**Pluralism, Media Mergers and European Merger Control**

Petros Iosifidis

**Introduction**

Concentration of media ownership is a phenomenon of increasing importance across the world. At a time when the media are becoming major actors in world businesses, and cable, satellite and the digital revolution are increasingly providing the conditions for a global media market questions are raised about the effects of media concentration on pluralism and diversity. Concentration of control over mass media and merger and acquisition activity have intensified recently due first to technology (technological convergence incentivize media firms to expand across sectors, from content, to production, to distribution), but also regulation relaxation (the introduction of liberal regulatory regimes and the setting up of converged regulatory bodies, like Ofcom in the UK).

Concentration therefore has been both a market reality and a public concern. This chapter starts by providing data and statistics on the level of media market concentration and lists various cases of mergers and acquisitions. It then assesses the impact of the rising levels of concentration on socio-cultural objectives such as media pluralism and diversity. Having provided working definitions of pluralism and diversity, the work takes a critical stance of the EU competition policy and merger control and argues that sector-specific regulation, like media concentration and content rules, are still relevant in order to safeguard the goals of pluralism and diversity.

**Concentration as market reality: merger and acquisition activity**

Globally, large media conglomerates include Viacom, CBS Corporation, Time Warner, News Corporation, Bertelsmann AG, Sony Corporation, NBC Universal, The Walt Disney Company, Hearst Corporation and Lagardere Group. As of 2011, the Walt Disney Company is the largest media conglomerate in the US in terms of market capitalization, with News Corporation, Time Warner and Viacom ranking second, third and fourth respectively. These companies have turned giants over the years as they have been involved in mergers and acquisitions activity. Such activity is expected to escalate. The rapid evolution of the media sector, including the growing availability of digital content which can be distributed across various platforms (digital terrestrial, cable, satellite, IPTV, Internet, mobile networks), as well as the rise of social media, increase the tendency for firms to develop new types of mergers and co-operations. Examples of recent consolidation cases include Liberty Media’s acquisition of American satellite consortium DirecTV for $16.2 billion, Facebook’s acquisition of MySpace (both social media companies) and Microsoft’s takeover of Skype for $8.5 billion. Liberty Global is also active in eleven countries in Europe offering video, broadband Internet, and voice services to customers.

The media business has been seen to lend itself to consolidation, as there are enormous economies of scale and scope that come from enlarging their footprint both at a national and international levels as the greater the proportion of the population that can be reached by a production, the greater the efficiency that can be consequently made. This increased commercial activity also stems from the high costs involved in keeping up with new technologies. Companies often decide to ally or merge with their competitors in order to share the high cost (and risk) in taking new initiatives. Such alliances may have negative effects on relevant markets and raise competition concerns as they result in increased concentration or foreclosure agreements. Competition law intervenes (or should intervene) to ensure that the market is contestable and open for competing operators.

**The introduction of liberal regulatory frameworks**

The consolidation trends in the media sector are facilitated because of the introduction of more liberal and flexible regulatory regimes. In the USA in 2005 the ten largest TV station group owners controlled 300 stations, up from 104 stations in 1995. Also group owners can now purchase TV stations with a maximum service area cap of 39 per cent, up from the previous limit of 35 per cent (it should be noted that the limit was just 25 per cent in 1985). Further, with rules relaxed on cable ownership 90 per cent of the top 50 cable companies are owned by the same parent companies that own broadcast networks. Similar deregulatory trends are evident in Europe, though different rules are in force in different countries. The common denominator though is that technological advances and the accompanying proliferation of channels of communication and modes of content delivery have challenged the rationale of imposing strict regulation. In the UK, for example, multi-channel development has provided the rationale for the government to implement ‘light touch’ regulation in broadcasting and the abolition of various ownership rules with the passing of the 2003 Communications Act. This Act also provided for the setting up of the converged regulatory agency Ofcom, to oversee all communication sectors.

EU media firms are smaller than those in the US in terms of market capitalization and sales, and mergers and acquisitions are to a reduced scale compared with those in the USA. Most EU firms function in one national market, with the notable exception of the large German multinational company Bertelsmann and Vivendi Universal (now General Electric-owned NBC Universal). However, an analysis of some past competition decisions in the media sector reveals that the EC has become sympathetic to the formation of large European corporations in order to enable them to compete globally (Iosifidis, 2005). This is evidenced by the implementation of the 2003 Regulatory Framework for the Regulation of Electronic Communications, and the new version of the AVMS Directive, both intended to create a single market for all audiovisual media services by providing less detailed but more flexible regulation (EU, 2007).

The EU’s media policy can also be viewed as a lever to promote market liberalization that would nurture European champions. After all the predominantly pro-liberal and pro-competition provisions of the European Treaties reflect what van Cuilenburg and McQuail (2003) have dubbed as ‘new paradigm’ of media policy prioritizing economic goals over social and political welfare. Meanwhile, in the broader context of restructuring of the European audiovisual scene merger cases have become more complex and entail increased competition concerns, resembling the 1990s merger boom in the USA when the major TV networks were acquired by industrial interests. The complexity of mergers in both sides of the Atlantic is a result of a shift in the nature of industry concentration, from one based on horizontal mergers to those involving vertical integration, as operators sought out alliances which would enable them to acquire the broad set of skills needed to address new markets (Iosifidis, 2005).

**Concentration as public concern: pluralism and diversity**

Whilst there are economic and efficiency motives to be gained from merger and acquisition activity, excessive media concentration can endanger media pluralism (the presence of a number of different and independent voices) and diversity in the media (different political opinions and representations of culture within the media). Therefore a pluralistic, competitive media system is a prerequisite for media diversity. Although pluralism and diversity are used interchangeably in this chapter it is worth going through some definitions of the concepts to establish why the lack of these ideals in a highly concentrated media market might be an issue of public concern. A broad definition of media diversity has been provided by Hoffmann-Riem (1992) who referring to the broadcasting scene distinguished four dimensions of diversity. For him there must be *diversity of formats and issues,* meaning that all the various fields and topics - entertainment, information, education and culture - have to be taken into account. Secondly, this should be complemented by a *diversity or plurality of contents.* This means that programmes should provide comprehensive and factual coverage of the different opinions expressed in a society. Thirdly, *person and group diversity* must exist. Programmes have to cater for the interests of all parts of the community. The main point here is access, but also representation. Finally, Hoffmann-Riem pointed out that broadcasters should include local, regional, national and supranational content. To sum up, a programme has to ensure that *issue, content, person* and *geographical diversity* is provided.

A similar identification of the dimensions of diversity has been provided by McQuail (1992, pp. 144-145) who argued that the media can contribute to diversity, firstly by *reflecting* differences in society, secondly by giving *access* to different points of view, and thirdly by offering a wide range of *choice.* Diversity as reflection means that pluralistic mass media are expected to represent or reflect the prevailing differences of culture, opinion and social conditions of the population. Diversity as access refers to the channels through which the separate ‘voices,’ groups and interests which make up the society can speak to the wider society, and also express and keep alive their own cultural identity. McQuail mentioned the most essential conditions for effective access, namely freedom to speak out, effective opportunity to speak (a prerequisite is the existence of many and different channels) and autonomy or adequate self-control over media access opportunities. Finally, diversity as more channels and choice for the audience represents a great deal of variety or range of products or services available to consumers, thereby giving them greater freedom.

In order to assess diversity in relation to media market structures and media mergers and acquisitions in more particular one also needs to distinguish between *external* and *internal* diversity. The former, according to McQuail (1992, pp. 145-147) refers to media structure because it is related to the idea of access. It relates to the degree of variation between separate media sources in a given sector, according to dimensions such as politics, religion, social class, and so on. In a given society, there are many separate and autonomous media channels, each having a high degree of homogeneity of content, expressing a particular point of view, and catering only for its own ‘followers.’ The latter, McQuail adds, refers to the media content and connects with the idea of representation or reflection mentioned above. It relates to the condition where a wide range of social, political and cultural values, opinions, information and interests find expression within one media organisation, which usually aims at reaching a large and heterogeneous audience. A particular channel might be assessed according to the degree of attention given to alternative positions on topics such as politics, ethnicity and language and so on.

More recently and with regard to simplifying the complex issue of pluralism and diversity and putting the results of the research into operation, the Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach (2009) split the concept of pluralism into three normative dimensions – political, cultural, and demographic pluralism – as well as three operational dimensions – pluralism of media ownership/control, pluralism of media types, and genres. It is clearly mentioned in the study that the main threat to pluralism of media ownership/control is represented by high concentration of ownership with media which can have a direct impact on editorial independence, create bottlenecks at distribution level, and further interoperable problems. This affects pluralism not only from a supply point of view, but also from a distribution and especially an accessibility point of view (p. 75). The main threats to pluralism of media types include: lack of sufficient market resources to support the range of media, which causes a lack of/under-representation of/dominance of media types (p. 75). Threats to media genres and functions include lack of/under-representation of/dominance of some functions, or genres are missing (p. 76). Threats to political pluralism dimension are unilateral influence of media by one political grouping, insufficient representation of certain political/ideological groups or minorities with a political interest in society (p. 77). Threats to the cultural pluralism dimension include insufficient representation of certain cultural, religious, linguistic and ethnic groups in society, and threat to national cultural identity (p. 77). Lastly, threats to the geographical pluralism dimension are lack or underrepresentation of various national geographic areas and/or local communities (p. 79).

To sum up, this study, which forms part of the European Commission’s three-step approach for advancing the debate on media pluralism within the EU, is a prototype for a *European Media Pluralism Monitor* – a risk-based, holistic, user-friendly and evolving monitoring tool that includes indicators of a legal, economic and socio-demographic nature. These indicators relate to various risk domains, including media ownership and/or control, media types and genres, political, cultural and demographic pluralism. The study makes it clear that while it urges the application of the same analytical framework in all Member States to ensure comparability of results obtained, it is not a call for harmonization of policies in this area. As in previous relevant EU documents and Treaties (see for example EU, 2007) it is repeated in this study that the sensitive matter of how to protect media pluralism is ultimately left to the discretion of Member States (p. viii). Paradoxically, even though the EU has substantially influenced market developments, principally on the basis of competition rules, where it enjoys direct powers, it nevertheless has no specific competence in cultural matters such as pluralism and broadcasting. By commissioning these studies though the EU has come to explicitly recognize the importance of socio-cultural policy objectives, citizen’s rights and pluralism and diversity. This is a welcome development, although clearly the EU’s substantive policy output remains centered on economic and competition considerations.

**EC competition law and media pluralism**

The European Union’s competition policy framework lies in Articles 101 and 102 of the Treaty. Competition policy is concerned firstly with preventing agreements between undertakings which reduce the effectiveness of the competitive process, secondly with controlling mergers which increase the probability of exercising excessive market power, and thirdly with anti-competitive behaviour which enables firms either to acquire excessive market power or to increase barriers to entry for newcomers. The main objectives of competition rules are first to foster technological innovation and price competition, and second to guarantee consumer choice (see Iosifidis, 2005). As a former European Commissioner for Competition Policy has asserted, this is achieved by ensuring that companies compete rather than collude, that market power is not abused and that efficiencies are passed on to final consumers (Monti, 2001).

Thus competition policy rules ensure (or should ensure) that the competitive process is not threatened by either market structure or the conduct of firms. Its application though to the media industry cannot always safeguard other values and objectives such as media pluralism and freedom of expression. Media policy has encompassed a much wider range of public values and objectives than the efficient functioning of private markets. The media play a central role as a disseminator of information, opinions and culture, and policies are often founded on broad principles governing the circulation of ideas and information that are fundamental values for pluralistic democratic societies. Precisely because of the nature of the media industry, competition policy objectives are not enough for preserving other policy objectives. This is not to say that competition policy does not have a role to play in the cultural field. Policies promoting efficient competition may limit concentration of media control and at the same time they may also promote the presentation of diverse points of view. However, the safeguarding of a competitive environment and the promotion of diversity are different (although sometimes overlapping) objectives. The latter can only be fostered by specific media rules on either content or ownership.

*The Merger Regulation*

In addition to competition rules that are part of the Treaty on the Functioning of the European Union, a Regulation on the Control of Concentrations between Undertakings – which is part of competition law – was adopted by the Council of the European Economic Community in 1989 and became effective on 21 September 1990. The Merger Regulation (Council Regulation (EEC) No. 4064/89, as amended by Council Regulation (EC) No. 139/2004, OJ L24/I-22) was intended to complement the European Commission’s anti-trust powers conferred by Articles 81 and 82 (then Articles 85 and 86 of the Rome Treaty) and also give the Commission pre-emptive powers to deal with mergers. Until 1989 the EC had powers to act against anti-competitive mergers and acquisitions only after they have taken effect and a restrictive practice or dominant position is established or strengthened. For many years the EC had argued that it should have new, pre-emptive powers that would remove the uncertainty of retrospective action for the parties involved. In fact, competition rules that intervene after a problem of imbalance has arisen (for example, an anticompetitive practice has been established or a dominant position has already been created) may not be able to remedy the situation. The Merger Regulation was intended to deal with that problem. This is becoming more important today because, in order to gain maximum benefit from the information society, ‘gate-keeping’[[1]](#endnote-1) issues require a more direct anticipation in competition law.

Under the Merger Regulation, the EC has exclusive jurisdiction for mergers between firms with a ‘European dimension’ – an aggregate turnover of at least 5 billion Euros and a turnover within the European Economic Area of more than 250 million Euros for each of them. It becomes clear that the Regulation covers only large mergers that affect competition in the market in question. As a result it has allowed many mergers to proceed as they fell outside its scope (Iosifidis, 1996; Just & Latzer, 2000). In the ten-year period between 1990 and 2000 the Merger Regulation has vetted over 2,300 cases (of which less than 50 were in fact dealing with media) and cleared the vast majority of them (over 90 per cent) after a routine one-month investigation. It has prohibited just 18 mergers in total, while a further 14 have been withdrawn when it became clear that regulators would veto them. Six of those cases were in the wider media and telecommunications sectors.[[2]](#endnote-2) In relative terms, this points out that quite a lot of mergers in the media sector were rejected. However, there is a specific provision that relates to mergers affecting media pluralism (Art. 21(4)), which allows Member States to apply stricter legislation to these mergers. This way the EC allows Member States to apply tougher national regulation where they think media pluralism might be in danger.

**The promotion of pluralism and diversity**

So, Member States have largely maintained their competence in politically sensitive areas - such as safeguards for media pluralism and diversity. Given that the main objective of competition policy is to create a business-friendly environment by eliminating barriers to entry and prohibiting the formation of dominant positions, the following sections assess whether social-cultural objectives like media pluralism and diversity can best be protected through the imposition of sectoral rules – media ownership regulation and content regulation.

*Is media ownership regulation still applicable?*

This chapter has presented evidence showing that concentration of media ownership is increasing and that corporate alliances between communications firms have become the norm. This can be observed in most regions due to the overall globalization of markets. At this point, it should be reminded why undue media concentration may damage socio-economic ideals. Two concerns have traditionally been raised with regard to large media firms: first, media conglomerates may raise prices to consumers and advertisers above competitive levels. The second concern is media-specific and refers to society’s socio-cultural and political health which is fostered by the existence of numerous, independent media. Excessive media concentration may threaten the access of the public to important information or viewpoints (Stucke & Grunes, 2009).

It should be noted that there are no Europe-wide media ownership rules. Each Member State has treated the issue separately, mostly with a deregulatory trend (Noam, 2009, p. 24). The European Commission, triggered by the European Parliament, entered this area in the early 1990s by issuing a Green Paper (EC, 1992) with the objective of assessing whether extensive concentration could damage media pluralism. In the end, the Commission came to the conclusion that the protection of pluralism is a national concern and decided that intervention in the national ownership rules could only be justified if the proper functioning of the internal market was at stake, but not in order to safeguard pluralism. Meanwhile, quite some Member States did not favor the European Commission having something to say on pluralism; this was in fact one of the major reasons for not successfully ending the initiative.

Combined with the deregulatory philosophy preoccupying the EC and the fact that the Commission has become sympathetic to the formation of large European corporations in order to enable them to compete globally (see Iosifidis, 2005, 2010), the absence of a Europe-wide mechanism to limit concentration of media ownership has left a few large communications conglomerates unhindered to expand their activities across the continent. At the same time, in countries like the UK, the passing of the Communications Act 2003 freed up the communications industry far more than was expected, removing most of the ownership regulations that characterized British broadcasting as it was thought these deprived companies of the economies of scale and scope required to expand into foreign markets. So, should media ownership rules be maintained to protect pluralism and diversity?

*Why is it difficult to maintain media ownership rules?*

Ownership restrictions that are tied to vertically integrated sectors, which link programming production and dissemination to the audiences, might not make sense if the same programming can be provided by methods that range across the current terrestrial and satellite broadcasting, cable and telecommunications sectors. Indeed, convergence has already revealed the inadequacy of European Commission initiatives to harmonize sectoral ownership regulation (Gibbons, 1998; Iosifidis, 1997). Increased pluralism, it is said, can be achieved through permitting the delivery of a greater range of services more closely targeted to individual needs and through lowering entry barriers so as to permit a greater number of actors to take part in the media.

However, diversity of sources cannot always result in diversity of media content. As shown earlier, the model of external or numerical diversity, in which diversity of content is provided by separate media outlets, naturally favors concentration of capital and ownership in the broadcasting business. The formation of large, vertically-integrated and diversified units has led to a corporate structure in which shares are normally dispersed, in which financial institutions and industrial corporations have significant holdings, and in which highly qualified managers make key decisions. In situations of dispersed share ownership, it is indeed very difficult to identify, first, who controls the firm in question and, second, the extent of the influence s/he can exert in the cultural and political domain. That is why it is difficult to sustain structural ownership rules.

The first issue – if ownership is equated with control – had led the European Commission to initiate a study in order to reach a definition of ‘controller.’ The study, carried out by The European Institute for the Media (EIM, 1994), identified five means of influencing a firm’s decision-making centre: *direct links, indirect links, family connections, external financial or contractual relationships* and *unofficial agreements.* The study also identified five ways of wielding influence: *influence through ownership links (capital), influence through links with staff, influence through financial links (debts)* and *influence through contractual links (supplies, distribution).* The study concluded that, although ownership links are the most effective way of exerting influence in the market, the other three – financial, staff and contractual links – should also be taken into consideration.

On the basis of these criteria it is then possible, with respect to each player, to evaluate by which ways and means s/he may exert a decisive influence on the operation and eliminate political pluralism and cultural diversity. Although such a qualitative definition of media control seems both to be better adapted to the complexity of current ownership and control/dependency structures and respond to various attempts at circumvention of media ownership rules, it was not favored by the European Commission. Apparently the Commission was concerned that the four criteria of wielding influence defined in the study were not clear enough to ensure fair and impartial application throughout the European Union.

The second issue – the identification of the most appropriate criterion for the measurement of levels of concentration and consequently media influence – has proven even more difficult to solve. First, the number of independently owned media outlets in a given market is not a good indicator on the amount of independently produced programmes, particularly news and current affairs programmes, where political pluralism matters. Second, the definition of the relevant market in a multi-media context is not a straightforward task, and therefore the measurement of market shares is also problematic. The difficulty here is that the outcome is extremely sensitive to the specific way in which restrictions are formulated. In particular, the choice between restrictions on *total audience reached, share of ownership in a channel, share of industry revenues,* and so on, is crucial and leads to disparate results as to the level of concentration and the influence exerted. My earlier work (Iosifidis, 1997) showed that, even though the measurement of ‘influence’ is problematic, there is a clear linkage between economic power and political/cultural pluralism, particularly because economic power can affect the range of material offered.

The close relationship between economic power and pluralism indicates that criteria that are being used for the measurement of market power can also be used, at least in principle, for the measurement of media influence, and vice versa. Financial criteria, for instance, a long established method for measuring market power, could also be adopted for measuring ‘influence,’ that is, audience exposure to mass media. These, however, should be accompanied by audience figures, supposed to be more efficient for measuring pluralism in the market place for ideas. In the absence of a direct measure of influence, my work concluded that it is necessary to develop an approach combining the various sets of methods (numerical criteria, such as the number of channels controlled, economic criteria, such as company turnover and advertising/subscription income, and audience criteria, such as audience share and audience reach), and use it as a coherent policy to establish media firms’ impact in the marketplace for ideas.

*A less controversial solution: media ownership transparency*

In this context, sector-specific regulation is gradually losing ground. Given the above difficulties and complexities, this chapter calls for increased transparency of media ownership. Transparency of media ownership presupposes that a great deal of information is available to media regulators. Such information, extracted from a wide range of indicators, will assist the regulator to decide whether the influence of a particular company is a cause of concern. As Stolte and Smith (2010) noted, the availability of up-to-date and accurate data on media ownership lies at the very heart of any media pluralism regulation, as it would be impossible to take steps to address excessive media concentrations without the tools to identify them.

There is interest in media transparency on several levels in the European Union. In the last few years, both the Council of Europe and the European Parliament have brought out recommendations regarding media transparency. The non-binding Council of Europe Recommendation on Media Pluralism and the Diversity if Media Content (CM/Rec (2007) 2) directly addressed transparency and ownership, whereas the non-binding Resolution of the European Parliament of 25 September 2008 (P6\_TA(2008)0456) specifically encouraged the disclosure of ownership of all media outlets to help achieve transparency relating to the aims and background of the broadcasters and publishers. These recommendations have not been acted on. Yet, a regulatory initiative focusing solely on transparency would be potentially much less controversial than earlier attempts by the European Commission to put forward proposals for a directive on media ownership (see EC, 1992). This is because Member States would not be required to modify existing media ownership structures.

The legally binding AVMS Directive requires Member States to ensure that audiovisual media service providers under their jurisdiction “shall make easily, directly and permanently available to the recipients of a service at least the following information: a) the name of the media service provider; b) the geographical address at which the media service provider is established; c) the details of the media service provider, including his electronic mail address or website, which allow him to be contacted rapidly in a direct and efficient manner; d) where applicable, the competent regulatory or supervisory bodies” (Art. 3a). However, according to Stolte and Smith (2010) the transparency requirements in the Directive are not designed to facilitate the citizens’ right to know who has provided news and information. Rather, they ensure that consumers have the information they need to contact a particular media company in order, for instance, to exercise their right of reply or complain about material transmitted. This provision is thus complaint, not information, oriented.

Ensuring transparency of ownership and control of media actors is a crucial regulatory role. This is often neglected but is the key to any other regulatory actions; it is of greater importance now than ever in the midst of a financial crisis (as it is acknowledged by the EC), but also given the complexity of the alliances in media and communications. The most effective tool for regulation is information. If regulators have the power to collect information and make it public, then in itself can solve many potential problems before they arise, and avoid others. All parties are well-informed, and the market environment is at least a little closer to the ideal perfectly competitive market of economic theory, which assumes all actors have perfect information. The market imperfection of information deficiencies can be diminished in the information society if supranational bodies (for example, the EU) and national independent regulators ensure than adequate information about the sector and the operators is made public (Iosifidis, 2011).

*A proactive approach to ownership*

A relevant issue is that, to date, policy approaches to ownership have been essentially *means* rather than *ends* based: that it, taking as a starting point that pluralism is a ‘good thing,’ policymakers promote it by putting in place a regulatory framework designed to prevent excessive concentration. Through the means of plural ownership, it is assumed that diverse ownership will be guaranteed. The emphasis has therefore been on restricting consolidation in order to sustain a variety of owners or controllers. This is certainly a *reactive* approach to policy intervention which embraces preventive measures, rather than a *proactive* approach (Iosifidis, 2011).

Barnett (2009) suggested that a more constructive policy approach, better attuned to the new media world and the new economic realities, would start with a more sophisticated analysis of the kinds of output regulators should seek to promote. Conventional approaches have focused almost exclusively on issues of diversity of voice, concentrated on the threat of a tiny cartel of media barons wielding excessive media influence. But while this concept of diversity is still relevant, the scholar points out that there are many incarnations of diversity, among others: whether serious issues of relevance to people in their everyday lives are being addressed; to what extent professional values of accuracy and integrity are being incorporated into everyday professional practice; whether specific local and regional issues are being adequately covered. These require a proactive approach to policy intervention (*Ibid*.).

**Is content regulation still applicable?**

What needs to be considered here is whether content regulation has a place in an era where the new disruptive technologies of digital convergence allow more and more citizens to become content producers and publishers, and where blogging, podcasting and peer to peer file sharing increasingly become common practice. The role of content regulation remains crucial in the converged media age, for an emerging and progressively more competitive media industry does not warrant ignoring content rules. Such rules should aim increasingly at ensuring that public interest content reaches users in the multi-channel era. Content regulation will be required to provide the framework – particularly valuable at a time of rapid change – which also allows intervention to take place when the above values are at stake.

Nevertheless, the traditional means of regulating through licensing broadcasters and imposing conditions on their licenses are challenged by the proliferation of channels of communication and the volume of material transmitted. In addition, the internationalization of television, the development of cable and satellite TV and the introduction of digitization have made it more difficult to maintain and manage content rules traditionally designed for off-the-air mass audience channels (Tambini et al., 2001). Technological convergence has made it increasingly difficult to distinguish between broadcasting and telecommunications. The Internet, the catalyst of convergence, can transmit voice, data and video to users and raises questions as to whether it should (or could) be regulated at all.

In fact, the Internet provides a good example of current content regulatory challenges. There can eventually be limitless number of websites and multiple means of delivery to the end-user, and equally varied ways and means for controls to be evaded. An Internet service provider, depending on the services it offers, may be variously categorized as a publisher, journalist, broadcaster or phone company, each of which has historically had different liabilities for content it distributes. From a general regulatory and societal perspective, it may no longer matter whether a piece of indecent material (for example, pornography) is obtained by mail, at a store, through the TV set, the mobile phone, or through the Internet (Levy, 1999). Of course, a distinction can currently be made between indecent material transmitted via a universally available medium, like the TV set, a medium with fast growing home penetration rates, like the Internet, and a medium in its infancy, like the IPTV (Internet Protocol Television) and the Third Generation (3G) mobile phones.

However, technological developments are likely to change things in the near future. Today’s niche technologies may become mainstream in a short period of time. Regulation should be dynamic and flexible enough to anticipate and accommodate such changes. A consistent approach is needed to determine the types of material that are objectionable and then their dissemination could be banned regardless of the type of conduit used to obtain it, with regulation tailored as needed to fit the specific medium of transmission (Iosifidis, 2011).

As Oswell (2007) mentioned with regards to the Internet, the medium has presaged a new age of regulatory complexity, but at the same time it provided a series of simplifications and centralizations of regulatory authorities and powers. The Internet has offered a single space upon which various regulatory problems and issues of different media and communications sectors could be made visible. As a discursive concept, the Internet begins to provide a totalizing space, a surface upon which trans-media regulatory issues are discussed. Regulatory convergence constitutes a single train of thought, understanding and problematization.

**Conclusion**

The role of competition policy is crucial in order to guarantee a ‘level playing field,’ preserve open access and prevent the formation of dominant positions in the media market. However, the established relationship between communications networks and owners of content has reduced its effectiveness in the field. Focusing on the volume and complexity of corporate alliances, this chapter showed that EC competition law, including merger provisions, cannot always effectively address the dangers of ownership concentration. This chapter suggests that a more rigorous competition policy is required to tackle consolidation trends in the media and communications markets so as to improve economic efficiency and innovation. Undoubtedly the Merger Regulation has transformed the use of economics in the EU and provided a sound analytical framework that is firmly grounded in economics. But the EC has become more lenient in practicing its merger control in the media and communications field in order to allow European companies to become bigger and stronger, capable of competing globally,

Additionally, competition policy should recognise the specific cultural and democratic significance of the media industries as opposed to other industries when investigating mergers and acquisitions. Due to the specific nature of this form of economic activity, the application of competition rules to the media industry cannot always safeguard other values and objectives such as plurality of sources and diversity of content threatened by excessive market concentration. Recognizing that competition legislation is insufficient to secure media pluralism and diversity, a number of countries have introduced measures to protect these social concerns. These measures include content regulation, as well as media and cross-media ownership rules. The analysis showed that, although there sector-specific rules are still relevant, their application on a Europe-wide basis is problematic in the digital converged era. The imposition of sectoral media ownership regulation and content regulation to safeguard cultural objectives like media pluralism and diversity is a matter of national media policy.

**References**

Barnett, S. (2009). Journalism, Democracy and the Public Interest: Rethinking Media Pluralism for the Digital Age. Working Paper, September. University of Westminster.

EC (European Commission) (1992). Green Paper, Pluralism and Media Concentration in the Internal Market, an assessment of the need for community action. COM(92) 480 final. Brussels EU.

EIM (The European Institute for the Media) (1994). Media Concentration in Europe: Commercial Enterprise and the Public Interest. Dusseldorf, Germany: EIM.

EU (European Union) (2007). Directive 2007/65/EC amending Council Directive 89/552/EC on the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Pursuit of Television Broadcasting Activities. OJ L332/27. 18 December. Brussels: EU.

Gibbons, T. (1998). *Regulating the Media*. London: Sweet & Maxwell.

Hardy, J. (2010). *Cross-Media Promotion.* New York: Peter Lang.

Hoffman-Riem, W. (1992). Trends in the Development of Broadcasting Law in Western Europe. *European Journal of Communication, 7*(2), 147-71.

Iosifidis, P. (1996). Merger Control and Media Pluralism in the European Union. *Tolley’s Communication Law, 1*,247-9.

Iosifidis, P. (1997). Methods of Measuring Media Concentration. *Media, Culture & Society, 19*(3), 643-63.

Iosifidis, P. (2005). The Application of EC Competition Policy to the Media Industry. *International Journal of Media Management, 7*(3&4), 103-111.

Iosifidis, P. (2010). Pluralism and Concentration of Media Ownership: Measurement Issues. *Javnost/The Public,* *17*(3), 5-20.

Iosifidis, P. (2011). *Global Media and Communication Policy*. Basingstoke: Palgrave Macmillan.

Just, N. and M. Latzer (2000). EC Competition Policy and Market Power Control in the Mediamatics Era. *Telecommunications Policy, 24*, 395-411.

Levy, D. (1999). *Europe’s Digital Revolution: Broadcasting Regulation, the EU and the Nation State*. London: Routledge.

McQuail, D. (1992). *Media Performance: Mass Communication and the Public Interest.* London: Sage.

Monti, M. (2001). Does EC Competition Policy Help or Hinder European Audiovisual and Telecoms Industries? Speech. London: British Screen Advisory Council.

Noam, E. M. (2009). *Media Ownership and Concentration in America*. Oxford University Press.

Oswell, D. (2007). Media and Communications Regulation and Child Protection: An Overview of the Field. In K. Drotner and S. Livingstone (eds.) *International Handbook of Children, Media and Culture* (pp. 475-92). London: Sage.

Stolte, Y. and R. C. Smith (2010). The European Union and Media Ownership Transparency: The Scope for Regulatory Intervention. Edinburgh: Edinburgh Law School.

Stucke, M. E. and A. P. Grunes (2009). Toward a Better Competition Policy for the Media: The Challenge of Developing Antitrust Policies that Support the Media Sector’s Unique Role in Our Democracy’. Social Science Research Network. 20 January.

Tambini, D. et al (2001). *Communications Revolution and Reform*. London: Institute for Public Policy Research.

van Cuilenburg, J. and D. McQuail (2003). Media Policy Paradigm Shifts: Towards a New Communications Policy Paradigm. *European Journal of Communication*, *18*(2), 181-207.

1. A firm may play a gate-keeper role if it possesses a certain technology, know-how or technical standard that allows it to exert a significant degree of control in respect of the access to a given market. [↑](#endnote-ref-1)
2. The six cases were: MSG Media Service in 1994, Nordic Satellite Distribution in 1995, RTL/Veronica/Endemol (Case No IV/M.553 – RTL / Veronica / Endemol, OJ L 134/32, 5.6.1996), Deutsche Telekom/Beta Research in 1998, Bertelsmann/Kirch/Premiere in 1998 (MSG II), and WorldCom/Sprint in 2000. The AOL/Time Warner intended merger with EMI in 2000 withdrew after it became clear that the EC would prohibit it. [↑](#endnote-ref-2)