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3rd European Ministerial Conference on Mass Media Policy

Nicosia (Cyprus), 9-10 October 1991

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Sub-theme 1 — Media economics and political and cultural pluralism

Synthesis report on media concentration in Europe presented by the Enlarged Working Party on Media Concentrations on behalf of the CDMM

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SYNTHESIS REPORT ON MEDIA CONCENTRATIONS IN EUROPE

I. INTRODUCTION

1.1 Context

In Spring 1988, the Steering Committee on the Mass Media (CDMM) and the Parliamentary Assembly of the Council of Europe decided to co-operate so as to have a better understanding of the developments taking place in the member States in the field of media concentration. A Working Party on media concentrations (CDMM-GT-CM) was thus set up and it was agreed to entrust two specialised institutions, the Audio-visual and Telecommunications Institute in Europe (IDATE, Montpellier) and the Institute for Information Law (IVIR, University of Amsterdam) with the task of reflecting on the methodology and the formulation of a questionnaire which would make it possible to co-ordinate national studies on multi media ownership and cross-media ownership and/or to collect information from the different member States. In February 1990, a questionnaire emerged which was divided into 3 parts: A. Legal situation, B. Statistical data, and C. Qualitative evaluation. This questionnaire was sent to the member States of the Council of Europe for completion. After having received the answers, the results were then analysed and further consultations took place with the representatives of the different member States contributing to the project. The report was subsequently completed by the addition of information available in the documentation centres of both Institutes.

On the basis of that report, and taking account of its own work in this area, the Working Party drew up this synthesis on media concentrations in Europe in the perspective of Sub-theme 1 of the 3rd European Ministerial Conference on Mass Media Policy (Cyprus, 9-10 October 1991). The synthesis report, as finalised by the Working Party, is submitted to the Conference by the Working Party on behalf of the Steering Committee on the Mass Media.

1.2 Media Concentration and the Issue of Freedom of Expression and Pluralism in Europe

Media products or media services are unlike any other merchandise or service. Fundamental rights and cultural issues are involved. The legal aspects of media concentration are also complex since, depending on the circumstances, general competition law and/or measures specific to the maintenance of pluralism are concerned. In view of this situation, the starting point of any discussion on the desirability or the necessity of media legislation in this area at national and/or international level, should therefore be the freedom of expression and the ways of protecting the existing cultural diversity in Europe.

1.2.1. The Council of Europe and the Safeguarding of Fundamental Rights

All democratic States have a concept of the freedom of expression, in one sense or another, embodied in their legal systems, including the freedom to receive and impart information. Freedom of expression is laid down in Article 10 of the European Convention for the protection of human rights and fundamental freedoms. It is generally accepted, as has been stated many times by the Parliamentary Assembly of the Council of Europe, that the right to freedom of expression is not simply a right protecting individuals from State intervention. The freedom also has a social aspect: all democratic States have an obligation to secure an adequate protection of this freedom for everyone. This means that the State has a duty whenever individuals prevent other individuals from exercising their right to freedom of expression. It is presumed that the conglomeration of power in a few media consortia, sometimes with an important international dimension, may threaten the freedom of expression of others and may affect cultural diversity. As soon as these threats arise, a State may consider the need to restrict this power. However, in so doing, States must realise that the formation of such transnational conglomerates may be necessary so as to be able to survive in a rapidly changing competitive environment. Media undertakings must grow, and work more efficiently and be more cost effective: to make use of economies of scale and economies of scope (through diversification). Furthermore, States must also bear in mind that media concentration regulations restricting natural or legal persons from owning or controlling whatever media and whatever number of media they wish may also, indirectly, affect their freedom of expression.

It must be concluded that a State may choose to limit the "freedom of enterprise" of media undertakings so as to safeguard media pluralism and, hence, cultural diversity; but a State may do so only to the extent necessary in a pluralistic and a democratic society to ensure "the right of others" to receive and impart facts and opinions (information). Moreover, States must be careful not to cause perverse effects when taking restrictive measures: the result must be, an adequate protection of the freedom of expression of everyone and not only of the most powerful groups in society.

For the purpose of this synthesis, it would be going too far to elaborate to any great extent on the technical details of the legal organisation of freedom of expression in Europe. It is important, however, to bear in mind that the starting point of a study on the desirability or the necessity of any kind of media regulations in this area should be the freedom of expression. The freedom of expression is one of the most fundamental of rights and it is embodied in the legal systems of all democratic States as well as in binding international legal instruments such as the European Convention for the protection of human rights and fundamental freedoms (Article 10) and the United Nations' International Covenant on civil and political rights (Article 19).

Due to the fact that each of the member States taking part in the Council of Europe's project on media concentrations takes a different view of the direct applicability and/or the direct effect of binding international legal provisions [1] and/or on the competence of international judicial organs to receive individual petitions[2], it is necessary to look at the different national constitutions or other legal instruments which set out the relations between society and government (the State power) to be able to know what demands flow from each of the national constitutions or other instruments in order to give concrete substance to the content of the fundamental right of freedom of expression.

To give meaning to their obligations at national level, Council of Europe member States have accepted to safeguard and promote pluralism in, and diversity of, the media within their jurisdictions. States, for example, require broadcasters to cater for minorities or to produce certain categories of programmes (political, cultural, educational, etc.). This means that the freedom of expression of certain individuals is limited by that of others. An increasing number of member States are expressing concerns in regard to tendencies towards concentration in the media sector and have embarked on studies on this subject. A number of member States have already passed legislation on the basis of the results of such studies. Other member States are carrying out such studies at the present time or intend to do so in the future, with the aim of formulating a policy on concentration tendencies. It may be observed that, in certain States, the obligation to carry out such studies and/or draft media concentration legislation, has been imposed by the highest courts[3].

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[1] See also paragraph 4.2

[2] However, as regards the European Convention on Human Rights all Contracting Parties (at present, 23) have recognised the right of individual petition. There is, in fact, a presumption that recognition of the right of individual petition to the Convention's organs is a condition of ratification.

[3] For example,

- in France, the Conseil Constitutionnel (decision no. 86 217 DC, 18 September 1986) demanded a revision of the Act on freedom of communication (loi sur la liberté de communication) of 30 September 1986 ruling that it did not contain sufficient guarantees against concentration in the media sector. The Act was eventually revised on 27 November 1986;
- in Italy, the Constitutional Court required the Council of Ministers to present to it a report on the state of concentration in the information sector and, in July 1988, in its decision no. 826 on Act no. 10 1985, it issued recommendations to Parliament for the formulation of a new Act which was to contain guarantees for the restriction of the development of concentrations and the formation of oligopolies;
- in the Federal Republic of Germany, in its judgment of 4 November 1986, the Constitutional Court considered that the existence of "basic programming" (Grundversorgung) by the broadcasting organs is the minimum condition for safeguarding pluralism of expression. In its decision of 24 March 1987, the Court pointed out that the obligation of "basic programming" is not only directed at the public broadcasting organs but also at private

Thus, the member States are quite aware of the new risks which concentration developments in the media field have on pluralism and cultural diversity.

Mention was already made of the problem in Resolution (74) 43 on press concentrations. More precisely, in the 2nd Resolution adopted during the First European Ministerial Conference on Mass Media Policy (Vienna, 9-10 December 1986, the Ministers agreed to: "Undertake to sustain the independence of the broadcasters and to secure the funding of public service broadcasting" and "Resolve to guard against monopolistic trends of the new television services"). The text of the European Convention on Transfrontier Television contains a certain number of guarantees, such as the obligation of transparency in the ownership of broadcasting organisations, the responsibility of broadcasters (especially the fairness of television news reporting), the right of reply or the guaranteeing of access of the public to major events.

The 2nd European Ministerial Conference on Mass Media Policy took place in Stockholm on 23 and 24 November 1988. During the Conference a number of Resolutions was adopted. The Conference ended with a Declaration.

Resolution No. 1 recommends the Committee of Ministers of the Council of Europe to:

"pursue consideration of questions raised by media concentration, and develop research and the exchange and distribution of information, in order to:

a. evaluate the consequences of such concentrations for the freedom and pluralism of information, cultural diversity and the circulation of television services and audio-visual works;

b. identify appropriate means of preventing abuse of dominant positions and the harmful consequences which could result therefrom".

The Declaration urges the Committee of Ministers to examine the matters referred to in Resolution No. 1:

"in order to develop new strategies calling for concrete political measures, notably in the following fields:

e) media concentrations".

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broadcasting organs. However, as long as public broadcasters are able to guarantee this "basic programming" it is not necessary to prescribe strict programming obligations for private broadcasters (see paragraph 4.1).

The CDMM considered Resolution No. 1 and the Declaration at its meeting from 20 to 24 February 1989, in the light of follow-up instructions received during the 424th meeting of the Ministers' Deputies.

In February 1989, a "Motion for a Resolution on the dangers caused by media concentrations for the exercise of freedom of expression and information and for cultural diversity in Council of Europe member States", was presented to the Parliamentary Assembly of the Council of Europe by Mr Van der Sanden and others [4]. The Assembly expressed its great concern caused by:

> "recent take-overs in the written press and by the rapid development of multi-media ownership at multinational level, inspired by purely economic and financial considerations, but which are leading to a smaller number of independent publications and to an impoverishment of the cultural diversity of the media".

Consequently the CDMM and the Parliamentary Assembly of the Council of Europe decided to co-operate so as to arrive at a better understanding of the developments taking place in the member States in the field of media concentration.

1.2.2. Implications of EEC law for the question of media concentrations

The Working Party has considered and taken into account the competences of the European Community for those Council of Europe member States which are also members of the EEC. The European Commission was represented throughout the work of the Working Party.

Fundamental rights form an integral part of Community law in terms of general principles, respect for which is required by the Court of Justice. In determining the content of a fundamental right the Court bases itself on the principles derived from the common constitutional traditions of the EC member States and from international instruments on fundamental rights, especially the European Convention on Human Rights which embodies the freedom of expression.

The European Commission and the European Court of Justice are mainly involved in the issues raised by media concentrations to the extent that these pose problems at the level of EEC competition law (especially Articles 85 and 86 of the Rome Treaty: cartels and abuse of dominant positions). It is sometimes said by certain observers that the Commission should take account of media pluralism and diversity in deciding on competition issues concerning the media. The aim of competition policies, however, is to secure effective competition. The application of competition law contributes to a certain extent to the maintenance of pluralism but may not be sufficient in all cases.

[4] Parliamentary Assembly of the Council of Europe, 27 February 1989, Doc. 6021.

On different occasions (most recently, on 15 February 1990), the European Parliament has requested the Commission to study media concentrations, to adopt a policy framework regarding competition rules for the mass media and to put forward proposals for action, since "restrictions on concentration are essential in the media sector, not only for economic reasons but also, and above all, as a means of guaranteeing a variety of information and freedom of the press". Lord Cockfield, addressing the European Parliament in 1989, pointed out that the Commission applies the competition rules of the EEC Treaty to broadcasting. Furthermore, he declared that, although the Commission recognised the political importance of media concentrations, the adoption of special competition law provisions for the media in the (then) draft Directive on "Television without Frontiers", as proposed by the European Parliament would, in the Commission's view, not add anything to Treaty law but, on the contrary, could add conditions to Article 86 (prohibition of abuse of a dominant position) and thus limit its possible application.

The Commission therefore looked for other ways to give meaning to the requests of the European Parliament. On 21 February 1990, the Commission published its "Communication to the Council and Parliament on audio-visual policy"[5]. In paragraph 2.2.3. on pluralism and mergers, the Commission makes it clear that the audio- visual policy of the Community does not seek to develop the audio- visual sector at the expense of pluralism, but wants to help strengthen it by encouraging, in particular, the diversity of programmes offered to the public. The Commission recognised explicitly that the application of Community competition law is not able to cover all situations in which a threat to pluralism is posed, notably in the case of multi media ownership. This was reaffirmed by Commissioner Sir Leon Brittan in his declaration in the European Parliament, on 15 June 1990, and it may have been one of the reasons why the "Regulation on the control of concentrations between undertakings"[6] allows member States to apply their national legislation on the protection of pluralism and freedom of expression when the Commission does not take steps to counter a concentration in the media.

According to the EC "Regulation on the control of concentrations between undertakings", the Commission is competent in the field of concentrations, above a certain level (although the thresholds for Community competence are very high at the moment and therefore not yet relevant to media undertakings: these thresholds will, however, be reviewed in due course). If the Commission decides that a given concentration is compatible with EEC law, member States may still prohibit the concentration on the basis of legitimate interests, such as media plurality. The Court of Justice would have to decide on a "case-by-case" basis if national measures are compatible with EEC law.

Concentrations, including media concentrations, not falling under the Concentration Regulation and thus not under Community competence (unless they cause competition problems, in which case the competition rules are applicable), may at any time be restricted

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[5] COM (90) 78 final

[6] OJ No L 395: 30-12-1989

by national measures for the protection of pluralism, but this must not unduly affect the free movement of goods, services, persons and/or capital in the media sector. The Court could decide on a "case-by- case" basis if national restrictions are in conformity with EEC law.

National measures in the field of concentrations to protect media plurality may take the form of economic measures (e.g. limitation of market shares; capital transparency obligations, etc.) and/or of specific media law measures (e.g. programme quota; licensing policy, etc.). In general, however, under EEC law, national measures to protect pluralism and diversity must not discriminate against EEC nationals vis-à-vis a State's own nationals.

Since national legislation, existing or planned, could be circumvented, the Commission remarks in its "Communication", that national legislation might not be sufficient to guarantee pluralism in all cases. According to the Commission, the multiplicity and disparity of national laws could limit the activity of operators who could contribute to a growth of pluralism in the member States. Therefore, the Commission has announced that it is studying the possibilities of proposing a Directive to harmonise certain aspects of national measures so as to protect media pluralism.

1.3 Definitions

The media concentration phenomenon may appear in different forms which need to be defined. The definitions given here are intended as working guidelines for the purposes of the study and do not necessarily correspond to legal definitions.

1. <u>Real concentration</u>

"Real concentration" is characterised by a decrease in power of autonomy of legal control. There are different forms of "real concentration":

1.1 merger

process in which either an undertaking is absorbed by another undertaking, or two or more undertakings unite to form one single undertaking;

1.2 integration

all forms of more or less far-reaching combination of power and control over the activities of an undertaking or a group of undertakings. Integration may occur in different forms:

1.3 vertical integration

situation in which an undertaking or a group of undertakings controls the different phases of a production process (e.g. in the media field: a press undertaking controlling newsprint, the actual publishing, the printing, the distribution);

1.4 horizontal integration

situation in which an undertaking or a group of undertakings controls, at executive level, several production units of one and the same activity (e.g. an undertaking controlling several printing businesses, or several titles, or several advertising agencies, etc.);

1.5 multimedia integration

situation in which an undertaking or a group of undertakings controls different media (e.g. participation of press undertakings in the capital of radio or television broadcasters);

1.6 multisectoral integration

situation in which an undertaking or a group of undertakings controls one, or several, different media and is active at the same time in one or more other economic sectors (e.g. an undertaking active at the same time in the building industry, the distribution domain and the media domain);

1.7 international integration

situation in which the activities of an undertaking or a group of undertakings extend over two or over several countries. Internal integration within the European Community must be distinguished from integration outside the Community. However, mutual integration between undertakings or groups of undertakings within the European Community and undertakings or groups of undertakings outside the European Community could be envisaged.

2. Co-operation agreements

Co-operation agreements exist as soon as distinct undertakings come to agreements intended to improve their market positions. Undertakings which are parties to this kind of agreement do not lose legal control; they agree to exert their power of decision separately for their common benefit.

3. Dominant position

All forms of real concentration and other forms of co- operation may lead to dominant positions. For this reason, all these forms of concentration may be subject to competition rules.

An undertaking is considered to be in a dominant position at the moment when it has the possibility to behave independently on the relevant market in a way that gives it an opportunity to avoid rendering itself accountable to competitors, buyers or suppliers. This possibility could result from either the market shares of one undertaking, or from the market share of this undertaking linked closely to the possibility of controlling technical know-how, raw materials, or capital. This dominant position enables this undertaking either to fix prices, or to control a significant part of the production or the distribution of the relevant products.

4. Relevant market

"The geographical reference market shall consist of the area in which the undertakings concerned are involved in the supply of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas. This assessment should take account in particular of the nature and characteristics of the products or services concerned, of the existence of entry barriers or of consumer preferences, of appreciable differences of the undertakings' market shares between neighbouring areas or of substantial price differences." [7]

2. ECONOMIC ANALYSIS OF MEDIA CONCENTRATION

2.1 The main characteristics of media concentration

The question of media concentration is not a new one. Honoré de Balzac had already noted that behind the apparent ideological diversity of the press in Paris was hiding the monopoly at the source of Charles Havas' press agency. The concentration of the press sector itself is noticeable from the second half of the 19th Century. The phonographic and cinematographic industries have experienced the phenomenon of oligopolistic competition from the beginning of the 20th Century. Concentration in the distribution of videograms has been very high from the beginning of the 1970s. Concentration in the field of broadcasting may be observed in the United States from the inter-war years. The phenomenon is more recent in the broadcasting sector in Europe and may be regarded as one of the consequences resulting from the ending of the monopoly of public service organisations which is a characteristic of the 1980s.

Vertical Integration

The marked trend towards concentration - or oligopolistic competition - in the field of mass media may be explained mainly by the fact that communication products may be reproduced (news, books, records, films, audio-visual programmes). Once produced, their reproduction and distribution cost is marginal but control over distribution is essential to ensure added value. Concentration at the distribution stage (and possibly the exploitation stage, for example in the cinematographic industry) tends to be organised by the producers themselves. From the origin of the different sub-sectors of the mass media industry, trends towards vertical integration may be noted.

Vertical integration may also intervene "upstream", either to reduce costs (control of the paper-making and printing industry by publishers) or to ensure priority in access to programmes (trend towards the control of audio-visual production by television broadcasters), or "downstream" (integration of advertising sales agencies by press groups or broadcasters).

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[7] Definition taken from Council Regulation (EEC) No. 4064/89 of 21 December 1989 on the control of concentrations between undertakings, OJ No. L 395: 30-12 1989.

Horizontal Integration

Horizontal integration has often been observed in the press sector. It enables a press group, by controlling different titles, to achieve economies of scale at the time of several operations (for example, operations concerning advertising sales; publishing editorial segments common to different titles such as TV supplements, games pages, fashion pages; operations concerning printing; distribution; promotion).

Multimedia Integration

Multimedia integration (i.e the same undertaking investing in different sectors of the communication and cultural industries) is a more recent phenomenon. It has developed in Europe during the 1980s through the establishment of multi media groups active on several markets (press, radio, television, cinema, records) along the same lines as already existed in the United States and, to a lesser extent, in Japan. However, European groups are smaller than their American or Japanese counterparts. Thus, in 1988, out of 100 audio-visual undertakings with a turnover of more than $ 180 million, 39 were American, 32 were European and 17 Japanese. But the 32 European undertakings shared only 29.7% of the market, as opposed to 41.5% for the 39 American ones and 20.4% for the 17 Japanese ones (source: IDATE, The World Audio-Visual Market 1990).

The trend towards media diversification may be explained by different factors:

- concern over diversification towards new media, in particular with the aim of developing expertise, preserving positions in the advertising market, even simply for prestige purposes;

- integration of the promotion of the same product developed in different media (for example, same character exploited in comics, in cinema, in television series and on records);

- investment in a market segment considered to be profitable.

The trend towards multimedia diversification is not specific to private undertakings alone; it may be also noted in respect of certain public service undertakings which have diversified their activities beyond their basic activities, especially in the direction of cinematographic production, publishing of books, magazines, records, video cassettes.

The trend towards integration between hardware and software undertakings, which is increasingly common in the United States (General Electric/NBC, Sony/Columbia, Matshushita/MCA, the role of cable operators in cable programming), is relatively rare in Europe (Philips/Polygram, cable groups in France).

International Integration

International integration may be explained first and foremost by the search for economies of scale in operations such as the sale of advertising slots, the production or purchase of programmes, research and development, the possibility of market segmentation.

International integration in the member States of the European Community may also be explained by anticipation of the completion of the Single Market foreseen for the end of 1992. Companies seek to acquire stronger positions so as to be able to face up to competition at the level of the European market. The fact that certain markets become global markets (international information, audio-visual programmes, records) and the emergence of new technologies (satellite, cable, HDTV, new video media) contribute to the reinforcement of concentration of the whole of the sector.

There is also a trend towards the proliferation of joint venture agreements, international co-production agreements, etc., which tend to constitute an important phenomenon of interdependence between communication groups and undertakings. Such agreements are sometimes concluded between private undertakings and public service undertakings (for example, alliance between News International and EBU members in Eurosport, alliance policy of RTBF).

2.2 The forms of concentration in the different sectors

Press Agencies and Picture Agencies

The forms and degrees of concentration vary enormously according to the different kinds of media.

The most noticeable and transversal phenomenon of the various information media (press, radio, television) is certainly that of "upstream" concentration at the level of press agencies and picture agencies. Generally, there exists in each country only one general press agency, several of which are facing endemic financial difficulties. Only a few press agencies (UIP, Associated Press, Reuters, AFP, Tass) are active at worldwide level. As regards information pictures, there are also only a few undertakings which are active on the whole of the worldwide market (Viesnews, which is controlled by Reuters, WTN, ITN) and the EVN network of Eurovision remains largely dependent, for non-European countries, on pictures provided by American television channels (CNN, networks). Concentration at the source is, however, tempered by a proliferation of specialised agencies, information newsletters, etc.

Written press markets

Written press markets remain on the whole under the control of national editorial groups and it is difficult, for the time being, to speak about a genuine European press market. However, some exceptions may be noted (daily press in Austria, in the French-speaking Community of Belgium, in Hungary, segment of the press magazine and specialised press for the general public in Spain, in the Flemish-speaking Community of Belgium). Trends towards internationalisation are emerging (cross participations, establishment of joint ventures, adaptation of formulae to a national market rather than broad international circulation of the products), especially in the press magazine and specialised press fields. Internationalisation is encouraged by different factors (dynamics of the advertising market, progressive emergence of a European leadership, effects of certain national regulations restricting concentration and which lead undertakings to internationalise their investments, technological changes, etc.).

On almost all the market segments of the press for which diachronic data are available it may be noted that the level of concentration, measured through the share of the market among the five main groups, has increased during the 1980s.

This level varies according to the market segments:

- it is generally very high in the segments of the national daily press, regional press and specialised press for the general public;

- it is generally low in the segment of the technical and professional press.

An evaluation of the degree of concentration in the daily press cannot be made mechanically. Indeed, in certain countries, the control of large market shares by a few titles, even a single title, of the "popular press" may be accompanied by a genuine richness of the "quality press", even if it remains quantitatively minor.

Another important indicator of the degree of concentration is the number of titles available. If the number of daily press titles is generally decreasing, it may be noted, on the other hand, that photocomposition techniques have enabled a proliferation of titles to be made available in the field of the periodical press. It may also be noted that new titles, including in the daily press, may quickly find a way onto the market and/or become a reference title even if they originate from new publishers.

Broadcasting

Almost all member States have tried to develop competition in the radio and television sectors by putting an end to the monopoly situation enjoyed by public service channels. This competition policy has taken different forms:

- increase in the number of frequencies offered to operators (new hertzian frequencies, cable, direct broadcasting satellites and low and medium-power satellites);

- granting of broadcasting licences to private radio or television channels;

- opening up of the domestic market to foreign channels;

- privatisation of certain public service undertakings;

- alleviation of certain public service obligations.

This competition policy has led to a proliferation of radio programmes and television channels offered to the public. In this sense, it might be considered that concentration in the broadcasting sector has been the subject of an important deconcentration during the 1980s.

However, this deregulation process has been accompanied by new forms of concentration which certain States seek to prevent by providing new forms of regulation, aimed in particular at limiting vertical integration, by distinguishing between production and broadcasting functions or by fixing programming quotas for independent production.

Radio and phonographic industry

In the field of radio, networks have appeared in several countries and have rapidly given rise to a process of concentration. Some of these networks are controlled by press undertakings which have seized a first opportunity to diversify. The development of such networks has sometimes given rise to legal proceedings involving community radios which have no commercial vocation and which claim from the public authorities forms of protection (allocation of distinct frequency areas) and even some forms of financial support.

"Upstream" from radio broadcasting, the phonographic industry remains highly concentrated within a few major undertakings which are themselves integrated in major international groups (Time-Warner, Philips, Bertelsmann, Thorn-EMI, Sony, Matsushita). The increase in production costs caused by the advent of compact discs has led to the disappearance or absorption of many small labels.

Television and the audio-visual programmes industry

By virtue of competition policy and the proliferation of possibilities for broadcasting, the number of television channels available in Europe has increased from 75 in 1985 to 117 in 1990. In most European States, the audience is now shared among general national public service and commercial channels, specialised channels, commercial or public service European channels. The global volume of programming in Western Europe has increased from 250,000 hours in 1985 to about 400,000 hours in 1990. These figures are sufficient to show the impressive increase in the offer of programmes engendered by deregulation.

The qualitative appraisal of the increase in the offer of pluralism and cultural diversity is however difficult to evaluate scientifically. It must be noted:

- that, if the qualitative contribution of certain new channels cannot be denied, a multiplication in the number of channels does not automatically mean an increase in the diversity and the quality of the programmes offered;

- that, due to the high level of investment needed for the establishment of television channels, "new entrants" on the audio-visual market are, in most cases, either editorial groups or industrial groups already enjoying a strong position in their original sector. The financial establishment of new channels entails more and more complex negotiations which create a strong interdependence among the different groups, but which often contribute to a marked instability in management;

- that the introduction of competition in the television sector gives rise to serious problems (mainly financial problems and problems of identity) for public service channels. In 1990, several public service channels in Europe face important deficits often due, at least partially, to additional costs - caused by the development of competition - for the purchase of programmes (films, sports programmes) or by the increase in the costs of staff;

- that there is "upstream" concentration in the cinematographic and audio-visual production and distribution sector, which is generally dominated by the Hollywood studios.

As regards television information, it is generally considered that the multiplication of channels entails increased editorial autonomy vis-a-vis political power. However, observers stress certain negative effects entailed by competition (more spectacular presentation of information, over-simplification of analyses, political and ideological imbalances in the choice of persons who are interviewed, risk of interferences involving the interests of the owners of the channel and the covering of certain events, etc.).

Cinema and video distribution

The cinematographic industry is the subject of strong concentration at international level as a result of the dominant situation occupied on the worldwide markets by the American cinematographic industry - and especially major companies - since the Second World War. The absorption of major American studios by foreign communication groups (Australians, Japanese or European) or the more and more frequent recourse to Japanese co-financing indicate that economic control over the cinema and audio-visual production sector, with a view to developing catalogues of films or strengthening markets and with a view to launching new technologies and new media (HDTV, VDC, laser disc), has become one of the major stakes at the end of this century. This concentration is especially pronounced at the production and distribution stage (cinema and video) and to a lesser extent at the exploitation stage (cinema theatres, retail shops for the sale or rental of video). However, it must be noted that concentration in the cinematographic sector, due to the greater or lesser success of films, is not as systematic as in the press sector. Between 1982 and 1989, the market shares of distribution in cinema theatres in the United States controlled by the five leading major companies varied between 65% and 79% but, each year, the share among the various undertakings is different and the market leader varies from year to year.

In Europe, the majors have improved their position on the different markets:

- in Italy, while the total receipts have decreased by 62% between 1983 and 1988, the receipts of the majors have increased by 44%,

- in Spain, during the same period, the total receipts have decreased by 45% but the receipts of the majors have increased by 65%,

- in the United Kingdom, American distributors are the main beneficiaries of the building of multiplex cinema theatres and have increased their receipts by more than 50% between 1983 and 1988.

The agreement concerning American distribution in Europe through the UIP company (company set up under Dutch law associating MCA, MGM/UA and Paramount) has been the subject of a decision of the European Commission, which has led to a review of the agreements between these societies without, however, questioning fundamentally the principle of the distribution alliance, which is viewed as being effective and rational (OJEC No L226/25, 3 August 1989).

The European cinematographic industry is relatively less concentrated at the level of production and distribution. The more recent trends indicate, in several European countries as in the United States, a strengthing of concentration at the level of exploitation (networks of cinema theatres, networks of video shops). Increasing investment by television channels in the production and, in Italy, even in cinematographic distribution and exploitation, often gives rise to the fear that vertical integration may be detrimental to the creative diversity of cinema.

Advertising

The advertising sector was the subject of a strong concentration process, at international level, during the 1980s. Mega-groups, comprising various undertakings with an international vocation, have emerged. In most European countries (with the exception of Finland and Switzerland), the advertising market is controlled by American, British and, to a lesser extent, French groups. Concentration of agencies has entailed concentration of advertising sales agencies, which are the intermediaries between advertising agencies and the media.

The main problems raised by the concentration of advertising agencies and advertising sales agencies come within competition law:

- problem of confidentiality: advertisers worry about such agreements between agencies which lead to the management of budgets of competing undertakings,

- problem of the transparency of tariffs: a report by the Conseil de la Concurrence, a part of which was published in France in 1987, describes pressures exerted on the media in regard to tariffs, sometimes including threatening the media with not providing them any more customers should they refuse their commmercial requests;

- vertical integration: agencies and advertising sales agencies diversify their activities "upstream" (research and development) and "downstream" (audio-visual production and even projects for television channels). Some broadcasters reinforce their activities in advertising and handle advertising for competing channels (case of Fininvest and RAI before the adoption of the 1990 Act).

However, the fact that the problems raised by the concentration of advertising agencies and advertising sales agencies fall essentially within competition law cannot mask the implications of such concentration for pluralism. Even though the advertising sector shows professionalism and makes choices based on the interests of advertisers, there is always a risk that certain agencies or advertising sales agencies gear their advertising investments to match their own economic interests or political options. From the point of view of the defence of pluralism, the genuine problem, which is generally acknowledged in the advertising sector, is not so much concentration but, rather, imbalances in the division of purchasing power: media addressing less solvent categories of the population usually collect less advertising receipts.

3. POSITIVE AND NEGATIVE ASPECTS OF MEDIA CONCENTRATION

Concentration may have positive aspects for freedom of the press and pluralism of expression. Indeed, it may, in certain circumstances:

- guarantee the autonomy of editorial groups vis-à-vis advertisers and political power;

- enable economies of scale to be achieved and production costs to be amortised through access to a wider audience and the possibility of having access to certain know-how and expertise, which place undertakings in a better position to face competition from other media;

- enable the development of European groups operating on an international level; this can be beneficial for the dissemination of ideas and can enable European undertakings to stand up to international competition, especially from major non-European groups which benefit from economies of scale due to their market and size;

- save certain newspapers in danger of closing down and, as a consequence, maintain a diversified supply and safeguard employment;

- enable the publication of newspapers or the production of new projects intended for minorities or even projects which are not directly profitable, but which contribute to political or cultural diversity;

- facilitate the introduction of new technologies or new services.

There are some risks, which are borne out by litigation or cases discussed at political level, arising out of the development of media concentration:

- disappearance or merger of newspapers, entailing a decrease in the number of information sources and a uniformisation of content;

- risk of control of a significant number of newspapers by the same operator;

- attempts to exclude new independent entrants or weaker competitors from the market through abuses of dominant position (in particular through the inequitable promotion of the products or services of a competing undertaking);

- editorial dependence of independent audio-visual producers on broadcasters;

- reduced supply, especially as regards the regional press;

- increase in the risk of certain information being witheld by certain media in cases where such information is not favourable to the interests of their owners;

- economic censorship of books which call into question the economic power of multi media groups;

- increasing role of advertising companies and "advertising sales centres", which may prejudice broadcasters' autonomy;

- risk of dependence of small cultural entities (small countries, regions, ...) vis-à-vis the strength of major national or international groups;

- risk of precarity of employment in the communication sector.

4. DIFFERENCES AND COMMON PROBLEMS

4.1. Policy Reasons for National Measures

In the questionnaire which formed the basis of national studies on media concentrations, the member States were asked to indicate the policy reasons behind national measures in the field of media concentration, or the policy reasons for not adopting such measures. The two reasons for not adopting measures on media concentrations are the fact that it is not deemed to be a problem (in particular, in Greece) and the constitutional problems such kinds of measures may have in member States where the freedom of the press and/ or the freedom of broadcasting and/or a prohibition of prior censorship is/are embodied in the legal system.

From the replies of the national experts, it emerges clearly that the usual starting point of media concentration policies is rapid developments towards concentration in the national media sector as a result of the economic strategy of media undertakings. Policy makers, in fact, fear that purely economic reasoning in media undertakings will endanger the fundamental right of freedom of expression for everyone, as well as cultural diversity.

Therefore, in many member States of the Council of Europe, the on-going economic developments towards concentration in the press sector have led, or tend to lead, to State intervention. This may take the form of positive measures to protect independent press undertakings against dominance by market forces. Such measures usually take the form of press support measures; in some cases, these have proven to be effective in the past (Sweden), but, in many cases, other or additional measures are deemed necessary, such as the prohibition of certain concentrations of press undertakings (e.g. Germany, the United Kingdom, France and Italy). Where State intervention takes the form of anti-concentration or special competition law measures for the media, it is expected that a greater number of independent undertakings guarantee increased plurality and diversity of opinions; where State interference takes the form of positive measures (support), it is expected that these measures may not only prevent concentrations, but may also prevent the disappearance of titles published by one single undertaking.

In those member States where there is private broadcasting, measures to protect diversity of opinion in broadcasting are often deemed necessary. The reasons mentioned for this are: the technical scarcity of broadcasting frequencies and the scarcity of economic or financial means. Although technical scarcity is increasingly diminishing because of technical developments (cable; satellite; microwave transmissions; digital broadcasting), economic or financial scarcity remains: television broadcasting, in particular, requires substantial investment. Because of this high investment, only powerful groups are in a position to survive. These powerful groups diversify, try to acquire exclusive rights and are able to make use of economies of scale, thus making it more difficult, if not impossible, for others to enter the broadcasting market.

The tendency towards diversification of media undertakings, the process whereby a media undertaking acquires access to all the appropriate sub-markets and enforceable rights (exclusivity) globally, has strengthened the policy makers' belief that media concentrations may lead to dominant opinion-forming forces that may run contrary to the freedom of expression of everyone, the fear that is usually at the basis of the adoption of "cross media ownership" provisions.

In some member States (Germany; Italy; France) the Constitutional Courts or Council have obliged the State to take measures to ensure and maintain everyone's freedom of expression and to ensure and maintain diversity. In other member States, the Constitution explicitly mentions the State's obligation to prevent freedom of expression from being endangered by media concentrations and to preserve pluralism (Portugal; Spain).

Relatively small linguistic communities, however, have adopted or intend to adopt media concentration policies because they fear that media concentrations, especially take-overs by foreign undertakings, may harm the freedom of expression of their nationals as well as the existing cultural diversity.

Many member States have adopted a policy to protect the written press vis-à-vis broadcasters. Such protective measures may take the form of restrictions for broadcasters on advertising; preferential financial measures for the press (preferential distribution and telecommunications rates; direct or indirect, general or special subsidies; etc.). In certain countries, such as France, Germany and Switzerland, restrictions in length and/or types of broadcast advertising have been fixed to protect the press. Switzerland has foreseen that the policy concerning radio and television must take account of the situation of the press (Article 55 bis of the Constitution). The German attitude is that broadcasting as a whole should provide for a basic public service. To this end, Germany has taken measures to secure such a service by means of programme requirements although recognising that private broadcasters have to operate on a market and that it is not possible to tie the hands of private broadcasters too much to public service requirements. Instead, Germany has a number of public broadcasters that do not have to operate under market conditions and are therefore in a better position to meet the programme requirements and other requirements which should guarantee the basic public service. In Belgium, the creation of national private channels has been organised in such a way as to allow participation of the press in the creation of the new channels: by political agreement in the French community and by law in the Flemish community.

4.2. Fundamental Rights

There is no uniform approach in the member States of the Council of Europe in regard to the procedures for incorporating the conventions of the Council of Europe into domestic law. The legal status accorded to them after incorporation also varies. For example, in some member States, conventions of the Council of Europe (as with international agreements in general) enjoy the status of constitutional law after their ratification, whereas in other member States they do not enjoy such a status. Furthermore, certain member States subscribe to the monist theory of international treaty law, while others subscribe to the dualist theory. This means that a possible convention of the Council of Europe designed to co-ordinate national measures in the field of media concentrations would be subject to differing incorporation procedures and enjoy differing levels of status in domestic law after incorporation.

Freedom of expression is embodied in Article 10 § 1 of the European Convention on Human Rights. Restrictions on this freedom are only possible in the framework of Article 10 § 2. However, the Convention, as explained above, does not have the same status in all of the Council of Europe's member States. In some member States, the national constitution may prevail; in other member States, the protection of freedom of expression in the national constitution may be of a higher level than that of the Convention.

4.3. Measures in Economic Law

In many cases, media undertakings are subject to general provisions in economic law. These general provisions may prohibit cartel agreements, or prescribe the possible contents of cartel agreements in detail. They may prohibit the abuse of a dominant economic position and/or they may limit the concentration of undertakings.

For example, Finland exempts broadcasters from competition legislation. Germany has special concentration control provisions for undertakings whose activities consist in whole or in part in publishing, the production or the distribution of newspapers and magazines, because of the smaller economic size of such undertakings in relation to undertakings in other sectors. Concentrations of other media undertakings are monitored under the general concentration provisions. In Germany, only the Federal legislature can undertake action on the basis of economic policies. This action may in particular concern media undertakings, but the motives must not be related to the contents of the media; they must be purely economic motives (i.e. motives based on competition law considerations). Italy has general concentration legislation as well as special legislation for the control of concentrations in the publishing and broadcasting sectors.

Where there exists concentration legislation or legislation prohibiting the abuse of a dominant economic position, the problem arises of defining the relevant market, of deciding when there is a dominant position on that relevant market and of deciding when such a dominant position is abused; of deciding what maximum level of concentration is allowed and what criteria will be used: percentage of market share, turnover or a combination of both.

In many cases, the concept of the public or general interest is used as a criterion in assessing whether there is an abuse of a dominant position or whether a certain concentration should be prohibited or not. In the United Kingdom the "public interest-test" requires the Monopolies and Mergers Commission (MMC) to report on "whether the transfer in question may be expected to operate against the public interest".

4.4. Media Law Measures

Apart from general measures in economic law relating to competition and/or concentration, economic measures are also employed to achieve the aims of media policies; measures like these are therefore embodied in media law. These measures usually limit participation in media undertakings of persons already participating to a certain degree in other media undertakings in the same market or even in different markets. France, Italy, Spain, the United Kingdom and German states (Baden-Württemberg, Bavaria, Hamburg, Hesse, Lower-Saxony) have adopted measures of this kind, although they use different criteria. This type of measure also exists in the USA and in Canada.

Such economic measures normally appear in combination with a licensing policy for radio and television. A licensing policy may limit persons owning (a certain combination of) licence(s) from participating in other media undertakings; a licensing policy may also, in a general way, limit the number of licences a (natural or legal) person may possess or impose restrictions on the combination of licences for different media which a person may own.

Licences may be combined with all sorts of programme prescriptions or programme promises by the applicant, such as objectivity requirements, the catering for minorities, programme type prescriptions, etc. These requirements, prescribed by law the fulfilment of which is promised by the applicant at the time of applying for a licence, are intended to guarantee pluralism and diversity in broadcasting as a means of ensuring everyone's right to freedom of expression.

In most member States, the State does not intervene in the press sector; often the freedom of the press is mentioned explicitly in the Constitution. Usually, therefore, there are no special measures for limiting press concentrations. Measures usually take the form of positive measures to prevent or postpone the economic necessity of concentration (preferential postal, tax or distribution rates; loans on preferential terms; investment subsidies; etc.). In some member States, however, special measures prohibiting certain press concentrations or controlling dominant positions in the press sector (France, United Kingdom, Ireland, Italy) do exist, or are foreseen (the Netherlands). In Germany, intervention in the area of the freedom of the press is deemed possible only on grounds which are unrelated to the content of the press, which means that such intervention is only possible for purely economic reasons, viz: competition law. The Media Bill in Belgium proposes purely economic criteria in the French Community. In the Netherlands, also, the contents of press organs cannot be taken into consideration in intervening in the press sector for reasons of media plurality. The Netherlands thus intends to make use of a neutral, objective, competition law-related instrument to achieve the aim of media plurality.

4.5 Evaluation of the effectiveness of anti-concentration mechanisms in the media sector

Evaluation of the effectiveness of anti-concentration measures in the media sector cannot be carried out mechanically. Historical circumstances have often determined the adoption and implementation of such mechanisms and it is necessary to analyse the specific nature of the situation in each particular case.

In the press and audio-visual communication sectors, three situations may be distinguished:

- the first situation concerns the absence of anti-concentration mechanisms. The reasons for this may be quite different: constitutional and political difficulties, the absence of any real problem but also an under-estimation of the risks, etc. In certain cases, a low level of concentration may, by virtue of market forces alone, continue in the absence of anti-concentration measures. Nevertheless, the absence of anti-concentration mechanisms probably constitutes a favourable factor for the development of concentration. Thus, the absence of any preventive mechanism has certainly been an important factor in Belgium, Austria or Hungary for substantial involvement by foreign groups in the national press;

- the second situation consists in the existence of preventive mechanisms under ordinary competition law, with relatively automatic modalities of application: this, for example, is the case of the German general competition law mechanism which has led the Cartel Office to prohibit certain types of mergers, without however giving rise to the disappearance of reputable titles. The definition of a rigorous methodology for evaluating concentration, stating the definitional criteria for reputable markets and indicators for measuring the parts of the market, constitutes the principal difficulty in applying the so-called "automatic" mechanisms. Difficulties may arise when the competition legislation confers on a ministerial authority a power of control which may prove to be incompatible with the freedom of the press (as was the case, for example, with the situation created by the French law of 19 July 1977);

- the third situation concerns the application of preventive mechanisms which are specific to the press or audio-visual communication sector.

The rigorous evaluation of some of these mechanisms is rendered difficult by virtue of the fact that their adoption is <u>ex post facto</u> the establishment of an advanced concentration: for example, this is the case for limitations on controlling more than 30% of the daily press market, which were established in the French Law on the press of 23 October 1984.

Preventive mechanisms (for example those which exist in Spain, France, Portugal and in certain of the German Länder) which limit the possibilities for cross-ownership between the press and broadcasting bodies appear, on the whole, to work. Nevertheless, they are often subject to criticism on the part of certain actors who believe that they prevent the constitution of multimedia national groups which would be competitive at the international level. In the USA, the application of a similar mechanism led Mr Murdoch to resell one of his titles as soon as he had the control of a television station on the Boston market. In Italy, the application of the law of 6 August 1990 will see Mr Berlusconi abandoning his daily press publishing activities and has already discouraged the Rizzoli/Corriere della Sera group from investing in television. The weakness of the mechanism in the French law of 30 November 1986 has sometimes been criticised by certain observers, given that it did not prevent the taking over of La Cinq by the Hachette group, despite the important position which this group occupies in the press and radio sector.

4.6 Other measures for limiting the risks of media concentrations

The regulatory formulae of competition law or communication law are not the only ones to be considered in combating the negative effects of concentration on pluralism. Recourse to provisions of company law (for example limited partnerships which dissociate economic ownership from management) may prove to be interesting formulae for guaranteeing management autonomy and editorial autonomy. Contractual agreements may, optimally, allow a daily newspaper to safeguard its editorial pedigree after its absorption into an editorial group which has a different ideological point of view (the case, for example, of La Libre Belgique after its absorption by the Brébart group).

Generally speaking, it seems that support measures for communication undertakings are often capable of guaranteeing the promotion of pluralism in a more effective manner than restrictive measures the constitutional merits of which may be doubtful or which may prove to be difficult to apply in an equitable manner.

Depending on the situations, such support measures may take different forms:

- support measures taking the form of direct subsidies (according to the circumstances, automatic and/or selective);

- support measures taking the form of indirect incentives (in particular, fiscal incentives: reduced VAT rate, fiscal incentive mechanisms for investment in the audio-visual production sector, etc.);

- support for training.

Financial support to the media may interfere with the market and may change market structures. Everything depends on the amount, the duration and the structure of the support. Financial support given to the press but not, for example, to private broadcasters may be deemed discriminatory. General measures such as, for example, zero-VAT rate for newspapers may not only be deemed to be discriminatory vis-à-vis broadcasters, but favour all newspapers, including the most profitable ones, giving the latter the possibility to reserve extra financial means for, for example, takeovers. Such a measure, like other non-directed general measures, such as preferential distribution and telecommunications rates, may favour the media industry as a whole, but may not contribute to the survival of the weaker newspapers, since such measures would not affect the competitive relations within the market in which both strong and weak newspapers compete. From the Swedish experience, it can be learned that only strong and permanent financial support, directed to those media that might not be able to survive in a competitive market, may, under certain circumstances, be able to safeguard pluralism within each given market.

Subject to broader considerations, the types of positive measures which have proved to be capable of promoting pluralism (although they may not work in all circumstances) take the form of a licensing policy, programme prescriptions, programme quota and advertising restrictions. However, such measures may give use to problems of a constitutional nature in some countries where the level of constitutional protection for the media is particularly high.

Finally, educating citizens and young people in an informed and critical use of the media may contribute towards reducing the negative effects of economic concentrations, one risk of which being that it entails a concentration of cultural consumption habits focused on a reduced number of products or programmes. Education may involve not only the critical analysis of information but also the study of the functioning of the media system and of the cultural industries, as well as learning about and discovering the richness offered by information and cultural works.

APPENDIX I

THE TOP 12 WORLD PUBLISHING GROUPS IN 1989

		Turnover (million $)	Profits (million $)
Dai Nippon Printing	Japan	7,892	274
Time Warner	USA	7,642	256
Toppan Printing	Japan	7,217	225
Bertelsmann	Germany	6,717	138
News Corp.	Australia	6,453	949
Thomson Corp.	Canada	5,112	929
Hachette	France	4,606	74
Gannett	USA	3,523	398
Times Mirror	USA	3,517	298
R. R. Donnelly	USA	3,128	222
Moore	Canada	2,751	202
Reed International	United Kingdom	2,749	881

Source: Fortune

The top 10 US communications groups in 1988 and 1989

	Aggregate turnover 1989	Aggregate turnover 1988	growth 89/88	Newspaper turnover 1989	Newspaper turnover 1988	Magazine turnover 1989	Magazine turnover 1988	Broadcasting turnover 1989	Broadcasting turnover 1988	Cable TV turnover 1989	Cable TV turnover 1988	Other media 1989	Other media 1988
Capital Cities/ABC	4767	4500.5	3.0	490.0	460.0	376.1	370	3504.0	3500.5	315.1	241.1		
Time Warner	4575	4142	10.5			1055	1752			2720	2390		
Gannett	3518.2	3314.5	6.1	2857	2607.0			400.3	390.5			257.9	226.1
General Electric/NBC	3392	3638	6.0					3392	3368				
CBS Inc	2850.0	2776.0	6.6					2850.0	2776.0				
Advance Publications	2881.7	2655.6	8.5	1745	1601.1	841.9	745			284.0	220.4		
Times Mirror	2807.1	2677.9	4.8	2065.0	1887.1	305.0	208.5	102.0	90	332.5	282.7		
TCI	2353	1708.1	38							2353	1705.1		
Knight Ridder	2261.0	2077.1	8.8	1888.4	1817.4							273.4	159.7
News Corp	2203	1683.3	30.0	284	185.7	713	508.4	700	620			506	350

Source Advertising Age

Share of American audiovisual firms in the sector's activities

(million $)	TURNOVER 88	CINEMA Prod.	CINEMA Distr.	CINEMA Exploit.	TELEVISION Prod.	TELEVISION Distr.	TELEVISION Airwaves	TELEVISION Cable	VIDEO Distr.	SOUND REC	RADIO
Capital Cities/ABC	3749				x		xxx	xx	x		xxx
NBC	3638						xxx	x			xxx
CBS	2780				x		xxx		xx		xxx
MCA	2290	xxx	xxx	xx	xxx	xxx	xx	xxx	xxx	xxx	
Warner	2027	xxx	xxx	xxx	xxx	xxx			xxx	xxx	
Paramount	1862	xxx	xxx	xxx	xxx	xxx	xx	xxx	xxx		
Columbia	1616	xxx	xxx	xxx	xxx	xxx			xxx		
Walt Disney	1149	xxx	xxx		xxx	xxx	xx	xxx	xxx		
Cox Enterprises	1090						xxx				xxx
PBS	1086						xxx				xxx
Viacom	945				xx	xx	xx	xxx			
Time	810	xx			xx			xxx	xx		
Turner Broadcasting	777				xxx	xxx	xxx	xxx			
Home Shopping Network	730						xxx	xxx			
TCI	589			xx				xxx			
MGM/UA	675	xxx	xxx		xxx	xxx			xxx		
Westinghouse	633				xx		xxx				
United Artists	577			xxx					x		
Lorimar Telepictures	528	x	x		xxx	xxx			xxx		
Tribune	506						xxx				xxx
Orion Pictures	469		xxx		x	xxx			xxx		
AMC Entertainment	467			xxx							
UIP	380		xxx					x			
General Cinema	380			xxx							
Pathe Communications	371	xxx									
Vestron	335	xxx							xxx		
Great American	319				xxx		xxx		xxx		xxx
King World Productions	280	xxx									
New World Entertainment	279	xxx									
Scripps Howard	275						xxx				
Chris-Craft	231						xxx				
LIN Broadcasting	226						xxx				
Multimedia	202				xx		xxx				
Media General	198						xxx				
AH Belo	166						xxx				
Carolco	165	xxx									

Source : IDATE

Classification by turnover of the [illegible] 100 leading audiovisual firms in 1988

(million $)

Position	Firms	Country	Aggregate Turnover 88/89	AV Turnover 88/89	CA AV / Aggregate (%) Turnover
1	Capital Cities/ABC	USA	4773	3749	78.55
2	General Electric/NBC	USA	50089	3638	7.26
3	Fujisankei	JAPAN	4876	2970	60.91
4	ARD	GERMANY	2970	2970	100
5	CBS	USA	2780	2780	100
6	NHK	JAPAN	2737	2737	100
7	Sony	JAPAN	9810	2577	26.27
8	MCA	USA	3024	2290	75.73
9	Fininvest	ITALY	4748	2152	45.32
10	Warner	USA	4206	2027	48.19
11	Bertelsmann	GERMANY	7118	1974	27.7
12	BBC	UK	1911	1911	100
13	RAI	ITALY	1865	1865	100
14	G&W/Paramount	USA	5108	1862	36.45
15	Polygram (Philips)	NETHERLANDS	28047	1711	6.1
16	Columbia Pictures	USA	1616	1616	100
17	Yomiuri Grop	JAPAN	nd	1592	nd
18	Newscorp	AUSTRALIA	6396	1580	24.7
19	Tokyo Broadcasting	JAPAN	1402	1402	100
20	Thorn-Emi	UK	5604	1304	23.27
21	Walt Disney	USA	3438	1149	33.42
22	Cox Enterprises	USA	1816	1090*	60.02
23	PBS	USA	1084	1084	100
24	Asahi National Broadcasting	JAPAN	1074	1074	100
25	Viacom	USA	1258	945	75.12
26	Toho	JAPAN	1128	904	80.14
27	CBC/SRC	Canada	896	896	100
28	ZDF	GERMANY	866	866	100
29	Time	USA	4500	810	18
30	TF1	France	779	779	100
31	Turner (TBS)	USA	807	777	96.28
32	Home Shopping Network	USA	730	730	100
33	Canal Plus	France	729	729	100
34	RTVE	SPAIN	700	700	100
35	Cineplex Odeon	Canada	696	696	100
36	MGM/UA	USA	675	675	100
37	Westinghouse	USA	12499	633	5.06
38	NOS	NETHERLANDS	598	598	100
39	TCI	USA	2282	589	25.81
40	CVN	USA	588*	588*	100
41	Thames TV	UK	578	578	100
42	United Artists	USA	842	577	68.53
43	Toei	JAPAN	774	557	71.96
44	Rede Globo (1989)	BRAZIL	nd	555	
45	Lorimar Telepictures	USA	678	528*	77.88
46	Asahi Broadcasting	JAPAN	546	518	94.87
47	Tribune	USA	2334	506	21.68
48	Sveriges Radio	SWEDEN	490	490	100
49	Orion Pictures Corp.	USA	469	469	100
50	FR3	France	468	468	100

IDATE Industrial Analyses

Position	Firms	Country	Aggregate Turnover 88/89	AV Turnover 88/89	Aggregate Turnover %
51	Central Independant TV	UK	467	467	100
52	Mainichi Broadcasting	JAPAN	420*	420*	100
53	AMC Entertainment	USA	465	465	100
54	ORF	AUSTRIA	459	459	100
55	Virgin	USA	1140	456	40
56	UIP	USA	446	446	100
57	SSR/SRG	SWITZERL.	439	439	100
58	LWT	[illegible]	426	426	100
59	Antenne 2	France	423	423	100
60	Granada	UK	2600	418	16 08
61	Television Tokyo Channel 12	JAPAN	414	414	100
62	Liberty Corp.	USA	401	401	100
63	ABC (Australia)	AUSTRALIA	400*	400*	100
64	Gannett	USA	3314	391	11.8
65	Qintex	AUSTRALIA	383	383	100
66	TV South	UK	381	381	100
67	General Cinema	USA	2323	380	16 36
68	Bond Media	AUSTRALIA	378	378	100
69	Kansai Telecasting	JAPAN	305*	305*	100
70	Pathe Communications	USA	371	371	100
71	Carlton Communication	UK	370	370	100
72	Rank	UK	1458	360	24 69
73	Yleysradio	Finland	349	349	100
74	Beta-Taurus	GERMANY	342*	342*	100
75	Vestron	USA	335	335	100
76	Shochiku	JAPAN	364	330	90 66
77	Channel 4	UK	322	322	100
78	Radio France	France	321	321	100
79	Great American	USA	382	319	83 51
80	CLT	Lux.	316	316	100
81	Nippon Columbia	LUX.	747	299	40 03
82	Liebermann Ent. (87)	USA	299	299	100
83	King World Productions	USA	280	280	100
84	New World Entertainment	USA	279	279	100
85	Scripps Howard	USA	1214	275	22 65
86	DR	DENMARK	274	274	100
87	Hachette	FRANCE	4097	269	6 57
88	NRK	NORWAY	252*	252*	100
89	Yorkshire TV	UK	246	246	100
90	Chris-Craft	USA	251	231	92 03
91	HTV	UK	227	227	100
92	LIN Broadcasting	USA	226	226	100
93	Nippon Broadcasting	JAPAN	226*	226*	100
94	Chubu Nippon Broad.	JAPAN	217	204	94 01
95	Multimedia	USA	440	202	45 91
96	Media General	USA	756	198	26 19
97	Tokai TV Broadcasting	JAPAN	194	194	100
98	QVC	USA	193	193	100
99	BRT	BELGIUM	190	190	100
100	HWT	UK	180	180	100

* estimate

Source : IDATE

MARKET SHARES HELD BY THE FIRST 5 GROUPS IN THE DIFFERENT COMMUNICATION SECTORS

	National Daily Press	Regional and Provincial Press	Whole of the Daily Press	Weekly Press	Specialised Press for the General Public	Technical and Professional Specialised Press
Austria	75,4	23,4				
Finland	100					
Germany	98	23		49 (?)	49	
Ireland	100	-		100		
Italy	86,1	55,11			52,47	
Malta (1990)	96 (1)			100 (1)		
Pays-Bas	96	60			86,1	
Portugal	81 (1)	-		76 (2)	59	nd
Spain	96,79	51,23		83,48	57,13	27,52
Sweden	84	40				
United Kindom (1988)	-	-	58,3			

(1) first three groups
(2) first four groups

Source: IDATE, based on replies to questionnaires

APPENDIX II

STATE OF THE LEGISLATION OF MEMBER STATES CONCERNING PLURALISM AND MEDIA CONCENTRATIONS

	General provisions on concentrations	Provisions on press concentrations	Provisions on cross-ownership	Support to the written press
AUSTRIA	yes	no	no	yes
BELGIUM	yes	no	yes	yes
GERMANY	yes	yes	yes	
FINLAND	no	no	no	yes
FRANCE	yes	yes	yes	yes
GREECE	yes	no	no	yes
ITALY	yes	yes	yes	yes
NETHERLANDS	yes	no	no	yes
PORTUGAL	yes	yes	yes	yes
SPAIN	yes	no	yes	yes
SWEDEN	yes	no	no	yes
SWITZERLAND	yes	no	yes	yes
UNITED-KINGDOM	yes	no	yes	no

APPENDIX III

LIST OF MEASURES WHICH MIGHT BE TAKEN TO GUARANTEE PLURALISM

In the course of its work on media concentrations, the Enlarged Working Party on Media Concentrations (CDMM-GT-CM) identified a certain number of measures which member States might adopt in order to guarantee and promote pluralism. In addition to listing the measures in question - which are to be seen as facultative and non-exhaustive - the Working Party also found it appropriate to suggest the various ways in which those measures could be implemented in practice. It should be noted that certain of these measures already form part of the policy of some States in the area of media concentrations (for example, those concerning support mechanisms) while others are more innovatory (for example, those concerning European co-operation).

I. Support measures

- Establishing or maintaining support schemes for communication undertakings which are in difficulties or which are obliged to adapt to changes in structural conditions so as to enable them to pursue their activities;

- Striving for maintaining a balance between general and selective support schemes, so that they benefit first and foremost undertakings which are in difficuties and where such difficulties can be eliminated through the grant of support;

- Establishing or maintaining support schemes which promote the creation of new communication undertakings;

- Ensuring that public aid, both general and selective, is granted on the basis of explicit and non-partisan criteria and that the grant of such aid is subject to the control of independent bodies;

- Reconsidering periodically the modalities of granting such support in order to ensure that they do not constitute involuntary and fortuitous encouragement to the process of media concentration or constitute undue enrichment for undertakings benefitting from this support;

II. Status of professionals

- Subject to the constitutional law of member States, safeguarding the editorial independence of the staff of communication undertakings in view of the risks which media concentrations may entail for their independence, in particular in cases where the orientation of the communication organ in which the staff is employed changes (conscience clause);

- Ensuring that such a guarantee is defined in principle by law or, subsidiarily, by professional agreements;

- Encouraging the participation of the staff employed in communication undertakings in the management and operation of the undertakings, in particular through the setting-up of legal and financial schemes to facilitate shareholding by staff in the capital of the undertakings or the purchase by the staff of the undertakings when they are in difficulties.

III. <u>Regulation of the activities and status of communication undertakings</u>

- Establishing, taking account of the legitimate interests of communication undertakings and groups, transparency rules for their ownership and decision-making structures, sources of finance and balance sheets, while enabling the public to have the widest possible access to data communicated under such rules ;

- Studying the setting up of legislative or regulatory provisions guaranteeing the maintenance of a plurality of independent media through measures such as the determination of appropriate thresholds for media ownership;

- Ensuring that such regulations are based on a clear definition of the situations to be taken into account for the evaluation of media concentrations;

- Ensuring that such regulations are balanced with other positive measures designed to guarantee pluralism;

- Ensuring that such regulations take into account the size of the States and their populations, the geographical and linguistic limitation of certain markets, the diversity of distribution means accessible to media undertakings and the principle of freedom of enterprise;

- Ensuring that the implementation of such regulations is adapted in accordance with the specific nature of each situation, taking into account the positive aspects which may result from media concentrations and the risks which an excessively vigourous implementation of the regulations might entail;

- Guaranteeing the autonomy of bodies responsible for applying regulations on pluralism and media concentrations vis-a-vis any external influence other than the legitimate role performed by public authorities with respect to such bodies.

- Ensuring, when developing procedures for licensing or authorising a broadcasting service, that the grant of a licence or an authorisation to a particular applicant does not have adverse consequences for pluralism. For this purpose, account should be taken of the control already exercised by the applicant in respect of other media undertakings. Studying the possibility of taking into account the control exercised by the applicant in regard to media undertakings in other European countries.

It is to be noted that member States could complement the aforementioned measures by developing, as from the stage of schooling, education for the public in the use of the many different types of media which are available, as well as a critical approach to the content of the media.

IV. European co-operation

- When a member State is examining whether or not it is appropriate to adopt measures on media concentration, taking account of the consequences which such measures could entail for the maintenance of pluralism in other member States. For this purpose, studying the appropriateness of creating procedures for consultations on such matters between member States;

- Following, within the framework of the Council of Europe and by means of appropriate mechanisms, the evolution of media concentrations at the European level, including the law and policy of the member States in this area, with a view to both determining whether or not measures are necessary at the European level for safeguarding pluralism, and allowing member States to exchange experiences in this area;

- Taking account, within this framework, of work carried out in this area in other international fora.