



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



ARE THERE COMMON EUROPEAN STANDARDS IN MEDIA FREEDOM AND MEDIA PLURALISM?

Prof. Pier Luigi Parcu



Co-financed by the
European Union

16 November 2012

Budapest



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



President: Marise Cremona

Robert Schuman Centre for Advanced Studies:

applied interdisciplinary research
projects

PhD departments:

Law, Economics, Political Sciences, History

Max Weber & Jean Monnet programs
(post-doctoral)

Historical Archives of EU Institutions



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Robert Schuman Centre for Advanced Studies

Director: Stefano Bartolini

**Florence School of Regulation
Communications and Media**



Scientific Committee

*Director
Pier Luigi Parcu*

CMPF
Centre for Media Pluralism and Media Freedom



Group of experts



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Activities

Research

Debates

Training

Dissemination of results



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Dissemination of
results

Online presence

Website



Newsletter



Social Networks



New CMPF Blog
soon online



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Social and Political Aspects of Media Pluralism and Media Freedom



Normative functions of media freedom & pluralism

Media freedom

Opportunity

(1) to provide a *platform* for self-expression ...

(2) to provide citizens with access to information (*not to 'truth'*)...

(3) to foster *agonistic* public debate and deliberation ...



Media pluralism

Outcome for all groups

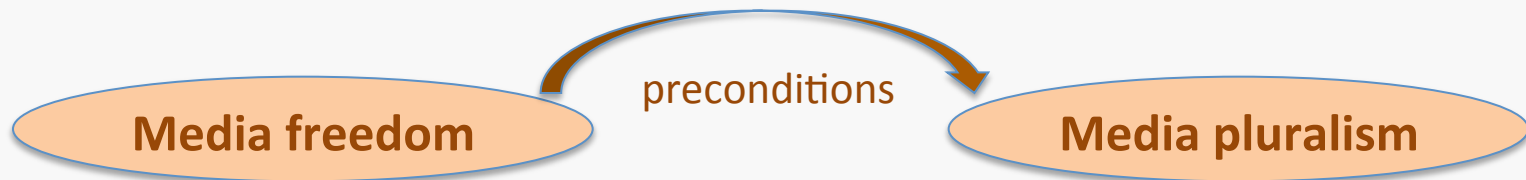
... reflecting the plurality of voices without misrepresentation

... by various, easily accessible sources, presenting wide variety of viewpoints

... between all groups in a society



Definition of media freedom & pluralism



- ✓ Independence from government, authorities' control & intervention; no governmental monopoly on information
- ✓ framed within the media-government relations
- ✓ Independence from disproportionate private control and influence of 1/few economic, social and/or political power(s)
- ✓ based upon the tolerance and inclusiveness in politics and society

European understanding: “freedom to”; proactively related to ensuring representation; “positive right”, i.e., rights and freedoms to do things

American understanding: “freedom from”; liberal-market approach of small state



Media freedom

“Owner” of the freedom: ordinary citizens, journalists or editors/media owners?

- ✓ Current de-professionalisation of journalists
- ✓ Freedom at the level of media source or freedom at the level of the individual journalist – depending on the particular media system and its emphasis on internal/external pluralism

Emphasis on violations *versus* proactive overall view

- | | |
|---|--|
| ✓ Minimal definitions of democracy | ✓ Social, political context & facilitating legislation |
| ✓ Focus on the presence or absence of certain indicative problems, e.g., the killing of journalists | ✓ Focus on overall performance, higher standards of democratic functioning |

- Reflecting closer the standards, ideals and specificities of the EU
- Outlining problematical areas and politically justifying intervention on EU level (guarantor and facilitator of media freedom & pluralism in the Union)



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Media pluralism

- ✓ **Variety, diversity and the plurality of media supply:**

Ownership, media outlets, sources of information and range of contents, guaranteed by market rules and regulations

- ✓ **Public sphere, general public and/or audience**

Actual consumption cannot be regulated, but easy access to pluralistic information should be guaranteed

Led by factors beyond commercial viability and profitability

- ✓ **Provided by free, independent and autonomous media**

Media freedom as pre-requisite to media pluralism

Political and economic independence

- ✓ **Results in access and choice of opinions & representations, which reflect the citizens of the state in question**

The result however, depends on social and political factors beyond media as well



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Measuring Media Pluralism across Social and Political Contexts



Measuring Media Pluralism

- International Institutions (CoE, 2008 & UNESCO 2007)
- Regulators (Ofcom 2012)
- Academic Researchers (Valcke et al. 2009)



There is no full agreement about how to
measure Media Pluralism



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Challenges

- Identifying the indicators:
*media-ownership concentration, media market competition,
content diversity, freedom of journalists*
- Framing a comparative research design
- Selection a research strategies:
Quantitative/Qualitative methodologies



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Comparing

- to identify national peculiarities
- to explore the unequal behaviour of our observed phenomenon
- as a component of a larger transnational system



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Standardizing Vs Contextualizing

Quantitative Vs Qualitative

Benefits

- Focusing on the same national indicators
- Standardize research tools
- Collection of neutral empirical data
- Data that can easily understood in different contexts



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Independent Study on Indicators for Media Pluralism in the Member States – Toward a Risk-Based Report

Valcke, KU Leuven - 2009

3 level of analysis

- Legal Indicators
- Socio-Demographic Indicators
- Economic Indicators



Standardizing Vs Contextualizing

Quantitative Vs Qualitative

Qualitative methodologies

- Ethnographic approaches
- Interviews
- Observatory participation



Produce explanation,
instead of dry pictures of facts



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Conclusion: we need a synthesis!

Standardization/Quantitative

Benefits

It generates neutral and easily comparable data

Limits

It risks to lose information on national peculiarities, which might be the goal of the research

Contextualizing/Qualitative

Benefits

More powerful tool to develop a deep knowledge of local contexts, in order to understand local Media Pluralism

Limits

It makes a transnational comparison more difficult



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Economic aspects of media pluralism



Media economy peculiarities

Entry barriers

Vertical integration

High initial costs

Low marginal costs

Horizontal integration

Economies of scale

Technological change

Lowering of barriers to entry

Products customization

Long tail effect

Audience fragmentation

More concentration
(*“media pessimists”*)

or ?

Less concentration
(*“media optimists”*)



Dynamics of media concentration

Noam



u-shape effect

If barriers to entry increase and economies of scale decline, in a first moment there is more concentration with less contestants, but then, due to scale economies, there will be more players.

If barriers to entry drop, but economies of scale increase, then in a first moment there will be more contestant, attracted by low barriers to entry, but then competition will increase and contestants will decrease

Baker



The lowering of distribution costs lead firms to allocate more resources on the first copy of the product, to keep the same profit. The increase of the costs of the first copy creates higher barriers to entry and thus could lead to a reduction of diversity



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Old and new concerns on media pluralism

As internet develops, traditional media move to the online, and online media conglomerates boost their profits, notwithstanding the crisis. Though, all this is rising a new patterns of concerns about pluralism and diversity:

- There is an unclear definition of relevant markets: what should be measured and how?
- It is difficult to assess competition between offline and online media (**level playing field**).
- Successful online information and content providers are not new but are mainly traditional media outlets moving online (BBC, CNN, FOX...)
- New content providers are smaller and find hard to compete with traditional players.
- Successful players are mainly intermediaries and aggregators, with low/no investments in new contents.

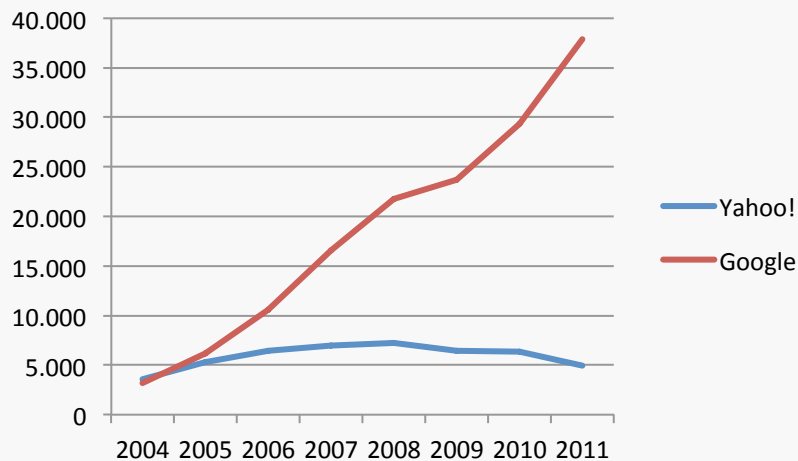


Tendency to concentration in the online media market

An further question is the increasing tendency to market concentration in new media (search engines, social networks...): **the winner takes all**.

Some examples of concentration in the online media markets are

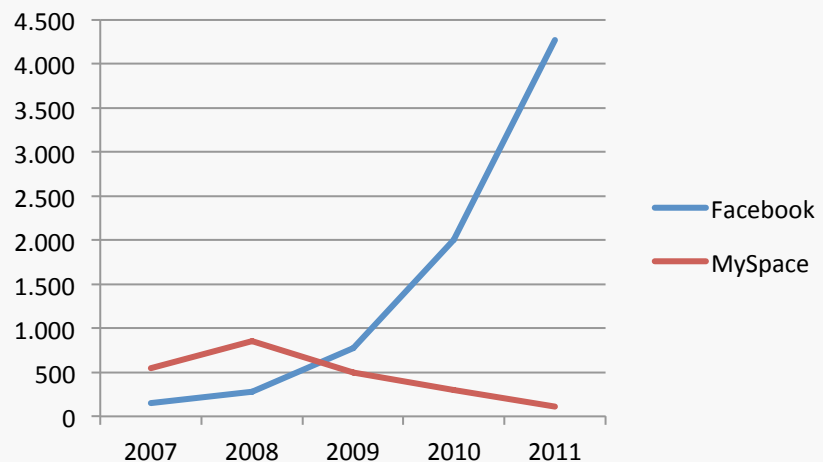
Google and Yahoo! revenues 2004-2012



Source: Netmarketshare.

Note: figures include only revenues coming from audiovisual

Facebook and MySpace 2007-2012



Source: eMarketer and data provided by operators.



Geographical market

A final concern is about the geographical origin of new players and the role of EU industry.

- The balance of trade between US and Europe has mainly taken one direction, due to internal market size, linguistic and cultural factors, general economic wealth
- New operators emerging from the internet economy are almost exclusively coming from the US.
- Europe struggles to establish new players able to compete worldwide.
- The challenge is between local-based and well-established media firms and international globalised organizations, mainly based in the US, operating as content aggregators.
- Traditional instruments such as quotas or public funding to protect local industries risk to be ineffective in the online media environment



Conclusion

- A greater diversity on the supply side could not correspond to a greater diversity on the demand side, and could not lead automatically to more pluralism.
- There is a need for a clearer definition of relevant markets to better address both pluralism and market competition on media.
- An excessive fragmentation in the EU media markets and the lack of a unified market risk to make European media outlets too vulnerable in the globalised economy.
- It must be understood whether current tools to protect European industry are still effective or not.



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



State of the art of the legal instruments



Fundamental Rights

- Article F.2 of the Treaty of Maastricht (1992): *The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to MSs, as general principles of Community law.*
- 2002: Charter of Fundamental Rights of the EU
- 2009: Treaty of Lisbon: introduced the Charter into EU primary law
- **Article 11(2) of the Charter: *The freedom and pluralism of the media shall be respected***



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Fundamental Rights

- Art. 10 ECHR: Freedom of expression.

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

The ECJ and the Commission repeatedly also refer to the *corpus* of activities of the CoE and of the ECtHR.



The AVMS Directive

- *Audiovisual media services are as much cultural services as they are economic services. Their growing importance for societies, democracy — in particular by ensuring freedom of information, diversity of opinion and media pluralism — education and culture justifies the application of specific rules to these services” (Recital 5)*
- Same legal basis as for the TWFD, the free movement of services, but, broadened scope: it covers all services with audiovisual content irrespective of the technology
- - Linear services: Programmes provided by a media service provider at a scheduled time and watched simultaneously by viewers
- Non-linear services: Programmes users select from a catalogue offered by the media service provider, to watch at their own convenience.
- All media services have to respect a basic tier of obligations in some specific areas: identification of media services providers, prohibition of incitement to hatred; accessibility for people with disabilities; qualitative requirements for commercial communications; sponsoring and product placement.
- However: two – tier system: *stricter regulation for linear services*



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Public Service Broadcasting

- Instrument to safeguard media pluralism and freedom – 2000
Communication of the EC on Services of General Interest in Europe “...*the broadcasting sector has, since its inception, been subject to specific regulation in the general interest. This regulation is based on common values such as freedom of expression and the right to reply, **pluralism**, protection of copyright, promotion of cultural and linguistic diversity, protection of minors and of human dignity, consumer protection...*”
- PSB is seen as an instrument to ensure the coverage of a number of areas and the satisfaction of needs that private operators would not necessarily fulfill to the optimal extent. (COM 2001/C 320/04)



The Telecommunications Package

- Electronic communications networks: resource through which content is delivered
 - 2002- Electronic Communications Regulatory Framework
 - Aim: harmonisation
-
- A **General Framework Directive** introducing a European framework for electronic communications networks and services
- +
- **4 more specific directives:** Authorisation; Access; Universal Service; Privacy and Electronic Communications



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Hard and soft law potential instruments



Article 11 of the Charter and article 10 of the ECHR: Media pluralism as a general principle of the EU order

- **Art. 11(2) Charter** “*The freedom and pluralism of the media shall be respected*”.
- **Art. 6 TEU: the Charter has same legal value as the Treaties** + “[...] *The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union’s competences as defined in the Treaties. [...] Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law*”
- The provisions of the Charter are not to extend the competences of the Union as defined in the Treaties



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Media pluralism as a general principle of the EU order

- Art. 10 ECHR: *“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference”*
- Art. 51 : subsidiarity principle
- Art. 52(3) *“In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.”*
- The two European Courts, the European Court of Justice of the European Union and the European Court for Human Rights, for instance, can play an important role in the definition and in the application of common European principles starting at “case level”.



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Rethinking the Commission's competition practice: Applying EU Competition law in a pluralism-friendly manner

- Does the integration of content diversity considerations comply with EU law?
 - Article 167(4) TFEU: The Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures.
 - Article 11(2)
 - 51(1) CFR: The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers
 - Recital 23, Article 2(1) and Article 21(4) EC Merger Regulation



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Pluralism and internal market harmonisation: ownership

- The main regulatory instrument that the Member States use to protect media pluralism in the media market is legislation on media ownership (and media ownership transparency) that usually prevents and sanctions the creation of a dominant position in the market
- All these differences can hamper the functioning of the internal market: their existence may be detrimental to the free movement of services or the right of establishment, since operators may find it difficult to establish or to provide services in another Member State where dominant positions are in place
- Need for an harmonization tool (Article 26 TFEU – internal market
- Article 114 TFEU – internal market harmonization)



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



The implementation of the AVMSD and the role of NRAs

- The AVMSD does not foresee the establishment of relevant independent National Regulatory Authorities (NRAs).
- The AVMS Directive does not introduce any specific obligation for the Member States nor does it provide any element about the structure, functioning or role of those national bodies or about the relationship among them.
- Comparison with the Electronic Communications Regulatory Framework
- In an era of convergence, it could be reasonable to consider the establishment of the same institutional requirements both for electronic communications and AVMS.



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



The European Agency on Human Rights (or another qualified body) soft law standard setting and monitoring

- Another potential European level of intervention on pluralism could be through the Fundamental Rights Agency (FRA)
- With regard to its general competences on human rights, and to the more specific ones on the democratic participation of the EU citizens and on information society aspects and having in mind Article 11 of the Charter, the FRA could be mandated to monitor the protection of media pluralism and freedom in the different Member States.
- Also having regard to the ample case law of the European Court of Human Rights and the ECtHR.



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



Conclusion

- EU competences with regard to media pluralism appear scattered in the European legal landscape.
- The European Union has few hard and soft law instruments to promote and assure media pluralism and freedom in Europe
- Given the paramount importance of the democratic principles to be promoted, however, greater certainty and strengthening is needed with regard to EU competencies.