

## Chapter 3

# Economic Issues in Media Regulation: An EU and US Perspective

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### ABSTRACT

*Changes in technology bring new challenges and opportunities for every industry, and the media industry is no different. Today people use mass media, and in particular the Internet, to participate in discussions and debate, to advertise and sell their products, to collect and store knowledge and to interact with the global community on the information super-highway. Given both the fast pace of innovation in the media industry and consumer demands for ever greater media content regulatory authorities are faced with challenging times. In this chapter, the authors examine how vertical mergers, vertical restraints, regulations, and competition policy are impacting on the European and American media industries. The authors examine how the internationalisation of the industry, increased merger activity, and the move towards cross media ownership are impacting on market concentration and diversity. The authors conclude that a balance must be struck between encouraging greater capital flows into the industry to help develop innovation, and the need to protect the public's long term interest through ensuring competitive markets.*

### INTRODUCTION

Up to 120 years ago, the only means of communicating with large numbers of people was through the spoken word and the printed page. The development of radio in 1896 and television in 1928<sup>1</sup> changed the way people communicate. Today, mass media is used to debate political and

social issues on a world scale. Nowadays, most people can use mass media, and in particular the Internet, to participate in discussions and debate, to advertise and sell their products, to collect and store knowledge and to interact with the global community on the information super-highway. The emerging online players are not subject to substantive limitations on content, ownership, or geography; they can pick and choose the audiences they target, the content they buy, and the way

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they provide it (Samuel, 2005). The combination of digital convergence, personal computing, and global networking has ratcheted up the pace of development and is giving rise to radical shifts in the media industry.

The internet, and more recently broadband internet, has had a major impact on the way people communicate. The most recent OCED data shows that over 247 million OECD consumers have internet access (OECD, 2008), while data from Internet World Statistics shows that over 1,463,632,361 currently use the internet (Internet World Statistics, 2008). As the speed at which information gets sent to us increases, and the capacity of telecommunication networks to deliver greater volumes of information grows, so too does the range of uses to which these technologies can be applied. Consumers' demand for speed, convenience, and quality will continue to rise as each new development raises their level of expectation. Tomorrow's media providers will help drive technological progress across a range of fronts. Consumer choice will be facilitated through advances in packet-switching technology, higher bandwidths, greater digital storage capacity and enhanced buffering and compression technologies (Samuel, 2005).

The internet changes the cost structure, scope of products and services, and geographic shape of media, creating an entirely different set of regulatory challenges. It caters to individualised rather than local, state or country institutions. It is pretty clear that it will be a key driver of the next wave of competition and the markets we have traditionally defined as 'media' will change. This development is likely to put greater demands on the regulatory regime as it tries to keep abreast of such developments. The legal and administrative regulation of media structure, delivery, and content, though still largely a matter of national law, is increasingly becoming an international one. For example, European institutions, such as the Council of Europe and the European Union are progressively playing crucial roles in the de-

termination of media law, policy and regulation, often seeking diversity both in content and in economic ownership. However the convergence of various electronic methods of content delivery across borders threatens to undercut any attempts at regulation.

In this chapter, we examine the economic regulation of the media industry both in the EU and the US and demonstrate the importance of this issue in fully understanding the industry. We also examine how the internet continues to change the media industry and the way it is regulated. Our focus is on the economic regulation of this industry and the economic theory that underpins much of this regulation. We also look at how the EU and US have attempted to apply regulation in this fast changing industry. An outline of the regulatory environment in both jurisdictions is provided and cases are analysed to illustrate the different approaches taken by the EU and US authorities. A full understanding of media industry regulation is crucial for both policy makers and industry players as advances in the economic theory of vertical integration and vertical restraints point to potential unforeseen benefits of such arrangements. A brief outline of the economic costs and benefits of vertical arrangements will therefore be outlined.

The remainder of this chapter is structured as follows. Section 2 describes the challenges facing the media industry and this is followed in Section 3 by a brief introduction to the economic theory of vertical integration along with a description of the role of regulation and competition policy. Section 4 outlines the regulation of the media industry in the EU and Section 5 does the equivalent for the US. Section 6 concludes by describing the challenges facing the media industry and its regulation.

## **THE CHANGING FACE OF MEDIA**

When we think of media, we generally tend to think of it in its traditional forms—radio, television,

cinema, newspapers and magazines. However, our communications environment is changing and today, many of us also think of the internet as a key media component. We are living in an age in which decisions made about information access will have a profound impact on our lives and that of the media industry. Emerging new developments in information and communication technologies are already affecting the ways we organize our work, seek information and develop innovations. Nonetheless, by and large we have differentiated these various silos, and defined them as different markets within the overall media industry.

Like any business, the media industry has evolved over time. Since Marconi sent and received his first radio signal in Italy in 1896, we have seen the introduction of media such as the television, cable and satellite television, video recorders, mobile phones, the internet and the World Wide Web. Since the introduction of privately run Internet Service Providers in the 1980s, and its expansion into popular use, the Internet has had a drastic impact on culture and commerce.<sup>2</sup> Its impact on the media industry is on-going. The industry is currently in a period of rapid economic and technological change, with sector boundaries and core technologies undergoing fundamental transitions. For example, traditional telephone companies are now merging with cable television firms to create facility-based broadband companies while underlying technologies are shifting from telephony to internet protocol and wireless systems.

The driving force behind the phenomenal growth in the internet has been the recognition by businesses and individuals of the power of the World Wide Web to reach customers and each other. This has led to significant advances in the industry through the use of online media. With internet usage and download speeds increasing throughout the world, the delivery of print, audio and video media has been dramatically transformed. Now consumers can access all forms of media content through one delivery mode. In

addition consumers can contribute content by uploading material in a way that was not possible with traditional delivery methods. Other advances have occurred in the print media, where most newspapers have developed their own websites where content can be updated and supplemented by audio or video content. In radio, podcasting has become a new form of media that has enabled these providers to keep up with changing consumer habits. In television markets, the introduction of satellite technology combined with the internet, allow consumers to control their TV's remotely such that programmes can be set to record via a mobile telephone or computer.

Along with changes in delivery modes we are also witnessing a convergence among the different media modes. The internet is the single biggest contributing factor to this convergence by becoming the common access point for media content. Your newspaper, television station and favourite book publishers can all now be accessed through the internet rather than the more traditional and distinct 'hard' copy versions. This brings the different forms of media into much more direct competition with each other and this benefits consumer choice. However the effects may not all be positive, since new entrants face a possible barrier to entry through the need to reach a large scale in order to compete with the big incumbent firms and through the need to break through consumer loyalty to their existing media suppliers.

Another development in online media is the emergence of a new phenomenon: social networking sites. The idea behind these sites is to connect individuals and businesses around the world. These sites support the maintenance of pre-existing social networks while many also help strangers connect based on shared interests, political views, and activities. The first site, SixDegrees.com, was launched in 1997. This site allowed users to create profiles, list their friends and surf their friends lists. The success of this site was short lived and in 2000 SixDegrees.com failed. Users of the site argued, that while the idea of the site

was excellent, many of their friends did not have internet access and so the site served little purpose (Kiehne, 2004).

In 2001, a new type of social networking site called Ryze.com debuted. The aim of this site was to help people leverage their business networks. Nowadays social networking sites such as MySpace and Facebook attract millions of users, many of whom have integrated these sites into their daily practices.<sup>3,4</sup> MySpace, established in 2003, differentiated itself by regularly adding new features and by allowing users to personalise their pages. In July 2005, News Corporation purchased MySpace for \$580 million (BBC, 2005), attracting massive media attention. Today, MySpace has the second highest membership with 117 million worldwide members (Dalrymple, 2008). The most popular site today is Facebook. This site began in early 2004 as a Harvard only social networking site (Cassidy, 2006). By the end of its first year, membership expanded to include students from Stanford, Columbia, and Yale and by September 2006, anyone, over the age of 13, with a valid e-mail address was permitted to use the site. In 2007, Facebook permitted users to decorate their profiles using HTML and Cascading Style Sheets and since then (i.e. June 2007–June 2008) its membership has grown from 52 million to 132 million worldwide (Dalrymple, 2008).<sup>5</sup>

Social network sites also benefit entrepreneurs' and small businesses which are looking to expand their contact base. Companies use these sites for advertising in the form of banners and text adverts. Since businesses operate globally, social networks can make it easier to keep in touch with contacts around the world. One of the most popular business networking sites is LinkedIn. All 500 of the Fortune 500 corporate members and more than 25 million individuals in 150 countries build their personal networks through LinkedIn (LinkedIn, 2008). It helps users to find employees, industry experts, jobs, and make deals. In the last few years, many media sharing sites have implemented social networking features.

For example, the photo-sharing site Flickr, now owned by Yahoo, lets people comment on others' photos, join groups and add friends, while video-sharing site YouTube, now owned by Google, has become a huge phenomenon partly because it lets people create user profiles, comment on videos and collect 'subscribers' for their videos.

### **Current Challenges for the Media Industry**

Changes in technology bring new challenges and opportunities for every industry, and the media industry is no different. For example when television arrived, it was widely predicted that it would devastate radio, and perhaps movies and newspapers. Yet nothing like this has happened. Similarly, when the CD-ROM appeared on the scene, people predicted the demise of the printed book. In the past new technologies have not led to the demise of the old technologies, however they have changed the type of service delivered by these services. The feared substitution between television and newspapers did not happen, instead newspapers adapted. Broadsheets, for example, while no longer the first to report on news stories; now provide comment and analysis (see Naughton, 2006). In a similar way it is expected that the internet, while not wiping-out older technologies, will force them to adapt to their new environment.

One notable challenge faced by the media industry is to adapt to changes in the way it is funded. Traditionally, all mass media was funded in the same way; large multinational companies, such as Procter and Gamble, Coca Cola and Ford, paid high prices to radio and TV stations for the privilege of getting access to large audiences. Taplin (2006) argues that this relationship was based on the law of scarcity. This was especially true for markets where product groups were very similar, for example in the drinks market, and the only way producers could differentiate themselves and grow their market was through TV and radio advertising. With relatively few local channels, and

even fewer prime time TV and radio advertising slots companies were willing to pay extraordinary amounts of money for peak airtime. Consumers also benefited, as long as they were willing to put up with the commercials then they did not have to pay for the programmes. This relationship worked well until about 10 yrs ago. Since then the internet, broadband, digital television and mobile devices have given consumers more mobility and control. Consumers are now less willing to listen to radio adverts or watch television adverts and as a result, producers are less willing to pay for them. A recent IAB advertising report shows that internet advertising (\$21.2 billion), surpassed radio advertising (\$19.8 billion) and cable television advertising (\$20.9 billion) in the United States in 2007 (PricewaterhouseCoopers, 2008). Social networking sites have become acceptable among advertisers. United States social network advertising expenditure is expected to be \$1,430 million in 2008 (eMarketer, 2008), with Facebook receiving the largest share of that spend (\$755 million). Advertisers are attracted to these sites for their ability to draw a massive audience of hard-to-reach young consumers.

Similarly, newspapers and magazines have experienced a drop in advertising revenue in the last few years. In 2007, newspapers share of the world advertising market fell to 27.5% from 28.7% in 2006. At the same time, internet advertising was up 32.45%.<sup>6</sup> Despite this newspapers and magazines remain the world's largest advertising medium, with a 40% share (WAN, 2008).<sup>7</sup> A recent survey by the World Association of Newspapers shows that paid daily newspaper circulations were up or stable in nearly 80% of countries. The five largest markets for newspapers are China with 107 million copies sold daily, India (99 million), Japan (68 million), US (nearly 51 million) and Germany (20.6 million). In places where paid-for circulation is declining, notably the US and some of Western Europe, newspapers continue to extend their reach through a wide variety of free and niche publications and through their rapidly developing

multi-media. The number of newspaper on-line sites grew by 51% from 2003 to 2007.

Another major challenge facing the media industry is the way in which it regulates itself. The purpose of media regulation is to ensure existing players are not allowed to use their market power to close down new forms of competition, and that, as far as possible, consumers decide what form this revolution takes and what services and content they wish to access. The internet poses new challenges to regulators as it changes the cost structure and geographic shape of media. A brief description of the economic theory underpinning regulation of media markets, along with the role of regulation and competition policy in media markets are outlined in the next section.

## **ECONOMIC THEORY AND THE ROLE OF REGULATION**

The economic theory most relevant to the regulation of media markets is that of vertical integration. This concerns the linkages between the various stages in the value chain with an industry, for example, between buyers and sellers of media content. The approach taken by the industrial organisation strand of this theory studies how vertical integration affects the exercise of market power.<sup>8</sup>

There are two related issues in this literature. The first is vertical mergers. Here some issues of concern are, control and ownership, exclusive contracts, mergers and state aid and how these issues may change the balance of market power in the industry to the detriment of consumers and, in relation to media markets in particular, to the diversity of opinion. Initially, vertical integration was seen as promoting market foreclosure.<sup>9</sup> This, along with the extension of monopoly power argument, was used initially to block many vertical mergers, despite some potential efficiency effects. The second issue is that of vertical restraints, that is business practices that can accomplish some of the same objectives as vertical integration through

contractual means rather than by merging, for example, exclusive dealing (contracts), tying,<sup>10</sup> and territorial restraints.<sup>11</sup>

The bias against such vertical arrangements was later relaxed when studies showed there were no anticompetitive effects, unless pre-existing market power occurred at one level or both.<sup>12</sup> This literature identified previously unrealised potential benefits of vertical integration such as technological economies, transaction costs such as, coordination costs, economies of scale and scope, efficiencies and reduction of the double marginalisation effect.<sup>13</sup> Along with these potential benefits, the issue of state aid was added. In particular such aid can potentially lead to a distortion of market power, aggravate issues of control and ownership, and create potential for market foreclosure through subsidising otherwise unprofitable ventures.

The regulation of media markets is an attempt to address some of these problematic issues associated with vertical arrangements and the evolution of such markets. Regulation has transformed the role of government and business through establishing a series of rules and guidelines that aim to balance consumer and producer interests. Many markets are subject to regulation including air transport, utilities and the media. Originally, government regulation was perceived as achieving public interest goals. Legislators were assigned the role of developing regulation to help achieve collective goals, which would not otherwise be achieved due to a failure of the market, such as monopoly power, inadequate information and externalities, leading to high prices, high profits, misleading information and both allocative and productive inefficiencies. The solution to many of these problems was to develop output regulations (e.g. standards of performance) and input regulations (e.g. rules of conduct) and introduce a regulatory regime to oversee these regulations.

Any negative effects of regulation, such as impeding economic growth, competitiveness, innovation, price competition, entry, investment and

efficiency, can be compounded if the regulatory system becomes overly bureaucratic, if vested interest groups seek regulation in order to block competition or if existing regulations become obsolete. This correction of market failure became the central theme of the public interest theory. The private interest theory later challenged this notion and maintained that regulation benefits groups of people which it may not have initially been set up to benefit. That is, private interest groups can use the political process to achieve (or re-direct) regulatory benefits for themselves at the expense of the public. Therefore government regulation can fail when it does not achieve its desired initial objective(s). This creates another form of market failure, that of regulatory failure.

It is important to distinguish between what may be called 'restrictive' regulations that have the potential to reduce competition and beneficial regulations that can protect consumers. Some restrictive agreements, anti-competitive practices and distributional practices may result when firms decide to collude rather than compete with each other. The traditional neo-classical theory in economics, which portrays the two extremes of perfect competition and monopoly, is often used to gauge the effect of such practices and is also used as a benchmark for policy prescription. Using this framework, it is generally believed that collusive practices tend to work against the interests of consumers and result in an inefficient use of resources. These inefficiencies occur both in terms of productive inefficiency (firms not operating at minimum average cost) and allocative inefficiency (price not equal to marginal cost) (Carlton and Perloff, 2005).

Competition policy is often introduced in order to avoid such inefficiencies, where competition policy is an instrument of public policy that monitors the behaviour of individual firms. It must be flexible enough to allow firms to grow and benefit from economies of scale in production, while also ensuring that the economy in general and consumers in particular do not suffer as a result

of too few firms competing with each other in a particular market. This highlights an inherent conflict that exists in competition policy. That is, what size must a firm reach in order to benefit from economies of scale and how does competition policy react to large firms who by exploiting economies of scale are capable of dominating the industry by taking over or closing down rival firms. Competition policy therefore has the difficult task of creating an environment that allows firms to expand to their efficient size while at the same time guaranteeing that barriers do not exist that would inhibit the emergence of new firms in the same market.

Competition legislation that attempts to achieve this balance between firm growth and market dominance exists in many countries. The United States was one of the first countries to introduce restrictions on firm behaviour (in the form of legislation) due to the public discomfort with large amounts of economic power being held by a few private institutions. The government introduced the *Sherman Act 1890*, and this was followed by the *Clayton and Federal Trade Commission Acts 1914*.

The European Union introduced competition policy in its founding document, the Treaty of Rome. One objective set out in this document is to ensure that competition affecting member states is not distorted. Articles 81 and 82, in particular, outline EC policy with regard to competition. One feature of this policy was that the domestic laws of each country in the EU were to be brought into line with these. Articles 81 prohibit the prevention, restriction or distortion of competition in trade in any goods or services and Article 82 prohibits the abuse of a dominant position in trade in any goods or services.

The European Commission is empowered by the Treaty to apply these rules and can do this through its investigative powers and the imposition of fines on undertakings who violate EU antitrust rules. Since 1 May 2004, all national competition authorities are also empowered to apply fully the

provisions of the Treaty in order to ensure that competition is not distorted or restricted.

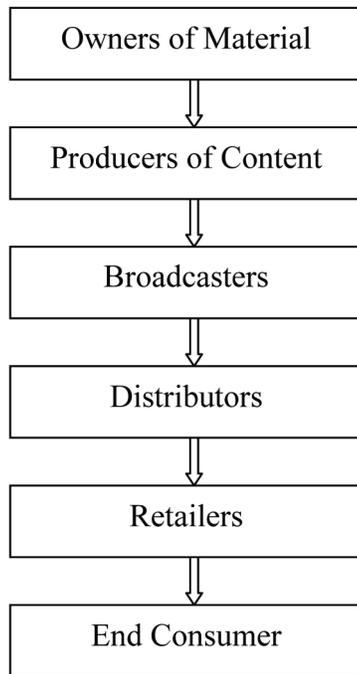
## **MEDIA REGULATION IN EUROPE**

Characteristics of European media markets today indicate a fast growing and evolving market structure where old and once dominant incumbents compete with smaller, and in some cases niche, players in a marketplace where technology is changing both the production and delivery of media products and services. The existence of incumbent players, who were once public monopolies, has resulted in the use of regulation along with market forces of competition in an attempt to achieve the effective operation of media markets in the public interest.

The structure of media markets has greatly influenced the delivery of new products and services across new geographic markets. Structural issues such as vertical integration and market power have an impact on consumer protection through regulation, concentration of ownership through merger activity and the competitive effect of state aid.

Nowadays the structure of media markets has become more complex, involving many new players made possible through developments in technology. Figure 1 illustrates a simple, aggregate, version of what a typical media industry chain may look like. The first component of the chain is material owners, that is, those who hold the legal rights to material such as book, music, sporting events etc. The second component is the producers of content, such as film and television producers, book publishers and music producers. Broadcasters constitute the third component and these include the traditional outlets such as public service television, pay TV operators and increasingly the internet service providers are becoming more important in this group due to the importance of the internet. The fourth component is the distributors who transport the product

*Figure 1. A vertically integrated media market*



through networks such as cable, satellite, mobile, and books. Retailers who sell content to the final consumer make up the fifth component, while the final consumer constitutes the last component in this chain.

Many of today's larger media companies have come about as a result of vertical integration, that is ownership of more than one of the stages in the media chain depicted in Figure 1. McChesney (1999) identified vertical integration in the media industry as a means by which companies can increase market power by promoting cross-selling media products or brands. For example, making a film and then cross promoting it over different media can be very profitable. McChesney gives the example of Disney's *The Lion King* which generated a profit of over \$1 billion, through developing a Broadway show, a TV series and an array of media spin-offs. In addition it led to 186 items of merchandising.

Changes in technology and increasing competition brought about by privatisation and deregulation of former state broadcasters in Europe has led to the consolidation of this media industry chain, where firms have increasingly become involved in more than one component. One consequence of this is the way in which it significantly alters how competition works in the market. As the boundaries between these components become less obvious the emphasis in competition analysis may shift away from how information is delivered to the products offered by companies. Such products can include advertising space, the supply of content from broadcasters to distributors, retailers and to consumers, premium content such as sporting events and the delivery of news and information.

Since the 1980s there have been an increasing number of mergers of media companies and as a result the industry has become more concentrated. Alongside this trend, the influence of advertisers and owners has increased significantly. In some places media companies are owned by major multinational corporations where revenue from advertising is a crucial component of profits. The reliance on advertising has resulted in questions being raised on the impartiality of content from these media stations and whether they are overly influenced by corporate interests. The fear here is that stories may be biased or dropped altogether in order not to offend advertisers or owners. If this were to occur the ability of the public to make informed decisions is likely to be affected. Increased concentration also brings with it the traditional fears associated with oligopolies and monopolies, in terms of price, quality and choice. The issue of choice is also important in the context of a desire to have a wide diversity of opinion in such an important market as media. Therefore ownership and in particular the concentration of ownership is a major issue in the analysis of modern media markets (Bagdikian, 2000).

Vertical integration was once looked upon as bad for consumers and governments subsequently treated it with suspicion fearing the creation of

dominant companies and a lack of innovation within the industry. Nowadays vertical integration is seen as a necessary way for companies to compete effectively in global markets. In the media industry one of the most common activities is for distribution companies and content providers to seek out alliances with each other. One of the primary benefits to vertical integration is on efficiency grounds arising from both economics of scale and/or scope. Other potential benefits include, improvement in products, the development of new products, and streamlining distribution channels. Potential negative effects of vertical integration are based around the issue of market power and can include the exclusive rights to products, using market power in one market to restrict output, thereby rising price, in another market, creating a barriers to entry, and strengthening of a dominant position (see, for example, Iosifidis, 2005; Coates and Sauter, 2007).

These structural issues pose challenges to regulators in trying to achieve a balance between competitive market behaviour on the one hand and protection of the consumer or the public interest on the other hand. In fast moving markets such as media, these challenges are even greater.

## **Regulatory Measures in the EU**

Since mid 1980 all European Union (EU) member states have gradually tailored their individual national media regulatory regimes to bring them in line with a central European view. In 1990 EU member states implemented the Television Without Frontiers (TWF) Directive. Initial implementation of this directive was poor. However, pressure exerted by the European Institutions was substantial, such as the enforced implementation of the TWF requirements throughout member states by the European Court of Justice. In parallel with the actions of the Court, the Commission's Merger Task Force was active in moulding Europe's commercial broadcasting markets through the application of competition law.

Coates and Sauter (2007) note how the regulatory framework of the telecommunications and broadcast industries are different and plans to integrate these frameworks across the EU did happen at the transmission infrastructure level but not at the content level. Telecommunications was initially considered to be monopolistic in nature, where national government would own such companies to achieve public service objectives such as universal service. With breakthroughs in technology and increased access to capital, the monopolistic approach was no longer deemed essential. The result was a progressive liberalisation of telecommunications markets beginning in 1990. Full liberalisation was achieved, in principle, in 1998 even though five countries (Greece, Ireland, Luxembourg, Portugal and Spain) were given a temporary derogation from the liberalisation timetable on the basis that the telecommunications networks were small and under developed. These derogations have now expired.

The issue of joint ownership of telecommunication and cable networks was also considered by the Commission on the basis that cable networks can be used as local communication services and are therefore potentially competing networks. The Commission ruled that any telecoms operator that also owned a cable network must, in most cases, keep the two operations legally separate. The key issue guiding the reasoning of the Commission in devising its regulatory framework is that of access, as many of the companies in this market were once state-owned natural monopolies who were in a position to build up strong dominant positions in markets in advance of liberalisation.

In comparison to telecommunication, there is little regulation of the media industry across the EU. Two examples are, first the Television Without Frontiers Directive gives Member States the power to prevent pay television operators from acquiring exclusive rights to events that are deemed to be of 'major importance for society', where each Member States defined what is of major importance. The second example, is that

of exclusive rights, where exclusivity itself is not considered to restrict competition. The landmark case law on this goes back to the *Coditel I*<sup>14</sup> case of 1980, where the Court of Justice considered that exclusivity is inherent in copyright and exclusive rights contracts do not necessarily breach EC competition law.

A later case *Coditel II*<sup>15</sup> in 1981 outlined three issues where exclusive contracts may breach competition law. These were, (i) duration and scope of exclusivity, (ii) the appreciability of its impact on competition between broadcasters in the acquisition of rights and on downstream television markets, and (iii) its effect on trade between Member States (see Coates and Sauter, 2007). The Commission subsequently sought to limit the duration and scope of exclusive contracts so as to achieve a competitive market and avoid such agreements becoming a barrier to entry and resulting in market foreclosure. Recent cases concerning the merger of two telecommunication companies *Telepiu/Stream*<sup>16</sup> and the sale of football rights by leagues would indicate that the Commission is concerned with both the accumulations of exclusive rights and exclusive rights being in the hands of a single purchaser.

The regulation of the Internet is far more problematic. Johnson and Post (1996) outline the problems of using the more traditional regulatory models for the Internet. For example, applying territorially based rules are difficult given the non-geographic nature of this market. Physical location is often irrelevant or else cannot be established which results in a lack of control over content, ownership and competition issues. Some attempts have been made to address these issues. For example, in the area of e-commerce, the EU typically focuses on issues of jurisdiction, national rules and the protection of national interests. In terms of privacy issues, the EU has laws governing the collection, use and dissemination of personal information. Finally in relation to content, the EU regulates content on the basis of protecting public opinion which includes national cultures, languages and identities.

In 2007, the European Commission announced a new directive, which revised the legislation put in place in the 1990's and covered all audiovisual media services, ranging from traditional TV broadcasts to emerging on-demand TV services. This directive should be implemented by EU member states by the end of 2009. The new rules relax restrictions on TV advertising and for the first time will permit 'product placement' - the placement of a specific product in TV programmes for commercial purposes. Product placement has been common in the US since the 1970s, creating, what some say is, an unfair competitive advantage for US productions. Under the new EU rules, product placement will be permitted, but not in informative programmes—such as news, documentaries and children's programmes.

## **Merger Regulations**

EU competition policy tries to ensure that competition effects are achieved in markets, excessive market power is curtailed and any anticompetitive practices that may allow firms to achieve excessive market power or create barriers to entry are prevented. At the same time competition policy tries to achieve a balance between encouraging technological innovation, price competition and wide consumer choice. Open and free competition is seen as the most effective way of achieving this balance. In the media sector EU competition rules have been applied more frequently over the past number of years because of an increase in the number and complexity of merger cases. Of particular concern is to identify what is an acceptable level of consolidation for this sector given how technology has dramatically changed the business model of media companies.

In assessing the merger of two media companies, the Commission must decide whether the proposed merger would result in a substantial lessening of competition in the market, based on all available evidence. This decision process can be made more difficult in media markets due

to the rapidly changing business environment brought about by advances in technology. For example convergence of technologies across the media sector has resulted in an increased degree of overlap between what were once considered distinct markets. For example, advertising and content can be distributed across many different media with the advances made in broadband technology and availability. The print and radio media, for example, were once considered distinct markets, however the content of both can now be accessed through a third media device, the mobile telephone. Indeed it is this drive by the 'old' media companies to reinvent themselves in the face of technological advances that has resulted in an increase in merger activity in this industry. Many of these companies are concerned about the large number of viewers using online media sites such as YouTube and Yahoo, such that 'old' companies are proposing to merge with 'new' companies so as not to become redundant in this sector. Hence we have a diversified media sector with overlapping media components in all the large media companies. This is best illustrated by News Corporation's large bid of \$5 billion for Dow Jones, which valued the publishers of the *Wall Street Journal* at a higher price-to-earning multiple than Google.

On the issue of the influence of technology on merger regulation, one thing for sure is that it is very difficult to predict how technology will evolve and shape future markets. It is quite possible that technology will help to increase competition in some markets and decrease competition in other markets, but it is unlikely that we can know beforehand the impact with any degree of certainty. This has important implications for media regulation since a merger between, for example, a print and radio firm was once considered to be safe, because these markets were considered to be distinct. If these markets become interlinked, a merger may now be less safe from a competition viewpoint. Once again, in the media sector there is also the issue of diversity, where differing viewpoints is

considered desirable so that any one media organisation cannot assert undue influence on society.

The EU implemented the Merger Regulations in 1990 to complement EU competition policy and it gave the Commission preemptive powers to deal with mergers. In 2003 the EC adopted a series of merger control guidelines to appraise mergers. These guidelines detail how a merger will only be challenged if it is considered to increase the market power in such a way that it is likely to harm consumers' interests, such as lead to higher prices, poorer quality or reduced consumer choice (Levy, 2005). The Merger Regulations cover only large mergers, that is, those mergers between firms with an aggregate turnover of at least €5 billion and a turnover within the European Economic Area of more than €250 million. As a consequence of these thresholds, many mergers have been allowed to proceed without analysis (Just and Latzer, 2000). An analysis of some of the merger cases blocked under the Merger Regulations provides some indication of what guides the Commission's decisions in media mergers. The creation of a dominant position was a critical factor in many of these decisions. For example, the MSG Media Services case in 1994, the proposed merger of WorldCom and Sprint in 2000 and the blocking of the AOL-Time Warner merger with EMI in 1999 were all prohibited on the grounds that they would have created a dominant position in the relevant market with negative consequences for consumers.

### **State Aid**

One final issue to look at in the EU context is that of state aid. Current policy in the EU centres on The Broadcasting Communication<sup>17</sup> first adopted in 2001. In this policy a set of principles applicable to the financing of public service broadcasting were outlined. These principles give the Member States' wide discretion to define public service broadcasting and outline the Commission's task to preserve fair competition. By this it means a

clearly defined public service mission along with limiting state aid to what is necessary to achieve this mission. In particular, overcompensation and any possible cross subsidisation of commercial activities are strictly prohibited.

In January of 2008 the Commission launched a public consultation on the future framework that will apply to state funding of public service broadcasting. This is an attempt to improve transparency and legal certainty in addition to allowing public service broadcasters fulfil their mission in the new media environment.<sup>18</sup> Over the years the Commission has used the existing guidelines to assess several complaints lodged by private competitors against the financing of public service broadcasters. Approximately 20 decisions have been taken by the Commission where it has further clarified it's the application of State aid rules to the broadcasting sector.<sup>19</sup>

Several of these decisions related to the broadcasting sector in Germany. For example, in 2007 the Commission rules against German government's plans to part finance (up to €6.8 million over 5 years) the fees commercial broadcasters pay for the transmission of their programs on the digital terrestrial television network on the basis that the proposals failed to fully identify the problem that required state aid and the failure to choose appropriate and non-discriminatory means of funding. This is an example of how technology is changing media markets and how such innovation is not automatically granted state subsidies, despite the obvious benefits to consumers. The Commission's point was that State support must target specific areas where the free market does not provide solutions and must not discriminate between competing services, in this case between terrestrial, cable and satellite transmission. Furthermore, the Commission considered the proposals to have the effect of potentially distorting competition between these three transmission platforms as the proposal only supported transmission over one platform, thereby disregarding the principle of technology neutrality.

## **MEDIA REGULATION IN UNITED STATES**

With the advent of electronic communications technologies in the United States, governmental control moved to a system of regulation. Soon after the first commercial broadcast in 1920, Congress introduced the first set of broadcasting regulations, known as the Radio Act<sup>20</sup> (Alexander *et al.*, 2004). These regulations were superseded in 1934 by the Communications Act. This act saw the introduction of the Federal Communications Committee (FCC), which was created to protect and represent the public interest. The committee was established to regulate 'interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, colour, religion, national origin, or sex, a rapid, efficient, nation-wide and world-wide wire and radio communication service ...' (FCC, 2008).

The regulatory structure was specifically designed to be flexible and adaptive to the changing shape of the industry, so much so that Congress left the regulatory standard open and allowed the FCC to fill in the details over time (Corn-Revere and Carveth, 2004). By 1938, the FCC used the 'public interest' standard to place harsh restrictions on ownership concentration in broadcast stations and they outlawed most local cross-ownership of different types of media entities (Baker, 2007). In addition, in spite of the prohibition against censorship in the 1934 Communications Act, the commission used the 'public interest' standard to place restrictions on the content of the programming which a station may broadcast (Oregon Bar Press Broadcasters Council, 2000). These included restrictions on political editorials, obscene and indecent programming, lotteries, contests and promotions, children's programming on television, recorded telephone conversations, prohibited advertising on broadcast stations.

The FCC have tried to structure a media market that is competitive enough to satisfy their custom-

ers while, at the same time, is diverse enough to provide a range of information and viewpoints necessary for informed public debate (Shelanski, 2006). Since its inception, the committee has been responsible for preserving competition in the media industry and consequently it has set many boundaries on media ownership. For example, in the context of a merger, the FCC only allowed an entity to control two television stations in a single market if at least one of the stations was not among the top four stations in the market and at least eight independently owned television stations remained in the market after the transaction was completed (Mitra, 2001). For a long time, the FCC justified these boundaries by arguing that, there was a direct relationship between democracy and a communications system of diverse sources. For example, in 1947, the Hutchins report argued that media concentration undermined the presses crucial roles as conveyer of information, government watchdog and educator. Horwitz (2005) argued that the logic of government policy generally derived from the combination of antitrust laws and regulatory practice with free speech jurisprudence. Until 1980 the FCC enforced the 'fairness doctrine' which compelled licensed broadcasters to provide balanced coverage of public issues, thereby allowing diverse voices to the airwaves (Magarian, 2008).

In 1983, Congress expanded the remit of the FCC to include the encouragement of new technologies and services. This new provision created a presumption favouring increased competition in the communications marketplace (Corn-Revere and Carveth, 2004). In 1996, Congress introduced the Telecommunications Act and made a clear move to deregulate the media industry and increase the level of competition. Immediately after the Act, there was a substantial increase in retail video competition, especially for new technologies such as satellite broadcasting and broadband internet service and this competition continues to grow (Owen, 2008). The Act eliminated most cross-market entry barriers and relaxed concentra-

tion and merger rules. The Act also overruled all state restrictions on competition on local and long distance telephone services. The Bell Operating Companies (Baby Bells) were freed to provide long distance service outside and inside their regions (Alexander *et al.*, 2004). All nationwide limits on radio-station ownership were repealed, but local limits on concentration were maintained.<sup>21</sup> In addition, the Act eliminated the twelve station television and raised the national cap to thirty-five percent, while also encouraging the deployment of advanced telecommunications capability on a reasonable and timely basis.

The aim of the Telecommunications Act was to produce more competition, more diversity of opinion, lower prices for consumers and more wealth for the economy. The FCC reacted very quickly after the act. For example, the day the act was signed the FCC granted several waivers to the Walt Disney Company to help facilitate its merger with Capital Cities/ABC (McConnell, 1996). Within a month, the commission implemented new rules on TV and radio station ownership and by April has proposed to extend the license terms for television and radio to 8 years (Corn-Revere and Carveth, 2004). However, many argue that the Act did not live up to expectations. For example, between 1996 and 2003 over 4,000 radio stations were bought out by larger corporations. By 2003, one company, Clear channel Inc., owned more than 1,200 radio stations across the country (Copps, 2003). Similarly, the raising of the cap on television to 35% spurred huge media mergers and greatly increased media concentration. The Common Cause Education Fund argued that "just five companies—Viacom, the parent of CBS, Disney, owner of ABC, News Corp, NBC and AOL, owner of Time Warner, now control 75% of all prime-time viewing" (Common Cause Education Fund, 2005: 5). Many cable companies also decided to cash in, for example AT&T bought TCI for \$48 billion in 1998 (Warf, 2003), while AT&T announced its \$58 billion takeover of MediaOne in 1999 (Labaton, 2000).

The proposed merger of three giants of the cable television industry: Time Warner, Turner Broadcasting System, and TCI resulted in a more assertive antitrust policy in the US. This case is an example of how a vertical merger brought about fears of foreclosure between cable programming (the upstream industry) and cable service (the downstream industry). TCI was at the time the largest cable service provider with 27% of the market, followed by Time Warner with 17%. Furthermore Time Warner owned several cable networks and Turner provided cable channels. Time Warner and Turner were allowed to merge, with some restrictions, but TCI was not allowed to have any direct interest in the newly merger company.<sup>22</sup>

The mega-merger between America Online and Time Warner in 2001, valued at around \$100 billion, changed the regulatory environment of the media industry. According to Yoo (2002) the merger re-opened discussion about open access to high-speed broadband systems. Around the time of this merger, consumers in the US were switching to broadband internet, which allowed customers to employ a proprietary Internet Service Provider (ISP). This raised concerns among competitors that such exclusivity arrangements had the potential to reduce consumer choice and harm competition. Corn-Revere and Carveth (2004) showed that the top four multiple systems operators, in 2002, served around 64% of US households. As a result the FCC were asked to “impose an open-access requirement that would require cable modem systems to make their transmission lines available to other, non-proprietary ISPs on a reasonable and non-discriminatory terms” (Yoo, 2002: 175). While the FCC had previously rejected calls for imposing open access as a condition to approving AT&T’s acquisition of TCI and MediaOne, they conditioned their approval of the AOL-Time Warner merger on the merged company’s willingness to negotiate access arrangements with at least three unaffiliated ISPs. In 2001, Time Warner also appealed and overturned the FCC’s

1992 rule limiting the reach of cable systems to 30% of potential subscribers nationwide. The D.C. Circuit court found that the FCC had set the level of ownership arbitrarily and without sufficient justification in the administrative record.

By 2003, the FCC recognised the many of its regulations were either irrelevant or insufficient in the changing media marketplace. Rulings in the Time Warner v. FCC and Fox Television v. FCC case<sup>23</sup> in 2001 and the Sinclair Broadcast Group v. FCC case<sup>24</sup> in 2002, highlighted that in future the FCC’s media ownership rules would need to be carefully justified on the basis of actual market evidence (Curwen, 2005). While it had been argued in 1996 that the Communications Act would “save consumers \$550 billion, including \$333 billion in lower long-distance rates, \$32 billion in lower local phone rate and \$78 billion in lower cable bills” within 10 years, “cable rates have surged by about 50 percent, and local phone rates went up more than 20 percent” (Common Cause Education Fund, 2005: 5). In addition, between 1996 and 2003, the market value of companies in the telecommunication industry fell by about \$2 trillion and these companies shed around half a million jobs. Shelanski (2006) highlights the extent to which the media industry had changed by showing that, “In 1980, for example, there were 9,278 radio stations and 1,011 television stations, about 19.2 million household cable subscribers receiving approximately twenty nationally distributed, non-broadcast program networks, 1,745 daily newspapers, and no mass-market internet. By 2003, there were 13,450 radio stations’ and 1,747 television stations, more than 900 million US household cable and satellite subscribers receiving 388 nationally distributed, non-broadcast program networks, 1,456 daily newspapers and more than 60 million household internet subscribers” Shelanski (2006: 372-373).

Over the last 25 years we have witnessed a dramatic consolidation in the US media market. Bagdikian (2000) notes that in 1983, 50 corporations dominated the media industry, by 1987 these

50 companies had decreased to 29 and by 1990 the number has further decreased to 23. At the end of the 1990s McChesney (1999) identified 9 corporations that dominated the media world, these were AOL-Time Warner, Disney, Bertelsmann, Viacom, News Corporation, TCI, General Electric, Sony and Seagram. The scale of these mergers also increased dramatically with the AOL Time Warner \$350 billion merger in 2000 was more than 1000 times larger than the biggest deal of 1983 (Bagdikian, 2000). Further consolidation ensued such that by the end of 2006 only 8 corporations dominated the US media industry, these were; Disney, AOL-Time Warner, Viacom, General Electric, News Corporation, Yahoo, Microsoft and Google. This latest list demonstrates the advances made by internet-based companies who take up 3 positions on this top 8 list. This consolidation in the media industry can lead to concerns about diversity of information as well as competition concerns.

By 2003, the regulations were considered to have no longer met the objectives of the committee, that is to foster competition, diversity, and localism. After completing their biennial review, the FCC modified and relaxed many of the regulations governing ownership of mass media outlets. The order permitted media mergers to be controlled by antitrust law rather than by industry-specific regulations. The order also repealed the ban on newspaper/broadcast and broadcast/radio cross-ownership and retained the ban only in markets with three or fewer television stations in markets with four to eight television stations, the order permitted cross-ownership between a daily paper or a television station, as well as cross-ownership between either a daily paper or a television station and a limited number of radio stations. In markets with nine or more television stations, there are no cross-media limits applied, although the individual radio and television limits apply. The order raised the national television ownership cap from 35% to 45% (Yoo, 2002).

Reducing restrictions on media mergers produced a storm of protest, from all sides. Public opposition was greater than for any other FCC action. In June 2004, one year after the FCC ruled in favour of unrestricted media ownership in the US, a federal appeals court reversed the FCC rule. Further deregulation of media ownership is prohibited for now and the national television ownership cap has been dropped to 39% (Labaton, 2004). The most recent review was completed in December 2006 and is known as The Quadrennial Review Order<sup>25</sup>. Following this review the following rules were adopted:

- (1) **Newspaper/Broadcast Cross-Ownership** is permitted when a daily newspaper seeks to combine with a radio station or when a daily newspaper seeks to combine with a television station in a top 20 designated market and (a) the television station is not ranked among the top four stations in the DMA and (b) at least eight independent 'major media voices' remain in the DMA.
- (2) **Local Television Ownership Limit**—a single entity may own two television stations in the same local market if (a) the so-called 'Grade B' contours of the stations do not overlap; or (b) at least one of the stations in the combination is not ranked among the top four stations in terms of audience share and at least eight independently owned and operating commercial or non-commercial full-power broadcast television stations would remain in the market after the combination.
- (3) **Local Radio Ownership Limit**—one entity may own (a) up to five commercial radio stations, not more than three of which are in the same service (i.e., AM or FM), in a market with 14 or fewer radio stations; (b) up to six commercial radio stations, not more than four of which are in the same service, in a market with between 15 and 29 radio stations; (c) up to seven commercial radio stations, not more than four of which are

in the same service, in a radio market with between 30 and 44 radio stations; and (d) up to eight commercial radio stations, not more than five of which are in the same service, in a radio market with 45 or more radio stations.

- (4) ***The National Television Ownership Limit*** - In 2004, Congress enacted legislation that permits a single entity to own any number of television stations on a nationwide basis as long as the station group collectively reaches no more than 39% of the national TV audience. The statute also excluded the national television cap from the ownership rules required to be reviewed in the quadrennial review proceedings. Accordingly, the national television cap was not under review in the 2006 quadrennial review proceeding.
- (5) ***Radio/Television Cross-Ownership Limit***—one company may own in a single market: one TV station (two TV stations if permitted by the local TV ownership rule) and one radio station regardless of total market size; or if at least 10 independent media voices (i.e., broadcast facilities owned by different entities) would remain after the merger, up to two TV stations and up to four radio stations; or if at least 20 independently owned media voices would remain post-merger, up to two TV stations and up to six radio stations or one TV station and up to seven radio stations. Parties must also comply with the local radio ownership rule and the local TV ownership rule.
- (6) ***Dual Network Ban***—This rule permits common ownership of multiple broadcast networks but prohibits a merger of the “top four” networks, i.e., ABC, CBS, Fox, and NBC. Multiple challenges to the *Quadrennial Review Order* currently are pending in the U.S. Court of Appeals for the Ninth Circuit, which will decide which court will ultimately hear these challenges.

## **CHALLENGES FOR POLICY MAKERS AND REGULATORS**

Traditionally vertical integration and vertical restraints were seen to be against the consumer’s interests. More recently, the potential benefits of such arrangements have materialised. This highlights the need for a comprehensive cost-benefit analysis of all such arrangements. In media markets such analysis is of added importance when the issue of reducing diversity of opinion is considered, along with the potential anticompetitive effects in upstream or downstream markets through increasing market power. Added to this are the ambiguous efficiency effects, which all lead to the importance of case-by-case analysis so that one can fully understand the economics of vertical integration and how mergers, contracts and state aid in the media industry effect how this industry operates. Added to these is the issue of advances in technological innovation that are changing this industry, all of which demonstrate the importance of a rigorous economic analysis of the industry and which provides policy makers and economists with considerable challenges in the years ahead as they weigh up the costs and benefits of vertical arrangements in an ever changing media industry.

One of the challenges facing policy makers is a risk that the exclusive acquisition of rights for new and emerging services will allow the rights-holders to shut out competition across a range of services delivered over new networks. This could deprive consumers of choice and quality and could determine the success or failure of a new competitor. For example, a report by the European Commission<sup>26</sup> in 2005 on 3G sporting content noted that mobile operators expect that access to sports content will become a significant demand driver for 3G services and a key branding element given its high profile and relevance with regard to marketing.

Other new media such as IPTV (internet protocol television) also pose new challenges to policy makers and regulators. These services began by

offering telephone services, they then extended to offer data services and are now starting to offer television in countries such as France, Germany, Italy, Spain, and the UK. Due to the large financial investments required by new broadcasting technologies, media companies have engaged in mergers and acquisitions. National governments have aided industry concentration by relaxing media ownership rules, including those restricting cross media ownership. In an attempt to improve their market positions, media companies have combined merger and acquisition strategies with those of internationalisation and diversification. As media companies are also expanding into adjacent communications markets, the definition of media markets is becoming more difficult, making regulation problematic. Indeed, without specific rules for the media industry, the European Commission is often accused of unreasonable arbitration and competition decisions on the media industry often face appeal.

As the forms of media communication adapt to the new available technologies, the regulators are starting to play a larger role in monitoring media mergers. The Commission prevents mergers or changes in ownership between two or more entities that would result in a substantial lessening of competition. This should continue to prevent undue concentration or accumulation of market power in the media, which would result in higher prices or lower quality service for consumers. However, a possible downside to this may be to negatively affect innovation in media services. Therefore regulation and merger analysis has to balance these two potentially conflicting outcomes.

While the internet has become the dominant platform for individuals and organisations to exchange information, the regulation of the Internet in which laws and technology interact have never reached an international common ground. In many respects, national borders have dissolved. Location, for all practical purposes, no longer exists. Countries must cope with the changes brought about by new technologies and adjust to the new

realisation that the control they once exercised over business, citizens and information have been greatly reduced. In addition, Internet jurisdiction law is still in its infancy and this presents new challenges to regulators who must encourage innovation, foster growth and protect the public interest in this 'cyberspace' free from geography.

A further challenge is how to measure market concentration and address the related issue of diversity. Whether you consider media markets to be concentrated or not, depends very much on how you define the relevant product and geographic market. One point of view is that media markets are concentrated and the number of merger deals that have occurred in this industry are used to support their point of view. In particular, the big mergers over the past two decades have significant effects on the type and diversity of information available. Bagdikian (2000) argues that a smaller number of owners have possession of larger numbers of media properties and these owners have exercised strong influence over national legislation and government agencies. In addition the large prices paid for media firms create heavy financial pressures on all aspects of the business including news and journalism divisions. The widely noted cutbacks in broadcast news divisions and instances of commercial conflicts of interest at even quality newspapers in the 1990s would appear to confirm this (Downie and Kaiser, 2002).

Others argue that even though there have been a notable number of large mergers in the media industry there has also been very significant growth in the sector, which reduces the potentially negative effects of large mergers. Noam (2006), for example contrasts the early 1980s, when 3 television networks collectively controlled 92% of TV viewers, one company (AT&T) controlled 80% of local telephone service and nearly 100% of the long distance market, and another company (IBM) accounted for 77% of the computer market, to the mid 1990s when, after the deregulation of cable television and the break-up of AT&T, the networks accounted for barely more than 50%

of TV viewers, AT&T served 55% of the long distance market and virtually no local customers, and no computer manufacturer supplied more than 12% of the microcomputer market. Therefore while there has been significant merger activity, Noam's argument is that the huge overall growth of the industry has alleviated any dangers of concentration.

Changes in delivery systems brought about by the nature and growth of the Internet blurs the lines between traditional media and further complicates the traditional antitrust thinking about geographical markets. Therefore there is a need to move toward evaluating the media industry as a whole. This will also have implications on how we assess diversity in addition to how we devise and evaluate media regulations. Economic models show that as the number of substitutes for any product or service increases, the market fragments and minority-interest products becomes economically viable. In the new media industry of today, where we have witnessed greater substitutability than ever, such fragmentation has occurred and this has increased the viability of 'marginal' products, resulting in many more media players in the industry. Therefore when analysing the issue of diversity regulators should take a much broader view of the market and include all substitutable media.

Given both the fast pace of innovation in the media industry and consumer demands for ever greater media content regulatory authorities are faced with challenging times. A balance must be struck between encouraging greater capital flows into the industry to help develop innovation and protecting the public's long term interest through ensuring competitive markets. In particular regulatory authorities must resist the temptation to increase the regulatory burden each time a new media delivery method is introduced. In addition, consistency in applying the existing regulations and a possible harmonisation of regulatory rules across the EU and US would go a long way towards encouraging the development of this industry to the overall advantage of the consumer.

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## ENDNOTES

- <sup>1</sup> The idea behind television was made earlier. However, in 1928, Philo Farnsworth made the world's first working television system with electronic scanning of both the pickup and display devices.
- <sup>2</sup> The internet started out as a US military funded project in the late 1960's called the Advanced Research Project Agency Network (ARPANET) which was a secure computer communications network that could survive a nuclear attack. It evolved into a vehicle which was used solely by academic and researchers to communicate and collaborate. However, over the past two decades it has been embraced by the corporate world and has evolved into a mainly commercial entity whose rapid expansion is fuelled by online advertising and selling.
- <sup>3</sup> For more details on the development of social networking sites see Boyd and Elisson (2007).
- <sup>4</sup> Other popular social networking sites include Bebo, Skyrock Blog, StudiVZ, Youmeo, Hi5, Orkut, Friendster, and Cyworks.
- <sup>5</sup> Internationally, Facebook's growth is huge. In Europe the company saw 303% growth, Asia Pacific 458%; Middle East–Africa 403% and Latin America 1055%.
- <sup>6</sup> Interestingly, the United Kingdom has nearly 40% of all internet advertising revenues generated in Europe, while Germany has 23% and France has 14%. If the US and

- European markets are combined, the US would have a 62% share, followed by the UK with 15% and Germany with 8%.
- 7 Globally television is still the largest advertising medium.
- 8 For an extensive treatment of the industrial organisation approach to vertical integration Milgrom and Roberts (1992) and Viscusi *et al.* (2005).
- 9 Where a vertical arrangement can reduce the vigour of competition which existed in these previously competitive segments.
- 10 The practice where a supplier agrees to sell its customer one product, only if the customer agrees to purchase all of its requirements of another product from the supplier.
- 11 See Viscusi *et al.* (2005) for an extensive treatment of these issues.
- 12 See Ordovery *et al.* (1990).
- 13 The double marginalisation effect refers to the case where the price of an input is marked up twice as a result of market power in both input markets. A vertical merger of the firms in both of these markets may help to reduce the size of this mark-up.
- 14 1980/881/EC
- 15 1982/3381/EC
- 16 2004/311/EC.
- 17 See IP/01/1429
- 18 See IP/08/24
- 19 See [http://ec.europa.eu/competition/sectors/media/decisions\\_psb.pdf](http://ec.europa.eu/competition/sectors/media/decisions_psb.pdf) for an overview of these decisions.
- 20 The Radio Act was introduced in 1927.
- 21 The new law permitted one company to own as many as eight stations in the nation's largest local markets, up from a local limit of four stations per market.
- 22 See Viscusi *et al.* (2005: 255) for a more detailed discussion of this case.
- 23 D.C. Circuit court found that the FCC failed to provide any basis for retaining either the national television station ownership limit or the cable/ broadcasting ownership cap.
- 24 D.C. Circuit court found that FCC had failed to justify its remaining local broadcast station ownership limits.
- 25 See <http://www.fcc.gov/ownership/>
- 26 EC, Concluding report on the Sector Inquiry into the provision of sports content over third generation mobile networks, Brussels, 21/09/2005.