

Policy challenges to the creation of a European Information Society: A critical analysis

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A vital factor in the formation of the European Information Society has been the EU's aggregate policies as regards broadcasting and telecommunication. Both sectors have been propelled into the age of high technology and deregulation over the past decades and, as a result, their industrial strategies and policy goals have, since the mid- eighties, gradually merged. This trend was reinforced by the publication of the White Book of 1985 and the endorsement of the Single European Act (SEA). Both of these reflect the decision, prompted by the recession of the seventies, to push for integration of all EU member states into one internal market where people, goods and services could move freely from 1 January 1993,. From this moment, the creation of the necessary conditions for a single market has been the dominant theme of European policy making. The creation of a common market for broadcasting and telecommunications was described in the White Book as an urgent issue for the EU. This can be found back in the landmark publication of the Green Book on Television without Frontiers (1984) and the Green Book on Telecommunications in 1987. Both Green Books had the same basic message: communication is a good/service and should move, be sold and purchased freely within the EU. EU policy has, since then, focused on removing barriers that hinder competition and the creation of an internal broadcasting and telecommunications market.

These objectives have been reiterated several times in initiatives where the creation of the European Information or Knowledge Society has been high on the EU policy agenda, for example, in the Bangemann report (1994) and particularly in Lisbon Summit (March 2000). Significantly, this whole process has been labeled as E-Europe since the end of the 90s, indicating a trend towards looking at the Information Society from a societal rather than a technological point of view. It is also noticeable that broadcasting and telecommunication policies are now converging at a European and worldwide level, along side technological and economic convergence. At a European level, this has been made explicit in the

Green paper on the convergence of the telecommunications, media and information technology, published in 1997, and its follow-up, the 2003 regulatory framework for electronic communications networks and services. The latter clearly indicates the EU approach, which is that all communications should be regarded as part of the same regulatory concept.

There is clearly a lot of activity going on at the policy level, and efforts are being made to achieve clarity in regulating the communications sector in an integrated way. However, the question remains: what sort of Information Society does Europe want?

In this context, we will review the political and economic trends in European broadcasting and telecommunications, as in contrast to the underlying assumptions and presuppositions of both EU policy and research in this field. We will show:

- (1) how the discourse on European integration and cultural diversity contradicts the oligopolistic tendency of the market,
- (2) how the emphasis on creating a plethora of competing distribution channels is opposed to the overstated and overrated demands of the user/consumer/viewer, and
- (3) how the Euro-specificity of policy making puts a burden on reaching coherence and efficiency in policy making.

This 'Euro specificity' of policy, as in other areas, is mainly due to the origins of the EU as an 'imposed supra-national' state, based on common interest that are real but nonetheless challenged most of the time. Indeed, when studying European problems one has to bear in mind that the EU is an integration process that has been imposed on what have been for several hundred years, competing, isolated and very heterogeneous regional entities and/or states. Therefore, a fragile equilibrium has to be found between heterogeneous member states on the one hand, and the European institutions on the other, especially when several new states join the European Union from 2004 onwards. This will result in a permanent struggle over enlargement of powers and competencies at both sides of the policy spectrum, especially also when the world level, by means of WTO policy making, comes in. Political and economic globalization trends are indeed opposed by the member states and regions themselves, which try to reinvent and renegotiate powers of their own (according to the principle of subsidiarity).

Trends, issues and assumptions in Western European media policy and research: Broadcasting and telecommunications

Though originally separate empirical realities which responded to distinct internal dynamics, both broadcasting and telecommunications sectors have changed dramatically over a very short period of time. This due to more or less the same factors: firstly, technological innovation has made new ways of delivering communication content possible. Also, user needs have changed as a result of a macro-economic climate (post fordism and globalism as a result of hyper-capitalism) linked with a changing consumer culture (individualization and pay-per logic). This was reinforced, up until recently, by an ultra-liberal climate of policy making backed up by a post-modern ideology of super individualism. Finally, a withering away in Europe of the nation-states as politico-geographical entities, which had traditionally shaped both the audio-visual and telecommunications sectors, has also contributed to the change (Burgelman, 1994; Charon, 1991; Collins, 1994; Collins, Garnham and Locksley, 1988; Eliassen and Sjoavaag, 1999; Euromedia Group, 1992; Garnham, 1990a; Kayzer, 1993; McQuail, 1990 and 1991; Pauwels, 1995; Sanchez-Tabernero, 1993; Siune and Trutzschler, 1992). With regard to the latter, a political shift has been observed away from the regional and national level to the post, transnational, or European level, and furthermore, the global level. At the global level, institutions such as the WTO have extended their powers into the telecommunications and audiovisual sector, thus adding an extra dimension to and pressure on European policy making. This goes hand in hand with a paradigmatic shift in European policy making in broadcasting and universal service issues in telecommunications, where a completely market driven approach now challenges the decades-long tradition of public service broadcasting, state subsidy to the film sector, must and may carry rules, etc. (Pauwels and Cincera 2001; Pauwels and Loisen 2002). Paternalism and state interventionism have given way to a policy based on consumer sovereignty and liberalization. Most of the time this is as rhetorical as the old discourse on 'educating for the better' and 'protecting the weak cultures of Europe'.

From the viewpoint of telecommunications and broadcasting economic actors, the above-mentioned dynamics resulted in managerial professionalization, capitalization and industrialization. Both sectors moved away at the same time from what had been only 20 years ago a public service monopoly in Europe towards a private, oligopolistic functioning. Telecommunications and broadcasting are becoming more and more intertwined, and concentration is indeed a very apparent trend in the communication industries. This means that overall

competition or antitrust policies are becoming more important than traditional sector-specific regulation and legislation.

From fragmentation to unification and backwards: Discourse and the process of policy making at the European level

European unification and the policy making process was and still is a question of give and take. It has been a struggle to get the member states to allow a transnational organization such as the EU to meddle in what they see as culturally (broadcasting/audio-visual sector) and economically (telecommunications) strategic sectors. In order to legitimize its intervention in both sectors, the EU has therefore been forced to depict in detail all sorts of boom-and-doom scenarios, and also continually amend and refine its policy instruments.

As stated above, the creation of a common market for broadcasting and telecommunications was described as an urgent matter for the EU in the White Book of 1985. The reasoning then was that the European dimension could offer these sectors new prospects for growth and competitiveness. In turn, these sectors could contribute to the realization of a European dimension in other economic sectors; for example, micro-electronics, consumer electronics, advertising etc. However, because of lack of concerted action and national fragmentation, this economic potential was not fully realized. European action was therefore necessary, particularly in view of the economic and cultural threats increasingly posed by Japan and America in these domains. If Europe was not to miss the boat as regards Information Society benefits, then concerted action was absolutely necessary. This message was repeated in the Green Books on TV (1984) and on telecommunications (1987). It was expressed again in two important publications, which were supposed to put Europe on track for the Information Society -- namely the 1993 White Paper on competitiveness, employment and growth and the Bangemann report on the Information Society, published in 1994.

The Lisbon Summit in 2000 made the realization of a European Knowledge society the new paradigm, as well as the driving force behind EU policy for both sectors. We note however that, with eEurope, discussion on what kind of Information Society Europe wants to develop is, to a significant degree, no longer technologically driven, as it was at the beginning. In the first decade of EU policy making, however, the opposite was true: the technological developments and thus the creation of an Information Society are not only unavoidable but also include quasi limitless possibilities, if only people know how to make use of them (Burgelman, 2001).

EU policy, which aimed at the realization of an internal market in telecommunications and broadcasting, encompassed both negative integration, i.e. the breaking down of existing national regulations that form an obstacle to European unification, and positive integration, i.e. the creation of the EU's own community-wide regulations and policy. The latter meant that certain matters had to be withdrawn from the domain of autonomous national policy. This resulted in the adoption of a battery of Directives (secondary community laws) that have liberalized, harmonized and standardized the production and distribution of both the hardware and software sectors. In addition, action was taken on stimulation programs in the form of a community industrial policy that was intended to support, among other things, the production of broadcasting and telecommunications equipment, infrastructure and content. These are or were often prestigious industrial programs such as Race, the action plan relating to HDTV or even the more culturally inspired and, compared to the previous two, largely underfunded Media program (Measures to Encourage the Development of an Audiovisual Industry in Europe).

With a view to the realization of the internal market and mainly by extensive use of Directives, the EU aimed to accommodate pressure from the member states wishing to reserve some control over their own policies. A Directive is, after all, binding in respect of the result but allows member states to choose the means by which they achieve it. Although this was the only way to draw in reluctant states, it also led to a situation in which the member states regarded community legislation as a sort of a la carte system. This allowed them to defend national interests both a priori, when they have the last word when complying with primary and secondary community legislation, and a posteriori, when it comes to the often ambivalent and challengeable implementation and interpretation. Although economically unified, the internal market is still, due to this, legally fragmented to an important degree.

After the legislative harmonization, which resulted in the establishment of the internal market in 1993, some important policy shifts occurred.

On the one hand, there is a major shift from a sector-oriented policy towards a more general competition and antitrust policy: 'the European competition authority has taken over the regulatory task, outweighing to a certain extent the decline in the Commission's legislative influence since the passage of the SEA' (Pauwels and Cincera 2001). From that moment onwards tensions between both approaches have occurred frequently. Simultaneously, the member states have shown even greater opposition, as they consider the intervention of the EU in questions of competition unwanted interference with national matters. Indeed, most national authorities tend to promote and defend, first and foremost, the interests of, for example, their own telecommunications operator instead of

thinking and acting 'European'. Hence there is a constant tension between them and the EU (Hulsink, 1994; Mansell, 1993a). The small nations and the so-called 'less favored regions' especially, as they have smaller markets to build on (also true in broadcasting), seem to be less inclined to follow the road of perfect liberalization than the big ones (Preston, 1993). The question is, however, whether these countries have any other choice and whether, given their specific economic and infrastructural situation, EU policy should not adopt more case-specific strategies at this level (Constantelou and Mansell, 1994).

On the other hand, the adoption of the Treaty of Maastricht caused a series of major changes. The EU started to emphasize a Europe of diversity, heterogeneity and pluralism – at least in discussion -- to the disadvantage of concepts like a European cultural unity and identity. In the phrasing of the cultural paragraph of the Treaty, cultural diversity became institutionalized. At the same time, Maastricht institutionalized the principle of subsidiarity, which serves to safeguard (at least in principle) the policy margins of the member states, in questions of culture, for example. The audio-visual sector gets mentioned here explicitly.

The inclusion of the principle of subsidiarity, may have been the only option left to convince the more restrained member states to move further in the direction of European integration and liberalization, as this principle aims to limit the interference of the Community as much as possible. De facto, it has resulted in decentralization and a tendency towards bottom-up rather than the former top-down policy making. This becomes obvious in the growing use of mechanisms such as the 'open method coordination'. In this more laborious bottom-up strategy, member states or other (economic) actors are requested to co-ordinate their policies as much as possible and to implement self-regulation and control. Initiated in the Maastricht Treaty, and from the Treaty of Nice onwards, decentralization becomes next to centralization the road Europe has – almost by necessity– chosen. In that respect, one can speak of a partial renaissance of the nation-state.

Towards a new global communication order: The economic convergence of broadcasting and telecommunications

The increasing importance of EU competition policy is not solely the result of internal political regulatory developments but also relates to the economic integration and concentration of the communication industries themselves. It is certain, however, that concentration, integration, and ownership entanglements between industrial/economic conglomerates and media corporations are neither explicitly recent phenomena nor strictly linear evolutionary processes. This is illustrated by the recent difficulties of some, once so promising, mergers (Mattelart,

1991a: 20&ff.; Pilon, 1991: 287&ff.; Bonnell, 1989: 471&ff.; 494&ff.; Conso, 1991: 291; Brenner, 1993; Crookes, 1996). The 80s and 90s, however, were characterized by a great number of takeovers, mergers and alliances, as was illustrated, among other things, by the rising number of cases which the European Union had to process under its merger regulation². It is noteworthy that the scale of these alliances were spectacular -- the largest merger of all time in economic history was the one between AOL and Time Warner (January 2000) with a combined value at that moment of 187 billion dollars. Other figures confirm this trend -- for example, 5 out of the 10 largest mergers were related to the telecom and media sector in 2000 alone. At the same time, these mergers have led to a fundamental strategic reorganisation of both the audio-visual and telecommunications sector (Idate, 1992: 7&ff.; Luyken, 1990: 621&ff.; Pilon, 1991; Hancock, 1993; Screen Digest February 1993: 36&ff.; Booz Allen and Hamilton, 1989; 1992; European Audiovisual Observatory, Statistical Yearbook 1996–1997; Pauwels and Cincera 2001; Burgelman, Bogdanowich and Punie, 2002).

These restructuring moves have indeed set the stage for a new era. Back in 1988, American networks were the world's largest audio-visual concerns, but from 1989 on they were overtaken by corporations pursuing both horizontal but mostly vertical integration strategies in the production, distribution, hardware, and software (programmes) areas. At that time, along with a trend towards integration of software and hardware companies, sales of American majors such as Columbia or MCA/Universal kept the headlines buzzing. Since in the mid-90s, however, the emphasis has been on convergence between telecommunications groups, computing and audiovisual companies. The telecom operators' strategy here is, as a former BT chairman remarked, "*to become (CP) retailers of anything that can be converted into digital form*" (IMO working paper 95/5). These alliances, whatever form they take, point to what the Green Paper on convergence refers to as a trend towards diversification as a response to the economic and technological opportunities being created in the EU and the global market (CEC, Com(97)623). Even though some alliances tended to misfire or were more inspired by hype than rational thinking³, usually leading to a renewed focus on core activities, further integration of telecommunications, cable, film industry, programme packaging, and consumer electronics was inevitable (Mansell, 1993; Noam & Kramer, 1994; Noam, 1996). These alliances can also be interpreted within the general framework of American and European plans for the establishment of *information highways* (Burgelman, Punie & Verhoest, 1995). Related to this, the latest takeovers and mergers such as AOL and Time Warner or Vivendi, Canal Plus and Seagram illustrate how far the Internet has become a 'driving force' behind the merger movements.

With this integration of the old and the new economies, the 'megalisation' of the cultural industry has clearly taken on a new dimension: i.e. to acquire the 'old-fashioned' media conglomerates. In 2000 e.g., Time Warner, AOL, the biggest player in the new media economy, was ready to pay five times as much as Viacom had stumped up five years before for CBS (Rutten, 2000).

Another trend is apparent: although European public service companies in broadcasting still hold respectable market positions, they have lost the complete dominance they had 20 years ago. The presence of a limited number of private multinational conglomerates here is simply overwhelming. This explains the recent shifts in policy thinking, pointing at the fact that public objectives do not have to be secured by definition by public service institutions but can be met equally well by the market (Oreja, 1998; Tongue, 1999). Or as EU Commissioner Viviane Reding said, referring to the coming digital age, where a scarcity of frequencies and other distribution channels will no longer be a problem, "... some public interest objectives, such as pluralism, will increasingly be met by the market itself " (Reding, 30 November 2000; Tongue, 1999: 128; 136; CEC COM (97) 623 3 December 1997). The challenge here, of course, is to understand how far a rather oligopolistic market with a minority of public services, will automatically provide pluralism, particularly as regards content.

Infrastructure and technology driven assumptions as opposed to content: Is content diversity and cultural identity politically and economically feasible?

The latest integration developments and the crisis of public service missions, as will be argued later, illustrate very clearly the way in which the 'content' sector has over the years become a strategic choice for takeover targets (Tongue, 1999; Rutten, 2000). The more distribution channels are added or freed through technological development and deregulation, the greater the demand for content, whether for traditional culture industry products like films, music, novels, magazines and television programmes, or more recent forms of electronic services. According to Screen Digest, continental Europe had over 650 TV channels at the end of 1998. With regard to the growth of digital TV, Idate calculated that as of June 1999, there were 35 digital TV platforms in the EU, compared with 20 at the end of 1998. At the end of 1999, Idate therefore estimated that there were around 400 digitally broadcast TV channels in the EU (Idate, 2000).

The first question to answer is, of course, to what degree this explosion of potential choice will be matched by a real demand for new broadcasting services on a pan-European level? Most policy makers and actors were expecting a lot from this because broadcasting is not a market to be invented (like multimedia was and is). Research suggests, however, that a more cautious approach to pan-European TV should be taken.

First of all, research shows that over the last few years total TV consumption stabilized in Europe (3-4 hours a day). This means that whatever new broadcasting services are offered, they will have to substitute existing viewing habits. These viewing habits are at the moment very well established and cost the viewer almost nothing. This raises the question as to why consumers would pay for new broadcasting services when they already have a multitude of free choice.

There is also the question of who is going to finance a segmented offer in Europe, given the fact that it took CNN, for example, more than 10 years to reach break-even. Indeed, is there enough advertising revenue to support a segmented broadcasting offer? It must be remembered that the largest TV advertisers are the Procter and Gamble type of consumer goods -- precisely those that need a broad audience and not a segmented one.

The answer could be subscription TV. However, here too it is questionable whether the European market is large enough to allow specialized TV on a subscriber basis. Or more precisely: is it homogeneous enough? The analogy in terms of specialized offer with the written press clearly does not work, since press economies are not at all comparable with broadcasting economies (though digital innovation makes the business model here more and more attractive). One also has to bear in mind that watching cross-border TV, an essential condition for a segmented pan-European broadcasting offer, is very infrequent in Europe.

Finally, what will be the ease of use of an explosion of demand? How will the viewer make a choice between 400 channels? The answer one reads about here is that someone will offer to make a choice for the audience (navigator systems pre-selecting e.g. half an hour of soap, 15 minutes of news, a movie and so on). Although possible, is this not exactly what the general channels offer?

As a result, this increase in channels has for the moment only resulted in an explosion in demand for cheap programmes. The European broadcasting industry can only provide 1/3 of the programmes needed (especially in fiction, the most competitive programme category). Hence the need to import entertainment and drama – this lies at the roots of one of the most complicated questions of media policy in Western Europe: namely, the dominance of the US and the endangered European audio-visual culture and industry.

The figures illustrate this domination clearly. If the Europeans only have a 6% market share of the US market, the American audio-visual sector in Europe has a market share of approximately 75%, though the European broadcasting and film sector pursue their own logics. In general one can say that people generally stick to national programmes, if available, when watching television but prefer watching US movies on the big screen.

As far as broadcasting is concerned, reception analysis as well as internal EU evaluation reports have shown that national broadcasters do programme home made fiction, especially during prime time as these programmes are the most popular ones. However, the remaining time is filled with imported American, rather than imported non-national European, programmes. Figures from the European Audiovisual Observatory confirm these trends. They show that the import of European fiction in 16 European countries has stabilized since 1994 but that import from American has increased (Table 1). In other words, the explosion in demand for programmes has up till now been filled with national and American material.

Table 1: Origin of imported fiction in 16 European countries

	Fiction of European origin				Co-production			Imported fiction – non-European		
	Germany	France	UK	Italy	European	joined.	Non-Eur.	US	CA	AU+ NZ
1994	1.7%	2.9%	6.0%	1.6%	2.7%	1.8%	0.4%	69.8%	1.5%	3.4%
1995	1.6%	2.7%	5.8%	1.1%	2.9%	2.7%	0.4%	69.8%	1.6%	3.3%
1996	1.5%	2.2%	5.2%	1.0%	3.0%	2.6%	0.5%	71.2%	1.5%	3.2%
1997	1.6%	2.3%	5.0%	1.0%	4.4%	2.0%	0.4%	71.3%	1.7%	3.1%

Source: l'Observatoire de l'Audiovisuel, Statistical Yearbook (1999: 196)

As far as film is concerned, the same imbalance occurs. It is striking that European non-national films still do not circulate in Europe, and that the share of national films in their own market, notwithstanding some recent exceptions and EU policy in this area⁴ is extremely small (Directorate of Culture and Audiovisual Policy, 1997: 14 et seq.; Pauwels, 1995; Directorate of Culture and Audiovisual Policy, 1997: 12 et al.). The market share of national films in their home market is around 17%, and the share of non-national European films on the European market only amounts to 13%. The gross earnings per distributed film are by consequence much higher in America than in Europe, namely 5.3 million dollars or 4.8 million euro in America compared to 1 million dollars or 900,000 euro in Europe (Directorate of Culture and Audiovisual Policy, 1997: 14).

Table 2: Market shares of the national and European non-national film on the European markets (1995/1996/1997).

	Market share (%) of national film (incl. Copro)			Market share (%) of European non-national film		
	1995	1996	1997	1995	1996	1997
France	35.3	37.5	34.2	8.4	6.5	10
Germany	6.3	15.3	16.7	5.1	8.9	11.5
Italy	23.7	23.9	31.3	11.7	12.5	15.9
Spain	11.9	9.3	13	14.1	11.8	17.6
UK	10.2	-	26	6.1	-	-
Belgium	2.5	5.3	3.6	20.8	10.9	13.4
Netherlands	7.6	5.4	3.4	75.	3.6	10.5
Denmark	10.3	3.7	6.6	7.4	15.3	13.1
Portugal	8.4	17.2	18.8	34	-	29
Finland	-	-	-	11.2	15.7	18.6
Greece	4	-	-	21	-	-
Switserla	2	4.3	2.3	24	24.3	21
Norway	12	5.4	5.2	-	-	-
Luxemburg	0	0.2	1.7	15.1	16.2	28.4
Iceland	5.9	8	3.7	-	6.7	13
Sweden	20.4	18	17.8	6.1	-	-

Source: Media Salles (1998)

This has resulted in a trade deficit that has continued to grow through the years. It increased from only 2.5 billion euro in 1990 to 8 billion euro in 2000 (Idate, 1992: 104-115; l'Observatoire de l'Audiovisuel, Statistical Yearbook 1998: 37 and 2002). According to the Commission's Communication on 'Principles and guidelines for the Community's audiovisual policy in the digital age' (CEC COM(1999) 657final): "American productions account for between 60 – 90% of Member States' audiovisual markets (receipts from cinema ticket sales, video cassette sales and rentals and from sales of television fiction programmes), whilst the respective European share of the American market is of the order of 1 – 2%". In terms of content, this is visible in the ubiquity of American films on European TV and

television screens. Of the top 50 box office successes in 1998, just 10 were of European origin, including two British-American co-productions. Leading the top 50 was Titanic, Armageddon and Saving Private Ryan. As Tongue argues "This deficit has a cultural, social and political impact on the UK and Europe" (Tongue, 1999:108).

These trends are even more problematic in the smaller EU countries because their markets are smaller and their cultures are more hermetic and thus not so easily exportable (Burgelman and Pauwels, 1992; Pauwels, 1995). There seems to be very little interest indeed among Greek viewers to watch a Scandinavian soap, and vice versa.

It is also much more difficult to realize a return on investment when making a programme for an audience of 6 million people, in a language that few understand (and thus needs dubbing, extra promotion etc. if it is to be exported), than when doing the same for an audience of 50 million. At the same time, this means less investment is made in film production in smaller states as compared to their bigger European neighbors, not to mention their American counterparts. As shown in Table 3, the average production budget of bigger member states is double the average budget the smaller states can spend.

Table 3: Average film production budget in 1997 (billions of dollars)

Big EU countries		Small EU countries		US	
France	5.53	Belgium	3.18	Majors	53.41
Germany	5.68	Netherlands	4.2	Independent	-
U.K.	8.34	Luxemburg	0.66		
Spain	2.97	Ireland	5.08		
Italy	3.44	Denmark	2.6		
		Finland	1.65		
		Sweden	2.63		
		Austria	1.23		
		Switzerland	0.82		
		Portugal	0.44		
Average	5.19	Average	2.25	Average	14.53

Source: Screen Digest, June 1998

However, if content diversity is a difficult economic objective within a globalizing entertainment economy, it might also be politically difficult to promote or organize. Does this rather dominant position of the USA imply that (1) European culture is threatened and (2) that a European response should be imposed? These questions divide both the policy and research communities in Europe, and are problematic in several respects.

Firstly, the assumption of American hegemony is disputable because it assumes on the one hand, that European production is better, because it is not American. It also ignores the fact that most American media groups, and indeed European groups too, are now global multinationals, as illustrated by the recent merger between Canal Plus/Vivendi/Universal. In this respect, it comes as no surprise that former Canal Plus/Vivendi's CEO Jean-Marie Messier declared European cultural specificity to be dead.

Second, European research in this area makes more or less the same mistakes as those observed in the debate on the New World International Information Order. This mistake resides in the fact that studies on the origin of a programme (in itself an irrelevant indicator as the example on the American programming industry just clarified) are used to presuppose effects on the audience, a fallacy that reception analysis within the cultural studies tradition has sufficiently tackled.

Third, it raises the question of what is so specific about European culture, that is has to be considered as endangered (Garnham, 1993). This is a vital but extremely complex research question since it is difficult to imagine how this can be operationalised. It would mean that European research would have to demonstrate what the specific quality of European culture is -- again, a very complex issue since it depends on the interests involved. Quality in broadcasting is something which can be measured in many different ways (Mulgan, 1990). It is in fact related to different assumptions as to the nature of the audience (consumer versus citizens), of broadcasting (being a commercial good or not) and as to the relationship between broadcasting and society.

From this point of view, the mechanisms Europe puts in place to establish a competitive audio-visual industry -- i.e. the Media program, quota and competition policy -- should be fundamentally reconsidered.

First of all, US domination cannot possibly be compensated for through EU funding. The total amount of the Media III program targeted at the production of audio-visual programmes, barely amounts to 350 million euro for 2000/2005, -- in no way comparable with the average production budget of the US major

companies. To push the comparison a bit further: the total budget of Media 1 was similar to that of just one high budget US production, i.e. Titanic.

An interesting paradox within European policy thinking emerges here: promoting competition and free market as the ultimate benchmark for free movement of goods and services within the community is not easily compatible with any support, based on cultural interests, of the broadcasting industry. This would mean an agreement has to be reached between big and small countries whom both have different objectives and interests in this area, as illustrated by the quota discussion in the Television without Frontiers Directive.

Smaller countries not only have much higher import rates than the bigger European ones, but they also complain about being too dependent on their big European neighbours. This came to the fore in the quota debates at the end of the 80s. In order to protect the European broadcasting industry, it was suggested that each country would have to schedule more than 50% of European programmes. In response, the small countries aired the view that this would oblige them to buy more expensive European programmes when they could buy cheaper elsewhere (from the US). The whole debate resulted in the adoption of the EU recommendation that member states should do their best to schedule as many European programmes as possible. Not only did the whole issue illustrate that quotas are economic and in this context to a large extent contestable, another fallacy appears: the scheduling of European content does not per se mean that it is actually watched. Audience research as well as political economy have clearly shown that one can only speak of homogeneous markets in broadcasting when the cultural proximity of the audiences is close. As we have said before, there seems to be very little interest indeed from a Southern European viewer in watching a Scandinavian soap and vice versa. This underlines the fundamental friction between the policy of a united Europe for business and the continuing constraints of cultural specificity.

Another level of complexity is added by looking at how EU competition policy comes into play here. EU competition policies are meant to reconcile two conflicting objectives. On the one hand, sizeable corporations are essential for accomplishing internal market objectives and strengthening European competitiveness. Improving technical efficiency in the production and introduction of a given set of (new) services at the lowest possible cost and overcoming fragmentation are important criteria in the industrial economic analysis of alliances. On the other hand, these holdings have to be deterred from taking advantage of their increased market power to undermine competition, i.e. their potential for anti-competitive behaviour towards both their competitors and suppliers and the abuse

of a dominant position vis-a-vis the users (Kiessling and Johnson, 1998:157; Cini and McGowan, 1998). As regards the media, Community competition policies adds an extra dimension stemming from the added cultural value of the software product. Here decisions regarding competition may have an impact on media pluralism and diversity, policy principles which in Europe are traditionally associated, among other things, with a public service mission, but as such do not belong to the specific objectives of the EC competition policy which is concerned solely with fair competition. It is questionable whether objectives for pluralism and diversity have been met by the outcomes of EU competition policy.

With regard to the application of the rules concerning state aid, an area that is traditionally not regarded as anti-trust, it is the general belief of the Commission that state aid does not contribute to economic efficiency. Its only benefit is to remedy market imperfection. It is in the light of this conviction that state-aid cases have been adjudicated. As the European Commission has often pointed to the need to remedy structural weaknesses in the audio-visual sector, it seemed until recently that the application of the state-aid rules in this area could be positively evaluated (CEC, COM (96) 160 final of 17 April 1996), in particular since the EC Treaty made provision for a new exception to the application of state-aid rules in order to support culture (art. 87.3.d). In this context it should, however, be emphasised that the Commission and the Court seldom deviate from the legal essence of the European unification, i.e. broad rules and no exceptions. Discriminatory and non-proportional provisions included in German, French, Danish, Spanish, Italian, Dutch and Greek support mechanisms for the film industry have had to give way under pressure from the Commission (Pons, 1996). Since 1998, however, the Commission has been seeking to lay down a more general policy line with regard to state aid to cinema and television programming. In its Decision of 9.6.1998 on the French system of support to film production, the Commission set out a list of 4 specific criteria on the basis of which it intended to assess state aid to cinema and TV programme production under the cultural derogation of Article 87.3.d. In particular the provisions that aid to the audio-visual sector should be limited to 50% of the production budget and that producers receiving such support must be free to spend at least 20% of the film budget in another member state led to uproar and unrest in professional and political circles. Significantly, the often heard point of view that 'culture should not serve as an alibi for subsidizing an industry' has been neutralized by the adoption in November 2000 of a resolution stating that the audio-visual industry is an 'exceptional cultural industry'. Assistance to film and media 'forms' is, in the wording of the resolution, 'one of the most important means of maintaining cultural diversity, which is precisely the objective of government assistance'. Whether this marks a turn in the tide has still to be seen.

Public service as guarantee for quality and diversity?

In so far as the Treaty recognises the importance of the concept of public service and provides guarantees for its existence and maintenance (arts. 7d, 86, 87.3.d), the Decisions of the Commission undoubtedly point to a certain goodwill. In the audio-visual sector member states have gone so far as to emphasise the importance of public broadcasting by endorsing the Protocol on Public Service Broadcasting, which was an annex to the Amsterdam Treaty⁵. Of more fundamental importance, however, are the proceedings that the Commission has initiated concerning state support to public broadcasting. Various private broadcasters have complained that the licence fee system distorts competition, especially when coupled with advertising on public service broadcasters. Several complaints have been brought before the Commission on this basis by the private broadcasters (Spain, Portugal, Italy, France, Germany) (Oreja, 1998). The Portuguese RTP case was the first one on which the Commission has passed judgement (Decision of 7 November 1996). The Commission concluded that the public financing which the RTP enjoys is not a form of government support because, in return, the RTP is required to fulfil public service tasks which are clearly defined by law. Whether this has had the effect of creating an important precedent is, however, another question, particularly since the Commission's Decision has recently (May 2000) been cancelled by the Court of First Instance. It found that the Commission had incorrectly reached a decision too quickly and should therefore start a more thorough enquiry. Similar failings had been denounced earlier by the Court of First Instance in the case of TF1 versus France 2 and 3. It is clear that, in the eyes of the Commission (Oreja, 1998) and the Court of Justice, support measures always have to be tested against principles such as transparency, proportionality, objective necessity and the like, which are arbitrary in that they have never been precisely defined. This raises the question, for example, as to whether licence fees can be maintained, and if so, how and in what form. Are they indeed proportional? In other words, is public broadcasting funding limited to the strictly necessary to allow fulfillment of the public service remit? Is it objectively necessary with respect to the public service mission? Is it really related to the added costs incurred by fulfilling a public service mission? As the added cost is almost impossible to calculate and criteria like proportionality are interpreted restrictively, public service broadcaster remain in a situation of legal uncertainty.

However, even if public service institutions were to survive, one should bear in mind that Public service status is not in itself a guarantee for varied content, or for 'providing what the market does not offer'. One should bear in mind, when being critical of the market, that one should also be critical of public broadcasting as an

instrument for relevant policy, as the EU competition policy quite rightly pointed out.

Indeed, the whole debate on the nature of public service broadcasting as opposed to commercial broadcasting rests on two assumptions (Burgelman, 1990). Firstly, public broadcasting has no inherent operational mechanism that determines its management, unlike commercial broadcasting (profit making). Public broadcasting is only a concept. Second, and by consequence, it is assumed that a public service exploitation model in broadcasting is a distinct organizational way of running a broadcasting institution.

More precisely it is accepted that public service broadcasting offers different outputs in terms of programming than commercial broadcasting (which is the main reason why public broadcasters are defended) because public service broadcasting is a different way of organizing communication. This specificity of public service broadcasting is very seldom challenged. On the contrary, the specific nature of public service broadcasting is accepted, almost as an ontological fact, which has been there from the beginning of broadcasting. Therefore one can almost speak of an ideology of public service broadcasting: public service broadcasting was and is superior to commercial broadcasting because it is organized in a non-market way. Many studies have, in the meantime, demonstrated that the way public broadcasters operate is very similar to commercial ones.

This means that having a public service output in broadcasting is not only dependent on media inherent characteristics. In fact, it may be more related to non-media specific elements, such as political culture and economic policy than to the specific way in which it is organized as a mass medium.

It follows from this non-media centric point of view that the dilemma presented by current regulatory debates on communications policy – i.e. between the need to regulate a communications system so that it fulfils its public service role, and the need to deregulate it commercially in order to fit a given cultural project – may be false.

Simply because regulating into a public service way, because of its supposed rationale of quality, culture or independence, is not the most important reason why such a system was chosen for by the policymakers. A non-media centered approach even suggests that a public service can also be chosen for its conservative, middle of the road, non-critical or whatever characteristics a market approach is said to be typical for.

The same reasoning goes for the implementation and articulation of the concept of universal service in telecommunications. Although large-scale comparative analysis of the regulatory concept of universal service is lacking, what is available

(Garnham, 1988b; Burgelman & Verhoest, 1994) demonstrates that it was, like public service in broadcasting, a compromise between all dominant interests (and the fact that business users and residential users had no other choice than to use the same network). It differs from country to country and is not a God-given concept that has a regulatory dynamic of its own. This means that 'solving' the present problems of equal distribution and access to telecommunications in Europe, in a fully liberalized market, by imposing a concept like universal service -- or by proposing regulatory concepts in which infrastructure, platform services and applications are seen as separate entities -- without negotiating this with industry, political authorities and so on, is bound to fail.

Public service and universal service should therefore be regarded as a normative and dynamic set of rules which have to be constantly reviewed and redefined (but not reinvented) in the light of the constantly changing nature of power relations and society.

Political and regulatory convergence of broadcasting and telecommunications at the global level: The impact of the WTO policy actions

Last but not least is the extra burden the WTO might actually put on the political and economic trends in European broadcasting and telecommunications. It could result in more conflicts between cultural diversity and the noticeable oligopolistic reality of the market on the one hand, and on tensions between the global policies, EU policy and the regional priorities on the other. As a consequence, a blurring of definitions might put extra pressure on maintaining traditional mechanisms like subsidies and public service for promoting content creation and diversity.

This last point becomes crucial within the coming WTO negotiations, launched in Qatar in November 2001 (Pauwels and Loisen 2002). Although the European Union was able to postpone the dismantling of its audio-visual policy and the liberalisation of the audio-visual sector during the Uruguay round, it did not succeed in exacting a separate cultural status for the audio-visual sector. The European audio-visual sector is therefore not safeguarded against future attempts at liberalisation. On the contrary: other contracting parties have already started on this liberalisation and have made concrete commitments. As few liberalisation commitments have been made in the audio-visual sector and an elaborate list of MFN exceptions has been drawn up, the only immediate effect of the GATS Agreement is that all members who have not entered into agreements will undertake to keep any rules and measures in the audio-visual sector which they

subscribe to now or in the future transparent (Article III of GATS Agreement). In this way, the largest and most important opponent of imposed liberalisation of the sector, the EU, has primarily gained time and a certain amount of room for manoeuvre. It remains temporarily free to enforce its regulatory framework and support measures.

However, the increasing convergence between traditional and new, digital, communications media (telecommunications and other ICT services) is leading to a situation where audio-visual sector policy and regulation are increasingly coming into contact with other forms of service provision. The result of this convergence is that borders between formerly relatively isolated concepts such as 'audio-visual services', 'electronic commerce' or 'online trading' are becoming blurred (Wheeler 2000, 254, 257; Deselaers & König 1999, 148). In view of the stalemate on the audio-visual dossier during the Uruguay round, it may be supposed that the advocates of imposed liberalisation of the audio-visual sector will attempt to crack the audio-visual market via the points of contact between various types of service. This is even more valid insofar as major steps towards liberalizing telecommunications had already been undertaken during the Uruguay round and in subsequent years. Although extreme differences between mainly the US and a number of developing countries meant that agreement was only reached on value added services during the Ministerial Conference in Marrakech (which formed the closing section of the Uruguay round), the deregulation of the entire telecom sector followed soon after. Basic telecommunications services, which represent approximately 80% of total turnover in telecommunication services trade (Barth 1999, 60) were finally fully included in GATS following difficult negotiations on 15 February 1997 (Fredebeul Klein & Freytag 1997, 477, 483, 486).

An additional aspect which may ensure that it will become ever more difficult to consider audio-visual services as a cultural product, is the fact that the new concepts arising from convergence are not yet clearly defined. In the past it was possible to fall back on the position that regulatory interference in the distribution of content was defensible for cultural reasons during discussions about the audio-visual sector. Thus Europe could keep free of liberalization commitments and advance the provisions of the Directive 'Television without Frontiers' without being sanctioned. However, where audio-visual services can be seen as a form of electronic transport, the issues are not so clear (Wheeler 2000, 257; Deselaers & König 1999, 148, 150). Furthermore, the US wishes to classify some products which are delivered and downloaded via the Internet as virtual goods, making them fall under the GATT regulation, which (for the time being) demands much stronger liberalization than GATS (Deselaers & König 1999, 151). Incidentally, this position is not only supported by the US, but also by another major trading power, Japan.

In view of the dominance of Japanese companies in the production of CDs, the prospect of a fully liberalized Internet market is an important reason for siding with the US (*Le Monde* 23 November 1999, 8). This may therefore mean an end to the cultural exception and the situation where member states can subsidize the audio-visual sector.

However, as previous negotiations within the GATS framework were disappointing for the US, an attempt is now being made to apply the rules already negotiated for other sectors to the audio-visual. Anticipating the position that the Europeans will probably adopt in this dossier, the US is attempting to demonstrate that sufficient safeguards exist for preserving the cultural component of audio-visual services. Thus, Article IV of GATT (dating from 1947) provides for an exception concerning the rules for national treatment of cinema films, GATS Article XIV (a) and GATT Article XX (a) provide for possibilities to intervene on a regulatory basis “to preserve public morality” and the acceptance of obligations does not by definition mean no possibility of acting via regulation ... “so long as the regulation is not administered in a way that represents an unexpected trade barrier” (United States, Communication from the United States – Audiovisual and Related Services; 18 December 2000).

In other words, room for European manoeuvre is limited.

Conclusion: Building the European Knowledge society on converged policy making?

If a European Knowledge Society is to appear, the three aspects of EU regulation - competition policy, telecommunications policy and media policy -- must be tuned into each other.

The first obstacle to overcome is the fact that European Information Society policy is, to a large extent, concerned with infrastructure. The issue of what content should be provided is very sensitive for the member states, as they want as much subsidiarity as possible. This means that two rival policies are at work: a ‘centralist’ hardware policy as opposed to a decentralizing preoccupation with subsidiarity in terms of content to be offered on that infrastructure.

The second obstacle (related to the first) which must be overcome is the conflict between the will of the EU to install fair competition, open the market, abolish the monopolies, etc. (EU competition objectives) and the need for at least a stable environment with guaranteed revenues to attract the necessary investment in

trans-European networks (EU industrial policy objectives) on the one hand, and the safeguarding of diversity and pluralism on the other hand (EU media policy objectives). Moreover EU competition policy is not always compatible with financing mechanisms for Public Service (state aid) or EU action programmes such as Media. This means that EU policy is rather inadequate when it comes to tackling what has always been a major concern -- promoting cultural diversity in mass media, as demonstrated by the problems associated with the import of American broadcasting.

The last is even more fundamental. Since the EU is a top-down construction, composed of nations which have, as their first priority, to gain their legitimacy at the national level, it is inevitable that the principle of subsidiarity will not always smooth the path of the European integration. Europe's specificity resides in fact that it is the local (nation states), which has been there far longer than the global (the EU). As argued throughout this article, there is nothing specific about European media policy. In fact, the main issues at stake are the same in other industrialized countries, but it is the context of Europe that makes them unique. This uniqueness lies in the fact that though Europe is a market, it lacks the necessary homogeneity to behave like a real market for communication services; it is also a political unity, without most of the 'normal', bottom-up political legitimacy such a unity requires. It is this tension between the local and the global reality that makes a pan-European communication policy so problematic, much more than the technical problems.

Notes

¹ The main ideas of this article were already developed in Burgelman (1997). The views in this chapter are the ones of the authors and do not represent the views of the EC. The authors want to thank Jan Loisen for his input.

² Since the regulation came into effect a number of mergers involving audiovisual media and allied services have been reported. Statistics on the merger regulation application moreover show increased merger activity in the telecommunications and media sector since 1996 (Cini and McGowan, 1998:124). Of the 1158 decisions which have been taken until now on the basis of the merger regulation, about 45 decisions are related to the media sector and 142 to the telecommunications sector. More importantly, however, six of the twelve negative decisions made until now under the merger regulation directly affect the media sector: MSG Media Service (1994), Nordic Satellite Distribution (1995), HMG (RTL/Veronica/Endemol (1995), Bertelsmann/Kirch/Premiere (1997), Deutsche Telekom/Betaresearch (1997) and MCI Worldcom/Sprint (2000) (Pauwels and Cincera 2001)

³ The many different agents in this field, from all kinds of network operators to consumer electronics companies and software distributors, seem not to be driven so much by rational, long-term strategies, but rather by a possibly short-sighted compulsion not to miss out on current developments and state-of-the-art technology (Burgelman, 1994).

⁴ Here, this relates mainly to the major producing countries such as Germany, Great Britain, and France. Often however this increasing market share held by the national film can be attributed to one or more box office successes ('The Full Monty', 'Bean', 'The fifth element', 'Knockin' on heavens door', 'Rossini', 'Kleines Arscloch',...) so that it is perhaps too early to talk of a real structural trend (l'Observatoire de l'Audiovisuel, Statistical Yearbook 1999: 78).

⁵ The protocol declares that, considering that 'the public broadcasting system in Member States is directly connected with the democratic, social and cultural needs' of every society and the need to maintain media diversity (...) the provisions of this treaty (...) do not detract from the rights of member states to provide financial resources for public broadcasting, in so far as such resources are provided to broadcasting organisations for the fulfilment of the defined and organised missions entrusted to them in the public service area, and providing that these resources do not influence trading and competition conditions in the Community to such an extent that, taking into account the demands of public service, they are opposed to the public interest."

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