



EUROPEAN COMMISSION

DIRECTORATE GENERAL XV

Internal Market and Financial Services

Intellectual and industrial property, Freedom of establishment and freedom to provide services, notably in the regulated professions, the media

The media, commercial communication and unfair competition

Brussels, 11.03.1997

XV D(97)

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Number of pages: 7

Subject: Directive on media ownership in the single market

Message:

URGENT

Directive on media ownership in the Single Market

This is a short framework Directive with no excessive details on implementing measures at national level but which only regulates the key obligations. The Directive has a simple design that can be presented in terms of three distinctive parts:

1. DEFINITIONS

The Directive determines a set of definitions relating, for example, to :

- the media covered
- the controller of a media company
- the competent Member State
- the establishment of a media company, the audience measures, the geographical area, etc.



2. LIMITS TO THE CONTROL OF MEDIA

The Directive provides for limits to the control of media companies which prohibit a same person from controlling in the same geographical area a set of media whose audience shares would exceed certain thresholds:

- 30% audience share for television broadcasting services,
- 30% listening share for radio broadcasting services
- 12% media consumption share for the control of several media of different types (newspapers, television, radio); i.e. average of all the monomedia audience shares).

Three conditional derogations:

- . a derogation for local media,
- . a derogation for certain services of general interest;
- . a general exemption clause in cases where the thresholds are exceeded only in one Member State.



3. IMPLEMENTATION MEASURES

The Directive determines the basic provisions for ensuring its efficient application; for example it provides that :

- the limitations will be applicable in three circumstances: *setting up of a new TV/radio; renewal of a license of an existing TV/radio; takeover of an existing TV, radio, or newspaper;*
- Member States should take relevant measures to make available required audience data;
- national authorities are under the obligation to cooperate between themselves;
- the Commission may take implementing measures (comitology) in three specific cases: application of audience criteria, application of the definition of the media controller, the exchange of information between Member States.

In return for the level playing field thus achieved, Member States can no longer submit operators below the thresholds to other media ownership rules such as shareholding limits or limits on the number of media (freedom of establishment) or restrict retransmission of media coming from another Member State (free movement of services).

MEDIA OWNERSHIP

Speaking

You will recall that the College already held an orientation debate on this issue in September. May I remind you of the main conclusions that I drew from that debate:

First, the Commission decided to pursue work on this issue through bilateral contacts between concerned Commissioners and the Information Society and audiovisual group of Commissioners.

Secondly, it appeared very clearly that the objective to establish a genuine Single Market in the field of access to media ownership is not contested.

Thirdly, a certain number of questions revealed many misunderstandings and demonstrated that more explanations were necessary;

Fourth, a certain number of concerns were expressed about the need to concentrate on the cross border dimension of the issue and to draw attention to the principle of proportionality. In short, we should take more account of the subsidiarity context.

Following this orientation debate all these observations have been analysed during recent months in order to draft a new proposal. The new approach I propose today represents a clear improvement given that it is more focused on the Single Market and more respectful of subsidiarity. This explains why it was supported last February at the meeting of the Information Society Commissioners Group. The three meetings of the special Chefs de Cabinet have in turn been fruitful in finding solutions to the remaining technical problems.

Today I am convinced that the Commission is not only able to adopt this proposal but should do so. This is the right initiative and this is the right moment to present it .

(1) THIS IS THE RIGHT INITIATIVE

- First, this Directive is a very good example of what the Single Market really consists of: it does not consist of an area open to totally unbridled free market forces but is an area where the fundamental equilibria have been struck. Contrary to what is often claimed there is absolutely no contradiction between the objective of encouraging growth in media enterprises and that of safeguarding pluralism. We are doing here what we have always done in many other sectors, that is to say, ensuring the protection of a fundamental interest at Community level in order to convince the Member States to abolish their legal and economic barriers. Therefore, in return for the opening of the market for

media ownership, we have to establish a level playing field. The fact that this concerns pluralism does not alter the Single Market perspective of the action. Contrary to what I have sometimes heard, this is not the first time that the Commission has intervened in the field of pluralism since you will recall that the "Television Without Frontiers Directive" fixes time limits on televised advertising specifically for reasons relating to the safeguarding of pluralism

- This Directive is the right instrument to select given that there are real Single Market problems. To take one real life example of a *barrier to cross border investment*: in many Member States there are prohibitions on nationals or foreigners holding more than 25% or 49% of the share equity of a broadcasting company. The concrete effect is that a media company cannot create wholly owned subsidiaries in these Member States but is forced to find alliances with partners which will, in all probability, be existing national players. More generally, all these media ownership rules require that an investor coming from another Member State obtains clearance from the competent media authority. This means that in all probability the national authority is likely to favour national rather than non-domestic EC investors. How can the European media industry be globally competitive with such rules?

- The alternative approach which would consist of sole reliance on the application of the Treaty would be legally impossible and politically unacceptable. Knowing the difficulties we have in convincing the Member States to abolish discriminatory restrictions based on nationality how can one hope to convince them to abolish non-discriminatory restrictions which pursue the legitimate aim of safeguarding pluralism? In political terms, this would amount to the pure and simple dismantling of the protective measures enacted by the Member States to incite circumvention or delocalisation since the latter could no longer apply their measures to operators established in other Member States.

- The other alternative of proposing a recommendation is not a new one since it had been considered in the Green paper in 1992 and the Commission had tacitly put it to one side in the 1994 Communication. To retreat now that we have continued would, as far as I am concerned, be totally unacceptable.

- . From a political point of view, it would represent a political error since it would represent a cosmetic solution, a sign of weakness that would fool nobody, and in particular not the Parliament.

- . From a Single Market point of view a recommendation would clearly be ineffective in removing the Single Market obstacles. In particular a recommendation would not prevent Member States from adopting different rules which would allow further fragmentation. It would therefore be completely inconsistent with the whole new regulatory policy of the

Commission which seeks to offer efficient solutions where they are needed, in short, to do less but better;

- The only question that we must ask ourselves is whether or not we wish to establish a real Single Market in the media sector or not? For me the answer is clear: the Commission has already shown that even in such a sensitive area, it is possible to bring the value-added represented by the Single Market. I would even go so far as to say that it is precisely in these important sectors that we must seek to offer the benefits of the area without internal frontiers. We have achieved this in the financial services sectors, we have done it in the field of the free circulation of people and in many other sensitive areas.
- Finally, the added value of the Directive will be felt across all the media sectors and notably by small and medium sized and the most innovative enterprises. These are precisely the firms that today do not have the means to cross borders given the current regulatory patchwork. The fact that a few major players have launched an aggressive lobbying campaign in recent days demonstrates how certain large national champions have no interest in the opening of markets. I am convinced that this Directive will open the market for the most competitive and innovative companies and thus enhance the growth of the European media industry competing against American rivals.

(2) NOT ONLY IS THIS THE RIGHT INITIATIVE BUT THIS IS ALSO THE RIGHT MOMENT

(i) First, from a political point of view, I want to remind you that if there is no proposal for a Directive following all the long and comprehensive preparatory work, the adoption of a Green paper and a Communication, two wide rounds of consultation and an orientation debate in September, the Parliament will - rightly in my view - sharply attack us for our lack of political vision.

(ii) Secondly, the adoption of this proposal will be fully consistent with our audiovisual and Information Society policies. It would contribute to our response to increasingly frequent criticisms on the very limited ability of the Commission to propose concrete and efficient initiatives which are not just Communications, consultative papers or studies.

(iii) Thirdly, because market and technological developments require that the European media industry should benefit from the Single Market in order to be competitive at the global level. The recent Commission Communication and studies on the Impact and effectiveness of the Single Market have pointed out the negative effect of the current regulatory patchwork in the field of media ownership and the need for regulation

(iv) Finally, many Member States will adopt in the near future new legislation in order to modernise their own rules on media ownership and therefore this is the right moment for co-ordination of these new rules. If we do nothing in terms of setting out ground rules we will be confronted with more and more national legislative proposals and consequently further fragmentation of the Single Market.

(3) THE TECHNICAL QUESTIONS HAVE BEEN SOLVED

Other than the questions of opportunity, it seems to me that the so-called technical problems have practically all been resolved following the orientation debate and the three Special Chefs meetings.

- In this respect, I wish to stress that in my opinion this Directive fully meets the Commission's objective of proposing simple framework directives. Those who know the complexity of the national legislation in this field will realise that this Directive will provide for a very significant simplification and modernisation of the national frameworks. It can be broken down into three parts,

- (i) a first part sets out a certain number of definitions which will act as reference points between the Member States and common standards at Community level. For example, by defining the person who really controls a media enterprise.
- (ii) A second part sets out a number of cumulative threshold limits for media control. These limits seek to prevent that a same person can control in a same geographic zone a set of media whose audience and consumption shares exceed a certain threshold.
- (iii) Finally, a last part sets out the means of implementation; in particular it establishes the obligation for Member States to co-operate and foresees executive powers for the Commission to fix details.

The solutions that have been worked on in recent days concerning the derogation for services of general interest, the modification of the general exemption clause and the replacement of the ten year duration with a specific monitoring procedure have allowed for us to reach a compromise whilst maintaining the essential equilibria. In particular, I do not believe that they have rendered the Directive unbalanced or ultra liberal. In particular, the general exemption clause is subject to strict monitoring every two years which will allow, if the case arises, to make proposals to modify the Directive. The only remaining fundamental question is that of the multimedia threshold. I am prepared to increase this threshold to 12% in order to account for the impact that the Directive could have, in particular, on certain small countries. Whilst

allowing for the Directive's balance to be kept this would not destabilise certain national markets.

In conclusion I propose to the Commission to adopt this proposal for a directive.