Media Concentration in the European Market. New Trends and Challenges

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1. Concepts

The last years of the twentieth century have been witness to three moments of far-reaching consequences and great symbolic significance: in the political arena, the fall of the Berlin Wall spelt the end of the division of the world into two antagonistic blocs; in technology, the development of the Internet meant that information could be transmitted and interpersonal communication could be conducted instantaneously and cheaply between people of different countries and continents; and, from the economic viewpoint, the birth of the World Trade Organization heralded the arrival of a globalised world, with increasingly fewer economic barriers.

The communications industry has been no stranger to that phenomenon, characterised by the creation of greater links between people who are not geographically close and by the competition of corporations in a global marketplace. For instance, in the year 2000, 40% of the mergers and takeovers of companies on a global scale—whose value reached the record figure of 3.5 trillion dollars—took place in the telecommunications, new technologies and communications companies sector. That year, two of the largest concentration operations were carried out by communications groups: AOL acquired Time-Warner and Vivendi gained control of Universal.

The globalisation phenomenon has re-opened the debate on the concentration of communications companies. Some of the controversial issues remain the same as those raised in earlier decades: Do citizens have access to differentiated sources which are really accessible so as to be able to compare information and make informed decisions? Do market conditions provide favourable conditions for the entry of new

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1 Teresa La Porte et al. (VI.2001), Globalisation of the Media Industry and Possible Threats to Cultural Diversity, report prepared for the European Parliament, University of Navarre, Pamplona.
contents providers? To what extent should a communications company be allowed to grow in a market? How and by whom should the concentration processes of communications companies be regulated?

However, today new challenges and voices of alarm have been raised, fuelled by irrefutable figures as well as groundless fears. In the first section of this chapter we will study the main theories and concerns on media concentration; we will then go on to analyse conceptual aspects which will allow us to identify the scope and real nature of this phenomenon: Where does the difference lie between industrial concentration and market concentration? When can it be affirmed that a physical or judicial figure controls a company? Which markets are relevant for the study of concentration processes (local, regional, national, international)? How do concentration processes come about; and what kind of communications groups emerge as a result of the mergers, takeovers and launching of new media?

1.1. Main Hypotheses in Recent Research

Thucydides provides us with the first surviving written testimony on the effects of the concentration of power. This Greek historian fought in the Peloponnesian war in the fifth century B.C.; pondering on the causes of the defeat of powerful Athens by Sparta, Thucydides left for posterity his pithy vision of the mechanisms of politics and government: “hegemony annihilates itself”.

So, the Athenian historian considered that any attempt to control massive power over a long period of time was destined to failure: just as in the myth of Sisyphus, reaching the goal was easy, but he would inexorably fall down the slope again just as the desired end was on the point of being attained.

In the business arena, history also shows that unfettered growth produces paralysis, a loss in flexibility, excessive bureaucracy and a weakening of the corporate culture: indeed, the rankings of the largest companies show constant fluctuations and few hegemonic positions sustained over time.

Despite this, the awareness of this fact does not help to reassure many writers. Marx, will say, for example, that without the coordinated action of the weakest (the proletariat), the strongest (the owners of capital)—even though they may not always be the same—will tend to exploit the rest.

Even though hegemonic positions do not tend to last for long, and although in today’s society there does not appear to exist a class struggle, there are risks of dominant positions in any market: at least in the “transitional periods”—when a company has achieved a good growth rate but has not yet felt the negative effects of its inordinate size—the concentration of power can prove to be an obstacle to free competition.

In the area of communications, situations of hegemonic power are particularly serious: as well as obstructing the entry of new competitors into the market, they hinder the exchange of ideas and imply that one business group may exert undue influence over political decisions and public opinion.

For this reason it is not surprising that the first systematic reflections on the effects of the concentration of communications companies go back to the Second World War: in 1942, H. Luce, founder of Time magazine promoted the work of the Hutchins commission, which after several years of investigation published the celebrated report “Freedom of the Press”. Already then, the Hutchens report identified the phenomenon of concentration as one of the three great dangers for the freedom of the press.


In Europe, in the sixties and seventies, the governments of some countries, the European Council and the Commission of the European Community began to take an interest in the possible negative effects of the growth of companies; in that context can be found the report drawn up by M. Leynen in 1979—which would be a working document for the Council—, the national reports ordered by the Commission, especially from 1978 onwards, the report presented by E. Gunter to the German government in 1967, the Rodgers report (1975) and the report conducted by G. Vedel for the economic and social Council of France (1979).

Also in those years the first work on the problem of the lack of transparency in the capital of communications companies was produced (M.H. Seiden, 1974), and on the effects of concentration in the political system (H. Schiller, 1976) and on the homogenization of contents (W.T. Gormley, 1976).

Concentration was a reality clearly bounded by national borders: in almost every country, the presence of foreign companies was hardly significant, so that the studies were decidedly national in nature. In Europe, with the exception of Great Britain, Finland and Luxembourg, the audiovisual sector was dominated until the mid-seventies by public monopolies, which—at least in theory—had been conceived, among other reasons, to guarantee information pluralism. Therefore, until the nineteen eighties, research on media concentration in the old continent tended to be limited to analysing the degree of press concentration in each country.

From the nineteen eighties onwards, work was published on the concentration of the print and audiovisual media, but almost always from a “national” perspective. In some cases, such as in the work published

by G. Wedell and G. M. Luyken or J. P. Jeandon, the European market was analysed but only as a mere account of the situation of various national markets; it would still take some time before the first quantitative analyses exploring the problems and challenges posed by the concentration of communications media in the European market would make their appearance.

Another line of work—particularly prolific in the eighties—refers to the so-called “critical theory”? This academic school, quite broadly defined, is made up of researchers who assume some historical and economic postulates of Marxism and a great many of them have been trained in the area of political economy. Of the most well-known work of this period are the studies of J. Curran and J. Seaton, A. and M. Mattelart and B. Bagdikian. In Spain, the works of E. Bustamante and R. Zallo and J. C. Miguel stand out. Those books refer, above all, to the hypothetical negative effects of concentration; however, not one of them is based on quantitative analyses of the market.

Other research makes an analysis of the legal aspects of concentration.

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4 On those first works referring to concentration, see Carles Llorens-Maluquer (2001), Concentración de empresas de comunicación y el pluralismo: la acción de la UE, doctoral thesis, Universidad Autónoma de Barcelona, Barcelona.

5 George Wedell and Georg-Michael Luyken (1986), Media in Competition, The European Institute for the Media, Manchester.


11 Enrique Bustamante and Ramón Zallo (coord.) (1988), Las industrias culturales en España, grupos multimedia y transnacionales, Akal, Madrid.

12 Juan Carlos de Miguel (1993), Los grupos multimedia. Estructuras y estrategias en los medios europeos, Bosch, Barcelona.
such as the work of A. Van Loon and G. A. I. Schuijt,13 or A. Lange and J. L. Renaud.14 On the other hand, B. Compaine,15 B. Guillou,16 R. Picard,17 A. Nieto and J. M. Morri18 and F. Cabello19 are more interested in company strategy and the typology of communications groups.

In 1993, A. Sánchez-Tabernero, with the collaboration of several researchers of the European Institute for the Media, published the first study on concentration in Europe based on a detailed quantitative study of 17 countries. The Institute itself has continued this line of work with partial reviews of the report or with the analysis of new problems. Other Institute researchers prepared several documents at the request of the Commission of the European Community, such as the “Transparency and Media Control in Europe” report, published in 1995.

In the nineties—especially towards their close—partial studies on concentration in Europe have been published with diverse approaches and contents:

a) Analysis of an exclusively national scope;

b) Compilations of legislation in the European arena, the most notable is the book by E. Machet and S. Robillard20;

c) Analysis of the “new world order” of information and proposals on the need for limiting the power of the giant communications companies: C. Hamelink,21 N. J. Woodhull and R. W. Snyder,22 D. Alger23;

d) Reports on concentration or on the lack of transparency in the advertising industry, both from the perspective of the advertisers as well as from the position of the advertising intermediaries: R. Rijkens24 and F. J. Pérez Latre25;

e) Biographies of the principal company owners and studies on the communications groups: J. Tunstall and M. Palmer,26 K. Maney,27;

f) Studies on the communications industry in Europe: A. Pilati and G. Richeri and annual reports by agencies and media buying companies (Zenith Media), investment banks (James Capel), research

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14 André Lange and Jean Luc Renaud, The Future of the Audiovisual Industry in Europe, The European Institute for the Media, Manchester.
24 Rein Rijkens (1992), European advertising strategies: the profiles and policies of multinational companies operating in Europe, Cassell, London.
institutes (IDATE, The European Institute for the Media) and public institutions (the European Audiovisual Observatory).

However, no up to date analysis of the phenomenon of the concentration of communications corporations in Europe has been carried out in the last few years. This study takes into account certain facts which were barely conceived of or had not become sufficiently important at the beginning of the last decade:

a) The globalisation of markets and the emergence of new media have changed the notion of “relevant markets”: they can no longer only be linked to geographical areas bounded by national borders.

b) The development of new technologies necessitates the establishment of two types of mechanisms ensuring free competition: some refer to distribution (systems preventing discrimination in access to the “highways”) and others to content (media ownership and market shares).

c) Concentration in the advertising sector has provided advertising agencies and media buying companies with enormous negotiating power; for this reason, proposals on a possible review of the legal framework must be formulated without excessively weakening the media’s position with regard to the advertising intermediaries.

Let us now go on to examine the cases where company growth results in a market concentration; we will also examine the mechanisms –as well as industrial growth– which can cause the appearance of hegemonic groups.

1.2. Industrial Concentration and Market Concentration

Concentration can be analysed from the market viewpoint or from the perspective of the companies. In the first case, concentration increases when the position of dominance or influence of the main companies becomes stronger, the public’s power of choice is reduced and when some “independent voices” disappear. From the business point of view, concentration implies industrial growth of the communications groups.

Some processes of industrial concentration do not generate market concentration: for example, if a company which owns radio stations in Greece and is not present in the Swedish market sets up a new radio station in Stockholm its industrial concentration will be increased but it will also cause a fragmentation of the radio broadcasting market of that capital city.

On the other hand, market concentration may not be the result of the growth of a company: in many European cities and especially in the United States, newspaper closures have given rise to their competitors becoming local monopolies.

As Compaine and Gomery warn, monopolies and oligopolies are wonderful for the owners of the companies which find themselves in a privileged position, but are seriously harmful both for the companies attempting to penetrate the market as well as for consumers. For this reason, there is general consensus on the need to avoid positions of excessive domination which may imply a likely risk for free competition.

But controversy does not arise in the field of general principles but when practical applications are put forward. For example, what is a

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“reasonable” market share? Should the same maximum share be established for each type of media: newspapers, magazines, radio stations etc.? What is a meaningful geographical area: local, regional, national, European? Do there exist other ways of gaining dominant positions which do not involve market percentages: for example, the control of “bottlenecks” in production or distribution? When can it be determined that an owner or group of shareholders “control” a company?

Some of these questions do not allow for a “scientific” reply: there is no easy way to distinguish whether it is better, for example, that a communications group reach 25% of the market share in daily press, radio and television or that it possess 50% of daily press circulation, but is not present in the other two product markets. It is not even possible to formulate criteria applicable to heterogeneous markets: legislation could ban a television company from holding 40% of subscriptions to pay television channels in the United States with the aim of avoiding a situation of domination; however, in much smaller markets, a lower percentage could present difficulties for the company’s economic viability.

In order to avoid these cases, the regulatory and control bodies tend to concentrate their activity on external growth processes: they examine if mergers or company takeovers give rise to situations where there is a risk of abuse of a dominant position. In contrast, they usually place less emphasis on the analysis of the internal growth processes (launching of new media) and on other factors which favour market concentration (such as the disappearance of competitors).  

The regulation of external growth has the advantage of being able to be carried out “ad casum”: each concentration operation is studied and it is decided if it should be approved, banned or permitted, but on condition of fulfilling some requirements (such as carrying out divestments or making the commitment not to hinder competitors’ access to distribution channels).

On the other hand, internal growth is more difficult to deter, for at least three reasons:

a) Firstly, because—in those cases—one or several companies’ increased presence in the market is a consequence of their capacity to innovate and their favourable reception by the public: anti-concentration measures would mean that a company in a dominant position would be prevented from launching new media in the same market or from increasing the transmission or audience size of the media it owns. That is to say, restricting the possibilities of internal growth would be tantamount to penalising innovation, the search for higher quality and the decision to take on business risks.

b) Also, the increase in a communications group’s market share could be compatible with increased offer available to the public; this has been the case, for instance, in many countries around the world in the last twenty years with the proliferation of television channels; in some markets, the leading television company has set up new channels and has even increased its market share, but the public has many more options at their disposal, even though several share the same ownership.

c) Finally, it is certainly not easy to determine on a hard and fast rule on what should be the maximum levels of market concentration not to be exceeded under any circumstance. Those market shares should be established for each type of media (newspapers, magazines, radio, television....) and for each type of market (with regard to its population). They should also include provisions for “cross ownership” for multimedia corporations. On the other hand, market share could be calculated based on the time the media are consumed by the public, on the total turnover figures of the companies in the sector or on the advertising market.

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There are several procedures for the calculation of the degree of market concentration: some—such as the Index of relative entropy—are not widely used, owing to their excessive complexity. Others, such as the Curve of Lorenz, permit a graphic approximation to the problem of concentration, but are not particularly appropriate in enabling regulatory bodies to reach decisions.

The Curve of Lorenz compares the real situation of concentration with a hypothetical case in which concentration would equal zero. The vertical axis indicates the number of companies expressed cumulatively and as a percentage, from lower to greater; the horizontal axis shows the chosen variable (turnover, market share, etc.), also expressed by a cumulative percentage. If the size of the companies—referring to the variable chosen in order to measure the degree of concentration—is the same, the Curve of Lorenz will be where the graph is bisected; and the further away the line is from the diagonal, then greater will be the degree of market concentration.

Other measurement systems are not precise enough: for example, the Gini Index merely expresses in mathematical form what the Curve of Lorenz shows graphically: it takes the rate of the numerical distance between the bisector of the angle and the real curve of Lorenz. With regard to the “Four firm concentration ratio” (CR4), this is limited to adding up the market shares of the four leading companies in a market. So, in a market A where one company has a 77% share and another three have a share of 1% each one, then it will have a CR4 of 80. Market B where the four largest companies have 20% each will have the same CR4; however, in this second case, the chances of a company abusing its dominant position are fewer.

One of the procedures most applied for measuring the intensity of competition or the degree of concentration in a market is the Herfindahl-Hirschman Index (IHH); it is a simple formula and expresses more than the CR4; it is calculated by adding together the squared market shares of the companies of a certain sector.

We will look at two cases. In market A there are only four radio companies with the following audience shares: 70%, 20%, 5% and 5%. The IHH of this radio station market would be 5.350 (the added squared figures of 70, 20, 5 and 5). In market B there are also only four radio stations, but each one of them has an audience share of 25%; in this case, the IHH would be 2.480, which is the sum of adding four times squared 25. A higher IHH means a higher level of market concentration and a lower intensity of competition.

The IHH is useful for comparing situations of concentration in different markets and for viewing over a period of time the evolution of the intensity of competition in a market. However, it is impossible to establish an IHH from which it can be said the degree of concentration is “excessive” or “not tolerable” for the regulatory authorities: that figure depends on the characteristics of each market, the type of business, and, in the last analysis, on the decision taken by the public through their political representatives.

For instance, in some countries, people may be more concerned by the risk of cultural colonialism than by the growth of home-grown communications corporations; this has traditionally been the case in Austria, Ireland and the French-speaking area of Belgium, as they are the natural areas for expansion for companies from Germany, Great Britain and France respectively. This circumstance explains why the legal frameworks of the first three countries mentioned permit a high degree of concentration, favouring the development of Austrian, Irish and Belgian communications companies.

Market dominance has been calculated up till now with regard to two possible realities; the total company turnover and audience share or (distribution) reached. However, it would be more significant to analyse the share reached of the public’s time: this system would not
only enable a joint measurement to be made of all the media’s presence in the market –print, audiovisual and interactive– but it would also more clearly reflect the capacity of each company to modify public opinion; a monthly magazine read for half an hour would not have the same influence as a television channel with a viewing time of two hours per person, even though the number of readers and viewers were the same.

Having said all this, regulators should establish measurement and control systems of the degree of concentration which can be put into practice; because to attempt to establish the “perfect system” would mean also having to analyse the degree of public attention, the place of consumption, the type of contents offered by each medium, etc. And those realities are of such complexity that to measure them is impossible or would require too disproportionate a cost.

There also exist other possible ways of abusing a position of dominance in a market which do not originate in achieving a particularly high turnover or share of the audience: vertical integration implies that one or several companies can control some “bottlenecks” in the process of the preparation or distribution of contents and can acquire a position of “gatekeeper” which means they can prevent the appearance of competitors and impose conditions.

In latter years the most widely known case in the world of possible abuse of its dominant position through a strong vertical integration has been that of Microsoft: in the US and EU the organs charged with defending competition examined if the link between the operative system (Windows) and the browser (Explorer) implied disloyal competition for other companies (such as Netscape) and represented a medium-term risk for consumers both with regard to price policies as well as a loss in incentives for innovation.

In the area of audiovisual media, there are a number of types of possible “bottlenecks”: exclusive broadcasting rights of some programmes, conditional access systems (decoders, browsers, guides of electronic programming and operative systems), and telecommunications systems (cable and terrestrial or satellite digital television platforms).

Occasionally, attractive programmes can encounter insurmountable difficulties in reaching the public when no access is available to the appropriate distribution channels. And, in the opposite sense, the economic viability of some distributors may depend on their being able to acquire certain contents (especially rights to broadcasting sporting events and to the most popular films). On the other hand, in the print sector competition is rarely distorted by a process of vertical integration.

In this study some systems are used to analyse the degree of concentration which, despite their drawbacks –as we have already mentioned, all measurement processes are necessarily limited–, allow for the identification of the fundamental problems of concentration of communications companies in Europe. In the quantitative analysis in chapter II the market share of the leading companies in each sector is indicated and their evolution between 1990 and 2000 is analysed. Other problems referring to the possible distortion of free competition are analysed with the study of particularly significant cases.

In the following section of this chapter we will deal with a controversial issue: how can we determine that a certain physical or legal figure has gained control of a communications company?

1.3. The “Control” of Companies

Since 1776 when Adam Smith published his “Inquiry into the Nature and the Causes of the Wealth of Nations” the idea that rivalry between different companies in a market generates products and services of

34 Alberto Pérez Gómez (III.2000), Las concentraciones de medios de comunicación, “Cuadernos del CAC”, 85.
higher quality at the lowest possible price has had huge currency. Most researchers and policy-makers consider that competition not only guarantees those advantages for the consumer, but also favours entrepreneurial innovation and plurality in information.\textsuperscript{35}

Even still, some writers argue that the main incentive for a company to innovate lies in being able to dominate a market and benefit from its hegemonic position: without those prospects companies would reduce investment in R+D; according to this theory an imperfect market is, to a certain extent, desirable so that innovators can recoup their additional investments; therefore, the key to policy on free competition should not be what percentage is reached by the market leaders, but if there exists an abuse of their dominant position over a long period of time with the result that competitors are prevented from innovating.

This way of thinking is largely based on the principle of “creative destruction” formulated by Joseph Schumpeter. This celebrated economist from the beginning of the twentieth century was one of the first to suggest that temporary monopolies stimulated innovation and economic growth. Those dominant positions tend to have fewer negative effects – according to Schumpeter – than positive ones; monopolies that are not based on legal concessions undergo “economic Darwinism”: the majority disappear and only the better prepared, those more adaptable to change survive.\textsuperscript{36}

The main players of “market control” are the firms. But these, at the same time, are controlled by persons or by other companies who make the business decisions: they choose in which markets to be present and with which products, they select managers and other staff, they approve marketing and investment plans and, in short, it is they who determine how corporations will compete.

In the past, most communications companies were in the hands of individuals or families; also, in previous centuries in some countries many newspapers and magazines belonged to political parties or factions of those political parties. Even today, in many places—for example, Latin America—a great part of the main communications groups is still controlled by a few families.

In states with planned economies and no free market, the mass media are usually the property of the respective governments or of other public entities. It is also evident in those cases who owns the communications companies.

However, the number of companies joining the world of free competition is continually on the increase; and in this economic environment, company capital is more dispersed and in the hands of a greater number of shareholders.

Until a few years ago, it was considered that with possession of over 50% of the capital total control of the company could be exercised. Some writers suggested that participation of between 20% and 50% of the capital gave “partial control”.\textsuperscript{37} This was also established as such in some legal texts.\textsuperscript{38}

The fragmentation of company capital has rendered those legal provisions, to a great extent, obsolete; control is now usually exercised with less participation in firms’ capital. There are several reasons to explain why the communications groups have a greater number of owners and, in many cases, none of them has a majority percentage of capital.

\textsuperscript{35} Jan van Cuijlenburg, On Measuring Media Competition and Media Diversity: Concepts, Theories and Methods, in Robert G. Picard, op. cit.


\textsuperscript{38} See e. g. the Regulation on foreign investment in Spain (RD 2077/1986, of September 25), which in section 1.3. stated “it is considered that a foreign investor can exert an effective influence on the management or control of the Society when his participation is equal to or greater than 20% of the capital”.

a) In the first place, ownership in family companies has already reached the fifth or sixth generation, with a subsequent dispersion of capital among relatives; moreover, some of them have sold their shares for capital gain or because they have lost management control.

b) Also, one way of guaranteeing the permanence of the most valuable employees has been by offering them a share in capital, which has meant the incorporation of new shareholders into companies.

c) The proliferation of mergers and takeovers in the communications sector has generated share gains among the former owners of the companies which took part in those concentration operations.

d) In the audiovisual area, communications groups have formed alliances—both for economic reasons (capital build-up) as well as political reasons (greater power of influence)—with the aim of strengthening their position with regard to radio, television and mobile telephone licence concessions.

e) The necessary capital to penetrate some sectors—such as telephone and cable and satellite television—and the possibilities of international expansion have caused many companies to go public in order to finance those investments. In this way, small investors have begun to buy up minority shares in communications companies.

The dispersion of capital of companies makes it difficult to evaluate the effects of capital transfer in the communications market: the mergers and takeovers can be interpreted in different ways, based on different ways of understanding who makes the business decisions or who has a decisive influence on them.

This fact was clearly shown when the French company Vivendi, chief share-holder of Canal + and one of the foremost pay television operators in Europe, acquired Universal, one of the main film production companies in Hollywood and world leader in the music industry.

For some analysts, with the international expansion of Vivendi, Europe was beginning to close the gap with the North American cultural predominance in the audiovisual industry. However, an article published in Le Monde claimed precisely the opposite; Professor Musso, after reminding us that 54% of Vivendi’s capital was in foreign hands, especially in Anglo-Saxon pension funds, concluded: if the takeover is successful, “a hostile takeover bid of Vivendi will always be possible, which will return the “champion” to its land of birth and turn it into a supplier of American products via European distribution networks (...). In case of failure, the industrial disaster for the European audiovisual sector will be such that there will be nothing left for us to do but prostrate ourselves for ever before the Hollywood dream factory to supply the innumerable European audiovisual distribution channels. Whatever happens, America will win”.

It is not possible—not perhaps convenient—to avoid argument on the interpretation of the effects of concentration operations; but there is a need to establish widely accepted criteria which permit a definition of who controls a company.

In the first place, it is important to clarify if business control is equivalent to editorial control. In the EU’s legal system, the owner of each company has almost complete decision-making power over contents: he names management, determines the competitive strategy, chooses the business plan, approves staff recruitment, etc. Neither the European Community’s legislation nor that of the Member States establishes real areas of autonomy for media managers.

Managers’ room for manoeuvre in setting out the editorial line depends on the “internal rules” of each company: institutional culture, degree of owner’s involvement—or, by their delegation, of the senior managers—in the contents of the media, newsroom statutes, behaviour codes, managers’ negotiating capacity and other unwritten codes.

In second place, it is important to determine with what share of the capital can control be exercised over a company. The Regulation on concentrations of the EU\textsuperscript{40} defines in its articles 3.3 and 3.4 the concept of control currently in force in the legal framework of the European Union:

"Control results from the rights, contracts or other means that, in themselves or as a whole, and taking into account the circumstances de facto and de jure, confer the possibility of exerting a decisive influence on the activities of the company, in particular a) ownership rights of the use of the totality or a part of the assets of the company; b) rights or contracts which permit a decisive influence on the composition, deliberations or decisions of the organisms of the company.

The person or persons or companies will be said to have acquired control: a) being holders of said rights or beneficiaries of said contracts, or b) that, without being holders of said rights or beneficiaries of said contracts, they can exercise rights inherent in the same".

According to this legal text, control is equivalent to the capacity to "have a decisive influence" on the most relevant decisions of the company. The Regulation of the EU discards, therefore, the idea of linking the concept of control to the possession of a certain percentage of the capital. When judging concentration operations, the Commission must appraise if there is a "decisive influence" on the part of a physical or legal person on the capital of a company. As we shall see in chapter IV, the flexibility of this assessment system means it is easier to make an adequate appraisal of the degree of real concentration produced in each market.

A more recent legal document\textsuperscript{41} distinguishes between "sole control" and "joint control": "sole control" implies that one or several physical or legal persons own the majority of the shares with a voting option of a company. However, a concentration operation brought about by a "qualified minority" can also result in a "sole control" situation; it happens in this way a) when specific rights are attached to the minority shareholdings, enabling them to determine the strategic commercial behaviour of the target company ("legal basis") or b) where the shareholder is highly likely to achieve a majority in the shareholders' meeting given that the remaining shares are widely dispersed ("de facto basis").

In accordance with the Notice of 1994, Baches Opi lists seven situations where "joint control" occurs:

a) When two companies share between themselves the voting rights of the "joint venture".

b) When two companies have the right to name the same number of members on the board of directors of the "joint venture".

c) When there is a situation of inequality between two or more companies with voting right ownership of a third company, and several owners can veto decisions referring to essential aspects of the "joint venture".

d) When there is a common exercise of voting rights. Even in the absence of veto rights, two or more companies acquiring minority shareholdings in another company may obtain joint control: i.e. the minority shareholders together have a majority of the voting rights and act together in exercising those voting rights.

e) If one of the parent companies has a casting vote, joint control does not exist. However, it can arise when this casting vote is exercised only after arbitration and attempts at reconciliation or in a very limited field.

f) If each of the parent companies has the casting vote for one year alternatively.


g) Where in a 50/50 joint venture one of the parent companies has a call option which can be used under certain conditions, or a put option\textsuperscript{42}.

Having outlined the concept of control of a company we shall advance further in the study of concentration situations with the identification of "relevant markets". In the following section we shall see how this concept is defined by the European Union and we shall study how it can be applied to the communications industry.

1.4. Notion of "Relevant Market"

The protests, demonstrations and attempts to boycott international meetings on globalisation have been one of the most surprising political and social phenomena of the beginnings of the twenty-first century. In years of few ideological battles—albeit in the more prosperous countries—an antagonistic fight has arisen (that on occasions has gone beyond a dialectic discussion) between those in favour of economic integration on a worldwide scale and those who demand protection for the less developed economies.

The defenders of globalisation believe that economic integration, caused both by technological progress and the general increase in freedom, generates long term prosperity for everyone\textsuperscript{43}. In contrast, those who oppose globalisation see in this phenomenon the potential exploitation of the poorer countries by the richer ones.

In any case, globalisation appears to be an inexorable reality, which particularly affects the communications industry: this sector is technology "intensive"; contents transport is quicker and cheaper, especially in audiovisual and interactive media, but also in the print media; and a large part of the products attracts global audiences, in particular entertainment, but also specialised information, for example, economy and finance, computing or automobiles.

The breaking down of national borders makes it necessary to re-define the context of the markets where problems of concentration and lack of competition are raised. The bigger the size of the market analysed, the less the degree of concentration tends to be: there are more local and regional situations of monopoly than on a worldwide scale, among other reasons—because some markets—owing to low levels of consumption cannot allow more than one company to survive.

In this context, when studying situations of dominant positions in each market, the question is raised as to how far “down” should the policy of defence of competition go: Is it enough, for instance, just to guarantee the public’s choice between several newspapers, radio stations and television channels on a national level or should diversity of offers also be promoted in each region and city?

In order to address this issue, it is necessary to understand that the political, economic and media structure of each country determines which competition policy is the most appropriate; for Spain, where each region has its own parliament with legislative power and governments with widespread powers, the political debate—and, therefore, media diversity—at a regional level is of greater importance than in Sweden; and in Great Britain where the London press has a strong penetration nationwide, the local press monopolies are less important than in France, where the Parisian newspapers are usually marginally present outside the capital.

Policies on free competition should be aimed towards what is possible and set aside Utopian situations of perfect competition and maximum balance between companies present in each market. In this context, the growing number of places—in Europe and, especially the United States—with newspapers in a situation of monopoly can be understood as a


\textsuperscript{43} For example, The Economist (23. IX.2000) wrote in its leading article following the famous anticapitalist protests at the Seattle summit: Globalisation is only "the best of many possible futures for the world economy".
negative but inevitable fact, which is partly compensated for by the appearance and development of many other ways of distributing local information: free publications, radio stations, television channels and Internet.

The European Commission has established two basic criteria in order to determine the markets of reference in which situations of concentration should be measured: contents of the offer (product or service) and geographical area. “The product market of reference includes all products and services that consumers consider interchangeable or replaceable by virtue of their characteristics, price or anticipated use made of them” (art. 7).

The geographical market is defined as “the zone in which the affected companies carry out activities of supplying products and rendering of services of reference, in which the conditions of competition are sufficiently homogeneous and can be distinguished from other neighbouring geographical zones owing, in particular, to that the prevailing conditions of competition there are markedly different to the former” (art. 8).

Therefore, when examining concentration issues, the Commission combines the notions of “product market” and “geographical market”; and identifies as an “unwanted” situation the dominance of one company in the market which means it can conduct itself with relative independence from its competitors, because no replaceable products exist.

The Commission uses the soft drink business as an example of a possible “substitution” (art. 18). In order to determine if the drinks of two different flavours -A and B- belong to the same market, consumer behaviour with relation to a price rise is analysed: if the price of the drinks of flavour A were raised between 5% and 10% and a significant number of consumers passed over to flavour B, then both drinks would belong to the same reference market; indeed, the price policy of the flavour A drinks would be dependent on that of flavour B.

In order to apply the concept of market of reference defined by the Commission to the communications industry it is necessary to determine which media are interchangeable for the public and which is the geographical area in which the messages are distributed: Does the significant rise in the price of a financial newspaper imply an increase in subscriptions to an on-line financial information service? Can the closure of a local newspaper be compensated by the appearance of a news channel in the same city? What degree of substitution exists between magazines and television theme channels or between music radio stations and the variety of adaptations of the model of television made popular by MTV?

Cuilenburg suggests that “for a start, media markets serving the general public may be classified into news and information markets on the one hand, and entertainment markets on the other. As national languages usually bind the consumer markets, in many cases geographically, media markets correspond to national, regional or local markets”.

The appearance of hybrid genres between information and entertainment, the convergence of technologies of information and communication and the development of media of international scope makes it difficult to define markets in terms of contents or products. As Cuilenburg himself warns, “in assessing media diversity in television program supply, do we limit diversity measurement to broadcasting and cable only, or do we take webcasting into account at the same time?”

Indeed, the communications markets are increasingly complex, multimedia, international and difficult to define, because the very same contents use several distribution platforms to reach the public: in practice,
the inhabitants of a local market connected to Internet in their homes, have access not only to conventional offers – publications, radio stations, local television – but also to all mass media which have on-line versions on the Net.

For this reason, some writers have proposed a new concept to measure positions of dominance in a market: “ownership of time”\(^{47}\). No longer can concentration be regulated by establishing limits on ownership of the media; that model referred to a system with a relative scarcity of supply. Neither can a distinction be made between media that inform, educate or entertain.

The use of the “ownership of time” of the public has two advantages: a) it allows the grouping together of several media belonging to the same owner; b) it makes it easier to take into account the relative influence of a medium with regard to its audience. As Woldt explains, “using audience shares brings the assessment of media pluralism closer to the main issue behind media concentration, the potential influence of media on the minds and the behaviour of the citizens. A channel with an average audience share of 30 per cent in principle has a greater chance of exerting influence over the audience than a niche channel with 2 per cent”\(^{48}\).

In order to gain greater operative power for regulating concentration the “ownership of time” model must address certain problems. In the first place, it is not easy, on the face of it, to group together audiences of different media, such as magazines, radio station and webs; in second place, adding together audiences of heterogeneous products, such as a news channel and one of films, implies conferring the same power to influence public opinion to two contents of different characteris-

tics; finally, audience rating measurement systems must be improved so they can more accurately reflect the real data on media consumption.

Market size is another aspect which is permanently under debate. In this study we have chosen two types of geographical markets of reference: the European states and the European Union as a whole. In both cases regulatory bodies exist – national Governments and the EU Commission – with power to prevent situations of abuse arising from dominant positions. A further reason for only studying those markets derives from a fact of political consideration: the most important decisions in Europe are discussed and taken by the European Union institutions and national parliaments.

Although there are situations where pluralism does not exist in local and regional markets, the development of Internet has partly alleviated those problems which, on the other hand, can only be analysed case by case and not with the panoramic vision used in this study. Also, as has been pointed out, in some local markets, owing to their small size and low level of consumption, it is inevitable that monopolies will exist such as in the daily press sector.

In the final section of this chapter we will analyse the typology of communications groups; as the main actors in the media markets, their diversification and growth strategies constantly present new challenges for the authorities charged with safeguarding free competition.

1.5. Typology of Communications Groups

The most successful and dynamic communications companies have not followed uniform paths in their expansion processes. Growth plans have been determined in all cases by the resources available, by the capacity of management to take on new business challenges and by the legal framework of each market. Those circumstances and the different ways each company has of competing have generated a great variety of growth strategies.


Having said this, it is possible to distinguish common tendencies and several models which group together the greater part of the strategic decisions of the companies. In the following chapters we will discuss those tendencies and the causes behind them; for now, we will restrict ourselves to examining the typology of the communications groups and look at how the different criteria of media accumulation affect concentration.

It is important to remember that in the area of communications, together with the general objective referring to concentration - the determination to prevent any company from abusing its position of dominance in the market and harming possible competitors or their clients - there is another objective of a more specific nature: that nobody may exert undue influence on public opinion⁴⁹.

With regard to this second aspect, more attention should be given, for instance, to a company with ownership of radio stations transmitting news contents with a market share of 40%, than to another company with a similar share but whose stations exclusively broadcast music. Therefore, the result of showing the different typologies of communications groups can be highly revealing with regard to a variety of criteria, such as contents, geographical area or degree of integration. Table 1.1 allows us to identify those varied typologies.

<table>
<thead>
<tr>
<th>TABLE 1.1 A Typology of Media Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Geographical Scope</strong></td>
</tr>
<tr>
<td>- local</td>
</tr>
<tr>
<td>- regional</td>
</tr>
<tr>
<td>- national</td>
</tr>
<tr>
<td>- international</td>
</tr>
<tr>
<td><strong>Type of Media Company</strong></td>
</tr>
<tr>
<td>- print</td>
</tr>
<tr>
<td>- electronic</td>
</tr>
<tr>
<td>- electronic and print</td>
</tr>
<tr>
<td>- audiovisual</td>
</tr>
<tr>
<td>- multi-sectoral</td>
</tr>
<tr>
<td><strong>Content</strong></td>
</tr>
<tr>
<td>- information</td>
</tr>
<tr>
<td>- general</td>
</tr>
<tr>
<td>- specialized</td>
</tr>
<tr>
<td>- both</td>
</tr>
<tr>
<td>- entertainment</td>
</tr>
<tr>
<td>- education</td>
</tr>
<tr>
<td>- several kinds of content</td>
</tr>
<tr>
<td><strong>Industrial Process</strong></td>
</tr>
<tr>
<td>- vertical integration</td>
</tr>
<tr>
<td>- horizontal integration</td>
</tr>
<tr>
<td>- vertical and horizontal integration</td>
</tr>
<tr>
<td>- conglomerates</td>
</tr>
<tr>
<td><strong>Owners’ Purpose</strong></td>
</tr>
<tr>
<td>- profit oriented</td>
</tr>
<tr>
<td>- public service oriented</td>
</tr>
<tr>
<td>- ideologically oriented</td>
</tr>
<tr>
<td><strong>Type of Ownership</strong></td>
</tr>
<tr>
<td>- public</td>
</tr>
<tr>
<td>- private</td>
</tr>
<tr>
<td>- mixed</td>
</tr>
</tbody>
</table>

Source: Adapted from The European Institute for the Media

With regard to their geographical area, companies can be local, regional, national or international. Insofar as they decide to widen their area of coverage, their relative position in the market tends to weaken; conversely, if they concentrate themselves in a limited geographical zone, they need a high market share to obtain high profit margins.

From the point of view of the communications media available, companies can possess print, audiovisual or interactive media, or integrate several of those possibilities. When the activity of the companies is reduced to one type of media - newspapers, or radio stations, or news agencies, etc. - they try to dominate in that sector; in contrast, the multimedia companies rarely occupy a leading position in several media at the same time.

As far as the contents are concerned, communications groups can provide news, entertainment, educational contents or a mixture of these

possibilities. Although, as Wolf explains, almost all the messages transmitted by the media include a certain dosage of entertainment 50.

The diversity in contents means that it is difficult to reach a dominant position in all the sectors. In contrast, some specialised companies—for example in economic and financial information, the production of cartoon feature films, the publication of academic and scientific books and journals—have reached large market shares in those sectors worldwide.

With regard to the production process, companies can be vertically or horizontally integrated. The first possibility helps in the control of "bottlenecks" in the initial part of the process (elaboration of contents) or in the final part (distribution); horizontal integration only poses the problem of reaching a predominant position in a market through the accumulation of media, as happens in many countries with newspaper chains or companies with ownership of magazines, radio stations or television channels.

The owners' basic proposal determines whether companies will be directed more at providing a public service, profit gain or the achievement of political or ideological objectives. The difference in mission has an influence on the choice between two possible priority criteria in companies: short term profit (which implies, among other aspects, a strict cost control policy) or the creation of entry barriers (which means more investment in research and development, in staff training and on-going search for higher quality).

The owners' characteristics determine whether the companies will be public, private or of mixed capital. Public companies always have specific obligations, referring both to contents as well as the funding system. Indeed, in Europe, until the eighties and nineties when technology brought greater audiovisual offer, governments considered that the best way to guarantee pluralism lay in establishing public television

monopolies—and, in some countries, also in the radio sector—, which would enable all social groups to have access to those communications media 51.

The six criteria shown permit multiple combinations; for instance, the typology of a communications group can be specified by the following characteristics: national area, specialisation in electronic media, exclusively devoted to entertainment, integrated horizontally, profit driven and privately owned. As we have pointed out, each typology presents different problems for the pluralism of ideas and opinions and for free competition in the market.

Often, the typology of groups is conditioned by the growth systems chosen. Table I.2 shows the different forms of growth, identifies in which situations companies, faced with other possibilities, tend to choose one procedure and what general effects each growth model has on competitors and the market.

| TABLE 1.2 Media Concentration and Diversification Processes |
|---------------------------------|---------------------------------|
| System of Media Concentration and diversification | General conditions required | Effects (companies and market) |
| Mergers | crisis in the industry | -decrease in level of competition in the market |
| Acquisitions | financial, industrial and commercial superiority (buyer) need to improve competitive ability (seller) | -quick growth of the companies that invest large sums of money -less 'voices' in the market |
| Media Expansion (new outlets) | market changing, growing or with new possibilities (i.e. new media) | -slow growth of the company | -more diversity in the market |
| Deals Between Companies | maturity of the industry and considerable entry barriers | -dangerous competition in the market avoided |
| | | -power sharing |

Source: The European Institute for the Media

As Mosconi explains 52, the external procedures of growth are more and


51 This aspect can be read in more detail in Jan Wieten, Graham Murdock and Peter Dahlgren (eds.) (2000), *Television across Europe*, Sage, London.

more frequent in European communications companies. This fact is partly due to the economic situation: on the one hand, the crisis in some sectors—such as cable television and satellite digital television platforms—have stimulated merger processes in those industries; in second place, the growth in the value of communications and new technology companies present on the stock exchange greatly enriched some companies allowing them to finance takeovers: the most relevant example of this phenomenon was the purchase of Time-Warner by AOL.

In many communications companies a cultural change has also taken place which has favoured the proliferation of mergers and takeovers: at the root of many of the external growth processes can be found a new desire to increase size as quickly as possible and a certain obsession with not losing ground to competitors.

“Natural” or “internal” growth consists in the launching of new media. This phenomenon comes about when the “game rules” in the market change, either because of legal reasons (such as the deregulation of the European audiovisual market from the eighties) or because of technological factors (such as the development of digital television and Internet in the latter years of the twentieth century).

Mergers and takeovers generate rapid growth in companies, at the same time as causing a decrease in the number of “different and independent voices” in the market. Every takeover represents, moreover, the disappearance of a competitor. In contrast, the launch of new media usually causes a slower growth of companies (they require several years to achieve the consolidation of new businesses) and implies a certain fragmentation of the market (although if the company launch-

ing a new offer is the market leader it may reinforce its predominant position).

Joint ventures between communications groups neither bring about change in ownership nor increase in size, but they can affect the competitive situation of the market: in mature industries, with highly qualified rival companies—able to build strong entry barriers with their respective businesses and markets—management can discover that to pact is more profitable than confrontation; with those agreements, “relative concentration” is increased: several companies decide to share their spheres of influence and help each other to protect their respective positions of leadership in certain geographical zones, contents or types of media.

The difficulty in regulating joint ventures and agreements between companies derives from the fact that these operations of “relative concentration” are not easy for the anti-monopoly commissions to analyse and are not covered by the legal provisions on free competition.

The conceptual definition given in the first chapter serves as a basis for choosing some criteria appropriate for the study of the degree of concentration of the communications market in Europe. This study refers primarily to three types of media which have a particular power to influence public opinion; newspapers, radio stations and television channels; these media continue to have an undisputed prominent role in political and cultural debate and in the modification of the public’s values and behaviour.

The quantitative data refer to the European States: the variations in market percentages gained by leading companies in the last decade will be shown, both in order to compare the evolution of each State as well as for the identification of the differences regarding the current situation and the tendencies between some countries and others. The


study of each State enables us to present, at the same time, a general vision of the concentration of communications groups in Europe.

This work aims to suggest future lines of action both for companies as well as for regulatory bodies. Since legislation and the anti-monopoly commissions have national or European jurisdiction, it has seemed preferable not to deal with problems of abuse of a position of dominance in some regions and cities.

The distortion of free competition can arise, above all, from the predominant position of a leading company in a market or from the existence of a company with a strong vertical integration, controlling a “bottleneck” vital for the survival of its competitors. Because of this last reason, special emphasis will be placed on showing the sectors in which vertical integration can produce more negative effects both for the public as well as for rival firms.

For a thorough analysis of concentration the underlying economic, technological and legal causes behind this phenomenon must be exhaustively studied; aspects which will be dealt with in the third and fourth chapters of this study; the most important effects of mergers, takeovers and launching of new media must also be looked at and will be pursued in the fifth chapter.

In any case, before siding either with those who look on with trepidation at the growth of communications groups or with those who take the opposite viewpoint and see no cause for alarm, it would be appropriate to study the basic data with reference to the concentration of the communications market in Europe. Only in this way—with the detailed information of the second chapter—will we be able (as has already been suggested on other occasions\(^55\)) to distinguish fact from fiction.