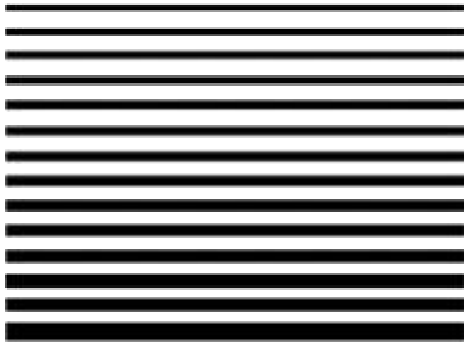


ENPA

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Media Concentration Control and the Press Current Status and Regulatory Future

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Outline

- Press Ownership Control in the Member States
 - ✍ Germany, Italy, UK, France
- Current Degree of Media Concentration
 - ✍ Press, Television
- Potential Influence of Convergence
 - ✍ New Regulatory Models / Proposals
- EC Media Concentration Control
 - ✍ Background, Legal Basis
- Conclusions / Discussion

Regulatory Status – Germany

- No sector-specific concentration control for the press
 - Only special ownership provisions for national television
- Only a few cross-media ownership restrictions
 - No formal limitations on the national level
 - „reelated markets“ considered in broadcasting regulation
 - Some provisions restricting joint ownership of (only) local newspaper and (only) local broadcasting station
- General Competition Law
 - € 500 Mio. threshold for a merger being subject to Federal Cartel Office approval
 - Modification for the press sector: € 25 Mio.
- Regulatory Trend
 - Deregulation in the broadcasting sector (self-regulation)
 - Slightly expand cross-media-ownership control

Regulatory Status – Italy

- Specific concentration control for the press since 1981
 - Completed in 1990 by general competition law and broadcasting law (1990)
- Joint regulatory body for press, broadcasting and telecommunications (since 1997)
- Dominant market position in the press sector if
 - Nationwide circulation exceeds 20 %
 - Nationwide advertising revenue exceeds 20 % per company
- Detailed Cross-Media-Ownership restrictions
 - Nationwide publisher with more than 16 % share in the overall circulation may only hold one TV license
 - Two TV licenses may be held if newspaper market share is between 8 and 16 %










Regulatory Status – UK

- Press mergers are treated under special provisions within the general competition law
- Special proceeding applies if a daily circulation of over 500.000 is affected by a proposed merger
 - Specific criteria are taken into account, e.g. implications on local markets and on freedom of opinion
 - But: General „laissez-faire“ approach in UK competition law is applied to press merger cases, too
- Detailed Cross-Media-Ownership rules
 - Traditionally strict limitations (Broadcasting Act 1990)
 - Today: Only very dominant newspaper groups may not control terrestrial television stations („Lex Murdoch“)
 - Special restrictions on local publishers / broadcasters
- Communications Bill 2002
 - More flexibility, deregulation on cross-ownerships

Regulatory Status – France

- Sector-specific merger control for the press
- No press merger may lead to a share of over 30 % in the nationwide newspaper circulation
 - May not be compensated
 - Only applicable to daily newspapers of a political nature
 - No special provisions for local / regional press markets
- Transparency Obligations
 - Update readership on relevant ownership changes
- Cross-Media Ownerships: „2 out of 4“ rule
 - One or more TV channel reaching > 4 mio. people
 - One newspaper with a nationwide market share > 20 %
 - One radio station reaching > 30 mio. people
 - One cable TV network reaching > 6 mio. people

Regulatory Status - Overview

	Germany	Italy	UK	France
Sector-specific legislation	--		()	
Sector-specific agency	--		--	--
Cross-media ownership rules	--			
Regulatory trend		?		?

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Daily Press Market - Germany

Publisher	Main Titles	Market Share
Axel Springer	BILD Die Welt	23,6 %
WAZ	Westdeutsche Allgemeine	6,0 %
Stuttgarter Zeitung Group	Stuttgarter Zeitung Die Rheinpfalz	5,0 %
Top 3 Publishers Market Share		34,6 %

Source: Horst Röper, Media Perspektiven 7/2000

- 386 daily newspapers, but only a few on Sunday
- 10 major publishing houses
- Over 300 local and regional publishers
- Kirch / Springer cross-media ownership

Daily Press Market - Italy

Publisher	Main Titles	Market Share
R.C.S. Editor SPA	Corriere della Sera Gazzetta dello Sport	17,5 %
Editoriale l'Espresso	La Repubblica	16,1 %
Monti	Il Giorno La Nazione	6,4 %
Top 3 Publishers Market Share		40,0 %

Source: Autorità per la garanzia nelle comunicazioni, 2001

- 94 daily newspapers
- 10 main national titles (combined market share: 55 %)
- 4 dominating publishing houses, some only present in parts of the country (e.g. R.C.S. not in the north-west)

Daily Press Market - UK

Publisher	Main Titles	Market Share
News International	The Sun The Times	37,0 %
Mirror Group	Daily Mirror Sunday Mirror	23,0 %
United News & Media	Daily Express Daily Star	14,0 %
Top 3 Publishers Market Share		74,0 %

Source: Audit Bureau of Circulation, December 1999

- 14 daily and 15 Sunday national newspapers (7 major publishers)
- 1.300 regional / local newspapers (99 publishers)
- News Int. (Murdoch) also operates leading satellite pay TV platform (BSkyB)

Daily Press Market - France

Publisher	Main Titles	Market Share
Les Editions P. Amaury	Le Parisien Aujourd'hui L'Equipe	43,5 %
Socpresse	Le Figaro France Soir	24,3 %
Le Monde	Le Monde	17,3 %
Top 3 Publishers Market Share		85,1 %

Source: CIVS, 2000

- 8 nationwide daily newspapers

Television Market – Germany



Broadcaster	Channels	Market Share
Public Service	ARD, ZDF, 3sat, ARTE, KiKa	42,7 %
[KirchGroup]	Sat.1, ProSieben, Premiere	25,8 %
RTL / Bertelsmann	RTL, RTL II, SuperRTL, Vox	24,7 %
Top 3 Broadcasters Market Share		93,2 %

Source: KEK, 2001

Television Market – Italy

Broadcaster	Channels	Market Share
Public Service	RAI 1, 2, 3	48,0 %
Mediaset	Italia 1, Rete 4, Canale 5	41,6 %
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Top 2 Broadcasters Market Share		89,6 %

Source: Auditel/AGB Italia, 1998

Television Market – UK

Broadcaster	Channels	Market Share
Public Service	BBC 1, 2	40,8 %
Carlton / Granada	ITV	35,6 %
Channel Four	Channel Four	9,9 %
Top 3 Broadcasters Market Share		86,3 %

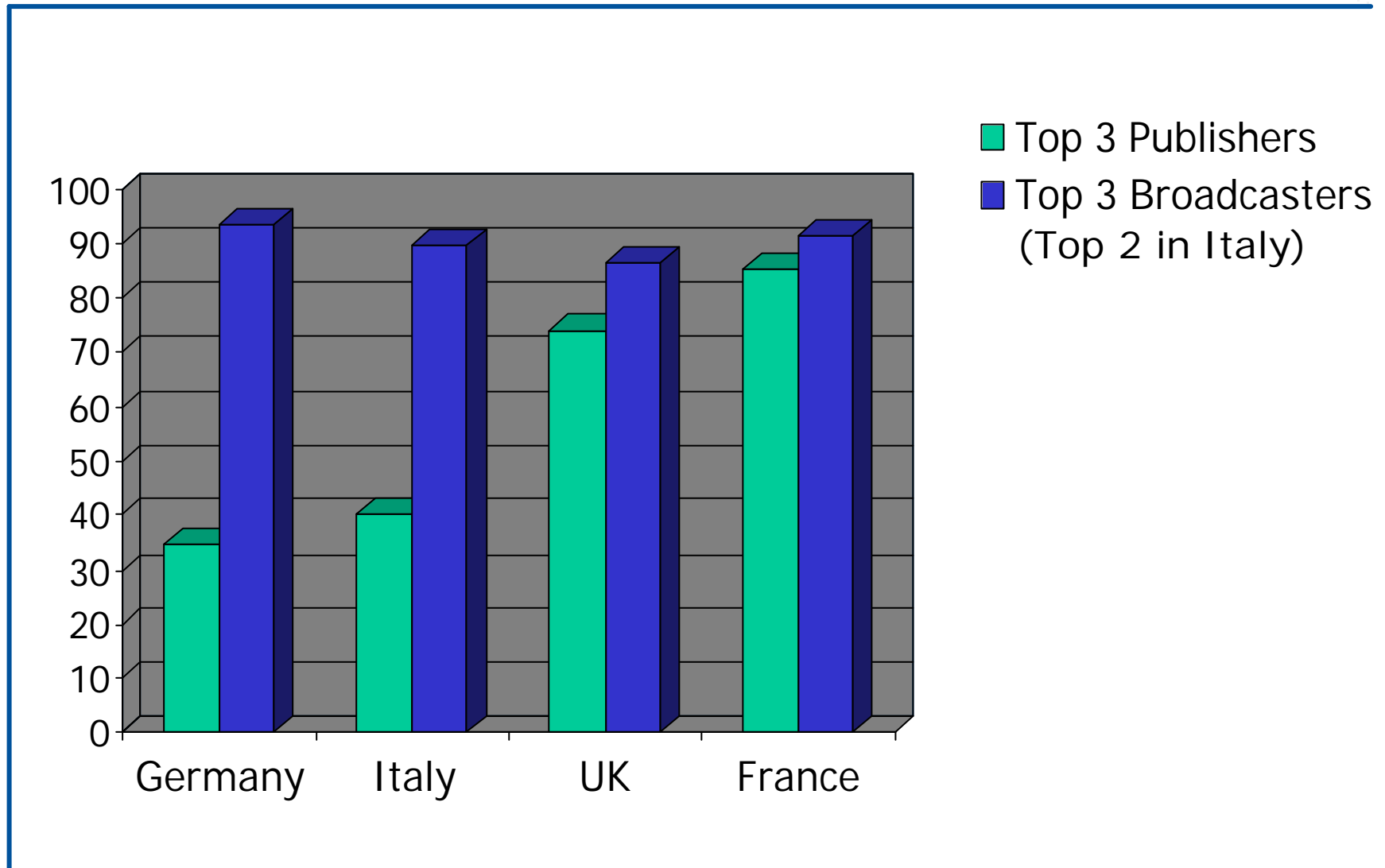
Source: ITC/BARB, 1998

Television Market - France

Broadcaster	Channels	Market Share
Public Service	France 2, France 3, ARTE	42,9 %
TF 1	TF 1	35,6 %
M 6	M 6	12,9 %
Top 3 Broadcasters Market Share		91,4 %

Source: CSA, 1998

Concentration in Press & TV Markets



Outline

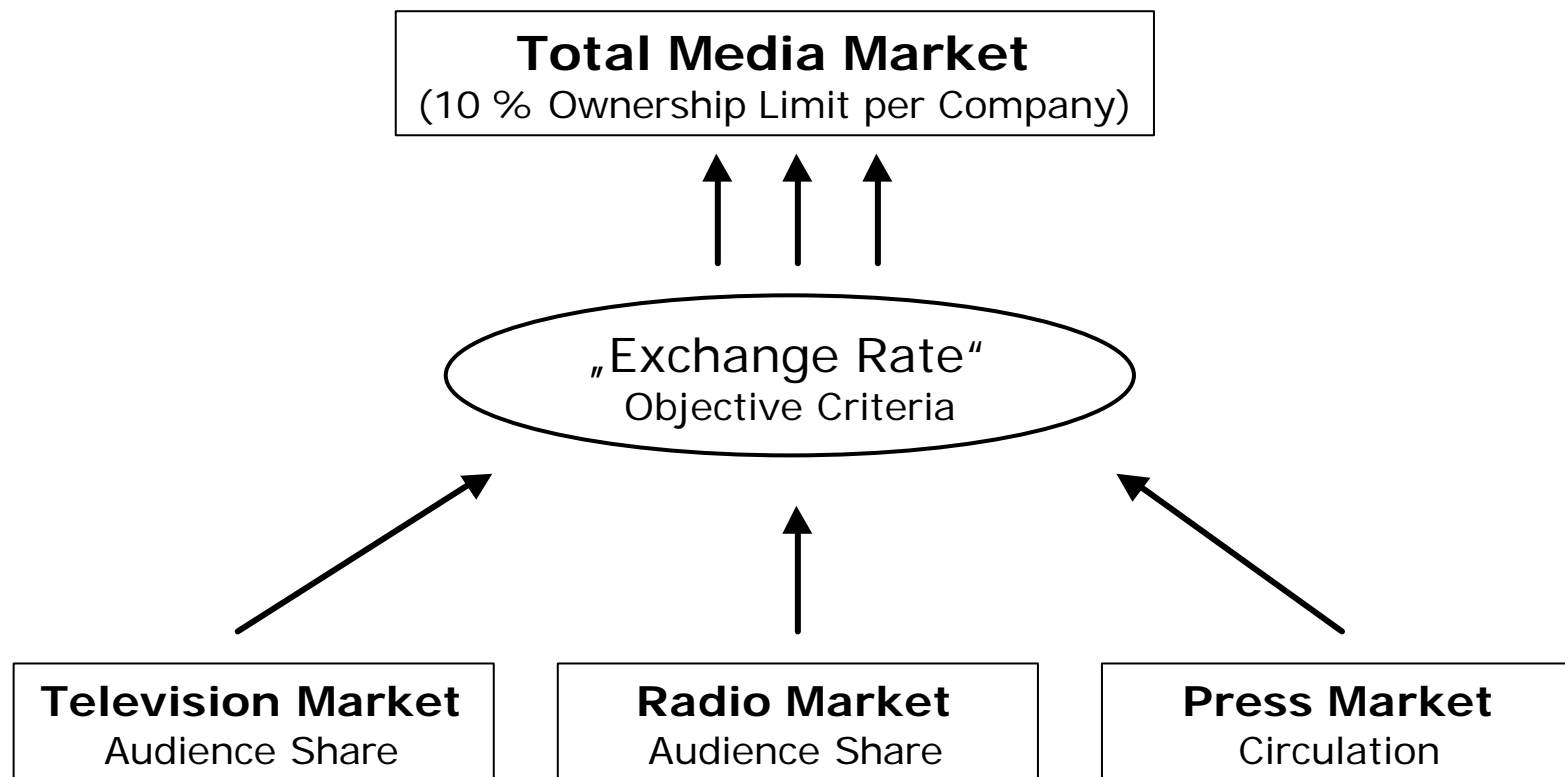
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Convergence (1)

- Germany: „Related Media Markets“ Approach
 - Introduced into the 1996 Interstate Treaty on Broadcasting, slightly changed in 2002
 - Special provision within the anti-concentration regime on nationwide television
 - „Dominant opinion-forming position“ is assumed if:
 - ✎ 30 % share in the television market alone, or
 - ✎ 25 % TV market share + dominant position in a related market
 - „Related Markets“ to be considered:
 - ✎ Advertising
 - ✎ Press
 - ✎ Production
 - ✎ Multimedia

Convergence (2)

- UK: „Total Media Market“ Approach (Proposal, 1995)



Convergence (3)

- Evaluation of market-based approaches (GER, UK)
 - Major problems with implementation
 - ✍ Which markets to include in extended consideration?
 - ✍ Which criteria to use as an „exchange rate“
 - More a reaction to convergence-driven market changes than a reaction to convergence itself
- „Real“ convergence issues
 - Include online distribution into market share approaches?
 - ✍ Television: Webcasting as audience share?
 - ✍ Press: Web hits as part of circulation?
 - How to deal with interactivity in this regard?
- Actual impact of convergence remains to be seen
- ✍ Cross-media ownership probably more relevant than „convergence regulation“ at the moment

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EC Media Concentration Control (1)

- Background
 - 1992: Green Paper „Pluralism and Media Concentration in the Internal Market“, COM(92)480
 - ✍ No definite proposal by the Commission
 - ✍ Potential actions: no action, transparency obligation, or harmonisation (directive / order)
 - ✍ No main focus on the press
 - Reactions
 - ✍ Parliament supported harmonisation approach and establishment of an independent „European Media Council“
 - ✍ Member states objected any EC activity in the field
 - 1996/97: Draft Directives on Media Concentration
 - ✍ Ownership restrictions on television, radio and cross-media-ownerships
 - ✍ Directive was not adopted, mainly for reasons of lack of competency

EC Media Concentration Control (2)

- Current EC Competition Law
 - EC Merger Control Regulation (1989, amended in 1997)
 - ✍ Generally applicable to media mergers, including such in the press sector
 - ✍ Exclusive EC authority to decide on any merger falling within the scope of the Regulation
 - Art. 21 Sec. 3: Escape Clause for Member States
 - ✍ „Member States may take appropriate measures to protect legitimate interests other than those taken into consideration by this Regulation [...]. Public security, **plurality of the media** and prudential rules shall be regarded as legitimate interests within the meaning of this subparagraph.“
 - „Newspaper Publishing“ Case, 1994
 - ✍ Merger would have been approved under Council Regulation
 - ✍ UK regulator was nevertheless allowed to reject it for plurality reasons

EC Media Concentration Control (3)

- EC Competency for Sector-Specific Regulation?
 - Principle of subsidiarity, Art. 5 EC Treaty
 - Legislative Competency under Article 151 of the EC Treaty?
 - ✍ „The Community shall contribute to the flowering of the culture of the Member States [...]. [It] shall take cultural aspects into account in its actions under other provisions of this Treaty, in particular in order to respect and to promote the **diversity of its cultures.**“
 - ✍ But: Art. 151 § 5 explicitly excludes any harmonisation in the field of cultural politics
 - ✍ EC Court of Justice on Tobacco Advertising (2000)
 - ✍ The EC shall help to ensure a high level of human health protection, Art. 152
 - ✍ But: If an EC action qualifies as a measure to primarily promote public health, it may not be a harmonisation of national law

EC Media Concentration Control (4)

- No Competency under Article 95:
 - Aim of Harmonisation: Achievement of the objectives set out in Article 14 = **improve internal market**
 - ✍ Argument: There is no internal press market in the EC due to language barriers between Member States
 - Harmonisation must abolish (potential) market hurdles
 - ✍ EC has wide discretionary power when determining potential market hurdles
 - ✍ But: language barriers make it doubtful that market is affected
 - Harmonisation must help to actually improve the development of the internal market
 - ✍ EC-wide concentration levels would obstruct EC press market rather than improve it
 - ✍ EC Court of Justice (Tobacco): No harmonisation of advertising restrictions by demanding restrictions on the highest level

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Conclusions

- Significant differences in the regulations applicable to press mergers in the Member States
- Market structure / degree of concentration in the press sector is also different in the Member States
 - Other than in the television sector
- Future Development: Regulatory reactions to cross-media ownerships probably more relevant than specific reaction to the convergence phenomenon
- No EC legislative competency to harmonise concentration control in the press sector
 - Art. 151 (culture) explicitly excludes harmonisation actions
 - Art. 95 requires improvements in the internal market

Thank you



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