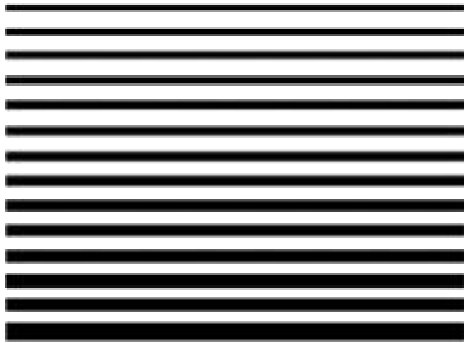


ENPA

ITM



European Newspaper Publishers Association
Seminar on Media Concentration
Athens, 24 October 2002

Media Concentration Control and the Press

Current Status and Regulatory Future

Dr. Andreas Grünwald

Institute for Information, Telecommunications & Media Law, Münster
Hogan & Hartson Raue L.L.P., Berlin

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		?		?

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

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 %
---	---	---
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 %

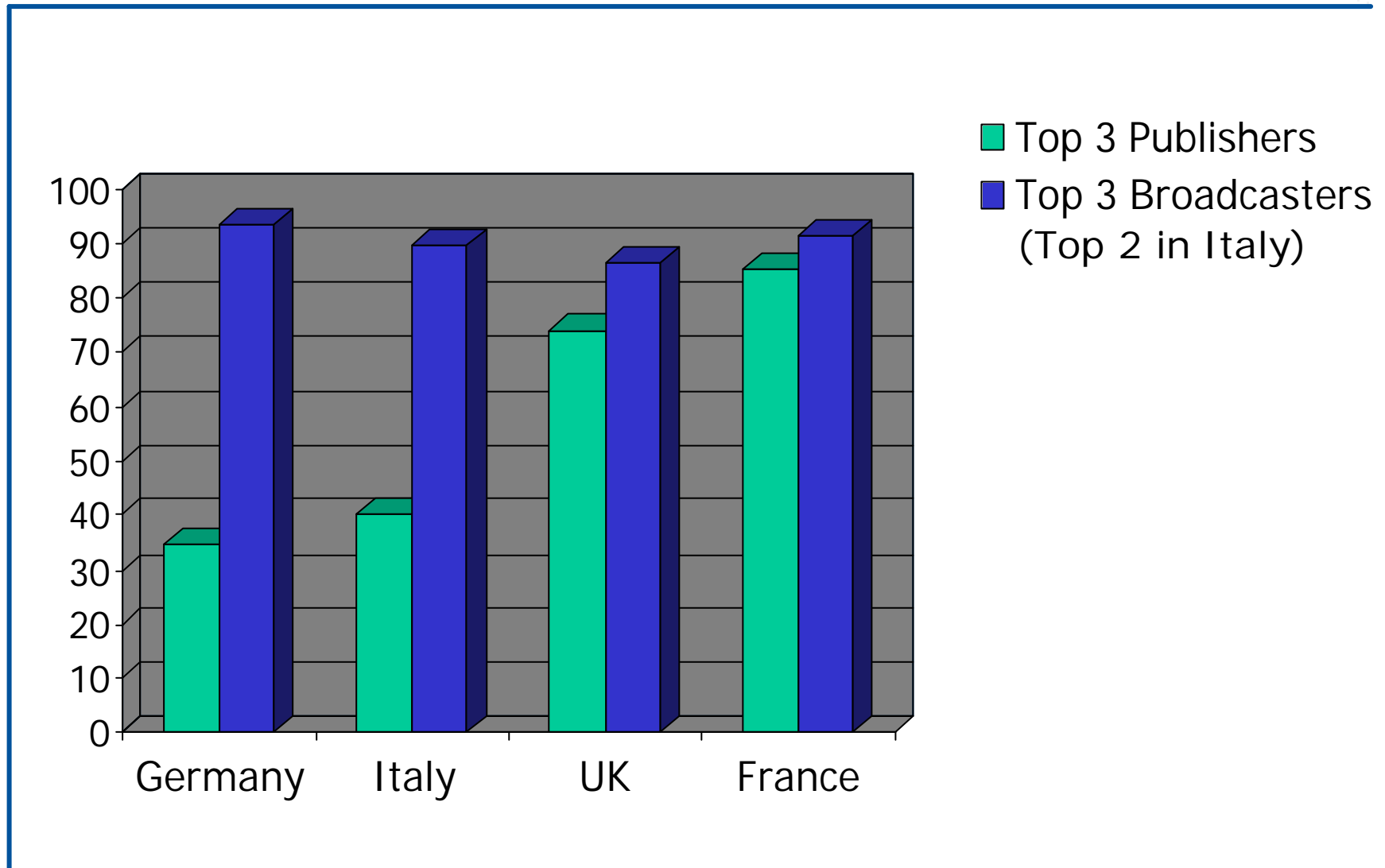
Source: ITC/BARB, 1998

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

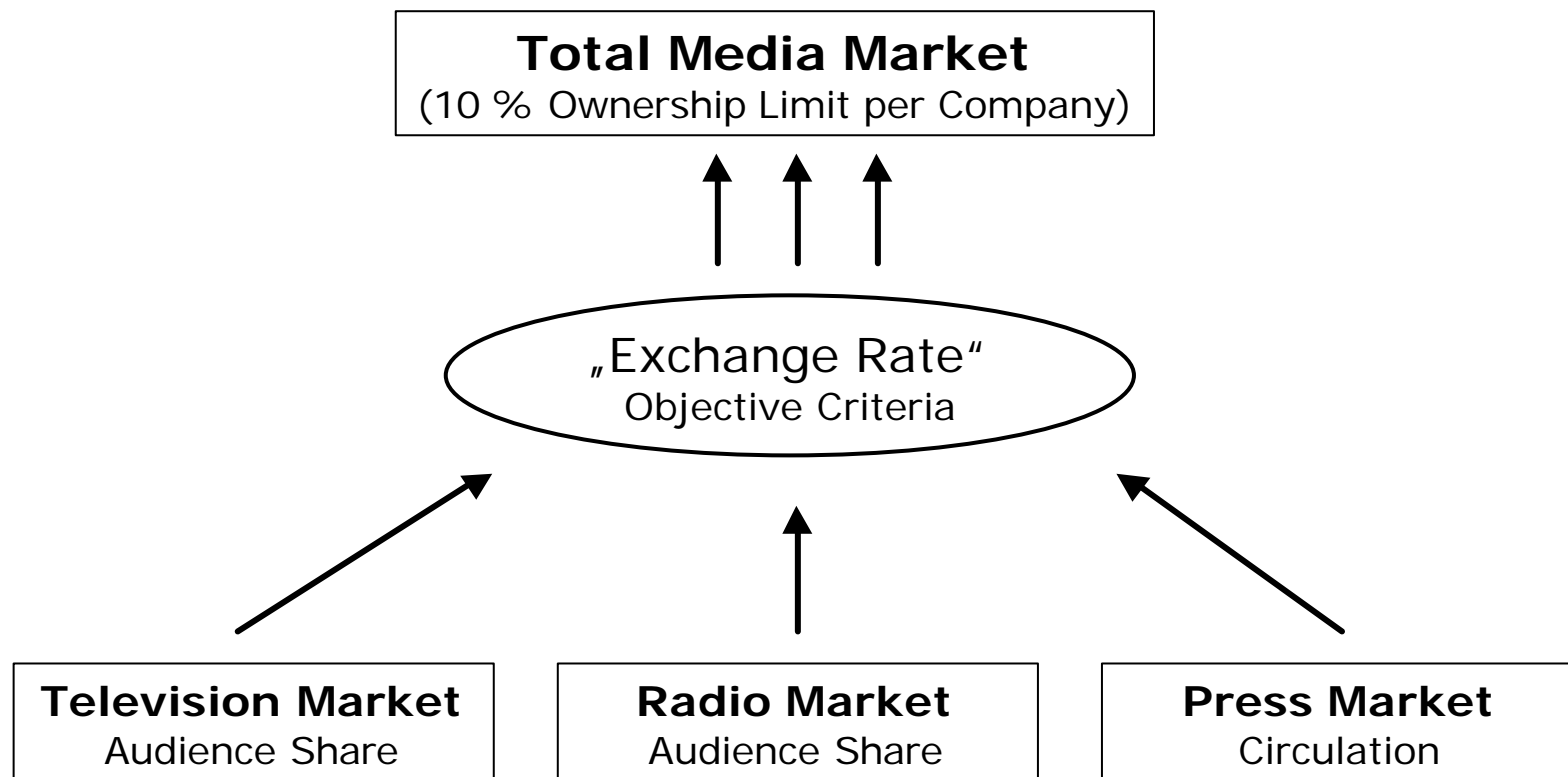
- Press Ownership Control in the Member States
 - ✍ Germany, Italy, UK, France
- Current Degree of Media Concentration
 - ✍ Press, Television
- Potential Influence of Convergence
 - ✍ New Regulatory Models / Proposals
- EC Media Concentration Control
 - ✍ Background, Legal Basis
- Conclusions / Discussion

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

Outline

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

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

Outline

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

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



Dr. Andreas Grünwald
Hogan & Hartson Raue L.L.P
Potsdamer Platz 1
10785 Berlin

AGruenwald@hhlaw.com
Tel: +49 (0)30 – 726 115 332
Fax: +49 (0)30 – 726 115 102
<http://www.hhlaw.com/>

Newsletter: <http://www.tkr-newsletter.de/>
Slides: <http://www.switch-off.com/>