2) Irish subscribers to Sky Digital are included under the United Kingdom

Source: European Audiovisual Observatory

8. FINANCING OF TELEVISION CHANNELS AND THE SWITCH TO DIGITAL

8.1. The importance of the funding issue

It goes without saying that issue of financing for the television system is of prime importance against the background of the switch to digital. Digital provides new opportunities for the whole of the television system to benefit from new sources of revenue (pay-TV, pay-per-view, prospective revenue from new services, etc.), but it also brings with it fresh costs (transmission and programming costs, investment in production, marketing costs, etc.)

This chapter does not set out to illustrate how the sector might grow, although it would probably be wrong to bet on unlimited expansion in the sector. Traditional television revenue sources (public money, especially the licence fee, advertising) have only increased slightly over the last few years and they might well soon reach their upper limits. As for pay-TV revenues, they constitute the main source of growth in the last years, but they may very well reach the ceiling.

8.2. Trends

The cable sector apart, public-service broadcasting is the part of the European audiovisual sector that had the lowest growth between 1993 and 1997. There are no comprehensive financial indicators for cable and pay-TV and so we have taken the physical indicators (increase in the number of subscribers), which show that revenue in the European public sector increased 22.1% between 1993 and 1997. This is higher than the increase in cable subscribers (21%), but lower than the increase in turnover for the video sector (22.6%), and significantly lower than the increase in cinema box-office revenue (27.5%), in major media ad spend (27.7%) and in TV ad spend (45%). The pay-TV sector is, unsurprisingly, the sector with the fastest development within Europe (growth rate of 183% between 1993 and 1997). This figure does not include the growth in subscriptions to digital packages, which shot up in 1997 and 1998.

Table 7. GROWTH RATES OF THE DIFFERENT SOURCES OF REVENUE IN THE AUDIOVISUAL SECTOR BETWEEN 1993 AND 1998 (in%)

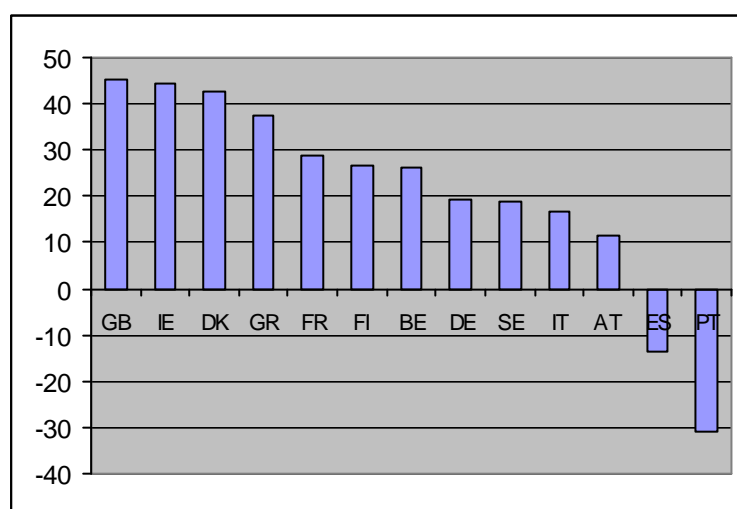
	<i>Public service resources</i>	<i>TV. ad spend</i>	<i>Cable subscriptions</i>	<i>Pay-channel subscriptions</i>	<i>Cinema box-office</i>	<i>Net sales video market</i>
AT	11.6%	31.8%	20.9%	363.0%	16.3%	31.0%
BE	26.0%	63.0%	3.8%	8.8%	16.1%	32.3%
DE	19.4%	85.3%	19.1%	101.2%	24.0%	2.2%
DK	42.7%	75.4%	14.0%	70.6%	26.8%	36.0%
ES	-13.7%	8.8%	207.7%	106.5%	30.0%	13.8%
FI	26.7%	75.9%	16.7%	19.0%	27.0%	63.5%
FR	28.7%	27.3%	85.9%	163.9%	14.2%	26.1%
GB	45.2%	60.0%	203.1%	348.2%	60.9%	37.9%
GR	37.6%	4.1%	—	n.a.	57.4%	40.7%
IE	44.5%	51.7%	28.9%	N/A.	53.9%	33.7%
IT	16.6%	25.3%	—	59.6%	16.3%	-6.5%
NL	7.4%	33.3%	6.7%	44.6%	21.5%	13.0%
PT	-30.8%	65.0%	3730.0%	N/A.	160.3%	18.6%
SE	18.8%	84.2%	19.0%	-23.7%	8.9%	54.0%
EUR15	22.1%	45%	21.3%	183.2%	27.5%	22.6%

Source: European Audiovisual Observatory

8.3. Public service funding

The funding of public-service radio-television corporations in Europe and especially in the European Union is a key feature of audiovisual policy at the dawn of the new millennium. The implementation of the Amsterdam protocol and the investigation by the European Commission of a number of national cases within the framework of the implementation of the competition policy, show that while promotion of the public service remains a major objective in European policy, the actual economy of the public service needs to be kept under constant review. Unfortunately, European and national discussions often fail to adopt a comparative approach, which, it must be said, is difficult in itself, given the problems in obtaining information to give a comparative picture within a common conceptual framework.⁹²

Graph 2. RATE OF GROWTH OF RADIO-TELEVISION PUBLIC-SERVICE CORPORATIONS ORDINARY REVENUE (1993-1997)



Source: European Audiovisual Observatory

⁹² For statistical information on the radio-television public sector, the Observatory works on a regular basis with the statistical group of the EBU to establish the comparability of relative data, based on a common methodological approach. The statistical group of the EBU sends out a questionnaire each year which enables the group to work out a European comparison. The Observatory checks the data, in particular published balance-sheets and income statements, finds alternative sources for obtaining data from public-service organisations that fail to reply to the statistical group's questionnaire, ranges the data in series and converts currencies into EURO.

Table 8. CHANGE IN FINANCIAL RESOURCES OF THE RADIO-TELEVISION CORPORATIONS (1993-1997)

In million EURO (at current rate)

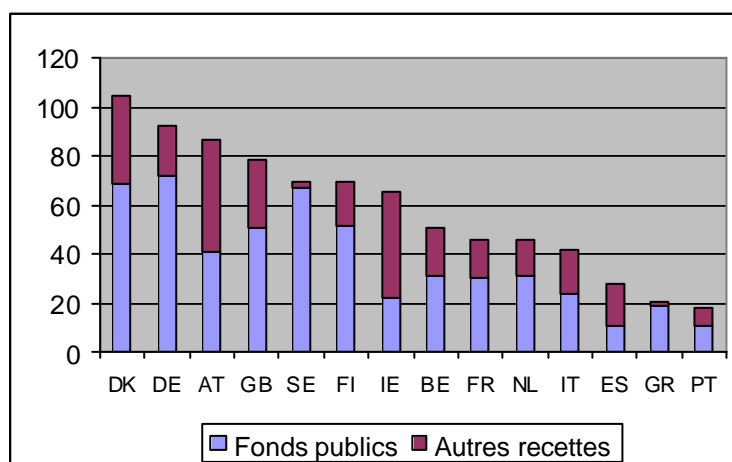
		1993	1994	1995	1996	1997	1997/93
AT	ORF	629,1	716,3	689,5	687,4	701,8	11,6%
BE	BRTN	211,6	226,2	226,0	254,5	278,7	31,7%
	RTBF	200,8	231,6	247,9	242,2	241,2	20,1%
	Total	412,5	457,8	474,0	496,6	519,8	26,0%
DE	ZDF	1 212,8	1 082,0	1 145,9	1 144,3	1 440,3	18,8%
	ARD	4 789,9	4 910,6	5 048,5	5 083,1	5 569,0	16,3%
	DW	290,7	334,2	339,8	347,8	340,7	17,2%
	DeutschlandRadio	—	228,4	188,0	180,9	166,9	—
	Total	6 293,4	6 555,1	6 722,2	6 756,0	7 517,0	19,4%
DK	DR	300,5	314,7	329,9	343,3	349,7	16,4%
	TV2 (*)	87,5	98,8	111,0	110,9	204,0	133,1%
	Total	388,0	413,5	440,9	454,2	553,7	42,7%
ES	RTVE	750,1	651,9	633,9	597,9	547,3	-27,0%
	TVC	158,5	145,1	161,3	164,4	217,1	37,0%
	RC	16,9	17,3	20,6	21,3	21,2	25,1%
	TVG	59,3	53,3	60,0	62,6	64,0	7,9%
	Canal Sur Radio	100,1	96,1	93,0	90,6	90,0	-10,1%
	Canal Sur TV	12,9	11,8	11,5	11,7	11,3	-12,1%
	TVA Madrid	73,9	71,2	64,1	71,9	75,1	1,6%
	TVV	80,1	77,0	35,0	33,1	54,8	-31,6%
	Total	1 251,8	1 123,7	1 079,4	1 053,6	1 080,9	-13,7%
FI	YLE	282,1	310,9	350,7	354,3	357,6	26,7%
FR	FT2	658,4	749,7	777,6	829,7	815,7	23,9%
	FT3	673,5	731,0	786,7	808,7	809,0	20,1%
	La Sept/ARTE	40,4	91,3	89,1	94,0	95,0	135,1%
	INA	79,8	81,4	88,7	91,3	86,7	8,7%
	RFO	134,8	143,4	157,5	166,3	177,9	32,0%
	La Cinquième	—	—	105,3	128,4	117,5	—
	SRF	365,8	380,4	401,5	416,5	408,8	11,8%
	RFI	80,4	90,9	101,0	103,9	111,0	38,1%
	CFI	18,9	21,4	24,7	26,2	29,8	57,4%
	TV5	29,0	32,8	37,9	40,0	44,8	54,9%
	Secemie (Euronews)	22,5	15,1	5,9	10,8	11,5	-49,1%
	Total	2 103,4	2 337,6	2 576,0	2 715,7	2 707,8	28,7%
GB	BBC	2 763,6	2 944,0	2 919,2	3 097,4	3 852,3	39,4%
	C4	440,9	526,6	559,8	637,3	801,0	81,7%
	Total	3 204,5	3 470,6	3 479,0	3 734,7	4 653,3	45,2%
GR	ERT (est.)	156,5	214,05	157,6	169,7	215,4	37,6%

		1993	1994	1995	1996	1997	1997/93
IE	RTE	163,3	176,4	186,0	200,9	236,0	44,5%
IT	RAI	2 058,0	2 074,9	1 946,7	2 241,7	2 399,2	16,6%
NL	NOS	666,1	689,3	715,6	694,0	715,4	7,4%
PT	RTP	211,0	144,8	125,7	154,2	127,4	-39,6%
	RDP	55,0	47,9	51,4	54,6	56,5	2,8%
	Total	265,9	192,8	177,1	208,8	183,9	-30,8%
SE	SVT	335,0	348,4	354,6	406,4	400,9	19,7%
	SR	184,6	189,1	200,6	214,8	216,2	17,1%
	Total	519,5	537,5	555,2	621,2	617,1	18,8%
EUR 15	Public funds	12 456,4	13 238,0	13 468,9	13 927,8	15 197,6	22,0%
	- Licence fee	11 472,6	11 691,6	11 969,5	12 387,0	13 812,4	20,4%
	- Others	983,8	1 546,4	1 499,5	1 540,7	1 385,2	40,8%
	- Commercial revenue	4 964,6	5 234,5	5 287,1	5 611,3	6 312,3	27,1%
	- Advertising	3 560,7	3 701,0	3 779,9	3 933,9	4 298,5	20,7%
	- Sponsorship	100,0	78,8	71,8	132,1	129,5	29,5%
	- Programme sales	492,0	600,0	600,5	611,8	732,4	48,9%
	- Others	811,9	854,8	834,9	933,5	1 151,9	41,9%
	Others	973,3	797,9	793,9	849,9	948,8	-2,5%
	Total	18 394,2	19 270,4	19 549,9	20 388,9	22 458,8	22,1%

(*) Local stations' commercial revenue has been included since 1997.

Source: European Audiovisual Observatory

Graph 3. AVERAGE REVENUE PER HEAD OF THE POPULATION FOR RADIO-TELEVISION PUBLIC-SERVICE CORPORATIONS IN 1997
EURO / inhabitant



Source: European Audiovisual Observatory

It is interesting to compare the growth in radio-television public-service corporations' advertising revenue with that of ad spend in television and radio, taking the data published by The European Advertising and Media Forecast.⁹³ With a growth rate of 20.7%, advertising revenue in the European public sector has not risen as fast as ad spend in television (45%) and in radio (37%). This can be explained by the fact that Swedish public service has not taken advantage at all of the opening up of the radio and television advertising market and also because public-sector advertising revenue has fallen off sharply in Germany, Spain, the Netherlands, and Portugal and remained stagnant in Austria.⁹⁴

Divergent developments in public-service funding

A look at funding sources for public-service radio-television corporations in Europe reveals such a number of different situations that any attempt to define public service by its funding system is doomed to failure. Public funding (licence-fees, subsidies, conventions, etc.) varies between 96% and 35% of public-sector resources. Although the licence-fee charged for receivers has long been the bedrock of public financing and still the commonest method today, it is not, however, the only form of funding and in fact does not even exist in the financing of public-service companies in a number of countries.

Taken at European Union level, the breakdown of public service resources between 1993 and 1997 shows a high degree of stability: the licence-fee stands at between 67.2% and 68.9% of total ordinary revenue, while advertising varies between 19.1 and 19.4%. The only changes that could appear significant are:

- the fluctuation in public revenue other than the licence-fee of between 5.3 and 8%
- the slight growth in programme sales, up from 2.7% in 1993 to 3.3% in 1997.

However, what appears at face value as a stable situation when all the European figures are added up, actually fails to reveal the divergence in national development. Although the relative size of public funding has fallen off slightly in France (from 67 in 1993 to 65% in 1997) and in Italy (from 60 to 56%), it has dropped significantly in Spain (from 49 to 39%) and in the United Kingdom (from 71 to 66%), while it went up in Germany (from 74 to 78%) and in Portugal (from 35 to 59%).

It is also worth comparing average revenue per head of the population for the public sector. Here again, there is considerable divergence. The Danish public service gets 106 EURO per inhabitant, against only 18 for the Portuguese public service. If public revenue by itself is considered (licence-fees, subsidies, etc.), then it is the German public service that receives the most (72 EURO per inhabitant) and the Spanish public service the least (11 EURO per inhabitant).

8.4. The development of advertising-based financing for private television companies

A thorough analysis of the development of advertising-based financing of private television companies poses a number of problems, with not all the data needed being available or sufficiently detailed.

An initial approach could be founded upon the figures provided by the Media and Advertising Forecast.⁹⁵ The data given there covers ad spend (including agency commissions) and includes ad spend for public-service corporations. It shows a growth rate of 59% for the period 1993 to 1997 for TV ad spend in the European Community.

⁹³ *The European Media and Advertising Forecast*, NTC, Henley-on Thames, August 1999.

⁹⁴ For Denmark, it should be born in mind that since 1997 advertising revenue for local stations affiliated to TV2 has been included, which explains the sharp growth in this figure.

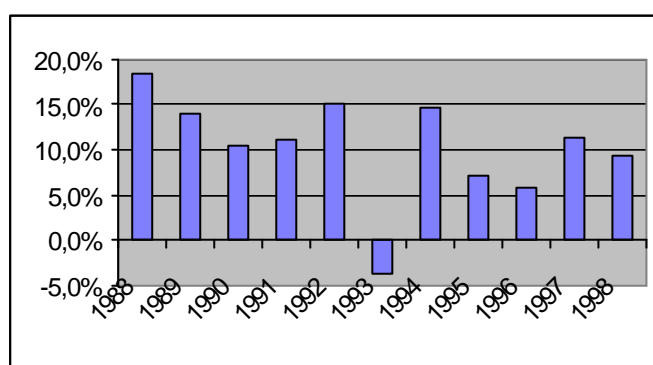
⁹⁵ *Media and Advertising Forecast*, NTC, Henley-on-Thames, August 1999.

Table 9. GROWTH IN TV AD SPEND (1993-1998)
In million EURO

	1993	1994	1995	1996	1997	1998	1998/97	1997/93
AT	242	280	271	274	319	347	9%	32%
BE	303	351	411	432	494	603	22%	63%
DE	2 270	3 251	3 760	4 012	4 207	4 491	7%	85%
DK	142	171	206	232	249	268	8%	75%
ES	1 371	1 337	1 350	1 426	1 492	1 731	16%	9%
FI	108	135	175	174	190	201	6%	76%
FR	2 178	2 355	2 560	2 688	2 772	2 973	7%	27%
GB	2 844	3 164	3 218	3 530	4 550	5 069	11%	60%
GR	395	528	753	398	411	421	2%	4%
IE	87	97	104	115	132	140	6%	52%
IT	2 384	2 412	2 272	2 683	2 987	3 248	9%	25%
LU	3	3	3	6	6	7	9%	121%
NL	418	499	542	528	557	571	3%	33%
PT	226	262	282	333	373	427	14%	65%
SE	165	233	242	266	304	327	8%	84%
EUR 15	13 136	15 078	16 149	17 097	19 043	20 824	9%	45%

Source: European and Advertising Media Forecast and, for Luxembourg, IP./OBS

Graph 4. GROWTH RATE OF TV AD SPEND IN THE EUROPEAN COMMUNITY (1988-1998)



Source: European and Advertising Media Forecast / OBS

There continues to be significant growth in TV ad spend across the European Community (11.4% in 1997, 9.4% in 1998), an improvement on 1995 and 1996, but, when taken over a period of ten years, the growth rate has trended downwards. The growth spurred on by de-regulation in the late 80's has slowed down and has only partially been offset by the emergence of new channels. The prospect of new bans on certain products (tobacco) and on child-focused advertising makes for a cautious approach, with the double-figure growth rates that were once commonplace at the beginning of the decade beginning to fade away.

Analysis of the revenue of the leading European channels where advertising is the main source of revenue, shows a slightly lower rate of growth for the period 1993-1997 than that estimated by the European Advertising & Media Forecast: 47% (against 59%).

Table 10. GROWTH IN REVENUE OF THE MAIN PRIVATE TELEVISION COMPANIES THAT ARE MAINLY FINANCED BY ADVERTISING (1993-1997)
In million EURO - Data in italics are estimated

		1993	1994	1995	1996	1997	1997/93
BE	VTM	145	167	183	135	142	-3%
	TVI	75	85	94	97	99	31%
	Total	220	253	277	231	240	9%
DE	RTL	953	978	1 046	1 074	1 142	20%
	SAT.1	665	813	867	867	847	27%
	Pro 7	346	583	712	764	806	133%
	RTL 2	31	125	174	212	208	565%
	KK / Kabel 1	16	32	81	108	134	725%
	DSF	25	31	37	52	64	155%
	Super RTL	0	0	0	29	53	
	Viva		14	28	32	35	
	Autres	60	44	95	134	227	279%
	Total	2 096	2 619	3 039	3 272	3 516	68%
ES	Antena3 de Television	266	341	386	403	388	46%
	Gestevisión Telecinco	243	215	214	261	347	43%
	Total	509	555	601	664	735	44%
FI	MTV	106	131	169	170	187	76%
FR	TF 1 S.A.	1 199	1 314	1 408	1 459	1 439	20%
	Métropole	228	294	332	364	386	69%
	TV M6						
	Canal Antilles			13	16	19	
	Total	1 427	1 609	1 752	1 838	1 843	29%
GB	Central TV	411	261	481	502	518	26%
	LWT	331	256	371	413	418	26%
	Granada TV	324	326	354	363	396	22%
	Carlton TV	238	355	346	338	363	52%
	Meridian TV	108	230	234	372	264	145%
	STV	160	152	129	163	227	42%
	Yorkshire TV	232	280	247	261	181	-22%
	Anglia TV	156	200	244	247	180	15%
	HTV	134	143	154	156	154	15%
	TV3	105	132	146	155	146	39%
	Broadcasting Group Ltd						
	GMTV	89	103	110	108	100	13%
	Channel 5	0	0	0	0	100	
	Tyne Tees TV	57	78	80	81	64	13%
	UTV	36	40	44	44	45	24%
	Westcountry	46	49	51	53	36	-21%
	Grampian TV (3)	26	27	32	31	26	-2%
	Border TV	13	15	16	17	20	60%
	CTV	12	12	12	13	14	20%
	Total	2 477	2 659	3 052	3 316	3 251	31%
		1993	1994	1995	1996	1997	1997/93

GR	Antena TV	65	80	118	100	102	56%
	Teletypos	78	87	89	86	95	21%
	New Television EDT S.A.	0	0	0	45	65	
	Total	144	167	207	232	313	117%
IT	R.T.I.	1 168	1 199	1 278	1 358	1 451	24%
LU	CLT-UFA	1 852	2 137	2 365	2 289	2 814	52%
NL	Veronica				127	118	
	SBS6				40	64	
	Total				166	182	
PT	SIC	26	64	90	103	117	343%
	TVI	15	21	21	22	26	81%
	Total	41	86	111	125	143	250%
SE	TV4	102	149	171	168	185	82%
	Kanal 5	11	16	16	22	40	252%
	Total	113	165	187	190	225	99%
EUR 15		10 153	11 580	13 040	13 852	14 899	47%
Croissance annuelle			14%	13%	6%	8%	

Source: European Audiovisual Observatory

This analysis also confirms the slow-down in growth, which dropped from 14% in 1993/94 to 8% for 1996/97

8.5. Evolution of revenues of the channels mainly financed by subscription

The analysis of revenues of channels mainly financed by subscription raises specific problems.

It is, in principle, possible to identify four types of services:

- “premium channels”, on which the viewers can directly subscribe. Those channels represent the first generation of pay-TV (CANAL+, later FilmNet channels which have been taken over by CANAL+, Premiere, TELE+, etc.)
- “packages” of several channels commercialised by a single operator (whatever in analogue or digital mode): BSkyB, Canalsatellite, TPS, Canal Satélite, DF1, Via Digital, Canal Digital, D+,...
- thematic channels which can be identified as independent companies
- pay-per-view services (films, sports events,...).

This typology is far from being perfect and will be received in various ways according to countries and patterns of marketing strategies, but it is fairly operational as for analysis of revenues. There are however various methodological difficulties:

- some packagers do not publish their accounts (DF1, TPS). It is then necessary to make some estimates on the basis of the declared number of subscribers, but with the risks of mistakes related to the effect of discounts, marketing prices for tiers,...Some small

operators ("premium" channels and pay-per-view services on cable networks in small countries) have not been taken into consideration,

- distinction between "premium" channels revenues and revenues of the packaging activities are not always easy to identify;
- some channels or packagers have revenues other than subscriptions (advertising, fees paid by cableoperators, sales of programmes,...);
- pay-per-view services are often included in digital packages and detailed information on the share in the revenues is not available.

Pay-TV companies had with no doubt the fastest rate of growth in the period 1993-1997 (155% for the European Union). Rates of growth can be split as follow:

- "premium" channels: 59%
- digital packages: 475%
- thematic channels: 516%.

The lower rate of growth for "premium" channels can be explained by the fact that some of those channels are already in the maturity phase. CANAL+ gives a typical example, as its rate are under 10% during the period.

Digital packages and thematic channels are far of having their growth exhausted: for example, ON-Digital data in 1998 are only on three months. Sky Digital has been launched in 1999. On the Italian market, D+ and Stream will take the statistical weight in 1999. As for Germany, the merger between Premiere and DF1 should relaunch the market (unfortunately rather unclear by lack of data published by DF1).

Even with forecast being difficult, it is clear that digital terrestrial television should provide new dynamics to the pay-TV services in their various formats on a certain amount of markets.

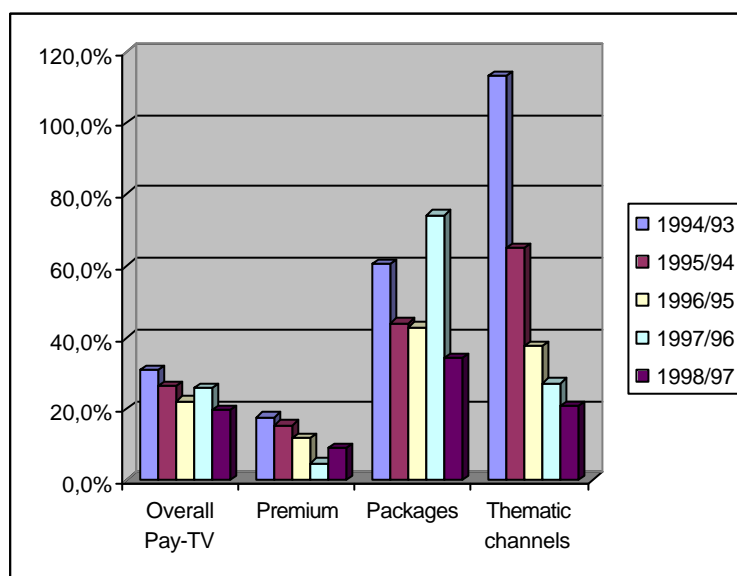
Table 11. EVOLUTION OF REVENUES OF PAY-TV CHANNELS IN EUROPE
(1993-1998)
In Million EURO – Amounts in italics are estimated.

		1993	1994	1995	1996	1997	1998	1998/97	1997/93
BE	CANAL+Belgique	37	46	52	55	55	58	4%	51%
	FilmNet/CANAL+Televisie	25	30	47	39	51	54	7%	99%
	Total	62	76	99	94	106	112	5%	71%
DE	Premiere	147	181	221	306	375	422	13%	156%
	DF1				10	50	100	100%	
	Total	147	181	221	316	425	522	23%	190%
ES	Sogecable S.A. (CANAL+)	202	256	318	397	427	480	12%	111%
	CanalSatelite Digital S.L.				10	93	268	187%	
	CableAntenna S.A.					4	5	44%	
	DTS (Via Digital)					1	130		
	Total	202	256	318	407	525	883	68%	160%
FR	CANAL+ Soc.mère	1 140	1 179	1 275	1 384	1 365	1 419	4%	20%
	Canalsatellite	12	38	75	104	171	327	91%	1357%
	TPS				0	48	167	247%	
	SETS (Eurosport International)	23	27	31	35	42	45	8%	84%
	TV Sports (Eurosport France)	16	22	24	28	35	42	19%	120%
	Kiosque			0	7	27	40	49%	
	LCI		4	18	20	29	37	25%	
	Cine Cinemas Cable	10	17	22	26	29	32	10%	183%
	Canal+ Horizons	6	11	17	18	19	23	22%	233%
	Canal J	16	18	22	21	24	21	-11%	54%
	Paris Première	6	10	13	15	19	20	9%	200%
	Planète Câble	10	11	12	15	18	19	3%	88%
	Canal Jimmy	6	11	11	15	16	17	5%	158%
	MCM Euromusique	8	12	13	13	14	15	11%	82%
	MCM International	0	5	8	11	12	13	11%	
	Extension TV	1	2	3	5	7	8	15%	408%
	Sédi-TV-Teva				1	3	5	41%	
	SED Odyssée					1	4	328%	
	La Chaîne Météo		0	0	1	2	3	33%	
	France Trans Film (Festival)				0	1	2	80%	
	Histoire SA					1	2		
	MCM Jazz Classique (Muzzik)				0	1	2		
	EDI TV (M6 Music)						1		
	Fun TV					0	1		
	MCM Africa					0	1		
	Total	1 253	1 369	1 545	1 720	1 884	2 266	20%	50%
GB	Brit.Sky Broadcasting Group	299	487	706	997	1 602	1 628	2%	436%
	PLC								
	Flextech PLC	10	30	45	84	129	163	26%	1136%
	ON-Digital						20		
	Total	354	669	1 063	1 524	2 265	2 461	9%	541%
GR	Netmed	0	1	14	40	67	75	12%	15578%
IT	Telepiù / TELE+	112	210	276	294	296	370	25%	164%

	1993	1994	1995	1996	1997	1998	1998/97	1997/93
NL Filmnet /CANAL+Nederland	55	58	57	61	63	65	3%	15%
SE Filmnet / CANAL+	0	65	87	58	62	69	11%	
TV1000	35	37	34	28	28	30	8%	-20%
Canal Digital	35	29	17	19	18	20	8%	-47%
Total	70	131	138	104	108	119	10%	55%
Total EUR 15	2 255	2 951	3 731	4 559	5 740	6 872	20%	155%
		31%	26%	22%	26%	20%		
Of which premium	1 753	2 063	2 382	2 661	2 788	3 041	9%	59%
		18%	15%	12%	5%	9%		
Of which bouquets	345	554	798	1 141	1 988	2 664	34%	475%
		60%	44%	43%	74%	34%		
Of which thematic channels	156	334	551	758	964	1 166	21%	516%
		113%	65%	37%	27%	21%		

Source: European Audiovisual Observatory

Graph 5. EVOLUTION OF REVENUES RATE OF GROWTH OF PAY-TV CHANNELS (in%)



Source: European Audiovisual Observatory

Pay-per-view services

Pay-per-view is one of the new sources of revenue for television companies and the kind of services with the highest rate of growth on the period (around 400% between 1995, year of the launch of the first services in Europe and 1998). This is due in particular to the success of the French and Spanish digital platforms and to the launch by BSkyB of pay-per-view services in analogue mode when waiting the launch of digital services (effective since early 1999). On the contrary, the pay-per-views services Cindeom on DF1 is generally considered by observers as a failure.

Development of digital capacity on satellites, cable networks and terrestrial digital networks should allow as further growth for pay-per-view services. According Screen Digest⁹⁶

Table 12. EUROPEAN PAY-PER-VIEW OPERATORS (not including sports services) (1998)

	Operators	Services	Analogue	Digital	Launch	Film channels
AT	Telekabel	Telekino PPV		X	5/.1997	8
	Cinedom	Cinedom		X	.1997	7
DE	DF1	Cinedom		X	08/96	7
	Deutsche Telekom Cable	Cinedom		X	11/97	7
	Premiere	Premiere PPV		X	11/97	4
DK	TeleDanmark	TVbio	X		11/96	2
	Canal Digital	Kiosk		X	02/98	24
ES	Canal Satélite Digital	Taquilla		X	03/98	8
	Via Digital	Canal Palco		X	09/97	5
	ONO	?			2000?	?
FI	Canal Digital	Kiosk		X	03/98	24
FR	CSN	Kiosque		X	04/96	10
	NC Numéricable	Kiosque		X	07/97	10
	Lyonnaise Cable/FT Cable	Multivision		X	1994	7
	Television Par Satellite (TPS)	Multivision		X	12/96	7
IT	Stream	Magic Movie PPV		x	10/98	17
	Telepiù	Telepiù PPV		X	10/98	22
GB	TeleWest, NTL	Front Row	X		1998	4
	BSkyB	Sky Box Office	X		12/97	4
	BSkyB/Cable & Wireless Communications	Sky Box Office		X	10/98	4
NL	A2000	Moviehouse	X		03/97	5
	Casema	MAX TV	X		09/95	6
	Mediakabel	Mediakabel PPV		X	.1999	14
NO	Canal Digital	Kiosk		X	10/98	24
	Janco Kabel-TV				1999?	?
SE	Svenska Kabel-TV	Bio Hemma	X		01/96	4
	Svenska Kabel-TV	Bio Hemma		X	1998	6
	Canal Digital	Kiosk		X	10/98	24
Source: European Audiovisual Observatory						

⁹⁶ "European Movie Pay-per-View: On course for mass market ?", *Screen Digest*, London, January 1999. See also the study *Video and pay-per-view release strategies*, *Screen Digest*, London, December 1998.

Table 13. POTENTIAL PAY-PER-VIEW AUDIENCES (1995-1998)
(in thousands of TV households)

	1995	1996	1997	1998	1998/97
AT	0	0	6	13	117%
DE	0	3	10	25	150%
DK	0	3	10	25	150%
ES	0	0	350	1000	186%
FI	0	0	0	20	—
FR	20	233	1032	1700	65%
GB	0	0	4050	5100	26%
IT	0	0	75	370	393%
NL	10	10	17	18	6%
NO	0	0	0	10	—
SE	0	90	100	130	30%
Total	30	339	5650	8411	49%

Source: Screen Digest / OBS

Table 14. EVALUATION OF REVENUES OF PAY-PER-VIEW SERVICES (1995-1999)
(in millions EURO)

	1995	1996	1997	1998	1998/87
AT			0,1	0,5	387%
DE		0,2	1,4	5,3	283%
DK			0,0	0,1	267%
ES			2,1	10,9	416%
FR	0,1	2,6	17,5	34,1	95%
GB			1,4	62,3	4198%
IT			0,7	6,2	857%
NL	0,2	0,4	0,4	0,5	18%
SE			0,5	0,6	16%
EUR 15	0,3	3,1	24,2	120,6	398%

Source: Screen Digest / OBS

American Majors studios give a great importance to the development of pay-per-view in Europe. Each of them provides its catalogues on the various national markets. End of 1998, Buena Vista and Columbia-Tristar had passed agreements with 11 operators, when Paramount and MGM had respectively 6 and 7 agreements. For the Majors, the distribution in pay-per-view is logically integrated in the windows strategy, after the distribution on the video market and before the market of pay-TV. Distributors video in Europe have obtained longer windows than those in practice on the US market (180 days after the video release, against 48 in the US). This is a handicap for the development of those services. American studies have indeed demonstrated that the rate of purchase of a film is 4 times higher when the film is accessible on pay-per-view 40 days after the video release than if it would have been shown 90 days after the video release.⁹⁷

This importance of American studios for the beginning of the pay-per-view in Europe is not without risks. The domination of American films could be even stronger on this market than on the video market. European distributors have less experience with this way of distribution than the US competitors who take advantage of the experience capitalised on the US market since the end of the 80es.

⁹⁷ For more details, see *Screen Digest* publications quoted in note 95.

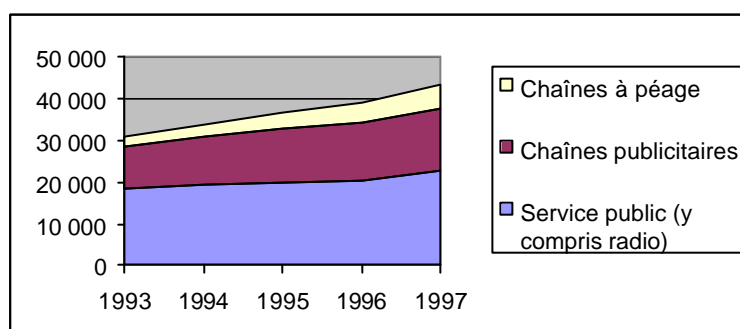
One of the most recognised US economists of the film industry, Professor Watermann⁹⁸, argues that the European delay in the early 80es in implementing pay-TV and video market constitute one of the historical reasons of the weakness of the European industry in front the US one during the 90es. European delays in implementing pay-per-view may well be produce the same effects for the next decade.

8.6. Overall evolution of revenues of European television⁹⁹

The television market in the European Community was worth 43 billions EURO in 1997. For comparison, the turnover in the entertainment activities (production, distribution, radio and television, record industry) of the four first world companies in 1997 (Walt Disney, Viacom, Sony and Time Warner) was of 45,5 billions USD.

Growth of the television sector for the period 1993-1997 was around 40%. This growth is not equally divided according the years and according the type of broadcasters. Pay-TV channels lead the growth, but they did it less in 1996 than the other years. 1997 is the year of highest growth for the overall industry (+ 11%), and this is due by a relaunch of public service revenues (mainly explained by substantial growth of Channel 4 and TV 2 Denmark advertising revenues, as well as by growth of licence fee revenues for BBC and ZDF).

Graph 6. EVOLUTION OF TELEVISION REVENUES IN THE EUROPEAN COMMUNITY (1993-1997) - (in millions EURO)



Source: European Audiovisual Observatory

Table 15. EVOLUTION OF TELEVISION REVENUES IN EUROPE (1993-1997) (in millions EURO)

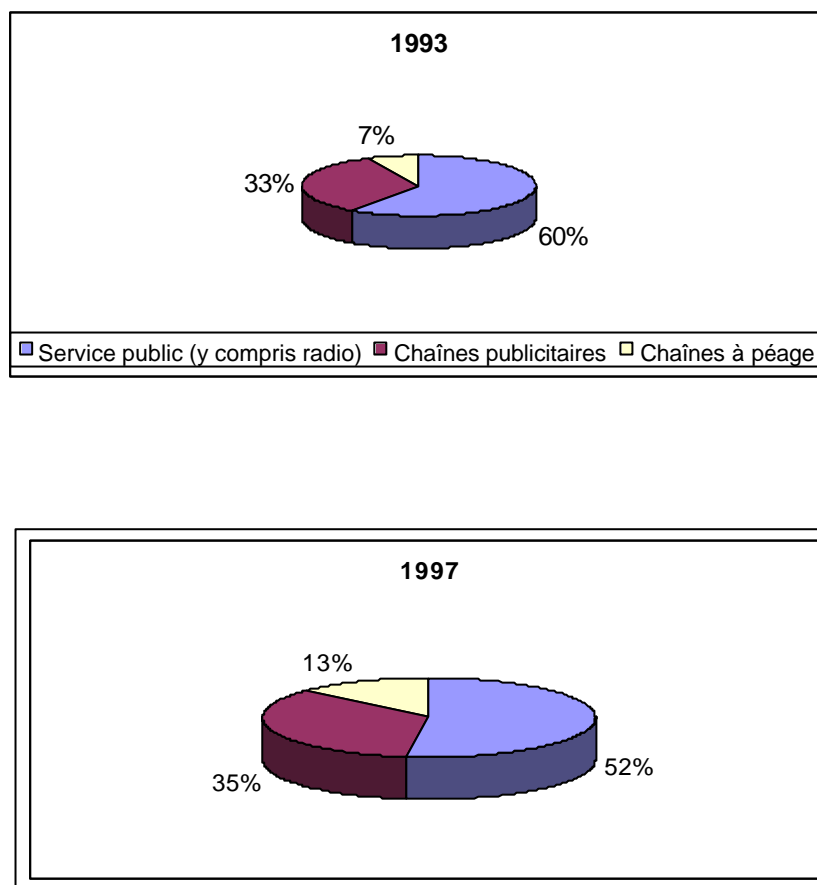
	1993	1994	1995	1996	1997	1997/1993
Public service (incl. Radio)	18 394	19 270 5%	19 550 1%	20 389 4%	22 459 9%	22%
Advertising channels	10 153	11 580 14%	13 040 13%	13 852 6%	14 899 8%	47%
Pay-TV channels	2 255	2 951 31%	3 731 26%	4 559 22%	5 740 26%	155%
Total EUR 15	30 802	33 801	36 321	38 801	43 098	40%
		10%	7%	7%	11%	

Source: European Audiovisual Observatory

⁹⁸ JAYAKAR, K.P. et WATERMAN, D., *The Economics of American Movie Exports: An Empirical Analysis*, Dept. of Telecommunications, Indiana University, April 1999.(unpublished).

⁹⁹ For methodological reasons already explained, it is not possible to isolate radio and television revenues of public service broadcasting organisations.

Graph 7. BREAKDOWN OF TELEVISION REVENUES ACCORDING THE KIND OF CHANNELS (1993 and 1997)



Source: European Audiovisual Observatory

9. THE IMPACT OF DIGITAL TELEVISION ON THE AUDIOVISUAL PROGRAMME MARKET

9.1. The domination of the European audiovisual programme market by American distribution companies

All the available data on the state of the European audiovisual programme market show that the various segments of the market (film, television, video) are persistently dominated by the American distributors. There have, however, been some encouraging signs over the last couple of years.

- A slight increase in the market share of theatre-released European films in 1996 and 1997. This trend did not, however, continue in 1998, nor probably in 1999..¹⁰⁰
- A clear regain in market share for prime-time European TV fiction viewing..¹⁰¹
- The good performance of certain categories of programmes in the European and international markets, particularly for French animated film..¹⁰²

9.1.1. *There are more European feature-length films produced than American ones, but production budgets are considerably lower and the films do not have much success outside their national markets.*

It is difficult to work out the exact number of feature-length films produced. To prevent co-productions being counted twice or even three times, minority co-productions obviously have to be excluded. Unfortunately, national statistics do not always specify the type of co-production. The figures we give here therefore suffer from a degree of approximation. Despite this, it is evident that European production is on a rapid growth curve. Although not all the 1998 figures are currently available, the number of films produced last year can be put at 550, probably slightly under the 1997 figure. There has been a slight drop in production in the United Kingdom, but an increase in France and Italy. The number of co-productions went down in the United Kingdom and Germany, but rose in Belgium, France, Italy and Sweden

Undercapitalisation has always affected the film industry and there is no European distribution or production company active across the continent. The Canadian group Seagram's take-over of PolyGram and the permanent integration of PolyGram Filmed Entertainment within Universal put an abrupt end to any hopes being entertained of seeing the formation of a Dutch-based European major.

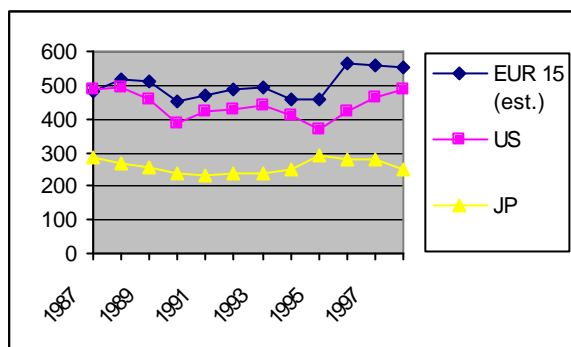
The difference between the average cost of American films produced by the majors and the average cost of European films has been widely publicised, while the rocketing costs recorded in the USA in 1997 further widened the gap.

¹⁰⁰ See EUROPEAN AUDIOVISUAL OBSERVATORY, *Focus 1999. World trends of the film markets – Tendances mondiales du marché du cinéma*, Cannes Market, 1999.

¹⁰¹ See BUONNANNO, M. (ed.), *TV Fiction in Europe. Third Eurofiction Report*, European Audiovisual Observatory, Strasbourg, September 1999. See summary below.

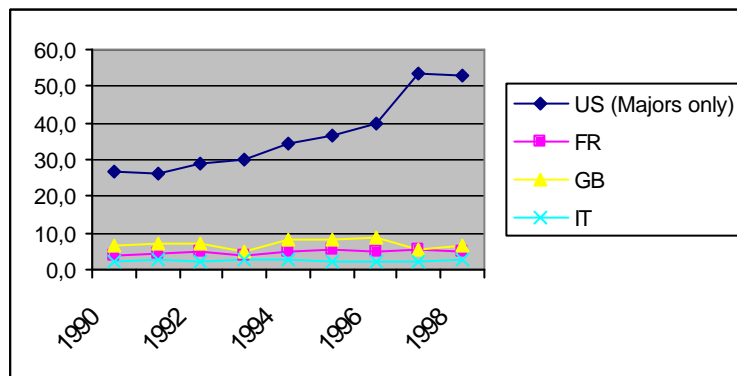
¹⁰² See LE BARS, S., *Animation française, un marché en pleine mutation*. Etude réalisée pour le Syndicat des Producteurs de Film d'Animation, Paris, juin 1999.

Graph 8. NUMBER OF FEATURE-LENGTH FILMS PRODUCED IN EUROPE, THE UNITED STATES AND JAPAN (1987-1998)



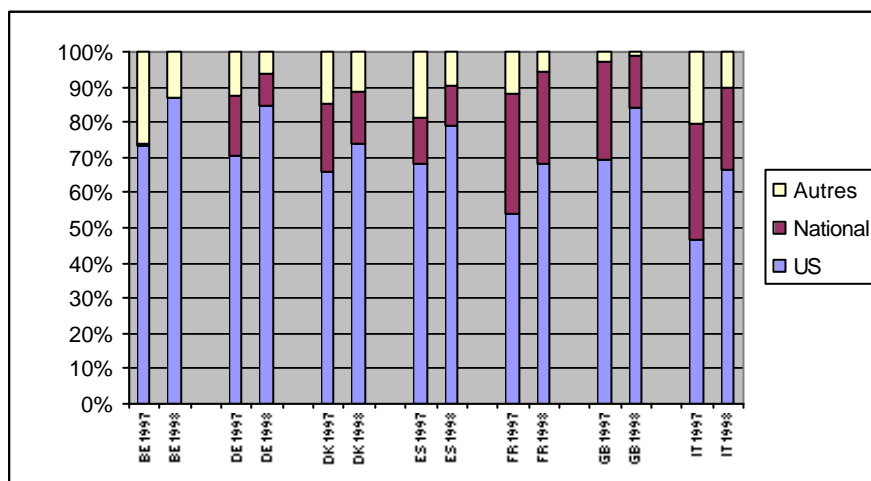
Source: European Audiovisual Observatory

Graph 9. AVERAGE PRODUCTION COST OF FEATURE-LENGTH FILMS (1990-1998) (in USD million)



Source: European Audiovisual Observatory

Graph 10. MARKET SHARES FOR NATIONAL, AMERICAN AND OTHER FILMS IN THE MAIN EUROPEAN MARKETS (1997-1998)



Source: European Audiovisual Observatory

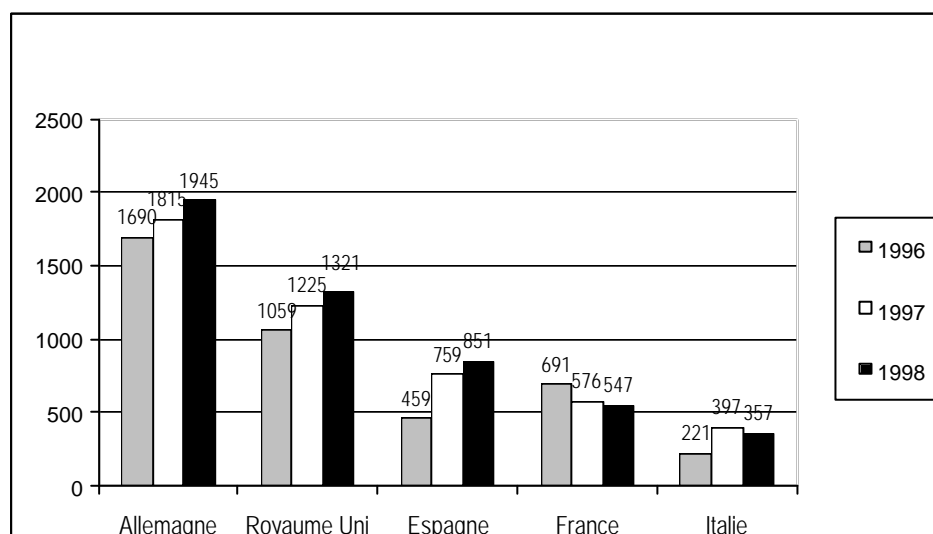
9.1.2. National television fiction's prime-time comeback

The European Audiovisual Observatory has been publishing the annual report "EUROFICTION"¹⁰³ Television Fiction in Europe" since 1997. The report looks at the national production of television fiction, based on the first showing on the main national channels in 1998. It covers the five main national television markets in Europe (Germany, the United Kingdom, France, Italy and Spain). The reports show the growth in TV fiction production and broadcasting in Europe.

The increase in production volume

1998 was the first year to see the figure for the first showing of national fiction over the five countries involved in the study top the 5,000-hour mark (the equivalent of 876 different productions). With an increase of 7% on the previous year, television production in Europe is enjoying a relative boom. The reasons behind this success include the drop in public interest for American general-public drama series, the disproportionate hike in prices for films and sports rights, along with the domestic success enjoyed by nationally-produced fiction. However, the cloud on the horizon can perhaps be seen in the 50%-plus drop in the growth rate of 16% (observed between 1996 and 1997) that might indicate that the budgets available for the main customers (the major national channels), the increase in production costs, the lack of properly-trained staff and the relatively high risk of failure have begun to hold back growth.

Graph 11. VOLUME OF BROADCAST NATIONAL FICTION (in hours) (1996-1998)



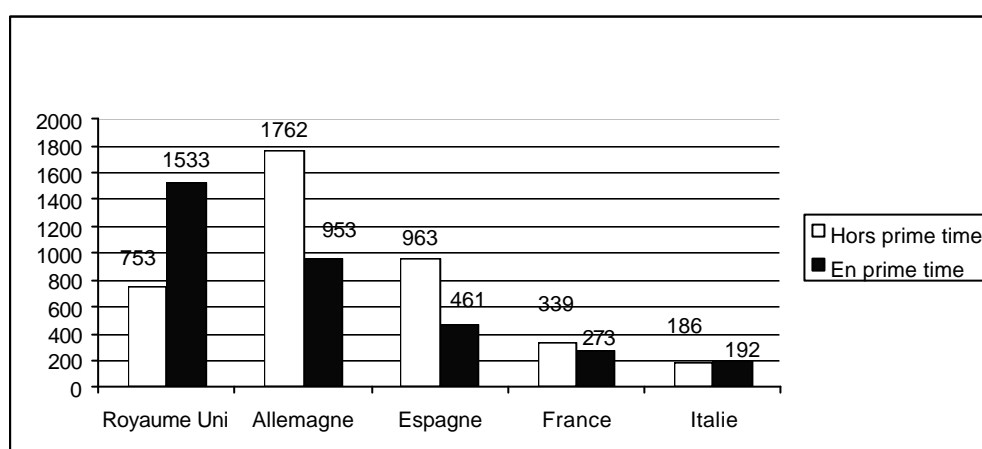
Source: Eurofiction

¹⁰³ The EUROFICTION projet fis a pluriannuel research and monitoring programme coordinated by the Fondazione Hypercampo, a partner of the University of Florence and the European Audiovisual Observatory. Eurofiction is the result of work carried out over several years by the Osservatorio sulla Fiction Italiana, and comes from the regular collaboration between five national teams. Apart from the Italian team, the EUROFICTION working party also includes the INA and the CSA (France), the University of Siegen (Germany), the BFI (United Kingdom) and the Universidad Autonoma di Barcelona (Spain).

More prime-time European fiction

In contrast to the previous year, 1998 saw significant growth in national fiction shown for the first time in prime time. 3412 episodes, making 46% of the total number of episodes shown, were broadcast at prime-time, which makes an increase of 13% and 380 episodes more than in 1997. On the other hand, over 400 national fiction episodes disappeared from non-prime-time programming. The figures clearly indicate that national fiction is moving towards a new production high. There is, however, considerable variation in the level of saturation by national productions at peak fiction broadcasting times. Figures for a week's monitoring of all fiction programmes, whether shown for the first time or repeats, produced nationally or imported, showed that, for the United Kingdom, national productions already accounted for 89% of prime-time fiction programming, while in Italy, the figure stood at only 17% (Germany 69%, France 47% and Spain 50%).

Graph 12. NATIONAL FICTION EPISODES PROGRAMMED IN 1998

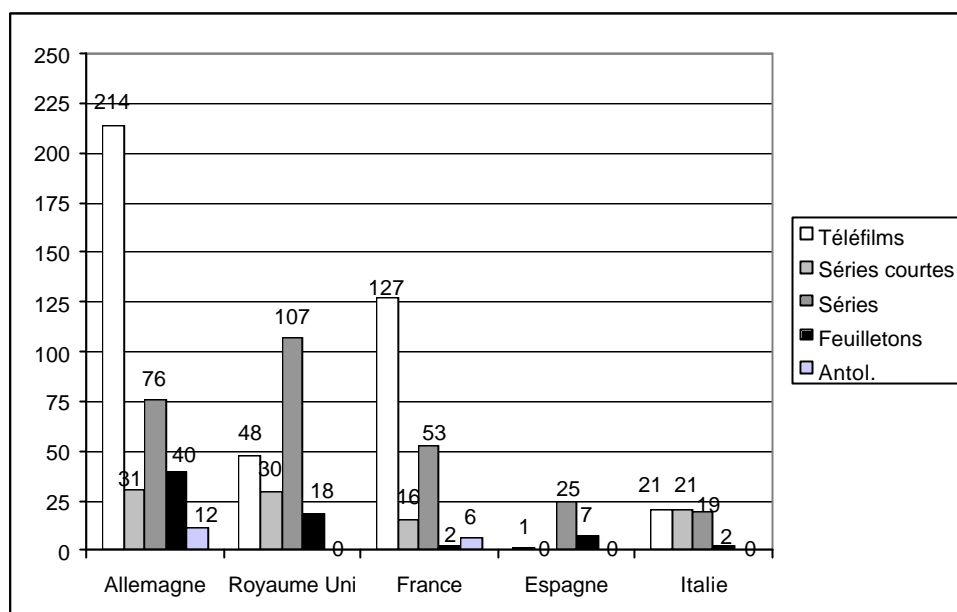


Source: Eurofiction

Significant differences from one country to another

The 1999 Eurofiction report gives an accurate picture of the considerable differences in quantity and structure of national fiction production in the five large European countries studied. Nearly two-thirds of the 5,095 hours were produced in Germany and the United Kingdom and under 20% by the two smallest producer countries, France and Italy. The 7% overall growth between 1997 and 1998 (and 16% for the previous 12 months) hid the beginning of the slowdown in French production. The drop, put at 20% over 24 months, was offset at European level by Spain, which practically doubled television production over the same period. France, Italy and Germany are all relatively in favour of co-productions, which account for 31%, 30% and 25% respectively of national fiction programmed for first showing, while the United Kingdom (10%) and Spain in particular (3%) avoid co-productions. There is also a significant difference in the ratio of total production volume to the number of hours, titles and episodes. The biggest difference is between Spain and France, with Spain producing an average of 43 episodes per title, with an average showing time of 36 minutes, against France's average production of 3 episodes each lasting on average 61 minutes. The different preferences in the two countries explain why there is such a gap. French production tends towards shorter formats, such as films made for television, mini and short series, while Spanish television goes more for long series, but with a smaller choice of titles and varieties.

Graph 13. NUMBER OF NATIONAL TELEVISION FICTION TITLES, ACCORDING TO FORMAT (1996-1998)



Source: Eurofiction

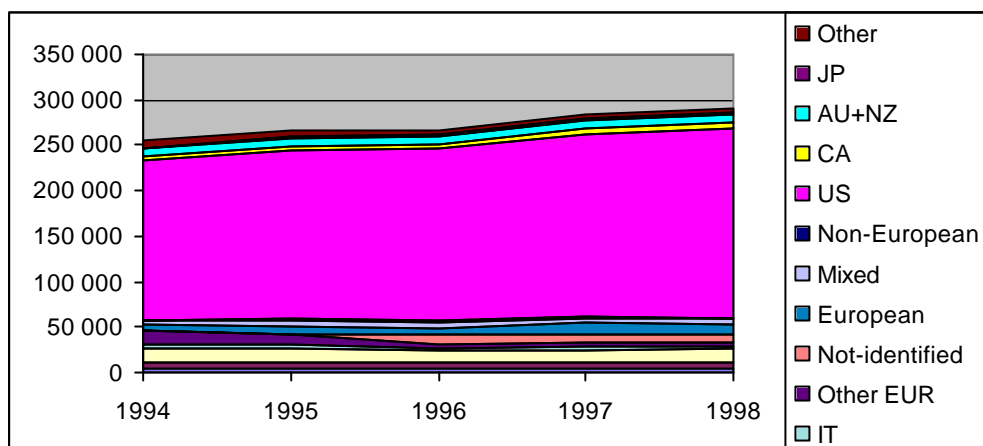
9.1.3. American fiction continues to gain ground in the imported fiction market

Despite the positive trend revealed by the EUROFICTION reports, it can be seen that American fiction (including films) has continued to increase market share in the non-national sector. This is shown in the figures given to the European Audiovisual Observatory.

This is what the figures gathered by ETS for European Audiovisual Observatory reveal.¹⁰⁴ Analysis by ETS shows that the market for fiction imported into the European Community went up from 251 000 hours in 1994 to 283 000 hours in 1997, an increase of about 4% per year. This increase was mainly to the advantage of American fiction, which rose from 69.8% in 1994 to 71.3% in 1997.

¹⁰⁴ The ETS data are published each year in the *Statistical Yearbook, television, video and the new media*, European Audiovisual Observatory, Strasbourg. The data include the main European public-service channels, advertising-financed channels and the main "premium" channels. They also include feature-length films..

Graph 14. ORIGIN OF IMPORTED FICTION PROGRAMMES BROADCAST BY THE MAIN EUROPEAN TELEVISION CHANNELS (1994-1998)

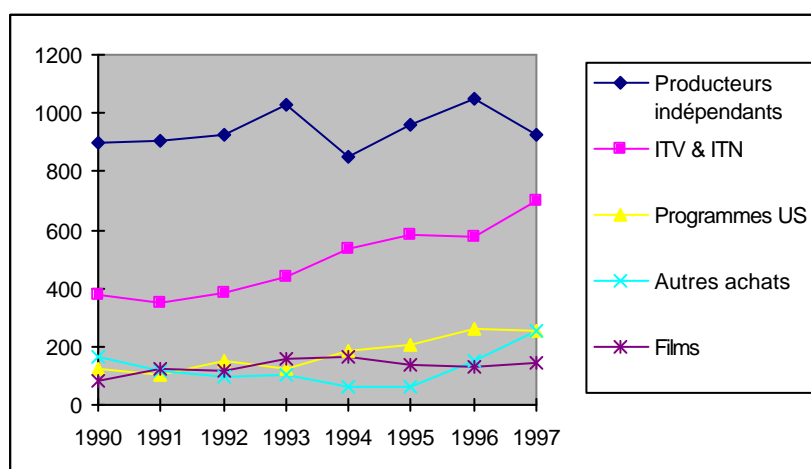


Source: ETS

9.1.4. Europeans programmes are tending to become economically more competitive

One of the traditional explanations for broadcasters' preference for American production is that it is more affordable than national or European productions. We do not have many precise figures for estimating programme costs. Channel 4 is the only television channel that regularly brings out figures on the relative costs of programmes according to origin. Although it is risky trying to make generalisations from a single channel, we considered it worthwhile noting the narrowing gap between the costs of national productions ordered from independent production companies and those of American productions. Between 1990 and 1997, the cost per minute of independent productions rose by only 3%, while the cost per minute of American productions went up by 104%. This means that American production, which was 7 times cheaper than national production in 1990, was down to only 4 times cheaper by 1997.

Graph 15. AVERAGE COST PER MINUTE OF PROGRAMMES BROADCAST BY CHANNEL 4, ACCORDING TO ORIGIN (1990-1997) GBP / minute



Source: Channel 4 / OBS

9.1.5. The rocketing costs of programme purchasing and the gains in market share made by American-produced programmes is having an increasingly marked effect on the European Union's trade balance

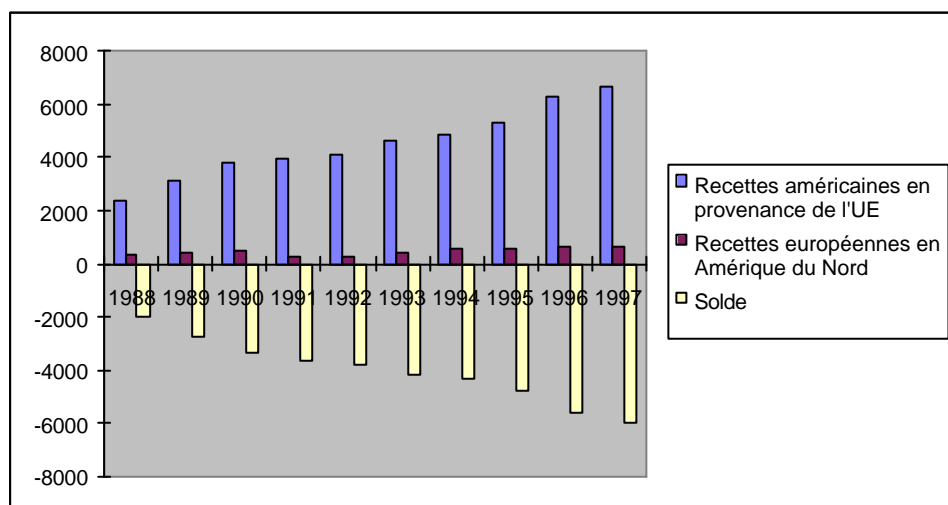
Methodological difficulties¹⁰⁵ make it difficult to propose a financial assessment of the costs in international trade.

The European Audiovisual Observatory considers that the definition of an international statistical system monitoring the international circulation of programmes, approved by sector professionals, should be put forward by the European authorities as an important point to be included in forthcoming international negotiations.

Available data and the assessments carried out on a regular basis by the Observatory indicate a strong rise in the European Union's trade deficit with North America. The Americans have seen their television programme revenue go up significantly, mainly due to the increase in prices, which is in turn due to greater competition, particularly following massive purchases of catalogues by the operators of pay-TV's broadcast as part of digital packages.

According the Observatory estimates, the deficit of the audiovisual trade between the European Union and North America reached 6 billions USD in 1997 and 7 billions USD in 1998. Imports of US TV programmes were estimated to 2,7 billions USD in 1997.¹⁰⁶

Graph 16. DEVELOPMENT OF AUDIOVISUAL TRADE BETWEEN THE EUROPEAN UNION AND NORTH AMERICA (1988-1997)



Source: European Audiovisual Observatory

¹⁰⁵ See A. LANGE, "Sources of information on the international trade in programmes", <http://www.obs.coe.int/oea/docs/00001775.htm> and Chapter 1 of the 1999 *Statistical Yearbook*

¹⁰⁶ See *Statistical Yearbook. Film, television, video and new media in Europe*, Edition 1999, European Audiovisual Observatory, Strasbourg, 1999.

9.2. Broadcasters' role in production

The increase in the number of channels has produced a debate as to the role of broadcasters in the production of new works. In 1998, the advisory committee of the European Audiovisual Observatory asked the Observatory to carry out a study to identify how investments made by broadcasters in audiovisual production could be compared. The study is still under way. A provisional report revealed the difficulties involved in setting up a comparative statistical tool.¹⁰⁷

Apart from the natural reluctance of the channels to hand over data they regard as strategic, there are also a number of methodological difficulties (defining production investment, problem of adding up structure costs, heterogeneity of accounting practices and available data, etc.)

9.2.1. *The regulatory framework : programming obligations, investment obligations or absence of obligations*

There is an ongoing discussion on whether programming obligations (with, as we already saw, the increasingly difficult task of monitoring their application) should be replaced by a system involving obligations of investment in production. The system of programming obligations was brought into European States' legislation following the "Television without Frontiers" directive. However, certain Member States also adopted further, more restrictive provisions regarding either investment obligations or obligations concerning independently-produced programmes that put the threshold significantly higher than the 10% laid down in the directive.

In other States, there are no detailed obligations, but obligations that are to a greater or lesser degree more restrictive are set out.

Investment obligations

This kind of system is used in a number of countries, including (without the list being comprehensive)

- Belgium (French-speaking community) :

- For public service: Authorisation to carry advertising was given to RTBF, subject to specifications laid down in the Executive decree of 21 November 1989 (amended by the Executive decree of 28 December 1990), which introduced special laws concerning the use of specific resources, programme sponsoring and the showing of advertising.
- For the private channels : Decree on the audiovisual sector of 17 July 1987 and its implementing laws

- France :

The regulatory framework for terrestrially-broadcast television channels includes obligations for investment in the production of cinematographic and audiovisual works. The two main laws are as follows :

- for the private, unencrypted channels (TF 1, M6) and public broadcasting corporations (France 2, France 3) : Decree n°90-67 amended by Decree n°95-1162 of 6 November 1995.

¹⁰⁷ *Les coûts de programme et les investissements dans la production audiovisuelle des chaînes de télévisions européennes*, Provisional report (Version 1.3., 8 October 1998), European Audiovisual Observatory, Strasbourg, 1998.

- for the private encrypted channels (CANAL+) : Decree n°.95-668 of 9 May 1995.

Conditions were set out for each channel, monitored by implementation reports carried out by the CSA, the regulatory authority.

A discussion is currently under way in France over the effectiveness of this kind of regulatory system. Broadcasters recognise that the system is efficient inasmuch as it incites them to invest. The independent production sector does, however, remain fragile and no companies of any significant size have emerged.

- Italy

The *Legge 31 Luglio 1997* founded a new regulatory authority to protect communications. The Authority was officially set up on 22 July 1998 and is responsible in particular for ensuring broadcasters' compliance with the implementation of programming standards (*Promozione della distribuzione e della produzione di opere europee*), as set out in article 2 of the *Legge 30 Aprile 1998*

Article 2 introduces the provisions of articles 4 to 6 of the Television without Frontiers Directive into Italian law (broadcasting of a majority of European-made audiovisual works, 10% of broadcasting time given over to independent productions) and also includes specific provisions under which :

- Broadcasters coming under Italian law have to set aside at least 10% of their annual net advertising revenue for the purchase of European-made audiovisual programmes (a minimum 40% of which has to be for films) and children's programmes (art II, § 5) ;
- the public service has to set aside a proportion of its licence-fee revenue for the production of European works. This proportion is set out in the service contract and, as from 1999, may not be under 20%. A reserve has to be set up from within this sum for the production or purchases from independent Italian or European production companies of cartoons produced specifically for child education (art II, § 5).

Programming obligations for independently-produced works : the United Kingdom example

Apart from the provisions of the Television without Frontiers Directive which were adopted by British law, the main provision contained within British law with regard to this issue is the "25% law" for independently-produced programming, which was introduced by the 1990 Broadcasting Act.¹⁰⁸

This provision, which became law in 1990, followed on from the emergence of the independent production sector, revived by the launch in 1982 of Channel 4. Ever since its inception, Channel 4's programming has been made up, for the main part, of programmes purchased or commissioned from independent production companies. In 1986, the Peacock Report on the financing of the BBC recommended that the BBC and ITV should make increasing use of independent production. In 1988, the Independent Broadcasting Authority published *The terms of trade agreement for independent productions on ITV*, that urged ITV channels to devote 25% of programming to independent productions. By 1992, independent productions were taking up 22% of total broadcasting time on ITV, a result of the broadcasters' voluntary policy.

The provisions relating to Channel 3 (ITV), Channel 4, Channel 5 and the BBC take a similar form, with 25% of broadcasting time being set aside for qualifying programmes from independent production companies.

¹⁰⁸ *Broadcasting Act 1990* - Chapter 41, HMSO, London, 1990.

9.2.2. *The Arthur Andersen report, carried out for the European Broadcasting Union*

The European Broadcasting Union asked Arthur Andersen to make a report on European Union TV companies' revenues and expenditure.

The report put the 1996 European Union television market at 29.4 Bn euros. The market value of the programmes is put at 17.4 Bn. Total revenue between 1990 and 1996 is reported to have risen from 21.6 Bn euros in 1990 to 29.4 Bn by 1996. Programming costs over the same period went up more gradually, from 13 Bn euros to 17.4 Bn (an increase of 34%).

The report states that revenue increase is mainly due to the private sector, particularly pay-TV. Over the 7-year period in question, the actual growth in public-service broadcasters topped out at 6%, compared with 88% for private television.

It is not up to the European Audiovisual Observatory to confirm the political messages emanating from the EBU following this report. We do, however, consider that the first three out of the five key points, as featured in a summary made by the EBU's strategic information service¹⁰⁹, are at the core of the debate over the next 5 years. The fifth point seems to us to owe more to political position-taking rather than objective analysis.¹¹⁰

Programmes costs are not increasing in proportion to television revenue

The Arthur Andersen report shows that over Europe as a whole, the percentage of total television revenue invested in programmes has not been rising, despite the increase in competition, which, at least in theory, is supposed to result in an increase in spending on programmes at the expense of profit margins. In fact, the percentage invested actually went down between 1992 and 1996, from 59% to 58%. This stagnation, or even decline, can be put down to the fact that the "next generation" broadcasters have been investing a lower percentage of revenue in programmes than the "first generation" broadcasters.¹¹¹

¹⁰⁹ *The impact of digital television on programme supply. Key features of the Arthur Andersen Report*, EBU Strategic Information Service, EBU, Geneva, October 1998.

¹¹⁰ "Digital television will bring about a fundamental change in the ways viewers will access programmes and programme suppliers access viewers."

¹¹¹ In the typology used by the Arthur Andersen report, the "first generation" broadcasters are especially public broadcasting corporations, but including TF1 and ITV. "Next generation" broadcasters are those which were launched in already-existing markets. This category includes private broadcasters, financed by advertising, pay-TV broadcasters and two new public broadcasters (Channel 4 and TV2 Denmark). The appendix contains a category-by-category list of first and next-generation broadcasters.

Table 16 : GROWTH RATE (1990-1996) OF TELEVISION COMPANIES' PROGRAMME EXPENDITURE AND REVENUE
Computed in constant-rate national currency

	<i>Revenue</i>	<i>Programme costs</i>
Monopoly-based countries		
<i>Austria</i>	6%	17%
<i>Ireland</i>	15%	18%
High-growth medium-sized countries		
<i>Finland</i>	101%	91%
<i>Greece (1)</i>	77%	84%
<i>Norway</i>	116%	69%
<i>Sweden</i>	112%	81%
- average growth		
<i>the Netherlands</i>	28%	21%
<i>Denmark</i>	32%	35%
<i>Portugal (2)</i>	37%	90%
- weak growth		
<i>Belgium</i>	1%	11%
Larger countries		
<i>France</i>	53%	55%
<i>Germany</i>	72%	61%
<i>Italy</i>	-1%	14%
<i>Spain</i>	13%	19%
<i>United Kingdom</i>	69%	44%
(1) <i>Ski et Star</i> not included, for lack of reliable data,		
(2) <i>TVI</i> not included, for lack of reliable data		

Source : Arthur Andersen / EBU

The drop in the market share occupied by first-generation broadcasters has tended to exacerbate the situation. "Next-generation" broadcasters' market share, especially for pay-TV operators, has been going up (especially in terms of revenue) at the expense of the first-generation broadcasters

The stepping-up of competition is leading to an increase in programme purchasing expenditure, at the expense of production.

The gap between spending on programmes and revenue is widening slowly but surely, although less rapidly, perhaps, than the gulf separating programme production expenditure and revenue. The main reason is the arrival in the market of the next-generation broadcasters who have been allocating a larger part of their budget to programme purchasing rather than to the production of their own programmes. The main focus of expenditure has been American-made programmes, films and sports rights. This re-focusing by pay-TV has been causing some concern over the possible consequences of digital television on programmes.

The introduction of digital television is intensifying the main trends of analogue television

The Arthur Andersen report considers that the dynamics of digital television market development are hardly any different from those driving analogue pay-TV. In other words, there are considerable differences from one market to another. Even in the medium term, the digital televisual market is unlikely to cut wide swathes in those countries which already have a high level of analogue channels or where there is a large number of channels financed by advertising (or even both) and/or where pay-TV plays a limited role (for example in Germany, Benelux, Denmark and Italy). Digital television, like analogue pay-TV, will doubtless generate fresh new sources of revenue and consequently additional resources for financing programmes. However, just as for analogue pay-TV, revenue for programmes will be far lower than those sums invested by Free to Air channels and even less so than by the first-generation companies. The money that digital television will be putting into the production of its own programmes, especially the more expensive and higher risk ones, will certainly be pegged at a limited level. In common with multi-channel analogue television, digital relies to a large extent on repeat programmes originally produced for general interest Free to Air channels. This trend is unlikely to change and the impact of new types of service (especially interactive ones), will remain limited.

9.2.3. A step towards a European tool for measuring broadcasters' investments in production?

The Arthur Andersen study had the merit of raising essential questions for the future of audiovisual production. It is not for the Observatory to say which measures should be adopted in order to stimulate production on the part of the "new generation of broadcasters" and to enable the "first generation" to continue investing in production. It is obvious that this is a divisive debate – and will remain so – between the advocates of regulatory options and the advocates of the liberal option (a division which is not however the same as the opposition of "first generation" and "new generation", or the opposition of "public service" and "private stations").

The European Audiovisual Observatory, at the request of its Advisory Committee – and in particular the two organisations representing broadcasters (EBU and ACT) – undertook a "general interest" study in 1998 on the subject of investments by broadcasters in audiovisual production. For a number of reasons (mainly concerning the budget and methodology), this study has not yet been completed. An interim report has been drawn up and a second study stage will look into the problem of measuring costs for nationally-produced fiction works in the five largest countries in the Community¹¹².

In this debate the problem of transparency should not be under-estimated. Increased competition tends to make the programmes market – which has never been particularly transparent – increasingly opaque. Apart from the methodological difficulties – which are in fact considerable – the desire of all those involved (broadcasters, producers and public authorities) to increase transparency would appear to be necessary. Since competition law seems set to play an increasingly important role in the resolution of conflicts engendered by a market which has become more competitive, it would appear to be very necessary to reinforce the rational understanding of the market, on the basis of elements of analysis agreed between the main groups involved. It must be admitted that, from this point of view, the difference in national regulations on the publication of accounts does not make the analyst's task any easier; indeed one may be justified in thinking that this difference is in itself a factor in the distortion of competition; in one country broadcasters are not even required to publish their turnover figures, whereas in another country broadcasters are required to respect not only the general regulations on the publication of company accounts but also to

¹¹² An interim report is available on application to the Observatory, entitled "*Coûts de programmes et investissements des diffuseurs dans la production audiovisuelle européenne*", version 1.3, European Audiovisual Observatory, Strasbourg, October 1998.

give the broadcasting regulatory body detailed justification of their investments in production¹¹³.

¹¹³ It should be noted that here also the difference between "communicant broadcasters" and "non-communicant broadcasters" is not the same as the difference between the public and private sectors or that between the "first generation" and the "new generation". Most of the major private broadcasters now publish their report of activities in full on Internet, whereas obtaining the accounts of a public service body requires the services of a financial information broker!

9.3. The weakness of the European independent TV production sector

The independent television programme production company sector remains little studied from the viewpoint of a sector-based analysis, and it is difficult to produce a complete economic table covering the European Community as a whole¹¹⁴. It must be admitted that the national or European regulatory incentives have not so far resulted in the formation of production companies of a significant size in the field of production for television. The major European companies in the sector remain subsidiaries of the major groups (Kirchmedia, CANAL+, Mediaset, CLT-Ufa, etc). The cinema groups such as Pathé and Gaumont which had invested in television production seem to want to pull out. The independent production companies with a significant turnover (Endemol, Pearson, Independent Television News, etc) have specialised in throwaway production (entertainment, news, etc) rather than programmes with re-run potential.

Table 17. THE 25 LARGEST EUROPEAN PRODUCTION AND DISTRIBUTION COMPANIES (CINEMA, TELEVISION) – "production and distribution" turnover in EUR million (1995-1997)

Ranking	Company	Country	Field	Activities	1995	1996	1997	97/96
1	PolyGram N.V. (film activities)	NL	CIN/VID	PROD-DIS	593.0	729.9	814.2	11.5%
2	Kirch Gruppe (est.)	DE	CIN/TV	PROD-DIS	764.7	770.0	780.0	1.3%
3	Viacom International Netherlands B.V.	NL	TV/VID	DIS	538.7	747.0	n.c.	n.c.
4	United International Pictures B.V.	NL	CIN	DIS	650.3	774.8	604.6	-22.0%
5	Cinema International B.V.	NL	VID	DIS	393.8	469.7	480.5	2.3%
6	Time Warner Entertainment Ltd	GB	CIN/TV	PROD-DIS-Ex	366.5	441.8	n.c.	n.c.
7	United Cinemas International Multiplex B.V.	NL	CIN	Ex.	257.1	274.3	309.2	12.7%
8	CANAL+ group (consolidated) (*)	FR	CIN/TV	PROD-DIS	256.4	258.4	302.6	17.1%
9	Endemol Entertainment Holding N.V.	NL	TV	PROD-DIS	198.0	256.0	290.8	13.6%
10	Gaumont	FR	CIN/TV/VID	PROD-DIS-Ex	189.3	198.7	289.9	45.9%
11	Pathé	FR	CIN/TV	DIS-Ex	69.2	252.4	277.7	10.0%
12	CLT-UFA (*)	LU	TV	PROD-DIS	84.0	107.2	276.7	158.1%
13	Monarchy Enterprises B.V.	NL	CIN	PROD-DIS-Ex	163.7	273.4	n.c.	n.c.
14	Granada Television Ltd (*) (est.)	GB	TV / CIN	PROD-DIS	197.5	239.9	257.2	7.2%
15	Viacom UK Ltd	GB	VID	DIS	162.5	250.4	n.c.	n.c.
16	Nordisk Film	DK	CIN/TV/VID	PROD-DIS	217.3	n.c.	226.3	n.c.
17	Lusomundo-SGPS S.A.	PT	CIN	DIS-Ex	141.0	183.8	211.4	15.0%
18	Audiovisual Sport S.L.	ES	TV	PROD	—	—	207.2	—
19	Warner Bros. Productions Ltd	GB	CIN	PROD	170.3	192.7	n.c.	n.c.
20	Pearson Television (est.)	GB	TV	PROD-DIS	169.5	179.7	188.5	4.9%
21	BBC Worldwide Television (*)	GB	TV	DIS	120.7	130.3	182.6	40.2%
22	Odeon Cinema Ltd	GB	CIN	Ex	112.8	119.2	181.9	52.6%
23	Buena Vista Home Entertainment (France)	FR	VID	DIS	158.7	183.8	165.7	-9.8%
24	Studio Hamburg	DE	CIN/TV	PROD	54.8	55.8	164.7	195.0%
25	ARD (co-productions and sales) (*)	DE	TV	PROD-DIS	140.1	149.3	163.0	9.2%

(*) "production and distribution" activities of broadcasters

Source : European Audiovisual Observatory

¹¹⁴ France and the United Kingdom are the only countries, to our knowledge, for which detailed economic and financial studies are available:

- France: *Les entreprises de l'audiovisuel. Résultats 1989-1996*, CNC-SJTI, Paris, 1999 and *Indicateurs statistiques de l'audiovisuel. Cinéma, télévision, vidéo*. 1998 edition, SJTI-CNC-CSA-INA / La Documentation Française, Paris, 1998;

- United Kingdom: *The film and television industry*, ICC Business Publications Limited, Edition 14, London, 1999.

CONCLUSIONS: OBSERVING IS NOT THE SAME AS CONCLUDING

The role of the European Audiovisual Observatory cannot be to propose guidelines for audiovisual policy action at European level. This would be contrary not only to its statute, but also to its legitimacy as the body responsible for observing markets with the highest possible degree of impartiality with a view to making them understandable to professionals.

The present summary is therefore intended only for information purposes, although it does attempt to place the information in context and to give meaning to the terms of the debate.

Questions not dealt with in the present report

We have not been able in the present summary to deal with a number of important aspects in the development of digital television:

- the problem of access systems, which raises a number of questions regarding both the citizen-viewer's right to information and competition law;
- the problem of the fragmentation of audiences, which some sociologists see as a threat to the public space of the States of the European Union. It would also be interesting to study the impact digital broadcasting could have on relations between the local, regional, national and European levels (possibilities for new local stations, possibility of inter-regional channels broadcast nationwide or even throughout Europe, etc);
- developments in digital television in the countries of central and eastern Europe¹¹⁵;
- the issue of the convergence of digital television with other technologies (Internet, DVD, etc).
- the issue of the growing importance of sports rights in the evolution of the television market (particularly in relation to the development of pay-per-view television);
- the international aspects of the development of digital television (promotion of the DVB standard in markets outside Europe, imbalances in programme exchanges, access to the European market for channels and services not established in Europe, international negotiations on the status of the audiovisual sector in terms of international trade.

Questions to be debated

Examination of the developments in digital television enable us to point out that the following points are certainly worth debating

- ***Types of European co-operation for the continuation of efforts as regards technological development and the setting up of digital television.***

Specifically, it appears that the Chester Agreements have not resolved all the frequency problems as regards terrestrially-broadcast digital television and that there are co-ordination problems (particularly in border areas). Some States seem to want to obtain additional frequencies in order to be able to set up additional multiplexes.

¹¹⁵ A number of States are beginning to adopt guidelines. See, for example, "Main directives of the policy to be pursued by the Republic of Poland with regard to digital television", in *The Bulletin of The National Broadcasting Council of Poland*, no.6/99.

- ***The impact of developments in digital television on the national legal framework for broadcasting***

The matter of the sovereignty of States in the management of their audiovisual systems continues to be a theme for discussion. Continuing on from the Treaty of Amsterdam Protocol, it would appear to be accepted that States should remain responsible for decisions concerning public service financing, but at the same time the European Commission is asking States to define the concept of public service, in order to be able to determine areas of competition.

A range of questions arise concerning the future of the public service:

- What are the implications of this logic of distinguishing the activities of public service bodies for their development of new services in line with the digital environment?
- Should the universality of the distribution of public-service channels be assured by principles embodied in regulations?
- How should finance for the public service be assured in order to safeguard and develop its missions in the digital age? Is the solution the principle, proposed by the United Kingdom, of a "digital licence fee" to be paid only by people using digital services offered by the public sector?

Other questions concern private channels and services:

- The multiplication of channels, particularly satellite channels, makes the arguments of the scarcity of the spectrum partially obsolete; this was one of the historical arguments which justified the system of awarding licences. It is necessary, however, to envisage – as proposed in some quarters – the disappearance of authorisation systems, leaving television to be treated as a service subject only to the initiative of entrepreneurs, like Internet? Or should we on the contrary continue to consider that the spectrum is still a scarce commodity and adapt the ways of granting licences, using techniques such as licence auctioning, which have already been introduced in certain countries?
- Can the principle of the "must carry" rule, generally in respect of the public-service channels, be extended to certain private channels (such as the national private channels in small countries)? If so, under what conditions? Is it desirable to have a definition of the principle of this at European level, or not?
- Are the present arrangements for the regulation of access systems satisfactory? Has the directive on the use of standards for the transmission of television signals¹¹⁶ - an initial report on its implementation is due soon - been implemented satisfactorily, and does it need to be revised? Are further European initiatives on this necessary?
- Recent national case-law concerning sports events contracts point to differences in approach and conclusions which differ radically. Should European harmonisation be envisaged in this field?

- ***The impact of digital television on the free circulation of programmes in Europe***

Is it acceptable for satellite channels to broadcast without a licence? It is technically possible for the person responsible for a channel broadcast by satellite to remain anonymous? If so, should the principle of a chain of liability (liability of the company managing the satellite's capacity, liability of the operator of the satellite) be adopted?

¹¹⁶ Directive 95/47/CE of the European Parliament and of the Council; OJ L 281/51 of 23.11.1995.

What is the future of Articles 4 and 5 of the directive on "Television without frontiers"? Will it still be possible to ensure the monitoring of their implementation? Will the new channels be capable of meeting their obligations, since the third Commission report Commission identifies difficulties encountered by recently created channels, theme channels and particularly cinema channels in meeting these obligations?

- **The evolution of financing for channels**

The public-service channels, the channels financed by advertising and the pay channels have different growth rhythms. Should measures be envisaged to enable the public service to keep up with the growth rhythm of the other types of channel? Should the revenue from advertising be shared out differently by increasing the amount of advertising permitted on public-service channels? Should certain types of advertising be liberalised or others prohibited (particularly advertising aimed at children)?

- **The prospects for the programme industry**

How can broadcasters be encouraged to invest in production? Should they be required to do so by means of regulations, as is the case in a number of Community countries? Even if there were agreement on this point, would it be possible to have it respected by "new arrivals" in the market? Would the objective of increasing their number of programmes be enough to encourage broadcasters to invest?

- **The transparency of the sector**

Various developments in digital television highlight the problems concerning the transparency of the market:

- identification of certain broadcasters,
- risks de distortion of competition arising from the diversity of publication obligations,
- economic analysis of the market (breakdown of the revenue and expenditure of broadcasting bodies, transmission network operators, etc; investments, etc),

Should the existing publication obligations for undertakings be harmonised in terms of the law applicable to all undertakings or in provisions specific to the audiovisual sector?

Would it not be advisable, in the framework of international negotiations on the audiovisual sector, to set up a framework to evaluate international exchanges of audiovisual programmes and services on the basis of data agreed on by the professionals concerned?

INTERNET SOURCES OF INFORMATION ON DIGITAL TELEVISION

International and European organisations in the field of telecommunications

Organisations internationales et européennes dans le domaine des télécommunications
ITU - UIT (International Telecommunication Union - Union internationale des télécommunications)

<http://www.itu.int/>

ETO (European Telecommunications Office)

<http://www.eto.dk/>

International standardisation organisations - Organismes internationaux de normalisation

CEN : European Committee For Standardisation

<http://www.cenorm.be/>

CENELEC (European Committee For Electrotechnical Standardization)

<http://www.cenelec.be/>

DAVIC (Digital Audio-Visual Council)

<http://www.davic.org/>

ETSI (The European Telecommunications Standards Institute)

<http://www.etsi.org/>

IEC (International Electrotechnical Commission - Commission électrotechnique internationale)

<http://www.iec.ch/>

ISO (International Organization for Standardization - Organisation internationale de normalisation)

<http://www.iso.ch/>

National standardisation organisations - Organismes nationaux de normalisation

DE : Allemagne : DIN (Deutsches Institut für Normung e.V.)

<http://www.din.de/>

FR : France : AFNOR (Association française de normalisation)

<http://www.afnor.fr/>

US - Etats-Unis : ANSI (American National Standards Institute)

<http://www.ansi.org/>

European Union sites - Sites des institutions de l'Union européenne européenne

<http://europa.eu.int>

/

http://europa.eu.int/comm/dg10/avpolicy/index_en.html

<http://europa.eu.int/comm/dg13/index.htm>

National broadcasting authorities - Instances nationales de réglementation de la radio-télévision

European States (> Site of the European Audiovisual Observatory)

<http://www.obs.coe.int/oea/docs/00001809.htm>

US - Etats-Unis : FCC (Federal Communications Commission)
<http://www.fcc.gov/>

Digital television systems - Systèmes de télévision numérique

ADSL : Asymmetric Digital Subscribers Line

Asymmetric Digital Subscribers Line Forum
<http://www.adsl.com/>

Other resources on ADSL
http://www.itu.int/Sites/wwwfiles/net_adsl.html

ATM (Asynchronous Transfer Mode)

ATM Forum <http://www.atmforum.com>

Other resources on ATM
http://www.itu.int/Sites/wwwfiles/net_atm.html

ATSC : (Advanced Television Systems Committee)
<http://www.atsc.org/>

DVB : (Digital Video Broadcasting)
<http://www.dvb.org>

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Worldwide TV Standards - A Web Guide
<http://www.ee.surrey.ac.uk/Contrib/WorldTV/>

Digital audio broadcasting systems - Systèmes de radio numérique

DAB (Digital Audio Broadcasting) :World DAB Forum
<http://www.worlddab.org/>

RDS (Radio Data System)
<http://www.rds.org.uk/>

Research & Development groups - Groupes de recherche et développement

Eureka 147 Consortium (DAB development)
<http://www.eurekadab.org/>

MHEG Centre
<http://www.mhegcentre.com/>

MPEG (Moving Picture Experts Group)
<http://www.cselt.stet.it/mpeg>

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MPEG Plaz
<http://www.visiblelight.com/mpeg>

/

MPEG Pointers and Ressources
<http://www.mpeg.org/MPEG>

/

Other resources on MPEG
http://www.itu.int/Sites/wwwfiles/mm_mpeg.html

Standard promotion groups - Groupes de promotion des normes

DIGITAG (Digital Terrestrial Television Action Group)

<http://www.digitag.org>

Professional organisations of the consumers Electronic Manufactures industry - Organisations professionnelles de l'industrie de l'électronique grand public

Europe : EACEM (The European Association Of Consumer Electronics Manufacturers)

<http://www.eacem.be/index.htm>

AT – Austria : FEEI (Fachverband der Elektro- und Elektronikindustrie)

<http://www.wk.or.at/feei>

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BE - BelgiUM : Fabrimetal (Federation des Entreprises de L'Industrie des Fabrications Metalliques, Mecaniques, Electriques, Electroniques et de la Transformation des Matieres Plastiques)

<http://www.fabrimetal.be>

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DE - Allemagne : ZVEI (Zentralverband Elektrotechnik- und Elektronikindustrie e.V)

<http://www.zvei.de>

/

ES - Espagne : ANIEL (Asociación Nacional de Industrias Electrónicas y de Telecomunicaciones)

<http://www.aniel.es>

/

FR - France : SIMAVELEC (Syndicat des Industries de Materiels Audiovisuel Electroniques)

GB – United Kingdom : BREMA (British Radio & Electronic Equipment Manufacturers' Association)

IT : Italy : ANIE (Federazione Nazionale Imprese Elettrotechniche e Elettroniche)

<http://www.anie.it>

TR - Turkey : ECID (Elektronik Cihazlar Imalatçilari Dernegi)

US – United States : CEA (Consumer Electronic Association)

<http://204.245.190.25/index.cfm>

Broadcasters' profesional organisations - Organisations professionnelles représentant les organismes de radio-télévision

ABU - Asia-Pacific Broadcasting Union

<http://www.abu.org.my>

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ACT - (Association of Commercial Television Association des télévisions commerciales)

<http://www.acte.be>

EBU - UER (European Broadcasting Union - Union européenne de radiotélévision)

<http://www.ebu.ch>

NAB - National Association of Broadcasters

<http://www.nab.org>

Digital packages and channels - Liste des bouquets et des chaînes numériques

Satellite channels

Lyngemark Satellite Charts

<http://www.lyngsat.com>

Digital terrestrial channels

ES – Spain

Onda Digital comienza hoy a emitir en pruebas llegando a 2,6 millones de hogares de Madrid y Barcelona (> Yahoo España, 15.11.1999) <http://es.news.yahoo.com/991115/9/4hdp.html>

FI – Finland

Decisions on licences for digital television operations reached in Finland: Aim Is to Waive Analogue Technology by the End of 2006, Press release, 23.6.1999 (> Ministry of Transport and Communication)

www.mintc.fi/www/sivut/dokumentit/tiedote/viestinta/ti230699620eng.htm

Operating licences for digital television operations granted in June 1999 (> Site de YLE)

<http://www.yle.fi/fbc/media/1-99/dlicence.html>

GB – United Kingdom

ITC site

www.itc.org.uk/licensing/dtt/licencees_index.asp?page_type=channel

www.itc.org.uk/licensing/dtt/licencees_index.asp?page_type=company

SE – Sweden

Digital SVT Channels (>Site de SVT)

<http://www.svt.se/hela/inenglish/digital.html>

Cable industry professional organisations - Organisations professionnelles représentant les entreprises du câble

Europe : ECCA (European Cable Communications Association)

<http://www.ecca.be>

US - Etats-Unis : NTCA (National Cable Television Association)

<http://www.ncta.com/>

Electrical and Electronics Engineers professional organisations - Organisations professionnelles d'ingénieurs électriciens et électroniciens

GB - Royaume-Uni : IEE (The Institution of Electrical Engineers)

<http://www.iee.org.uk/>

US : Etats-Unis : IEEE (The Institute Of Electrical And Electronics Engineers, Inc.)

<http://www.ieee.org>

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Film and Television Engineers professional organisations - Organisations professionnelles de techniciens du cinéma et de la télévision

FR - France : CSTIS (Commission supérieure technique de l'image et du son)

<http://www.cst.fr>

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GB - Royaume-Uni : BKSTS (The British Kinematograph Sound and Television Society)

<http://www.bksts.com>

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US - Etats-Unis : SMPTE (Society of Motion Picture & Television Engineers)

<http://www.smpete.org>

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Organisations fighting against digital piracy - Organisations de lutte contre la piraterie numérique

AEPOC (Association Européenne de Protection des Oeuvres Cryptée)

<http://www.aepoc.org/>

IIPA (International Intellectual Property Alliance)

<http://www.iipa.com/>

Makets and conferences - Marchés et conférences spécialisés

IBC (International Broadcasting Conference)

<http://194.159.2.186/>

Montreux Symposium

<http://www.montreux.ch/symposia/TV/frame.html>

SATIS

<http://satis.reed-oip.fr/>

National research & development centers - Centres de recherche et développement nationaux

DE - Germany : IRT (Institut für Rundfunktechnik)

<http://www.irt.de>

FR - France : CCETT

<http://www.ccett.fr>

GB – United Kingdom : BBC Research & Development Website

<http://www.bbc.co.uk/rd>

National reports - Rapports nationaux

DE – Germany

Documentation 451 - "Digital Broadcasting" Initiative of the German Government

http://www.bmwi.de/english/en_infomaterial.html#dok455

Initiative "Digitaler Rundfunk" der Bundesregierung Markteinführung des digitalen Hörfunks und Fernsehens in Deutschland - Bericht der Arbeitsgruppe (= "Digital Broadcasting" Initiative of the Government of the Federal Republic of Germany The introduction of digital radio and television in Germany - Report by the working group)

<http://www.bmwi.de/english/digital/report.html>

Plan de répartition entre services de télévision numérique de l'hyperbande des réseaux câblés de Deutsche Telekom, adopté par la Conférence des Directeurs des instances régionales de réglementation des médias (DLM) le 28.10.1999. (> Communiqué de presse de la DLM, 28.10.1999)

<http://www.alm.de/presse/p281099.htm>

FI – Finland

Decisions on licences for digital television operations reached in Finland: Aim Is to Waive Analogue Technology by the End of 2006, Press release, 23.6.1999 (> Ministry of Transport and Communication)

www.mintc.fi/www/sivut/dokumentit/tiedote/viestinta/ti230699620eng.htm

FR - France

AGENCE NATIONALE DES FREQUENCES, Etude sur la planification des Fréquences en vue de l'introduction en France de la Television numérique de Terre-DVB-T , Rapport du Groupe de Travail sur l'Ingénierie du Spectre de la Television de Terre (> Site de l'ANFR)

<http://www.anfr.fr/fr/textedoc/television.html>

Rapport de Messieurs Eymery et Cottet , à Mme Catherine Trautmann, ministre de la culture et de la communication, avril 1999. Texte intégral au format RTF (> Site du Ministère de la Culture et de la Communication).

<http://www.culture.gouv.fr/culture/actualites/rapports/cottet-eymery.rtf>

Nouvelles orientations concernant la télévision numérique hertzienne terrestre présentées par Mme Catherine Trautmann, Ministre de la Culture et de la Communication, et M. Christian Pierret, Secrétaire d'Etat à l'Industrie. 12 mai 1999 (> Site du Ministère de la Culture et de la Communication).

<http://www.culture.fr/culture/actualites/politique/hertzien/intro.htm>

Livre blanc, juin 1999 (au format RTF) (> Site du Ministère de la Culture et de la Communication).

<http://www.culture.gouv.fr/culture/actualites/forum/livre.rtf>

Forum de discussion ouvert par le Ministère de la Culture et de la Communication (> Site du Ministère de la Culture et de la Communication).

<http://www.culture.gouv.fr/culture/actualites/forum/>

GB – United Kingdom

Digital Television, ITC Note n.40 (> Site de l'ITC)

http://www.itc.org.uk/about/itc_notes/note_40.asp?

The Digital Future (> Site de l'ITC)

<http://www.itc.org.uk/digital/index.asp>

The Future Funding of BBC Independent Panel Review, 5 August 1999 (Ce rapport de la Commission Davies, mise en place par le Ministre de la Culture, des Médias et des Sports analyse la question du financement du service public dans le cadre de la transition au numérique). (> Site du Department for Media Culture and Sports)

<http://www.culture.gov.uk/BBCREPORT.htm>

NERA, A study to estimate the Economic Impact of Government Policies toward Digital Television, Executive Summary and Final Report, Prepared for Radiocommunications Agency

and Department for Culture, Media and Sport, London, January 1998. (> Site du Department for Media Culture and Sports)

<http://www.culture.gov.uk/NERA.HTM>

THOMAS, A., Regulation of Broadcasting in Digital Age, Independent Report, 26 May 1999.(> Site du Department for Media Culture and Sports)

<http://www.culture.gov.uk/thomastitle.htm>

Consultation on proposed revision to the Statutory Digital Terrestrial Programme Service Points System, 2 November 1998.(> Site du Department for Media Culture and Sports)

<http://www.culture.gov.uk/PTSCONDO.HTM>

IE – Irland

RTE and Digital Television (> Site de la RTE)

<http://www.rte.ie/aboutrte/policydigital.html>

Différents rapports sur la télévision numérique, la numérisation du câble et du MMDS sont accessibles sur le site de l'ODTR (Office of the Director of Telecommunications Director).

<http://www.odtr.ie/html/information.html>

IT – Italy

AUTORITA PER LA GARANZIE NELLE COMUNICAZIONI, Schema concernente la determinazione degli standard dei decodificatori e le norme per la ricezione dei programmi televisivi ad accesso condizionato, 22.6.1998. <http://www.agcom.it/provv/decoder.htm>

AUTORITA PER LA GARANZIE NELLE COMUNICAZIONI, Comitato per lo sviluppo dei sistemi digitali. Considerazioni sullo Standard del Ricevitore-Decodificatore Integrato per la Fruizione dei Servizi di Televisione Digitale, ottobre 1999
http://www.agcom.it/provv/stand_RD.htm

US – United States

FCC Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service MM Docket No. 87-268

<http://www.fcc.gov/dtv>

Web sites specialised on digital television - Sites d'information spécialisés sur la télévision numérique

GB – United Kingdom

BBC Digital

<http://www.bbc.co.uk/digital>

Digital TV Group

<http://www.dtg.org.uk>

/

US – United States

Analog2Digital

<http://www.analog2digital.com>

DBSDish.com

<http://www.dbsdish.com>

/

Digital Television: The Site

<http://www.digitaltelevision.com>

/

Digital Television Online

<http://www.dtvonline.com>

/

Doug Lung's R.F. Technology Page

<http://www.transmitter.com>

/

DTV Express Harris / PBS

<http://www.dtvexpress.com/mainmenu.htm>

The HDTV Newsletter

<http://www.web-star.com/hdtv/history.html>

Training institutions - Institutions de formation

Europe IAB - International Academy of Broadcasting

<http://www.iab.ch>

/

US : BEA (Broadcast Education Association)

<http://www.beaweb.org>

/

Specialised consultants - Consultants spécialisés

Forrester Research

<http://www.forrester.com>

/

IDATE

<http://www.idate.fr>

NERA

<http://www.nera.com>

/

OVUM

<http://www.ovum.com>

/

Screen Digest

<http://www.screendigest.com>