5

Big Promises, Small Deeds

The Bumpy Ride from Media Ownership Transparency to Ownership Restrictions

Josef Trappel

In terms of audience reach, the government is now believed to influence 93% of the radio market, 52% of the evening television news bulletins, 35% of online news sites, 48% of nationwide daily papers, 100% of regional daily papers, and 20% of weekly magazines. … Nonetheless, there is a high level of media ownership transparency in Hungary.

Péter Bajomi-Lázár and Péter Krasztev, 'Country report 2022: Hungary'[1]

5.1 INTRODUCTION

The numbers accumulated over the years. The major surge came in 2018, when 476 Hungarian media outlets were united under the roof of the Central European Press and Media Foundation (KESMA) with the purpose of coordinating their news services.[2] Such unprecedented concentration of media power close to the ruling party set off alarm bells and reminded lawmakers in Brussels of a notorious and painful policy headache: media ownership concentration.

Few issues on the media and communication policy agenda have had the same longevity as ownership concentration. Since the inception of the media and communication industry, owners were suspected of limiting pluralism and diversity of opinion or at least exerting undue influence on the public agenda. Indeed, media 'moguls'[3] (such as William Randolph Hearst and Reinhard Mohn) and

In 2022 and 2023, at the request of the European Commission, the author and his team developed the Euromedia Ownership Monitor (EurOMo), which provides information on the ownership of opinion-shaping media in all twenty-seven Member States in the form of a searchable online database: https://media-ownership.eu.

[1] Péter Bajomi-Lázár and Péter Krasztev, 'Country report 2022: Hungary', EurOMo Euromedia Ownership Monitor, 2022, available at: https://media-ownership.eu/findings/countries/hungary/; figures based on Attila Bátorfy, 'The past ten years of the Hungarian media', Átló, available at: https://atlo.team/media2020/.

[2] Bajomi-Lázár and Krasztev, 'Country report 2022: Hungary'.

[3] Jeremy Tunstall and Michael Palmer, *Media Moguls* (London: Routledge, 1991).

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later 'tycoons'[4] (e.g. Rupert Murdoch, Robert Maxwell, Silvio Berlusconi, Vincent Bolloré, Arnaud Lagardère) built media empires in their national markets, and some of them even beyond. Regulation never really managed to control the phenomenon, despite its obvious and acknowledged risks for democratic societies.

In this chapter, the bumpy ride of European policy efforts to get to grips with media ownership concentration is addressed, with a focus on initiatives by the European Union. Looking back on the cumbersome process and analysing the current policy activities allows for a better understanding of the remarkably modest success so far. This chapter suggests that focusing policy on the establishment of ownership transparency and pluralism monitoring, instead of ownership control, risks absorbing transformative energy at the expense of progress in limiting the power and dominance of transnational media and communication conglomerates. Both ownership transparency and pluralism monitoring are indeed necessary pre-conditions, but they are by no means sufficient instruments for effective media ownership control. It can also be argued that stricter and more consistent regulatory measures by the European Commission could have avoided the ominous market dominance of individual media companies and conglomerates today, such as KESMA in Hungary, Berlusconi's Fininvest and Media-for-Europe in Italy and other countries, and Bolloré's Vivendi group in France. In conclusion, this chapter suggests establishing a European mechanism whereby a higher degree of ownership concentration necessarily entails obligations for greater internal editorial freedom.

5.2 ISSUES OF MEDIA OWNERSHIP CONCENTRATION OVER TIME

Concerns about the detrimental effects of concentrated media ownership cluster around two main strands. First and foremost, neoliberal ideology claims that any kind of market concentration damages the benefits of the free market. Looking back at 250 years of market economy, Picard notes that producers and consumers engaging in unrestrained competition with each other generate economic and social benefits. Any constraints on competition potentially deny those benefits.[5] Within this market-based ideology, the first and principal duty of politics is to protect and promote competition. Ownership concentration, leading to oligopolies or even monopolies, threatens well-functioning competition. Competition authorities and other supervisory bodies have a full set of regulatory instruments at their disposal to prevent such distortion of competition. The European Union is firmly rooted in competition-oriented economics within and beyond the internal market, as set

[4] For Central and Eastern Europe, see: Vaclav Stetka, 'From multinationals to business tycoons: Media ownership and journalistic autonomy in Central and Eastern Europe' (2012) 17(4) *The International Journal of Press/Politics* 433–456.

[5] Robert G. Picard, 'Competition, monopoly, and antitrust issues', in Terry Flew, Jennifer Holt and Julian Thomas (eds.), *The SAGE Handbook of the Digital Media Economy* (London: SAGE Publications Ltd., 2023), pp. 449–469 at 453.

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out in Part Three of the Treaty on the Functioning of the European Union, Titles I (The Internal Market) and VII (Common Rules on Competition, Taxation and Approximation of Laws).

The second set of concerns is detached from economic and competition law considerations but is no less serious. Media ownership concentration is believed to limit the free flow of information, reduce the quality standards of the media, harm pluralism, and thus put democracy at risk. Literature and policy provide ample evidence for these claims.[6]

Concerns have been expressed in Europe and beyond. In the context of the United Nations, Mendel and colleagues have pointed out that 'concentration threatens the ability of the media system as a whole to reflect the variety of ideas, viewpoints and opinions that exist in society and to represent all political, cultural social groups'.[7] While any restrictions of media ownership might also restrict the freedom of expression of media owners, international law provides an alternative view: '[B]y promoting a plurality of voices in the public sphere, such limits enhance the right of listeners to receive a diversity of information and ideas, which is essential to the exercise of full citizenship, political participation, robust cultural expression and many other important values in society.'[8] The authors of the report furthermore argue that media ownership concentration increases the risk of reducing the quality of journalism:

> However, this risk is far greater in a concentrated market, which is normally characterised by reduced competition, due to the fact that dominant players face fewer risks from reducing quality (which might otherwise lead to a loss of market share). … There may also be a tendency to orient media content towards cheaper, easier to produce forms of content to the detriment of more substantive and public interest content.[9]

Similarly, the Council of Europe has repeatedly addressed the issue of media ownership concentration over the last three decades.[10] Most recently, Recommendation CM/Rec(2018)1 of the Committee of Ministers to member states on media pluralism and transparency of media ownership points out that '[o]ne or a small number of media owners or groups can acquire positions of considerable power where they can

[6] Among many others, see: European Parliament, 'Strengthening democracy, media freedom and pluralism in the EU European Parliament resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society', 2021/2036(INI), 2021; Toby Mendel, Ángel García Castillejo and Gustavo Gómez, 'Concentration of media ownership and freedom of expression: global standards and implications for the Americas', UNESCO, 2017; Helle Sjøvaag and Jonas Ohlsson, 'Media ownership and journalism', in J. F. Nussbaum (ed.), *Oxford Research Encyclopedia of Communication* (Oxford: Oxford University Press, 2019).

[7] Mendel, Castillejo and Gómez, 'Concentration of media ownership', 11.

[8] Ibid., 29.

[9] Ibid., 13.

[10] Karol Jakubowicz, 'Media and democracy', in Council of Europe (ed.), *Media and Democracy* (Strasbourg: Council of Europe Publishing, 1998), pp. 9–33.

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separately or jointly set the agenda of public debate and significantly influence or shape public opinion'.[11] This applies not only to the incumbent media business, but also and in particular to online platforms. Thus '[s]tates are furthermore encouraged to ensure procedures to prevent media mergers or acquisitions that could adversely affect the pluralism of media ownership or diversity of media content'.[12]

In the academic literature, the debate on the consequences of media ownership concentration has been controversial. Some scholars have praised competition as well as monopolistic market conditions as enhancing diversity. Robert Entman argued back in 1989 that '[a]lthough competition does not have broad impacts, it may in some circumstances incrementally enrich the diversity of ideas in a community'.[13] He continued to argue that enjoying monopoly status 'may allow a newspaper the freedom to report more extensively, innovatively, and fearlessly than it would under the threat competition poses of losing readers and advertisers'.[14] In response, Oscar Gandy took a more critical stance and claimed: 'When competition and profit maximization are presented as rational, a critical response seeks to demonstrate that the products of such pursuits are something other than optimal.'[15]

In her seminal book on media economics, Gillian Doyle called for a more sophisticated approach and a distinction between ownership of media and control over its content. 'The extent to which, and the precise point at which, ownership of a media organization will translate into influence over the content of its products has been the subject of analysis, debate and many divided opinions.'[16] She pointed out that editorial interference by owners can often be indirect, 'through the selection of key personnel, or through the establishment of a culture of obedience and self-censorship'.[17] It is this ambiguity that propelled reservations about the negative implications of ownership concentration in the media sector and slowed down the process of policy making in this contested area. Much clearer, however, is the notion that the influence of ownership concentration on pluralism and diversity constitutes a risk. Doyle insists that 'greater levels of concentration contribute to a greater risk of media power being abused'.[18]

Another compelling argument for regulating media ownership has been developed by C. Edwin Baker. He has argued that media are essential for democratic

[11] Council of Europe, Committee of Ministers, 'Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership', 7 March 2018, preamble, recital 7.

[12] Ibid., para. 3.9.

[13] Robert M. Entman, *Democracy Without Citizens: Media and the Decay of American Politics* (Oxford: Oxford University Press, 1989), p. 89.

[14] Ibid., p. 90.

[15] Oscar H. Gandy, 'The political economy approach: A critical challenge' (1992) 5(2) *Journal of Media Economics* 23–42 at 23.

[16] Gillian Doyle, *Media Ownership: The Economics and Politics of Convergence and Concentration in the UK and European Media* (London: Sage, 2002), p. 18.

[17] Ibid.

[18] Ibid., p. 20.

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public opinion formation, as media constitute the public sphere and mediate between the public and the government. 'For this reason, a country is democratic only to the extent that the media, as well as elections, are structurally egalitarian and politically salient. The best institutional interpretation of this democratic vision of the public sphere is … an egalitarian distribution of control, most obviously meaning ownership, of the mass media.'[19]

When the Internet and the World Wide Web hit the mass markets and developed their own market realities, some scholars nurtured the illusion that dominant media ownership would disappear without further intervention, as 'the monolithic empires of mass media are dissolving into an array of cottage industries'.[20] Realities did not follow this scenario. Instead, new business giants evolved, global in scope and unprecedented in size. Amazon expanded its global turnover from 4 billion in 2003 to 74 billion in 2013 and, again ten years later, to 575 billion in 2023. Meta (Facebook) reached global revenues of 8 billion in 2013 and 135 billion in 2023. Alphabet reported a turnover of 307 billion in 2023.[21] Such market realities prompted the authors of the *Media Manifesto* to point out that more concentrated media ownership in ever fewer hands would exert 'undue influence over politicians, impacting on diversity of media content, promoting clientelism and creating an ever more impoverished public sphere'.[22]

To sum up, media ownership concentration is contested in two respects. On the one hand, and no differently from other sectors of the economy, media companies that grow too large threaten the good functioning of market competition, thereby reducing economic welfare. On the other hand, media ownership concentration restricts the broad public's freedom of expression, reduces diversity, threatens pluralism, jeopardizes the development of a democratic public sphere, and reduces 'what could be called citizens' communication welfare'.[23]

5.3 REVIEW: EUROPEAN ACTIVITIES TO ADDRESS MEDIA OWNERSHIP CONCENTRATION

Although it was initially not a core activity for European institutions, they have been wrestling with this twofold issue for four decades, maintaining competition and defending democratic values. The bumpy ride for European institutions

[19] C. Edwin Baker, *Media Concentration and Democracy: Why Ownership Matters* (Cambridge: Cambridge University Press, 2007), p. 7.

[20] Nicholas Negroponte, *Being Digital* (New York: Alfred A. Knopf, 1995), p. 57.

[21] All revenues and turnover indicated are in USD. The data is derived from the respective companies' annual reports.

[22] Natalie Fenton, Des Freedman, Justin Schlosberg and Lina Dencik, *The Media Manifesto* (Cambridge: Polity, 2020), p. 103.

[23] Mihály Gálik, 'Regulating media concentration within the Council of Europe and the European Union', in Beata Klimkiewicz (ed.), *Media Freedom and Pluralism: Media Policy Challenges in the Enlarged Europe* (Budapest: Central European University Press, 2010), pp. 229–244 at 230.

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started in 1984 when the European Commission and Council released the Green Paper on audiovisual policy, 'Television without Frontiers',[24] which eventually, in 1989, ended up as a Directive of the same name. There, ownership is not explicitly addressed but the Commission and the Council expressed their concern: one recital of the preamble stipulates that 'it is essential for the Member States to ensure the prevention of any acts which may prove detrimental to freedom of movement and trade in television programmes or which may promote the creation of dominant positions which would lead to restrictions on pluralism and freedom of televised information and of the information sector as a whole'.[25]

At the same time that the Commission was working on the 'Television without Frontiers' Directive, the European Parliament vigorously embraced the issue of media ownership concentration. In the second half of the 1980s, the following resolutions were adopted:[26]

- 1985: Resolution on the Economic Aspects of the Common Market for Broadcasting in the European Community, focusing on competition policy in the television and film industry;
- 1986 and 1987: Resolutions on the Fifteenth and Sixteenth Report of the CEC on Competition Policy, outlining potential dangers to competition in the area of the media, explicitly including newspapers, magazines, television stations, and cable and satellite operators;
- 1990: Resolution on Media Take-overs and Mergers, going beyond the previous resolutions by stating that restrictions are essential in the media sector not only for economic reasons but also for protecting sources of information and the freedom of the press in general.

Despite these interventions the Commission decided to retain its media policy focus on the audiovisual sector only; it released a communication in 1990 that addressed the issue of ownership concentration in the television business only marginally, stating that its policy would be designed to encourage the diversity of programmes offered to the public.[27]

The European Parliament did not let up and increased the pressure on the Commission to eventually address the issue of media concentration. It turned out that the Commission and the Parliament were working on the issue almost

[24] European Commission, 'Television without frontiers. Green Paper on the establishment of the common market for broadcasting, especially by satellite and cable', COM(1984)300 final, 1984.

[25] Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, OJ 1989 No. L298, 24.

[26] See: Petros Iosifides, 'Pluralism and media concentration policy in the European Union' (1997) 4(1) *Javnost – The Public* 85–104 at 89.

[27] European Commission, 'Communication to the Council and the European Parliament on the audiovisual policy', COM(90) 78 final, (1990); Iosifides, 'Pluralism and media concentration policy', 91.

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simultaneously. In April 1992, the Parliament adopted a 'Resolution on Media Concentration and Diversity of Opinions', calling on the Commission to 'submit a proposal for effective measures to combat or restrict concentration in the media, if necessary in the form of an anti-concentration directive, with a view to: (a) harmonise national provisions on the concentration of media ownership; and (b) guarantee diversity of opinion and pluralism where the proposed concentration is on a European scale'.[28]

Furthermore, the European Parliament called on the Commission to set up a European Media Council, a new body charged with media ownership matters such as ownership transparency and mergers.[29]

A few months later, in December 1992, the Commission published its widely recognized Green Paper on Pluralism and Media Concentration.[30] Instead of preparing a path towards an anti-concentration directive in the media sector, the Commission's key message was that safeguarding pluralism is a matter of responsibility for Member States, while incidents of anti-competitive market behaviour would be taken care of at the European level. Three options were suggested for public consultation: (1) no action; (2) action regulating transparency, and (3) action to harmonize laws.

In a reaction to the Green Paper, the European Parliament replied with another resolution in 1994, repeating its request for a directive and the creation of a European Media Council 'whose role would be monitoring developments in the media, providing expertise and opinions to the Commission on mergers, and ensuring transparent relations between media firms'.[31] Industry representatives clearly expressed their preference for option (1) of the Green Paper.[32] Nonetheless, Commissioner Mario Monti prepared a first draft of a directive on media pluralism in 1996 and a second draft in 1997, but did not succeed in convincing his colleagues. It became clear that 'any attempt to tackle the issue of media ownership and concentration at a European level is unrealistic'.[33]

In the wake of media mogul Silvio Berlusconi's return to political power, the European Parliament released a resolution in 2004 calling on the Commission to

[28] European Parliament, 'Media concentration and diversity of opinion', Report by the Committee on Culture, Youth, Education and the Media, A3 153/92, PE 152 265 final, 27 April 1992.

[29] Iosifides, 'Pluralism and media concentration policy', 91; Sophia Kaitatzi-Whitlock, 'Pluralism and media concentration in Europe: Media policy as industrial policy' (1996) 11(4) *European Journal of Communication* 453–483 at 462.

[30] European Commission, 'Pluralism and media concentration in the internal market: An assessment of the need for Community action', COM(1992)480 final, 1992.

[31] Iosifides, 'Pluralism and media concentration policy', 100.

[32] Alison Harcourt, *The European Union and the Regulation of Media Markets* (Manchester: Manchester University Press, 2006); Stylianos Papathanassopoulos, 'The Europeanization of the European media: The incremental cultivation of the EU media policy', in Leen d'Haenens, Helena Sousa and Josef Trappel (eds.), *Comparative Media Policy, Regulation and Governance in Europe: Unpacking the Policy Cycle* (Bristol: Intellect, 2018), pp. 117–132 at 126.

[33] Ibid., p. 127.

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submit a proposal for a directive to safeguard media pluralism in Europe.[34] They asserted that the protection of media diversity should become a priority of EU competition law, and the dominant position of a media company should be considered as an obstacle to media pluralism in the European Union.[35]

Nonetheless, it took the Commission a decade to recover from its failure and to address the issue again. In 2007, at a time when digital platforms of US origin had long been disrupting media and communication industries worldwide, the Commission released a 'staff working paper' on media pluralism[36] with a view to a later communication (which never materialized).[37] The working paper acknowledges the relevance of the issue: 'A major concern is the possible domination of a number of markets by national and international companies. … A few companies may control the majority of TV channels and newspapers, potentially leading to an enormous opinion-forming power in that market.'[38] However, the Commission insisted that 'European competition law cannot replace – nor does it intend to do so – national media concentration controls and measures to ensure media pluralism.'[39] Thus the general attitude survived the decade: that pluralism is a matter for the Member States rather than a matter of European concern. There was even some hope expressed that this thorny issue might resolve itself: 'Hence, even if it is still too early to draw any conclusions in relation to media concentration and media pluralism, one can already argue that, theoretically, internet media seem promising for pluralism.'[40] The paper ends by announcing the intention to commission an independent study to define indicators for assessing media pluralism. In parallel, the Audiovisual Media Services Directive was revised in 2007 – with the same vague reference in the preamble to pluralism and freedom of information as in 1989.

The European Parliament did not agree with the Commission's analysis. In another resolution it concedes that 'the EU has no intrinsic competence to regulate media concentration' but states that 'its competence in various policy fields enables it to play an active role in safeguarding and promoting media pluralism'.[41] The resolution identifies a legal shortcoming as the reason for the ineffectiveness of the European approach towards media concentration: 'EU competition law is

[34] European Parliament, 'European Parliament resolution on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights)', 2003/2237(INI), 2004, recital 76.

[35] Ibid., recital 77.

[36] European Commission, 'Media pluralism in the member states of the European Union. Commission staff working document', SEC(2007)32., 2007.

[37] See: Tarlach McGonagle, *Minority Rights, Freedom of Expression and of the Media: Dynamics and Dilemmas* (Cambridge: Intersentia, 2011), p. 472.

[38] European Commission, 'Media pluralism in the member states', 7.

[39] Ibid.

[40] Ibid., 16.

[41] European Parliament, 'European Parliament resolution of 25 September 2008 on concentration and pluralism in the media in the European Union', 2007/2253(INI), 2008, recital AT.

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somewhat limited in its ability to address media concentration issues because the activities creating concentration of media ownership at vertical and horizontal level in the new Member States have not reached the financial threshold at which EU competition law would apply.'[42]

Nonetheless, the European Parliament recalls that 'the unrestricted concentration of ownership jeopardises pluralism and cultural diversity and … a system purely based on free market competition alone is not able to guarantee media pluralism'.[43] Such a pluralistic media system is an 'essential requirement for the continued existence of the democratic European social model'.[44] Consequently, the resolution establishes that 'competition law must be interlinked with media law, in order to guarantee access, competition and quality'[45] and calls on the Commission to 'commit itself to promoting a stable legal framework with a guaranteed high standard of protection of pluralism'.[46]

In July 2009, the independent study on media pluralism in the Member States was published.[47] It identified six risk domains in the field of media pluralism: risks to fundamental rights (basic domain), geographical pluralism, cultural pluralism, political pluralism, pluralism of media types and genres, and pluralism of ownership and control.[48] The latter risk 'include[s] a high horizontal concentration of ownership and/or control in the various media sectors (terrestrial television, cable/satellite/DSL television, radio, newspapers, etc.), a high degree of cross-media ownership and certain forms of vertical integration, and also a lack of transparency with regard to ownership structures'.[49] For each of the six fields, the authors suggest a number of indicators to be empirically tested. This academic study carried out by three universities and one business consultant laid the foundation for the (now annual) Media Pluralism Monitor (MPM), headquartered in Florence, Italy, at the Centre for Media Pluralism and Media Freedom (CMPF), established in 2011.

The years after the release of the staff working paper in 2007 were characterized by extensive efforts to grasp the rapid development in the digital media and communications realm. In 2010 the Commission released its Digital Agenda, which acknowledged the role of the internet as 'a driver of greater pluralism in the media, giving both access to a wider range of sources and points of view as well as the means for individuals'.[50] Potential problems arising from emerging dominant digital actors

[42] Ibid., recital Z.
[43] Ibid., recital N.
[44] Ibid., Art. 4.
[45] Ibid., Art. 5.
[46] Ibid., Art. 7.
[47] Peggy Valcke et al., 'Independent study on indicators for media pluralism in the member states – Towards a risk-based approach', Report prepared for the European Commission Directorate-General Information Society and Media, 2009.
[48] Ibid., 25.
[49] Ibid.
[50] European Commission, 'A digital agenda for Europe' COM(2010) 245 final/2, 2010, recital 2.7.3.

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were not addressed. However, Commissioner and Vice-President Neelie Kroes picked up the issue again in 2011 when calling for a High Level Group to examine and assess the need for action with regard to pluralism and freedom of the media. In the terms of reference of the group, the Commission asked it to cover possible limitations to media freedoms (in particular state interference) and the impact of media ownership on freedom and pluralism of the media.[51]

When the Charter of Fundamental Rights of the European Union became legally binding upon the entry into force of the Treaty of Lisbon in 2009, the High Level Group had a strong starting point at hand, whereby Art. 11.2 stipulates 'The freedom and pluralism of the media shall be respected.' The High Level Group presented and published its report in January 2013. Regarding media resources in the hands of a few owners, the report starts out by raising the question 'as to how to maintain a pluralistic environment in markets in general, and in smaller markets specifically'.[52] In the compact one-page analysis of competition and concentration (chapter 2.4) the group calls for competition policy authorities 'to look at market concentration not only as an issue related to competition, but also related to pluralism'.[53] This remarkable statement suggests combining the two elements of media ownership concentration and calls for an integrated view. However, the subsequent recommendation no. 7 does not take up this crucial insight, but merely calls for regular assessments of the media environments in the Member States. Dominant positions bother the group only with regard to the emergent internet giants. Recommendation no. 8 stipulates that the 'dominant position held by some network access providers or internet information providers should not be allowed to restrict media freedom and pluralism'.[54]

Taken together, these various policy and research initiatives defined the lowest common political denominator, which was monitoring media ownership concentration, rather than limiting the media market power of dominant companies and conglomerates. Monitoring was recommended by the independent study on media pluralism 2009,[55] and replicated by the High Level Group in 2013. With the establishment of the CMPF at the European University Institute in Florence, a permanent working unit was institutionalized, demonstrating and documenting the agility and agency of European policy making. The European Parliament's request for political intervention, however, in a media ownership directive and the establishment of a European Media Council disappeared from the political agenda.

[51] European Commission, 'High-level group on media freedom and pluralism', 2011, 3.
[52] High Level Group on Media Freedom and Pluralism, 'A free and pluralistic media to sustain European democracy', 2013, 23.
[53] Ibid., 23.
[54] Ibid., 24.
[55] Valcke et al., 'Independent study on indicators for media pluralism'.

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5.4 2020s: NEW TRY, NEW LUCK

The time that has elapsed since the High Level Group submitted its recommendations has worked against the policy objectives of limiting media power and sustaining and promoting media pluralism. Global digital platforms developed into powerful oligopolies and some Member States succeeded in boosting media ownership concentration around the ruling political circles. The establishment of the KESMA conglomerate in 2018, quoted at the very beginning of this chapter, literally cried out for the revision of European media policy.

Actually, the European Parliament never lost track of its endeavours to further political and regulatory action against the negative effects of media concentration and in favour of fostering media pluralism. Building upon its earlier work, the European Parliament referred in its resolution 'Media pluralism and media freedom in the European Union' to the findings of the MPM on high ownership concentration and emphasized the freedom of the media from political and economic power, reiterating 'the importance of preserving journalism that benefits from mechanisms which prevent the concentration of single, monopolistic or quasi-monopolistic groups, ensuring free competition and editorial diversity'.[56] It called on the Member States to 'adopt and implement a media ownership regulation in order to avoid horizontal concentration of ownership in the media sector and indirect and cross-media ownership, and to guarantee transparency, disclosure, and easy accessibility for citizens to information on media ownership'.[57]

In 2020, the Commission released a compact set of policy documents, addressing the twofold issue of media ownership concentration, distortion of competition and threats to pluralism. Each of these documents explicitly refers to media (pluralism), thus earmarking this issue with a salient profile within the Commission's term of office that started in 2019.

In the EU Action Plan on Human Rights and Democracy 2020–2024, the Commission, together with the European Parliament and the Council, expressed their concern that fundamental and human rights are under stress across the world, including media freedom.[58] In more detail, the European Democracy Action Plan devotes two of its five chapters to media and pluralism. One of these deals with countering misinformation and the other looks into strengthening media freedom and media pluralism.[59] In addition to a general call for transparency of media

[56] European Parliament, 'Media pluralism and media freedom in the European Union. European Parliament resolution of 3 May 2018 on media pluralism and media freedom in the European Union', 2017/2209(INI), 2018, recital AF.

[57] Ibid., Art. 43.

[58] European Commission, 'Joint communication to the European Parliament and the Council: EU action plan on human rights and democracy 2020–2024', JOIN/2020/5 final, 2020, 2.

[59] European Commission, 'On the European democracy action plan. Communication from the Commission', COM(2020)790final, 2020.

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ownership, the Action Plan enlarges the scope to include revenues and thus the economic dimension of the media. 'Better public disclosure of information on who owns or controls media outlets and the transparent and fair distribution of state advertising can also protect media pluralism.'[60] Beyond this general declaration, the Commission announces that it will co-finance a pilot project establishing a Media Ownership Monitor with the objective to provide a publicly available database containing relevant information on media outlets.[61] Other issues included in this chapter concern safety of journalists, abusive use of strategic lawsuits against public participation (SLAPPs), and professional editorial standards.

Focusing primarily on audiovisual media in the tradition of the Television without Frontiers Directive as well as the subsequent Audiovisual Media Services Directive, the Digital Media Action Plan sets out a comprehensive and well-scheduled programme to support the recovery, transformation, and empowerment of audiovisual media.[62] Action 3 'NEWS' addresses the news media sector as a whole and promises better access to finances, capacity building among investors, and support for collaborative transformation. Ownership issues, however, are not addressed at all.

Finally, in 2020 the Commission released its first Rule of Law Report.[63] One of the four pillars of this series of annual reports is media pluralism, next to the justice system, the anti-corruption framework, and other institutional checks and balances. In the relevant chapter, media pluralism and media freedom are depicted as 'key enablers for the rule of law, democratic accountability and the fight against corruption'.[64] Transparency of media ownership is considered to be 'an essential precondition for any reliable analysis on the plurality of a given media market'.[65]

The European Parliament acknowledged the progress made in media policy by the Commission and released its Resolution 'Strengthening democracy, media freedom and pluralism in the EU', calling on the Member States 'to guarantee media pluralism and ensure transparency of media ownership' and 'on the Commission and Member States to develop an ambitious, robust and complete legal framework',[66] which later became the proposal for a European Media Freedom Act (EMFA).

To sum up, media ownership and media pluralism has climbed up remarkably on the European policy agenda. Compared to efforts in the 1990s and the 2010s, the issue has gained urgency and attention. However, monitoring as the lowest common

[60] Ibid., 11.
[61] Ibid., 16.
[62] European Commission, 'Europe's media in the digital decade: An action plan to support recovery and transformation', COM(2020)784final, 2020.
[63] European Commission, '2020 Rule of Law Report. The rule of law situation in the European Union', COM(2020) 580 final, 2020.
[64] Ibid., 17.
[65] Ibid., 18.
[66] European Parliament, 'Strengthening democracy, media freedom and pluralism in the EU. European Parliament resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society', 2021/2036(INI), 2021, Art. 17.

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policy denominator still dominates the policy agenda. Every year, the CMPF publishes the Media Pluralism Monitor for all Member States and beyond, pointing out year after year the high risk of media ownership for media pluralism.[67] The Rule of Law reports call for ownership transparency. Furthermore, the pilot phase of the Euromedia Ownership Monitor (EurOMo) begun in 2023 has resulted in a substantial and easily accessible public website containing ownership information on opinion-shaping media in all twenty-seven Member States, including graphic displays of trans-national networks of ownership chains as well as detailed country reports.[68] EurOMo has been developed by a consortium of mostly university institutes, coordinated by the University of Salzburg in Austria. All these monitoring exercises cannot, however, fill the increasingly pressing need to move forward from monitoring to regulating ownership patterns and pluralism protection.

However, resistance against any form of media ownership regulation, even against transparency requirements, is still considerable. Efforts to keep the public informed about company ownership experienced a major setback in November 2022, when the Court of Justice of the European Union ruled that the provision of the fifth anti-money-laundering directive – whereby Member States must ensure that the information on the beneficial ownership of corporate and other legal entities incorporated within their territory is accessible in all cases to any member of the general public – was invalid.[69] Such access by the general public to information on beneficial ownership was held to constitute a serious interference with the fundamental rights to respect for private life and to the protection of personal data. This ruling bears consequences for making information available about beneficial owners of media companies and conglomerates and fundamentally counteracts the transparency intentions laid down in recent policy acts by the European Commission. Transparency International, together with many other concerned NGOs, criticized this ruling, saying that it 'takes us back years'.[70]

5.5 2024: THE EUROPEAN MEDIA FREEDOM ACT

The latest landmark in European media policy constitutes the European Media Freedom Act (EMFA), which was adopted by the Council on 26 March 2024.[71]

[67] Available at: https://cmpf.eui.eu/media-pluralism-monitor/.

[68] Available at: https://media-ownership.eu/.

[69] Joined Cases C-37/20 and C-601/20, *WM and Sovim SA v. Luxembourg Business Registers* [2022] ECLI:EU:C:2022:912; Court of Justice of the European Union, 'Press release no. 188/22', 22 November 2022, available at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-11/cp220188en.pdf.

[70] Transparency International, 'EU Court of Justice delivers blow to beneficial ownership transparency', 22 November 2022, available at: www.transparency.org/en/press/eu-court-of-justice-delivers-blow-to-beneficial-ownership-transparency.

[71] Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act), OJ 2024 No. L1083.

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This regulation was preceded by a proposal by the Commission in September 2022,[72] and by a recommendation by the Commission also in September 2022.[73] This new regulation of the European Parliament and the Council remarkably extends the scope of European media policy. The regulation not only covers all news media including the press and digital platforms, it also for the first time addresses editorial processes in newsrooms in order to safeguard journalistic freedom.

Regarding media ownership concentration, however, the regulation is less bold. Media ownership is addressed in two ways. First, ownership must be transparent to recipients of the media services; second, concentration of ownership must be assessed against the risk to pluralism, opinion-shaping, and editorial independence. The regulation's preamble confirms that it is 'crucial for the recipients of media services to know with certainty who owns and is behind the news media so that they can identify and understand potential conflicts of interest which is a prerequisite for forming well-informed opinions and consequently to actively participate in a democracy'.[74]

The EMFA requires media service providers to publish their legal names and contact details, including the names of beneficial owners. This up-to-date information should be made 'easily and directly accessible to the recipients of their services'.[75] With reference to recital 32 of the EMFA this obligation is to be understood as the publication of this ownership information on the websites of the service providers. In the same recital 32, the EMFA addresses the above-mentioned ruling of the Court of Justice of November 2022 on the limits to disclosure of personal data on company owners, by weighing the two legal goods of privacy and the public's right to know. Thus the disclosure of targeted media ownership information would produce benefits clearly outweighing any possible impact of the disclosure obligation on fundamental rights, including the right to private and family life and the right to protection of personal data.[76]

Beyond transparency of ownership, the EMFA acknowledges that it is not only potential restrictions of the good functioning of the internal market that constitute justification for regulation; negative impacts on pluralism and editorial independence also justify regulation. The EMFA establishes a wider argument. This is based on the one hand on the traditional view protecting the internal market. Concentrated ownership might reduce the variety of views and information in the market, thus endangering the good functioning of internal markets. On the other

[72] European Commission, 'European Media Freedom Act – Proposal for a regulation and recommendation', COM(2022) 457 final, 2022.

[73] European Commission, 'Commission Recommendation (EU) 2022/1634 of 16 September 2022 on internal safeguards for editorial independence and ownership transparency in the media sector', C(2022) 6536 final, 2022.

[74] EMFA, recital 32.

[75] Ibid., Art. 6.

[76] Ibid., recital 32.

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hand, Art. 11 of the Charter of Fundamental Rights of the European Union requires free and pluralistic media services based on editorial independence. Following this argument, ownership concentration constitutes a risk. The EMFA clearly delegates the responsibility to mitigate this risk to the Member States:

> Media play a decisive role in shaping public opinion and providing citizens with information which is relevant for actively participating in democratic processes. That is why Member States, independently from competition law assessments, should provide for rules and procedures in national law to allow for the assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence.[77]

The EMFA specifies that assessments of media market concentration that could have a significant impact on media pluralism and editorial independence should be carried out by competent national authorities and in accordance with objective, non-discriminatory, and proportionate criteria.[78]

Under these arrangements, the assessment of ownership concentration should be undertaken according to procedural rules laid down by national laws that address the impact on media pluralism and editorial independence. It should take into account '(a) the expected impact of the media market concentration on media pluralism, including its effects on the formation of public opinion and on the diversity of media services' and '(b) the safeguards for editorial independence, including the measures taken by media service providers with a view to guaranteeing the independence of editorial decisions'.[79]

These assessments should not go unnoticed by the general public. The EMFA is to conduct an annual 'monitoring exercise' of the internal market for media services, including the risks and progress of its functioning.[80] Based on a list of key performance indicators, the monitoring is intended to analyse the level of media concentration in all Member States and the impact of online platforms on the internal market for media services; to provide an overview of risks to media pluralism and the editorial independence of media service providers; and to assess the success of the measures taken in guaranteeing the independence of editorial decisions.[81] The monitoring report is to be available to the public and subject to discussion by the European Parliament.

Overall, the EMFA widens the scope for justification of media ownership concentration rules, but it calls Member States to action, refraining from establishing European concentration rules. In this respect, the EMFA – again – has failed to establish sound and strict European media ownership concentration restrictions.

[77] Ibid., recital 64.
[78] Ibid., Art. 22(1).
[79] Ibid., Art. 22(2).
[80] Ibid., Art. 26.
[81] Ibid., Art. 26(3)(a–d).

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Some statements during the consultation processes show how controversial the issue of ownership concentration is. The International Press Institute, for example, pointed out that publishers are concerned about the EMFA's focus on ownership and pluralism and afraid that it represents a dangerous restriction on their freedom to operate in the same way as any other businesses.[82] Other press representatives go even further, claiming that '[m]edia markets need more concentration in order to gain scale and be competitive to innovate and be resilient. Legislation should not restrain this from happening.'[83] Similarly, the European Newspaper Publishers' Association commented that 'media consolidation is an indispensable instrument to salvage media outlets during economic downturns and to better sustain the costs of running a professional media outlet'.[84]

While the EMFA constitutes substantive progress in other media policy areas (editorial freedom, protection of journalists, quality news content, digital platform governance), achievements with regard to mitigating risks of media ownership concentration are limited to ownership transparency rules and ownership monitoring. Responsibility for applying measures against the abuse of dominant media market power by concentration of ownership remains a matter to be settled by Member States.

5.6 CONCLUSIONS: AMPLE EVIDENCE IN SUPPORT OF REGULATORY ACTION

The bumpy ride towards establishing European rules on media ownership concentrations continues. After its kick-start in the early 1990s, ownership concentration intensified, accelerated, and culminated in the global oligopolies of very large digital platforms, most of them of non-European origin. In parallel, continuous endeavours of the European Parliament to establish some kind of European set of rules to cope with the risks and negative consequences of accumulated market power in the hands of a small number of media owners (some call them oligarchs) did not bear much fruit. Instead of focusing political activities on limits and control, European media policy has aimed at monitoring concentration and at transparency of media ownership. This transfer of attention from ownership concentration to ownership transparency constitutes a step back from the ultimate goal of ensuring pluralism and diversity. Ownership transparency is a necessary, but by no means sufficient, condition for limiting concentration and fostering pluralism and diversity.[85]

[82] International Press Institute (IPI), 'IPI position on the European Media Freedom Act', 23 January 2023, available at: https://ipi.media/ipi-position-on-the-european-media-freedom-act/.

[83] Asociatión de medios de información, 'AMI comments on the proposed Media Freedom Act', 2023.

[84] European Newspaper Publishers' Association (ENPA), 'EMMA – ENPA comments on the European Media Freedom Act proposal', 2023.

[85] Josef Trappel and Werner A. Meier, 'Soaring media ownership concentration: Comparing the effects of digitalisation on media pluralism and diversity', in Josef Trappel and Tales Tomaz (eds.), *Success and Failure in News Media Performance. Comparative Analysis in the Media for Democracy Monitor* (Gothenburg: Nordicom, 2022), pp. 147–164.

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Nonetheless, responding to the digital disruption of the entire (news) media business, some progress has been made with regard to the justification of regulatory action. No longer is the protection and development of an undisturbed internal market the single argument for scrutinizing media ownership patterns. Rather, media pluralism and editorial independence are now strong and accepted arguments to justify policy interventions.

From a bird's-eye view, progress towards effectively limiting undue power of concentrated media ownership has been modest and options beyond monitoring and transparency have hardly been considered. What should be clear, however, is that the thorny issue of media ownership requires a gradual approach. In principle, the more media market power is accumulated in the hands of single owners, the stricter should be their obligations for editorial freedom and pluralism. Looking back at this policy history, it is plausible and fair to suggest that after four decades of Europe's wrestling with media ownership regulation a considerable portion of today's news media problems could have been avoided by releasing and applying stricter ownership rules forty years ago.

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