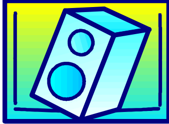

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an der Universität zu Köln

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Combating Media Concentration in a Globalising World Economy

Institute for Broadcasting Economics
University of Cologne, Germany

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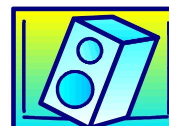

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Combating Media Concentration in a Globalising World Economy*

1. Forms and Causes of Concentration in the Television Sector

1.1. Forms of Concentration in the Television Sector

The term economic concentration is applied if the supply of and/or demand for goods is limited to only a few market participants and/or if only a few market participants hold high shares of total supply and/or total demand. *Horizontal* concentration relates to the market shares within the value added segment of a single good, *vertical* concentration relates to the market shares of several, successively downstream value added segments of a single good, and *diagonal* (cross-ownership) concentration relates to the market shares (of the same or of successive downstream value added segments) of several related (substitutive) goods.

All these forms of concentration exist in the media sector (although only the concentration of *supply* is commonly viewed as problematic). These concentration variants, limited here to “television”, “radio” and “newspapers and magazines” as the “classic” media, are presented in Figure 1. A simplified value added chain, comprising the three elementary segments of “production”, “provision” and “distribution”, is assumed for each sector, and the focus – in line with the topic dealt in this paper – is on the television sector.

The *horizontal* concentration (of supply) in the television sector thus relates to the market shares of companies within different value added segments (also described as value segments or market segments). Horizontal concentration within the segment “programme provision” ranks traditionally as highly problematic; in Germany, it is also the focus of legal regulations of concentration (see Section 2.3.). If, for example, the market share of provider A increases vis-à-vis competing providers (here: B and C) as a result of a particularly successful business policy the level of horizontal concentration within this value added segment will also increase. The same applies if provider A wholly or partly acquires competing providers (= external growth), possibly via capital which that provider generated on upstream or downstream market segments or on completely different media or other goods markets. -- Processes of concentration resembling those outlined here for horizontal concentration in the programme provision segment can also occur in the upstream segment (of programme production) and in the downstream segment (of programme distribution).

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Figure 1:
Forms of Concentration in the (Traditional) Media Sector

Newspapers/Magazines

Value segment | Actors

Print distribution — Distributor A, Distributor B, Distributor C

Print publishing — Publisher A, Publisher B, Publisher C

Print production — Ed. office A, Ed. office B, Ed. office C

Value added chain; horizontal concentration; vertical concentration

Television programmes

Value segment | Actors

Programme distribution — Distributor A, Distributor B, Distributor C

TV programme provision — Provider A, Provider B, Provider C

Programme production — Producer A, Producer B, Producer C

Value added chain; **horizontal concentration**; **vertical concentration**

Radio programmes

Value segment | Actors

Programme distribution — Distributor A, Distributor B, Distributor C

Radio programme provision — Provider A, Provider B, Provider C

Programme production — Producer A, Producer B, Producer C

Value added chain; horizontal concentration; vertical concentration

diagonal (cross-ownership) concentration

Accordingly, *vertical* concentration (of supply) in the television sector relates to the market shares of companies which operate on successively downstream value added segments. A programme provider, for example, could extend its activities to the upstream value added segment by founding its own production company (or by acquiring an existing production company); or it could start operating on the downstream value added segment by distributing its programmes (or the programmes of other providers) via its own or acquired transmission facilities, satellite or cable network operators.

Diagonal concentration (of supply), also known as cross-ownership, relates to the market shares of companies that operate in one (or also in different) value added segment(s) in a variety of media. A television production company, for example, could team up with a company that produces cinema films, computer games or video clips; cooperation is also conceivable with companies which operate on a different value added segment in these media (for example, a merger with a newspaper publisher or with a cable network operator).

1.2. Causes of Concentration in the Television Sector

The media sector is traditionally characterised by comparatively high concentrative tendencies. Irrespective of currently observable merger and concentration measures that are primarily attributable to technical changes,[1] there are fundamental economic incentives for media suppliers to form horizontal, vertical and diagonal mergers. These have been discussed in media economics and essentially identified by economic policies as reasons for countermeasures in the fields of competition law, antitrust law and media law.

The so-called *economies of scale* are viewed as the main cause *of horizontal concentration* in the media sector, i.e. falling (average) costs as output rises. These economies are attributable in turn to the non-rivalness of consumption in the media: The extension of the circle of media consumers (of the “audience”) does not reduce the benefits for individual media consumers (a television programme, for example, gives the individual viewer a benefit that is independent of the number of persons simultaneously watching that programme; and the benefit that a daily newspaper gives to the individual reader is independent of how many other copies of that newspaper are being read). Consequently, the marginal costs *of consumption* of media content are equal to zero; and the so-called optimal output of a media producer (as the average cost minimum)[2] is achieved at the highest saleable output level. Furthermore, the marginal costs of the *production* of media content also fall, albeit not uniformly, up to large output levels – for example, the printing costs per copy of newspaper and magazine in dependence on the circulation, and the production costs per TV-programme minute in dependence on the duration and number of the programmes produced. The primary explanation for horizontal concentration, therefore, is the endeavour to extend output (i.e. – depending on the medium – to increase the circulation or viewer ratings), via which – assuming constant marginal costs of consumption and degressively rising marginal costs of production – the (sales or also advertising) revenues increase. -- This horizontal concentration, however, is limited by the fact that media content will ceteris paribus differ to an increasing extent from the preferences of the consumers as output rises. It will end at a point at which the associated cost savings are lower than the

1 See Section 1.3.

2 Cf. on this aspect the explanations in the relevant microeconomics textbooks, for example, in KREPS 1990 or LIPSEY/CHRYSTAL 1995. They also deal with the variants of the basic models presented here, which relate to oligopolistic or monopolistic forms of supply or which result from the distinction between fixed and variable costs (and, in connection with these costs: short-term and long-term sales planning).

concomitant benefit losses.[1] Insofar as the (anti-concentrative) heterogeneities of preference increase to a greater extent over time than the (pro-concentrative) economies of scale resulting from the non-rivalness of consumption the horizontal concentration of media enterprises will ceteris paribus (i.e. neglecting other conceivable factors that could influence concentration)[2] even decrease.

The main cause of *vertical concentration* of companies in different value added segments of one and the same medium are the so-called *economies of scope*. These economies result from the fact that some resources can be utilised in several value added segments without causing higher costs than if these resources were to be utilised in just a single value added segment. For example, non-rival resources (such as PC Software, know-how, industrial safety facilities) or resources with stepped fixed costs (for example, certain administrative, distribution, advertising and R&D activities) remain constant in the case of the vertical concentration/integration of companies up to a certain company size, which means that vertically integrated media enterprises have a more favourable cost structure than media enterprises which confine their activities to just a single value added segment.

Economies of scope are also the main cause of the *diagonal concentration* of companies which operate within the same or in different value added segments of *different* media. These result here if resources (once again due to non-rivalness or to stepped fixed costs) can be utilised for the production, provision or distribution of different media without causing higher costs than those that would arise if a single medium was utilised. Editorial activities that have been invested for the production of broadcasting programmes, for example, could also be utilised due the their non-rivalness for the production of programme-accompanying print media. Along similar lines the resources required for the distribution of a medium (such as television programmes), for example, transmission facilities or cable networks, could also be utilised without additional costs for the distribution of other media (such as radio programmes). – A contributory factor for diagonal concentration is the fact that the properties of media offerings can only be assessed by the consumers after consumption ("experience goods") or cannot be assessed at all ("credence goods") and that the offerings of those companies are preferred which are already familiar from other markets and thus can be assessed indirectly (reputation).

1 Taking into account this form of "rivalness", media cannot be classified as purely public goods, but must be classified as limitedly public goods (so-called club goods). See on this aspect KOPS/HANSMEYER 1996, HANSMEYER/KOPS 1998. Cf. also Section 2.3. for an explanation of the – U-shaped – average cost curve to be expected under these conditions.

2 See Section 1.3.

1.3. Foreseeable Increase of Concentration Tendencies in the Television Sector

Foreseeable technological changes in the media sector will make the already mentioned intramediary and intermediary economies of scale and scope even greater. This will bring about a further increase in the resultant tendencies towards horizontal, vertical and diagonal concentration for media offerings.

One major technological reason is *the digitalisation* of media production and media distribution, which allows all media contents to be stored, processed and transported in the same form independent of transmission modes and terminal equipment. On the one hand, this leads to production cost savings, which pushes up optimal company size (and ceteris paribus, therefore, reinforces the tendencies towards horizontal concentration); on the other hand, the existing economies of scope are compounded and new economies of scope created (and ceteris paribus, therefore, the tendencies towards vertical and diagonal concentration increased).

Digitalisation, however, also creates a situation in which the elements of traditional media – service, network and terminal equipment – can be increasingly decoupled and reassembled to form new kinds of differentiated media. A variety of new forms of offerings are thus positioning themselves between the traditional print media and the traditional electronic media of radio and television, which resemble each other to a much greater degree and between which there are much more pronounced economies of scope than between the traditional media newspapers/ magazines, television and radio (cf. Figure 2). For example, new electronic services resembling print media (such as Video Text, Emails, Ebooks, online services, stock exchange services, electronic banking, news services, etc.) and new electronic services (such as Video Web Casting, (Near-) Video On Demand, Business TV, Telegames, Teleshopping, Teleteaching, etc.) will move between print media and television. And electronic services with a similarity to radio (for example, Audio Web Casting, (Near) Audio On Demand, call services, etc.) will establish themselves between television and radio programmes. The transitions between these services will become fluid; for the user – assuming appropriate terminal equipment, transmission channels, software standards and network technologies – the user will be unable to detect any differences at all in the case of some services. This convergence of the greater variety of media offerings in terms of technology and content creates more possibilities for a common, non-rival consumption of resources – both within the newly emerging, more differentiated media (increased vertical concentration) as well as between these media (increased diagonal concentration). The associated increase in the variety of media offerings, on the other hand, diminishes the already mentioned tendencies towards horizontal concentration.

Figure 2:
Value Added Chains of Digital Media Offerings

Radio programmes

Radio-type electronic services
(Web Casting, (Near) Audio On Demand, Message services, Call services, etc.)

Television programmes

Production of TV-appropriate performances/ events

Production of rights for performances/ events

TV Programme production

TV programme provision

Individual programmes

Programme subscriptions

Programme bundles

TV-programme marketing

TV programme distribution

Multiplexing

Integration in navigation systems

Data transmission

TV programme reselling

Rights agencies

Programme dealers

Programme producers

Programme providers

Advertising/marketing agencies

Computer centers/ software houses

Service providers, platform operators

Radio/ cable/ satellite operators

Post programme dealers

Television-type electronic services
(Web Casting, (Near) Video On Demand, Business-TV, Telegames, Teleshopping, Teleteaching, etc.)

Print media-type electronic services
(Video Text, Emails, Ebooks, Online services, Stock exchange services, Electronic banking, News services, etc.)

Newspapers and magazines

The greater variety of media offerings is paralleled by greater differentiation of value added chains, both of the (digitalised) classic media and of the newly emerging digital media: The existing value added segments will be extended by new, value added creating goods and services (= deepening of the value added chains), and new, value added creating goods and services will emerge behind and in front of, and also, to a certain extent, between existing value added segments (= lengthening of the value added chains). These changes are illustrated in Figure 2 with exemplary reference to the medium television: Instead of the simple value added chain presented in Figure 1, with the three value segments production, provision and distribution, a much more differentiated value added chain emerges: The (own) production of television programmes, for example, is preceded by business in rights for performance/events (actors: rights agencies) and in external productions (actors: film and/or programme distributors) as new value segments, the value segment of programme provision disintegrates into several different task profiles (such as: the provision of individual programmes, programme subscriptions and programme bundles). the value segment of distribution also splits up into a variety of tasks (such as: the so-called multiplexing, the integration of navigation systems and the actual data transmission itself), and additional value added segments move in ahead of and behind programme distribution (such as: programme marketing and resale). A similar process of differentiation can be observed in the case of the value added chain of other media (Figure 2 refrains from presenting them in detail).

Through this horizontal differentiation of the value added chain the similarity of the goods and services supplied on the individual value added segments will increase. This will thus extend – in a way resembling the previously described (vertical) differentiation of media offerings – the economies of scale and scope, and the incentives for the actors operating on individual value added segments to engage in horizontal, vertical and diagonal concentration will increase.

The horizontal differentiation of the value added chains, however, also means that the actors in individual value added segments will become more dependent on the economic decisions of actors in upstream and downstream segments. These dependencies result inter alia from technical bottlenecks and the need for uniform technical standards; a further key explanation, however, is also the fact that, due to the economic causes outlined and in part due to the competition policy failings of the past, monopolistic or oligopolistic supply and demand structures have emerged within individual value added segments which give the actors there considerable market power in comparison with the actors on upstream and downstream segments. On account of this high degree of dependence the great economies of scale and scope are joined by a further economic cause for the above-average incentives for concentration in the case of the media, especially the digital media: (Vertical) integration here provides a suitable instrument for effective protection with low transaction costs against the opportunistic behaviour of actors in neighbouring value added segments. This explains the large number of mergers and alliances that can currently be observed, especially between Content Providers (for example, rights agencies, film production firms, editorial offices, television

providers) and Service Providers (for example, network operators and operators of technical platforms). Both groups are interdependent when it comes to building digital television and other digital media: Efficient and low-cost distribution channels and systems are required for the distribution of software, but they only make sense for the consumer if they can be received with attractive content (software).

Finally, the uncertainties connected with technological changes and changing patterns of consumer behaviour for the amortisation of investments (that tend to be high)[1] also increase the incentives for vertical and diagonal concentration, spreading the investment risks to several companies that operate with different media contents and distribution channels.

[1] The varying assessments of the prospects of (digital) Pay TV and Pay-Per-View offerings in comparison with the prospects for Web Casting characterise this uncertainty. Whereas in Germany the Kirch Group has invested billions of Marks in the former marketing variant, Bertelsmann has dropped this market altogether and focuses on the Internet. See, for example, on this aspect JAKOBS 1999.

2. Advantages and Disadvantages of National Concentration Restrictions

2.1. Advantages of National Concentration Restrictions

With a high level of concentration of media offerings a number of suppliers hold substantial market power, which enables them to restrict economic competition or make it ineffective, for example, through collusive agreements on prices and quantities or through the discrimination of suppliers and purchasers. This makes the prices of the goods offered higher and/or the quality lower than in the more intensive competition that exists in a less concentration supply situation. This diminishes the welfare of the media users and/or consumers – and hence of the economy as a whole. The extent of these welfare losses depends on the degree of absolute and relative concentration, i.e. on the number of suppliers and their shares of the market, as well as on a number of other factors, some of which are harder to define.

These disadvantages of economic concentration are especially high in the media industry, as - even when there is a workable competition - the specific attributes of the audiovisual media render the diversity of the suppy side smaller than for other goods.[1] Concentration in the media sector, thus, not only impairs economic competition, but also journalistic competition (as the competition between alternative ideas and opinions). Insofar as the media fail to adequately represent "the plurality of themes and opinions ..., that play a role in society as a whole,"[2] they will not be able to fulfil major social functions adequately; the disadvantages of weakened economic competition that directly affect media users (negative impact on price and quality) are compounded by indirect disadvantages (in economic terms, so-called "negative external effects"). In this situation, the freedom of opinion is curtailed, the political control function and society's integration function are insufficiently fulfilled by the media, and the political and cultural diversity of media contents (particularly for minorities) declines. These indirect consequences also constitute social costs (which, admittedly, are hard to quantify) of media concentration. They are particularly serious if the journalistic influence of media owners derived

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1 This tendency to supply "more of the same" has been illustrated by the so called TV-Economics school (see, for example, BEEBE 1977, GERBNER 1991, NOAM 1987, OWEN et al 1974, SPENCE/OWEN 1977). Its basic result - that the plurality of the supply is small if the demand concentrates on some few "main stream" contents only - can be illustrated by a simple example: In the case, say, that 67 % of the viewers prefer "entertainment" and 11 % of the viewers respectively prefer "culture", "information" and "education", the first six commercial broadcasters will all offer "entertainment" only, since each of them can cover one sixth (= 11,2 %) of the total market. Only a seventh supplier entering the market will offer "culture", "information" or "education", since it can reach a higher market share (of 11 %) with this genre, compared to another, seventh entertainment channel, which would compete with the six existing entertainment channels (and would only reach one seventh of 66 %, i. e. 9,4 % of the total market). In a case in which the number of stations is restricted for technical reasons to six (e. g. when there is terrestrial distribution only), all suppliers will offer "the same" (entertainment) and no station will supply one of the other genres.

2 Wording to this effect by Germany's Federal Constitutional Court (Bundesverfassungsgericht – BVerfGE) can be found in BVerfGE 57, 295, 319ff, 73, 118, 152f, 74, 297, 320, 83, 238, 320.

from market power is used to support favoured politicians or political parties or, as, for example, in Italy,[1] or to even move into political office themselves.[2]

These consequences are described and discussed in detail in the literature on media law. Germany's Federal Constitutional Court has also repeatedly pointed out the political and social risks of media concentration. Interest focused here on television – because of its extensive reach and its particular suggestive power; for radio and for newspapers and periodicals, too, however, as the other "classic" mass media, jurisprudence has often emphasised the need for legal control of media concentration that extends beyond antitrust law – encompassing a control under media law of vertical and diagonal concentration.

It is not only appropriate, therefore, that general competition and antitrust law barriers should apply for private media providers – in Germany, first and foremost, the Act Against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen, GWB) and the Act Against Unfair Competition (Gesetz gegen den unlauteren Wettbewerb, UWG) – but also that barriers to concentration should also exist under broadcasting and media law that move beyond this framework and which prevent a restriction of journalistic competition and the creation of "controlling influence" ("vorherrschende Meinungsmacht").[3] The plurality of media offerings which this safeguards and increases, helps contribute to discourse in society and thus to political competition, political control of power, and social integration, too.

2.2. The National Concentration Restrictions of German Media Law

Concentration restrictions under media law that extend beyond general economic law, therefore, exist in many countries.[4] In Germany they are specified in the media laws of the individual federal states (*Länder*) and in the German Interstate Broadcasting Agreement (Rundfunkstaatsvertrag – RfStV). The following wording, which can be found in the RfStV[5] and in most Land media laws, has become a

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[1] In Italy former head of government and current opposition leader Silvio Berlusconi controls three of the six nationwide television stations. For more information on the problems this entails see, for example, WEBER 1997.

[2] The external costs of insufficient journalistic competition (which, to cite the terminology used by the Public Choice school, are classed as "agency costs" or "frustration costs") are not only caused by the fact that the media (as the so-called agents) fail to offer media users (as the so-called principals) the contents they demand, but also by the fact that governments which owe (phoney-democratic or dictatorial) rule to the improper use of the suggestive power of the media are able to push through decisions that citizens do not want or which have adverse effects for citizens in other policy fields. Cf. on this aspect KOPS 1999, pp, 76 ff. with further literature references.

[3] The corresponding German term is used for the first time "as a new key term in concentration law" (STOCK 1997a, p. 23) in the RfStV 1997 (Art. 26). It can be viewed, to cite STOCK's (ibidem), "as a sub-case and form of control of the unilaterally dysfunctional exertion of influence".

[4] See HOFFMANN-RIEM 1996 for an overview.

[5] Art. 25, paras. 1 and 2 of the Third German Interstate Broadcasting Agreement (Dritter Rundfunkänderungsstaatsvertrag) of 26.8/11.9.1996, which came into force on 1 January 1997, cited in the following as RfStV 1997.

"legislative creed":[1] "The content of private broadcasting must generally indicate a plurality of opinion. Important political, ideological and social groups shall be given adequate opportunity to express themselves in the full programme services; minority views shall be taken into account. It shall remain possible to offer specialised programmes. A single programme shall not influence public opinion in a largely imbalanced way."

The RfStV valid up until 1996[2] sought to achieve these goals through a so-called participation model. According to this model, a provider of nationwide full programme services or of specialised programmes focusing on information should only be allowed to operate if it held less than 50 % of the capital or voting rights and if it did not exercise a "comparable controlling influence" in any other way (element of internal plurality)[3] and if it distributed at most two radio and two television programmes and respectively only one full programme or specialised programme focusing on information (element of external plurality).[4] The two elements were combined through the provision to the effect that a company that held a share of 25 % or more in a provider of a nationwide full television programme or information programme was not allowed to hold shares in more than two other providers of such programmes or only allowed to hold a share of less than 25 %.[5]

Due to its various shortcomings (in particular due to the incentives to form associations of suppliers in which the allocation of journalistic responsibility was no longer identifiable) the participation model was replaced in the new version of the RfStV which came into force in 1997 by the so-called market share model or viewer rating model. This model only includes elements of external plurality, and it allows a company to broadcast an unlimited number of television programmes nationwide in the Federal Republic of Germany insofar as it is unable to exercise a "controlling influence". Such a controlling influence is presumed to exist pursuant to Article 26, para. 2, sentence 1 RfStV 1997 if the programmes attributable to one company achieve an average annual viewer rating of 30 %; all programmes are attributable to a company which that company either broadcasts itself or which are broadcast by another company in which the company has a direct holding of 25 % or more of that company's capital or voting rights (this is known as the "minor-market threshold").[6] Controlling influence is also presumed if the rating is "slightly" below the 30 % threshold insofar as the company holds a dominant position in a related, media-relevant market or if an overall assessment concludes that the influence is equivalent to that of a company with a viewer rating of 30 %.[7]

1 SCHELLENBERG 1997, p. 38

2 See RfStV of 31 August 1991, amended by the Second German Interstate Broadcasting Agreement of 22 June 1995, cited in the following as RfStV 1991.

3 Art. 21, para. 2 RfStV 1991

4 Art. 21, para. 1 RfStV 1991

5 Art. 21, para. 2 RfStV 1991

6 Art. 28, para. 1, sentence 1 RfStV 1997

7 Art. 26, para. 2, sentence 2 RfStV 1997

If a company is able to exercise a controlling influence as defined by law it is to be denied any further external growth;[1] furthermore, it shall appropriate steps to eliminate its controlling influence in order to avoid the revocation of the broadcasting licences that have been issued. The following measures can be considered: The relinquishment of attributable holdings in other broadcasters,[2] the reduction of market power on related, media-relevant markets,[3] the provision of transmission time for independent third parties, and the appointment of advisory councils with pluralistic representation and effective programming influence.[4]

The most important parameter of control in German media concentration law, therefore, is the market share ceiling laid down in Art. 26, para. 2, sentence 1 RfStV 1997. The intensity of the national concentration restriction varies along with other determinants, such as the definition of related, media-relevant markets pursuant to Art. 26, para. 2, sentence 2 RfStV, the minor-market threshold laid down in Art. 28, para. 1 RfStV or the interpretation of the term "slightly less" with respect to the market share ceiling as specified in Art. 26, para. 2, sentence 2 RfStV. As opposed to these parameters, however, the market share ceiling is intentionally designed as a politically determinable – and, if need be, alterable – adjusting screw for the intensity of national concentration restriction.[5]

The figure of 30 % laid down as a market share ceiling in the RfStV 1997, therefore, has also become a focus of media policy discussion. As the ceiling was higher than the level reached by the existing media provider “families” in the Federal Republic of Germany at the time of the amendment of RfStV 1991, i.e. in the year 1996, it has occasionally claimed that the limit had been set as a, so to speak, “supporting pillar” in the interest of a “corporate- and concentration-friendly tendency” (STOCK 1997a, p. 32), benefiting, among others, for example, companies such as Kirch and Bertelsmann. The history of the origins of the RfStV 1997 does indeed provide weighty indications for such an assertion.[6]

A further major point of criticism of the market share model anchored in the RfStV 1997 was that it had been too strongly orientated to one form of concentration (horizontal concentration) and to a single medium (television).[7] This focus finds its expression in Figure 1 in the form of the circle drawn in bold type. It shows that the market share model of RfSTV 1997, just like the participation model of RfStV

1 Art. 26, para. 3 RfStV 1997

2 Art. 26, para. 4, sentence 1, No. 1 RfStV 1997

3 Art. 26, para. 4, sentence 1, No. 2 RfStV 1997

4 Art. 30, para. 1, Art. 31 RfStV 1997 and Art. 31, para. 2, Art. 32 RfStV 1997

5 This is why it is justified in the following section to simplifyingly assume in the model theory examination of the consequences for the international competitiveness of media enterprises resulting from national concentration restrictions that the market share ceiling is the only determinant for the intensity of national concentration restrictions. It would also be possible, of course, in the approach presented here to treat the market share ceiling vice versa as a constant and to examine the implications for international competitiveness connected with the variation of other determinants of the intensity of national concentration restrictions.

6 See STOCK 1997a, pp. 16ff., pp. 30ff.; by the same author 1997b, pp. 164ff.; DÖRR 1996, p. 526.

7 RÖPER 1996, p. 620

1991, lacks effective and justiciable barriers to vertical concentration in the television sector (for example, it fails to take into account the additional market power a television broadcaster obtains through the participation in television production companies or in cable network and satellite operators) and that it is unable to prevent a diagonal concentration with the suppliers of other media.[1]

The widening of perspective this would require, extending beyond the aspect of mere horizontal concentration of television broadcasters (indicated in Figure 1 by the middle and outer circle) is recommended to the legislator, particularly with a view to the changes in the media landscape described in Section 1.3. (see again on this aspect Figure 2, in which the circles show the existing, narrow perspective and its required extension). In view of the foreseeable increase in vertical and diagonal concentration it will become more and more difficult in future to measure the market power of a television broadcaster on the basis of its shares of television programme markets alone. Rather, its shareholdings in companies in upstream and downstream value added segments in the television sector and its shareholdings in print media and electronic media must be taken into account to an increasing extent.

The rule incorporated in Art. 26, para. 2, sentence 2 RfStV 1997 that a company's controlling influence may also be assumed at a level that is "slightly less" than the 30 % threshold "insofar as the company holds a dominant position in a related, media-relevant market or an overall assessment of its activities in television and in related, media-relevant markets concludes that the influence obtained as a result of those activities is equivalent to that of a company with a viewer rating of 30 %" paves the way by law for such a wider perspective. In practice, however, this is ineffective, since it only applies to broadcasters who already hold a 30 % or slightly lower share of the market for television programmes.[2] To remedy this problem the term "slightly less" should be interpreted much more broadly than is commonly the case. Furthermore, the concretisation of the term as a fixed percentage share should be avoided, since this would lastingly quantify the supplementary criterion of a "slightly" lower share (irrespective of the foreseeable decline in the significance of the primary criterion of the "television market share"). In view of the need for an indeterminate legal concept that can be adapted to foreseeable technical and economic changes on the media markets any such quantification should be avoided.

Dispensing with quantification in this market-share clause, however, does not mean that the legislator should no longer develop precise and justiciable criteria. Rather, the legislator must develop criteria defining which "related markets" of television broadcasters are "media-relevant" (qualitative relevance) and how great the controlling influence emanating from these related, media-relevant markets is (quantitative relevance). The current concentration control, which is also described as the "television market share model" on account of the predominance of the market shares of television broadcasters, thus should be extended into a "media

[1] See RÖPER 1996, p. 620; LEHR 1995, pp. 669f.; STOCK 1997a, pp. 35f.

[2] As aptly pointed out by RÖPER 1996, p. 618.

market share model". This will create new, sometimes difficult methodological problems of measurement, and it will also not (yet) be possible in the case of most media to fall back on data that have already been gathered anyway for other purposes. Nevertheless, (national) concentration law must move in this direction if the outlined advantages of barriers to concentration are to be maintained under the foreseeable changing market conditions.

2.3. Disadvantages of National Concentration Restrictions

A development of national concentration restrictions in this direction comes up against its limits at the point where the associated disadvantages (costs) are greater than the achieved advantages (benefits), an economic maxim that is also emphasised in jurisprudence (through the principle of proportionality). This applies, first and foremost, to the transaction costs that result for institutions vested with sovereign power[1] and, to a certain extent, for media enterprises[2] when measuring and controlling media concentration – costs which, in the final analysis, the citizens will have to bear (via taxes and goods prices). An inappropriate and inconsistent allocation of responsibilities is just as unacceptable, therefore, as unnecessarily high expectations with respect to the validity and reliability of measuring and control methods, which lead to high additional costs but only low (or even negative) additional benefits; and there is a justification for pragmatic solutions, in which high cost savings compare with low benefit losses.

The disadvantages that result for national media enterprises in international competition should also be taken into account as costs of national concentration restrictions. In particular the "global players" in the media business repeatedly point out that national barriers to concentration prevent them from producing economically optimal outputs and from effecting economically meaningful cooperations and mergers with other media enterprises. They claim that this worsens their sales prospects and diminishes their sales shares abroad, a fact which were reducing national and international revenues as well as the number of profitable jobs in this (particularly future-directed) sector. What is more, there was also a risk that these national jobs would be lost in the slipstream of globalisation, since especially those media enterprises with an above-average share of virtual jobs could easily shift business locations to other countries. Finally, the "global players" argue, a weakening of the competitiveness of German media companies and a reduction of the number of jobs in this key industry could indirectly have adverse effects on other sectors of the economy, for example, on the international reputation of German

1 In Germany these are primarily the *Land* Media Supervisory Authorities (LMAs), the Conference of Directors of the *Land* Media Supervisory Authorities (KDLM), and the Commission on Concentration in the Media (KEK), alongside, especially in the wake of legislation, the state chancelleries, parliaments and governments of Germany's individual federal states.

2 The costs that media companies themselves have to pay to meet official requirements (generally described as passed-on bureaucratic costs) must be taken into account as transaction costs. These primarily comprise the resources required to gather, process and forward data for the assessment of ownership structures, market shares and other indicators of media concentration.

industry, whose image abroad was shaped to a considerable degree by the media, on the efficiency of the news and telecommunications industry, which relied on the substantial synergy effects described in Section 1.3., or – more generally – on the speed with which Germany would develop into an ”information society” in comparison with other countries.

The microeconomic disadvantages at the beginning of this line of argument of a limitation of market shares as laid down in concentration law are illustrated in Figure 3 with the help of the average cost trajectories of two firms F^{96} and F^{05}.[1] Both reveal a U-shaped curve, since the assumption is that average costs will initially (primarily as a result of the non-rivalness of consumption) decline as output rises, but that it will increase again once a certain output level has been reached (and increasing expenses for the promotion, provision and distribution of the programmes become necessary to compensate the increasing differences from the the viewers´ preferences).[2] These disadvantages for the company F^{96} occur at an earlier stage (because, for example, the specific cultural, language and regional characteristics of the media content play a more important role): Its optimal output is at a level of 3,000 million viewer minutes (with minimal average costs at that level of 0.80 DM/viewer minute). In the case of company F^{05} the average costs first begin to increase again beyond the higher output figure of 7,500 million viewer minutes (with minimal average cost of 0.60 DM/viewer minute). -- How many suppliers can stay on the market with these cost behaviour patterns depends on the trajectory of the demand function D. As the average costs fall across the entire area of relevant demand in the case of comparatively low demand, denoted here as D*, only one of the companies (the natural monopolist) can stay on the market, in this case the company F^{96}, which is able to produce the output demanded at lower average costs than F^{05}.

At a demand level such as the level depicted by D, on the other hand, several firms will be able to exist since the quantities they produce in optimal output only satisfy a part of total demand. The 3,000 million viewer minutes produced in optimal output by F^{96}, for example, only account for 20 % and the 7,500 million viewer minutes produced by F^{05} only account for 50 % of the total demand figure of 15,000 million viewer minutes,[3] which means that, under these conditions, a duopoly or a tight-knit oligopoly could be expected in the long run.

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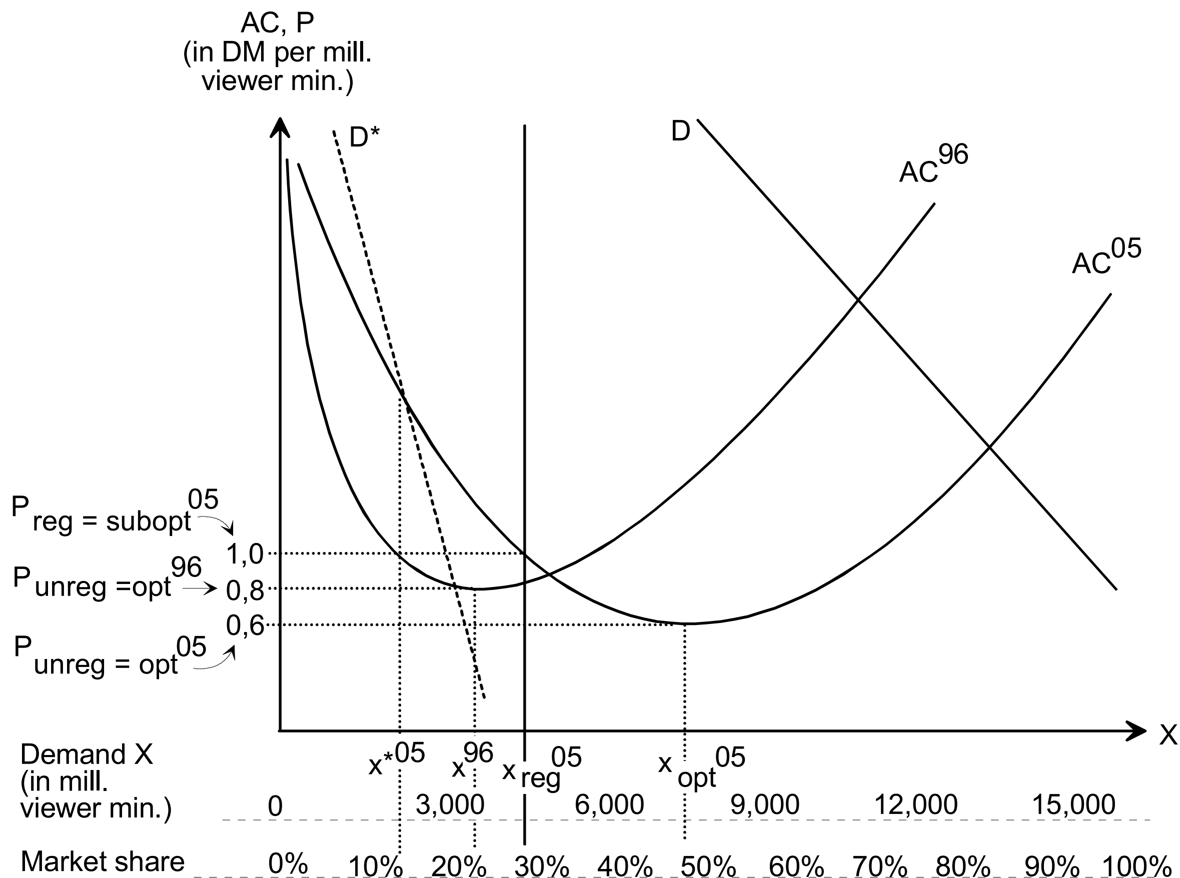
1 Figure 3 refrains from taking into account the previously mentioned transaction costs, particularly as the variation in the extent of these costs probably depends not so much on the intensity of concentration control, which acts there as an independent variable, but on other factors which are primarily connected with administrative economics (to be plotted in Figure 3, therefore, as a parallel to the abscissa).

2 Cf. above, Section 1.2.

3 The numbers inserted for didactic reasons in Figure 3 for absolute demand, market shares and production costs only correspond approximately to the actual figures for the German television market. The total demand was simplifyingly calculated by multiplying the total number of German TV viewers (80 million) with the average daily viewing time (190 minutes). The production costs per million viewer minutes was approximately calculated by dividing the average production costs per transmission minute stated by the ARD for the First Television Programme (5,984 DM, ARD-Jahrbuch 1998, p. 365) by one million. This method neither takes into account the substantial differences between the production costs of the different transmission types nor the

Figure 3:
Microeconomic Consequences of Restricting Market Shares



Microeconomic costs of concentration restrictions – in the German market share model, therefore, primarily the limitation to a market share of 30 % (disregarding the remaining elements of Art. 26, para. 2 RfStV and other anti-concentrative measures of the RfStV in this analysis)[1] – only arise in the cost trajectories shown in Figure 3 if a company's optimal output is higher than the market share ceiling, i.e. if the company targets an output figure in an effort to minimise costs and maximise profits which leads to a share of the market that is higher than the maximum share allowed under concentration law. In Figure 3 this case (assuming in the following the validity of demand curve D) only occurs for the AC trajectory of F^{05}: For this company, therefore, an output figure of 7,500 million units would make sense microeconomically (and would also be saleable at a demand level of D), and the production costs per output unit would be minimised (here: to 0.60 DM per million

differences that result from the (lower) production costs for private television programmes. The fact that the total demand in the simple model used here varies with the price per viewer minute (whereas with the predominance of free TV in Germany a zero price emerges, as a result of which the output demanded depends on other factors – above all, on the opportunity costs of TV consumption) is also neglected here. This justifies, on the other hand, that the approach applied here refrains from varying the total demand in dependence on price (and thus on the output too) when calculating the market shares.

[1] Cf. page 12, footnote 5.

viewer minutes). -- The market share ceiling prohibits this microeconomically optimal solution for F^{05}: Instead, the company can only sell at most 4,500 million viewer minutes (equal to a 30 % share of the market) with average costs of 1.00 DM per million viewer minutes, which is 0.40 DM more than the average costs for the optimal output.[1]

National concentration restrictions do not cause microeconomic costs, on the other hand, for the company F^{96}: The optimal output targeted by this company is achieved at a figure of 3,000 million viewer minutes (and production costs of 0.80 DM per million viewer minutes); an increase of this output to over 20 % (or even to the permissible market share ceiling of 30 %) would make no sense in microeconomic terms, since the average costs would then be higher than in the optimal output. The microeconomically targeted market share of 20 %, therefore, is lower than the maximum permissible market share.[2]

AC^{96} possibly depicts the trajectory of average costs for television providers in 1996, the year in which the RfStV 1997 was drawn up. Assuming such a development of average costs, the market share limit of 30 % on which agreement was reached at that time would have had no allocative effects, since it would not have influenced the microeconomic decisions of television providers.[3] It would, as its critics put it, have been a ”paper tiger”.[4] This would change if the minimum average costs were to shift so far to the right, in other words towards higher output, over time (for example, over a period of ten years, following the amendment of the RfStV 1997, i.e. by the year 2005), that the market share ceiling is then lower than the market share that television providers would try to obtain for microeconomic reasons. The trajectory of average costs for the television providers in the year 2005 would, working on these assumptions, perhaps be aptly depicted by AC^{05}. The market share limit chosen in the RfStV 1997 would thus rank as a decision by

[1] This form of presentation and line of argument represent a simplification – carried out for didactic reasons –, since the welfare losses of the consumers (i.e. the lower consumer’s surplus in comparison with the optimal output) compare with the higher producer’s surplus of the suppliers. The macroeconomic welfare loss, therefore, is limited to the (negative) difference between the two forms of surplus, i.e. to the smaller social surplus caused by the concentration restriction.

[2] F^{05} would also have no microeconomic costs that are caused by national concentration restrictions if the demand curve D* were to apply: F^{05} could then sell the output x^{*05}, but not output $xopt^{05}$. This explains efforts by the media enterprises to not only lower their operating costs, but also to increase the demand for their products, for example, by offering more contents with mass appeal, with, perhaps, fewer specifically regional or cultural characteristics, and through the (thus partly achieved) standardisation of user preferences. Whether this will be achieved, at least to the extent outlined in Figure 3 (shift from D* to D), is doubtful. On the one hand, an adaptation of viewer preferences to international film and television productions, particularly in Asian and South American countries, has been confirmed (buzzword: US-American cultural imperialism); on the other hand, however, the number of media products that can be marketed worldwide has been relatively low so far: ”These include parts of music production, a large share of the Hollywood films and a number of literary world bestsellers. The remaining media offerings have so far been by and large tailored to individual language and culture areas and thus have marketing problems when they are expected to move beyond these boundaries” (SEUFERT 1999, p. 121).

[3] See Section 2.2.

[4] HEGE 1994, p. 248.

the legislator which, although not effective at the time of its introduction, was nevertheless expedient with an eye to the changing media landscape, far-sighted, as it should become substantively effective a few years after it was adopted.

Assuming that AC^{05} approximately depicts the relative magnitude of microeconomic costs for television providers the already-mentioned criticism levelled by the media enterprises against the national market share ceiling of the RfStV 1997 is justified, although perhaps not with respect to its date of introduction but with a view to today’s and future market opportunities. Substantially higher (in the cost trajectories assumed in Figure 3, for example, 40 % higher) costs in comparison with foreign competitors who, due to larger sales markets (North America) or the absence of (or less rigid) national concentration restrictions (France, Italy, Japan),[1] are not prevented from achieving optimal output, impede the international competitiveness of German media enterprises, which have to compete on both domestic and foreign markets with multinationally operating, in particular US-American media groups.[2] The ceteris paribus associated reduction in sales and revenues then indeed leads to the criticised decrease in the income of the employees of German media companies (and of the German and foreign capital owners of these companies). And it creates a situation in which fewer profitable jobs are available in the German media industry than would be the case without national concentration restrictions. Bearing in mind the aspect of high unemployment and the strengthening of international competitiveness quite rightly emphasised by politicians, these and other conceivable disadvantages of national barriers to concentration should not be disregarded, even if they are, in some instances, similarly hard to quantify as the previously mentioned advantages of national concentration restrictions.

2.4. The Need to Weigh Up the Advantages and Disadvantages of National Concentration Restrictions

Discussing the disadvantages of national concentration restrictions does not necessarily mean that such restrictions should be waived. Their associated costs, however, must be weighed up against the previously outlined and also significant benefits of national concentration restrictions. Furthermore, the socially appropriate extent of such restrictions (or, for generally, the socially appropriate intensity of national concentration control) should be determined on the basis of this weighing up the advantages and disadvantages of concentration restrictions in the political discussion.

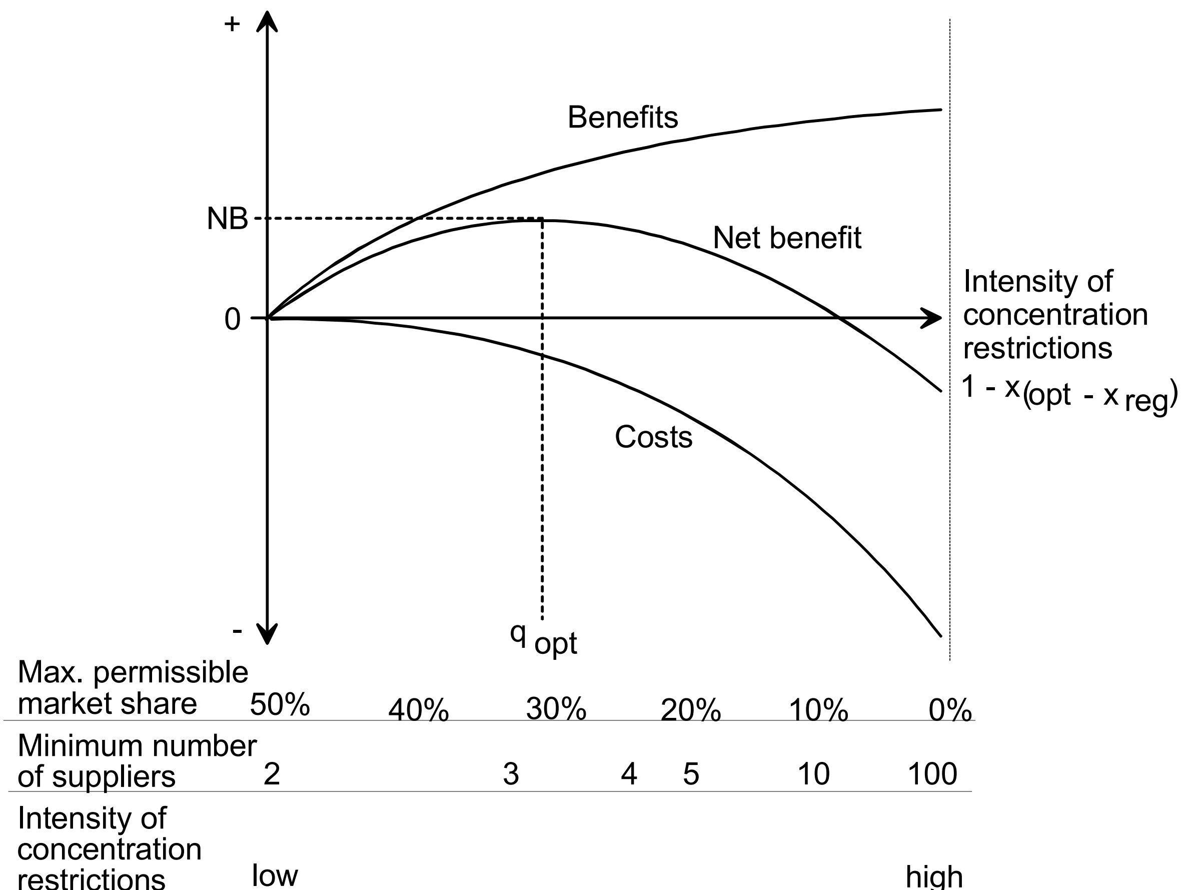
Figure 4 depicts this weighing up as an economic cost-benefit analysis in a two-dimensional form of presentation. The intensity of national concentration control (measured in a simplified way as the level of the market share ceiling) is plotted on

[1] Comparative international presentations of laws relating to media concentration can be found in EUROPÄISCHES MEDIENINSTITUT 1995, pp. 184ff.; HOFFMANN-RIEM 1996; SCHELLENBERG 1997 and PARASCHOS 1998; specifically on media concentration control in Britain see HOLZNAGEL/GRÜNWALD 1997; specifically on the by and large deregulated media markets in Japan and other Asian countries see MECKEL 1996, pp. 630ff.

[2] On the predominance of the US-American media industry in Asia and Latin America see MECKEL 1996 and SALAMANCA 1996.

the abscissa and the benefits and the costs of national concentration control (as positive and/or negative quantities) on the ordinate. -- On the assumption that the curve of average costs AC^{05} in Figure 3 is an apt depiction of the microeconomic cost trajectories the national concentration restriction first begins to generate social benefits beyond the market share ceiling shown in Figure 4 of less than 50 %.[1]

Figure 4:
Benefits, Costs, and Net Benefit of Limiting Concentration
in Dependence on Their Intensity



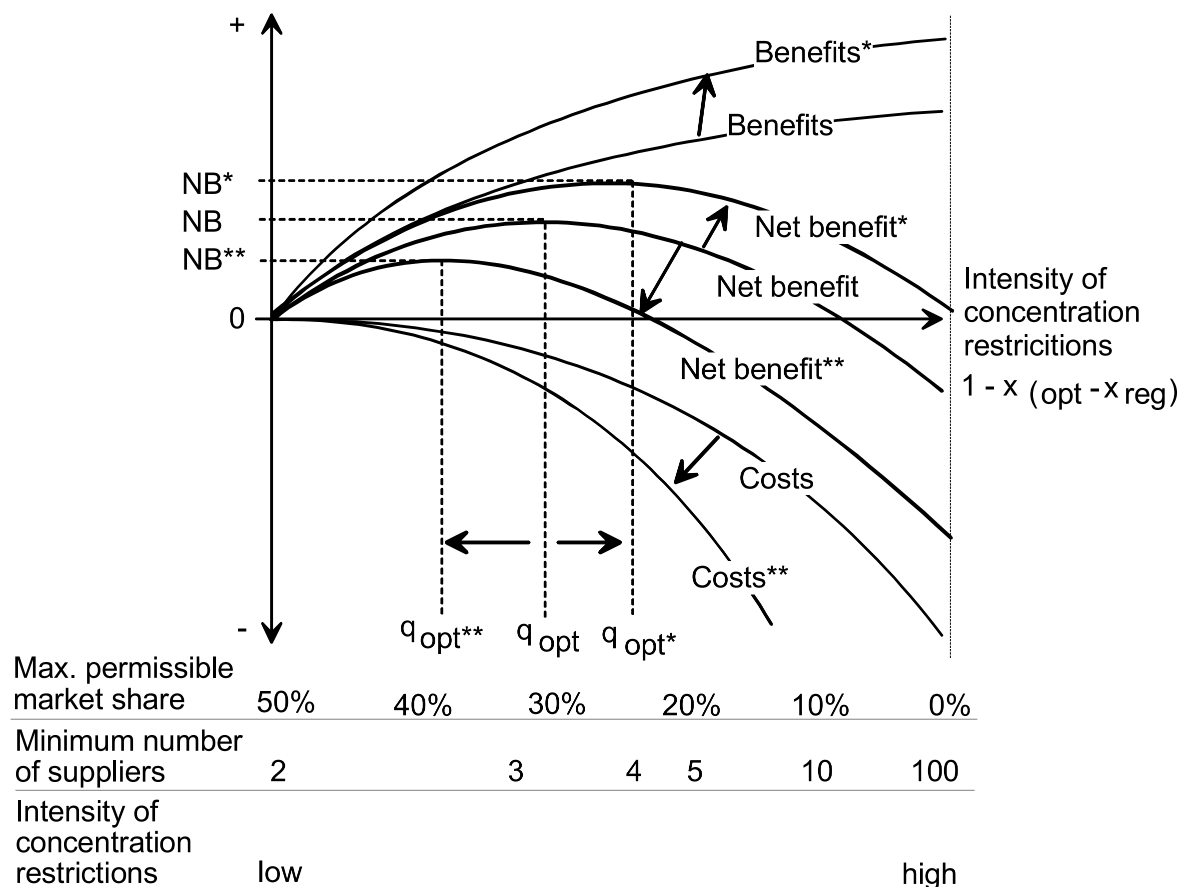
These benefits increase with the growing intensity of the concentration restriction. In Figure 4 a disproportionately low increase, i.e. falling marginal benefits are also assumed – as is customary in the economics of commodities – for national concentration restrictions with the growing intensity of these restrictions. The marginal benefits, which are generated, for example, by the fact that the (regulated) market share of the biggest provider is 10 % lower than the (unregulated) market share

[1] If the market share ceiling is higher than 50 % the microeconomic decisions remain unchanged (because, assuming the cost trajectory depicted by AC^{05} in Figure 3, a higher market share was not targeted by the providers); the social benefit (as well as the social costs) of the national concentration restriction, therefore, would amount to zero. – Under the assumption of different microeconomic cost structures, for example, those depicted by AC^{96} in Figure 3, the social benefit (and cost) of a national concentration restriction would take a correspondingly different course. In the case of AC^{96} a social benefit would already be achieved beyond a market share ceiling of ≤ 30 %.

generated on the basis of microeconomic considerations, is estimated to be greater if the market share is reduced from 50 % to 40 % (the number of suppliers thus increases from 2 to 3) than if this share is reduced from 40 % to 30 % (and the number of suppliers increases from 3 to 4), and the latter in turn is estimated to be higher than in the case of a market share reduction from 30 % to 20 % (and an associated increase in the number of suppliers from 4 to 5), etc.[1]

On the other hand, beyond a market share of ≤ 50 % the costs of national concentration restrictions, described in Section 1.2., arise. Figure 4 assumes a disproportionately high increase in these costs with growing intensity of the concentration restriction. This progressively rising increase is attributable to the fact that – as depicted in Figure 3 – the average costs initially decrease disproportionately with growing output, as a result of which a prohibition via national concentration restrictions of the realisation of microeconomically optimal output causes even higher microeconomic (as well the associated social) marginal costs the greater the extent to which the maximum permissible market shares under concentration law diverge (downwards) from the microeconomically expedient market shares.

Figure 5:
Controversial Assessment of the Benefits, Costs, and Net Benefit of Restricting Concentration



[1] This seems plausible, since a second supplier who joins a monopolistic supplier would probably make a greater contribution towards fulfilling the functions of broadcasting than a third supplier joining a duopoly, a fourth supplier joining a triopoly, or, say, a tenth supplier joining nine suppliers.

By balancing the benefits and costs the so-called net benefit of the national concentration restriction can be determined. Due to the assumption that the benefits rise degressively and the costs rise progressively with the intensity of concentration this net benefit initially increases with the growing intensity of the concentration restriction, but it declines again beyond a certain intensity, and, finally, even becomes negative. Insofar as the market share ceiling is located to the left of the maximum on the net benefit curve the lowering of this share (i.e. the intensification of the concentration restriction) is recommendable, since the associated marginal costs are lower than the thus achieved marginal benefits. If the market share ceiling, on the other hand, is located to the right of the maximum on the net benefit curve its increase (i.e. a reduction in the intensity of the concentration restriction) is advisable, since the thus saved marginal costs are higher than the simultaneously lost marginal benefits.

Working with the trajectories depicted in Figure 4, maximum net benefit will be achieved at a market share ceiling of 30 %; the market share ceiling fixed by the legislator in the RfStV 1997, therefore, could not have been a better choice in terms of economic considerations that weigh up the macroeconomic advantages and disadvantages of a national concentration restriction. If the benefits of a national concentration restriction are put at a higher level than in Figure 4 (with unchanged costs) a more intensive concentration restriction would be required (i.e. a lower market share ceiling). In the case of the benefit curve marked with an asterisk (*) that is plotted in Figure 5 the net benefit curve would reach its maximum at a market share ceiling of $q_{opt}*$ = 35 %. -- A lowering of the market share ceiling would be required, on the other hand, if the benefit curve were to increase less markedly with growing intensity of the concentration restriction than in Figure 4 or if the costs were to increase to a greater extent than assumed in Figure 4. In the cost trajectory marked with two asterisks in Figure 5, for example, the net benefit curve would shift to bottom left, producing a new market share ceiling q_{opt} of 25 %.

The conceptual model underlying Figures 4 and 5 is designed to illustrate that a theoretically clear-cut, welfare-maximising intensity of national concentration restrictions exists in the form of the maximum on the net benefit curve. This reveals the general qualities, but also weaknesses of abstract model observations that simplify reality. Above all, it should not create the impression that the benefits and the costs (and thus the net benefit) of national concentration restrictions could be measured with empirical exactness and without controversy. This was already mentioned in the qualitative presentation of these forms of benefits and costs in Sections 1.1. and 1.2: The social significance of both parameters can be defined, depending on fundamental ideological attitudes, distribution policy considerations and other factors, very differently; consequently, the collective decisions taken in this context strongly depend on the decision-making procedures applied.

On the other hand, the conceptual model which finds its expression in Figures 4 and 5, correctly describes the approach needed for a rational media concentration control in principle: What is required is a political decision-making process characterised by a weighing up of the social advantages and disadvantages associated

with concentration restrictions of varying intensity. A quantification is essentially necessary here, even though this cannot be carried out down to the last penny and with the precision suggested in the figures depicted.

As, in the final analysis, all citizens are affected by concentration restrictions, which direct the diversity of the media contents offered, the degree to which they are safeguarded against commercial influence, the extent to which international competition is reduced, and the losses of national income, the system of representative democracy, in which all citizens are able to exert the same influence, would appear prima facie to be a suitable instrument for this purpose. And it would then also seem only proper that the intensity of the national concentration restrictions are, as in Germany, determined by the parliaments.[1]

Through representative democracy the goal is to integrate the preferences of citizens into political (majority) decisions with the least possible transaction costs. In this approach the citizens are the so-called principals, the politicians the so-called agents.[2] The delegation of political and administrative tasks by the former to the latter group enables utilisation of the advantages of the division of labour: citizens can concentrate on pursuing their (private) goals and, at the same time, enjoy the advantages of the specialisation of politicians and bureaucrats.[3] The latter function in this arrangement as mere trustees: The greater their ability to assess the preferences of citizens and translate them into political programmes, the more successful they will be.[4] Politics in this sense is, to use the terminology coined by BRETON/SCOTT (1980), ”design by machine”, in which there is no room for independent ideas of politicians that differ from the citizens’ desires and in which the politicians refrain in their own interest (with an eye to vote maximisation) from developing such ideas. If, assuming such a constellation, the political decisions differ from the preferences of the citizens this is not attributable to the influence of the politicians, but to the deficiencies of the collective decision-making procedure, such as the varying ability and willingness of different population groups to participate in politics, an aspect discussed in the last section. The preferences of the citizens thus remain unaffected as the yardstick for political decisions; to use economic terminology, the ”consumer sovereignty” is ascribed to citizens to assess best themselves which political measures maximise their net benefit. And insofar as the deficiencies of collective decision-making procedures are eliminated the system of representative democracy will turn the preferences of citizens into socially optimal decisions.

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[1] Whether, as in Germany, the regional parliaments (*Landesparlamente*) are the suitable decision-making bodies is a different matter, which will be discussed in Section 3.3.

[2] For details of the principal-agent theory see, for example, BLANKART 1994 or KOPS 1999a, pp. 16ff.

[3] See ibidem.

[4] From this perspective politicians act as entrepreneurs, whose goal is the maximisation of votes. See for more fundamental details on this aspect DOWNS 1968.

A completely different result is obtained if the consumer sovereignty of the citizens is contested. In view of the complexity of the interrelationships involved, for example, it is fair to doubt whether citizens are able to properly assess the costs[1] and the benefits of national concentration restrictions. It is particularly doubtful whether, along similar lines to the German Federal Constitutional Court, a citizen can indeed perceive a diversity of media content that extends beyond his or her own preferences as beneficial; and it is also doubtful whether a citizen knows how to assess the disadvantages – which tend to materialise in the long term and are hard to identify – of a commercial provision of media whose diversity fails to extend beyond the degree of diversity desired by the consumers in comparison with the advantages – which tend to materialise in the short term and are pecuniarily noticeable – of an increased international competitiveness of national media companies.[2] If it is contended that citizens do not have these abilities their preferences declared in the political decision-making procedures should not be made the yardstick or at least should not be made the sole yardstick for political decisions. Rather these decisions then should be made by (better informed) ”experts” (which would above all include politicians and bureaucrats).[3] Politics would then no longer be, again using the terminology coined by BRETON/SCOTT, ”design by machine”, but ”design by politicians”. In awareness of their inadequate information situation the citizens would not only tolerate this extension of expert powers (from merely translating citizens’ preferences into practice to actually setting these preferences), but indeed expect this from politicians, as the only way to achieve socially optimal decisions.

Whether decisions on the control of media concentration should be guided, in line with the model of ”design by machine”, by the preferences of voting citizens or, in line with the model of ”design by politicians”, by the ideas of politicians and other experts is a controversially discussed question which cannot be answered here. It would have to be addressed by weighing up the relative efficiency of both approaches and/or the varying, depending on the policy field involved, advantages and disadvantages of delegation.[4] A mixed system combining the two forms would probably be the most suitable choice for media concentration control, and the decision-making procedure essentially practised in the Federal Republic of Germany, in which the ”design by machine” that applies de jure is aligned to the ”design by politicians” through the de facto varying degree of participatory ability and willingness of the different population groups, is probably not that far away from this optimal combination.

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[1] The most important factors which make it difficult for citizens to identify the transaction costs of media concentration control were already pointed out in Section 2.3.

[2] See for a more detailed look at this aspect KOPS 1996, pp. 24ff.

[3] In public finance theory the justification for such ”meritorious” interventions is controversial. See for more general information on this aspect ibidem pp. 7ff.

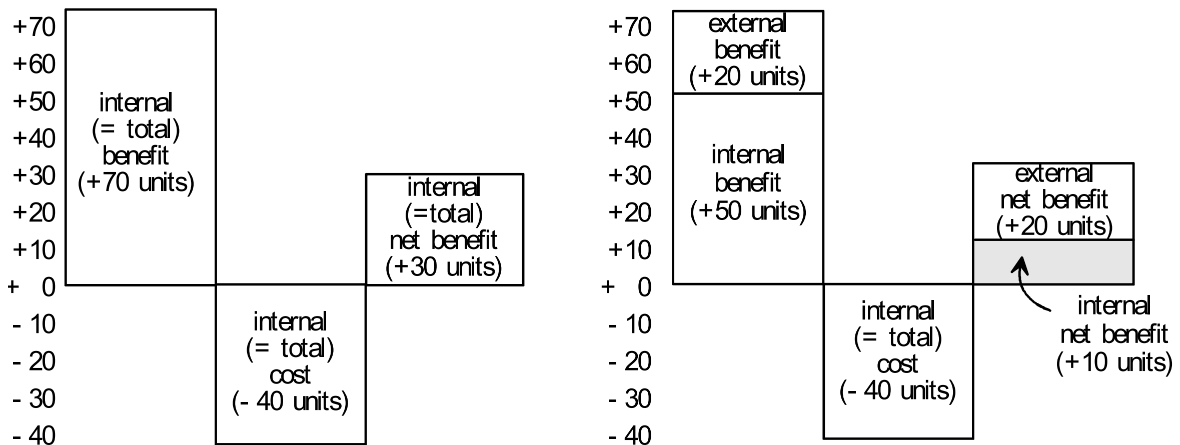
[4] See KOPS 1999a, pp. 16ff., pp. 75 ff.

3. National Concentration Restrictions and Global Media Markets

3.1. The Fixing of National Concentration Restrictions Assuming Spatial External Effects

Irrespective of whether the intensity of concentration restrictions is decided by voters or by politicians and/or "experts" the chosen intensity of concentration control will be suboptimal if part of its costs or part of its benefits are "external", i.e. do not affect the persons participating in the decision-making process (citizens or experts), but affect non-participating "third parties". When demarcating decision-making collectives on the basis of spatial and/or administrative criteria these "third parties" should primarily be defined as those citizens or politicians who are resident outside of the political subdivisions vested with decision-making powers. As subdivisions vested with jurisdiction with respect to concentration restrictions these are, first and foremost, nation-states (which are the focus of the following analysis), although a jurisdiction of their constituent (federal) states as well as associations and/or communities of nation-states is conceivable.

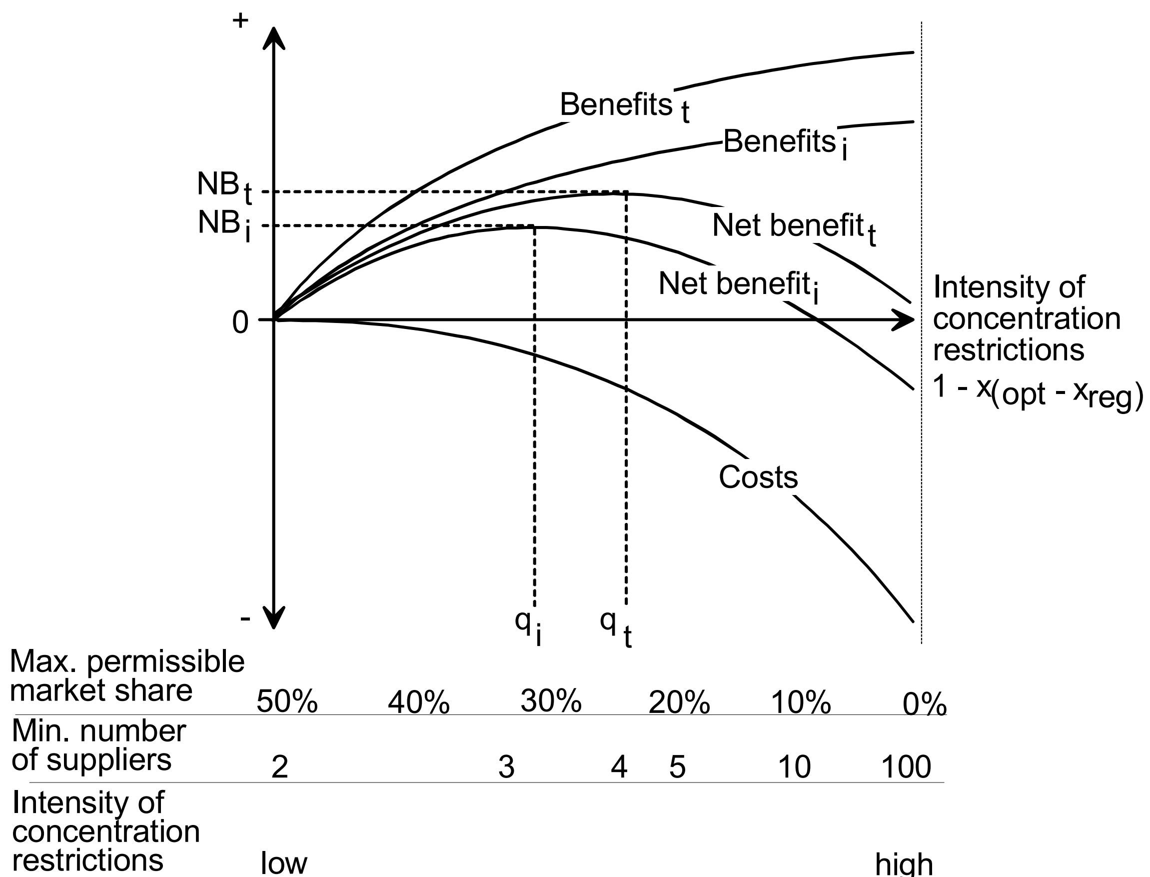
Figure 6:
Spatial Symmetry (Left) and Spatial Asymmetry (Right)
of the Benefits and Net Benefit of a Concentration Restriction



Such "external effects" of concentration restrictions can only be prevented if the companies they affect exclusively operate inside the state issuing these restrictions; this limits the total benefits and the total costs (and thus the net benefit) of the concentration restrictions to the national area of that particular state (or to its resident citizens). -- The left part of Figure 6 depicts this case of a spatial correspondence (symmetry) of the consequences of concentration restrictions; on the basis of the fictitious values assumed there for the internal (= total) benefits (of +70 units) and for the internal (= total) costs (of -40 units) the result is a positive internal (= total) net benefit of +30 units.

If, on the other hand, all or some of the media enterprises operate outside of the state (country) that fixes the concentration restrictions the market shares are limited there too due to the diminished competitiveness described in Section 2.3. This enables other companies to gain higher market shares – with the associated advantages, as described in Section 1.2. (greater plurality, safeguarding of journalistic and political competition, etc.). The national concentration restrictions then generate supranational (external) benefits, which are all the greater the higher the market shares held in other countries by the companies affected by concentration law regulation. On the other hand, the costs of the concentration restrictions (reduced number of jobs, lower revenues and profits) still exclusively or at least by and large find their expression nationally; negative external effects, therefore, do not result. -- The right part of Figure 6 depicts this constellation, working on the assumption that of the total benefits generated by concentration restrictions there is +50 internal units and +20 external units, whereas the entire total costs (of -40 units) are internal. For the inhabitants of the country issuing the concentration restrictions, therefore, there is an internal net benefit of +10 units and for the inhabitants of other countries an external net benefit of +20 units.

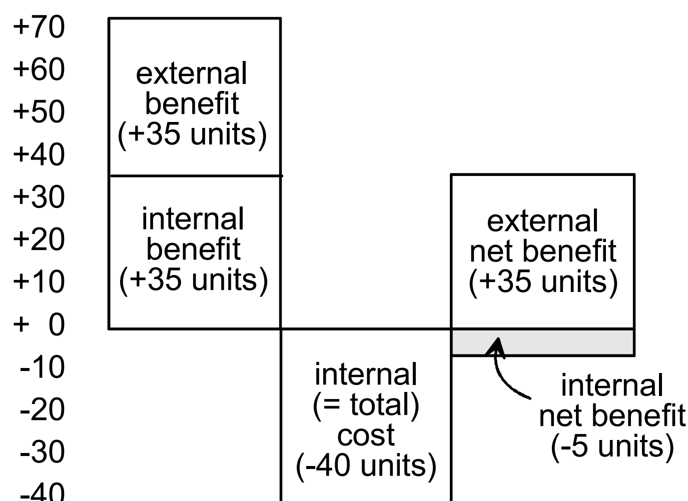
Figure 7:
The Divergence Between the Internal and the Total Net Benefit of a
National Concentration Restriction as a Cause of Misguided Political Decisions



As the political actors of nation-states exclusively orientate their decisions to the consequences resulting for their “own” country this spatial asymmetry of the advantages and disadvantages of national concentration restrictions leads to decisions which, from a global perspective, i.e. from the viewpoint of all citizens affected, are sub-optimal. These consequences can be illustrated via reference to the graphic form of presentation that has already been presented (Figure 7): $Benefits_i$ depict the internal benefits, $Benefits_t$ the total (internal and external) benefits. In the case of a concentration restriction orientated to internal benefits a market share ceiling would be fixed at q_i = 30 %, but if the total (internal and external) advantages and disadvantages were weighed up a market share ceiling of q_g = 23 % would be fixed, i.e. the intensity of the concentration restriction selected from a national viewpoint is lower than the intensity required from a global (supranational) viewpoint. Misguided decisions in this respect are all the more serious the greater the market shares the regulated companies achieve externally (abroad), i.e. in the graphic form of presentation, the greater the extent to which the internal benefit curve diverges from the total benefit curve.

If the internal benefits – for example, in the wake of the globalisation of media markets forecast in Section 2.4. – successively decline vis-à-vis the external benefits the internal net benefit in fact becomes negative, even if the sum of internal and external benefits and the (internal) costs remain constant over time. Assuming, for example, that the internal and external benefits of the concentration restriction do not have a split of +50 / +20 (as assumed in Figure 6), but that the internal benefits have a lower value (of +35 units) and the external benefits have a correspondingly higher value (also, therefore, of +35 units), a negative net benefit is produced for the individual political subdivision (of -5 units), since the internal net benefit of +35 units compares with internal costs of -40 units (see Figure 8).

Figure 8:
Spatial Asymmetry of the Benefits of a Concentration Restriction
as the Cause of a Negative Internal Net Benefit



3.2. External Effects as an Explanation for Waiving Internationally Desirable National Concentration Restrictions

Insofar as the (inhabitants in the) individual nation-states comprehend the interrelationships described and the cost-benefit decisions based on these interrelationships can be fully implemented in respective legislative procedures they will even waive any concentration restrictions at all if there is a negative internal net benefit. In the attempt to maximise their internal benefits they take "non-cooperative" decisions, whose welfare effects for the sum total of all persons affected are lower than other, "cooperative" decisions – independent of whether these actors assume that the other actors for their part cooperate or also fail to cooperate ("defect").

This decision-making structure, which is described in the language of economic game theory as a "prisoner's dilemma", can be illustrated by reference to a so-called payoff matrix, which shows the net benefit of all conceivable decisions (see Figure 9, in a simplified form for the two countries A and B).[1] If country A waives any national concentration restrictions (does not cooperate) it will achieve, regardless of what action is taken by country B, a higher net benefit than if it cooperates: If country B cooperates country A will achieve a net benefit with cooperative action of +30 units;[2] with non-cooperative action, however, it will achieve a net benefit of +35 units.[3] If country B fails to cooperate, country A achieves a net benefit of -5 units with cooperative action, but a net benefit of -0 units with non-cooperative action.[4] Country B will make the same considerations; thus for country B the option of non-cooperation also is the dominant solution, regardless of whether country A cooperates or defects.

Assuming the incentive structure described here in game theory terms, it would be rational for all countries to waive concentration restrictions (whose benefits accrue to others, but whose costs they must bear alone) and, instead, to try to free ride, i.e. to benefit from the concentration restrictions issued by other countries.[5] The

[1] B can be viewed here as an individual state or as an aggregate of all individual states affected by the concentration restrictions of country A.

[2] Under the previously set assumptions the value +30 units results as the sum of the internal net benefit of the concentration restrictions issued by country A (totalling +35 - 40 = -5 units) and of the external net benefit of the concentration restrictions issued by country B (totalling +35 - 0 = +35 units).

[3] The value +35 units results as the sum of the internal net benefit of the concentration restrictions not issued by country A (totalling 0 units) and the external net benefit of the concentration restrictions issued by country B (totalling +35 - 0 = +35 units).

[4] The value -0 units results from the sum of the internal benefit of the concentration restrictions not issued by country A (totalling -0 units) and the external net benefit of the concentration restrictions not issued by country B (totalling -0 units).

[5] This also explains why most countries tend to be more willing to tolerate market dominant positions for domestic media enterprises than for foreign media enterprises. "It is no coincidence, for example, that the IBA encouraged publishers in the 1950s to invest in the television sector. The U.S. FCC urged economically and journalistically productive companies, such as that of Murdoch, to open a fourth network, and in the interest of global economic expansion, it has promoted cooperation among U.S. media companies at the international level that it would not have tolerated in the domestic market." (HOFFMANN-RIEM, 1996, p. 398). Other examples of this variant of a "beggar-my-neighbour" policy on the part of national supervisory authorities can also be found ibidem.

probability here that the actors face such a prisoner's dilemma is all the higher the lower the internal benefits are in comparison to the external benefits of concentration restrictions and the higher the internal costs are in comparison with the internal benefits.[1]

Figure 9:
The Issuance of National Concentration Restrictions as a Prisoner´s Dilemma

		Country B: issues national concentration restrictions	Country B: does not issue national concentration restrictions
Country A	issues national concentration restrictions	A: +30 B: +30 A+B: +60	A: -05 B: +35 A+B: +25
	does not issue national concentration restrictions	A: +35 B: -05 A+B: +25	A: +00 B: +00 A+B: +00

From this perspective, the fact that in Germany until 1997 the constituent states and/or the Land media supervisory authorities were able to licence the operation of television broadcasters nationwide and were thus also responsible for the application of national concentration restrictions proves – leaving aside the associated high transaction costs – inexpedient: Those *Länder* that interpreted the existing scope for decision-making generously were able to avoid the costs associated with concentration restrictions (loss of existing and forfeiting of new jobs, reduction of regional and local tax revenues, declining appeal as a business location for other companies, etc.) or to at least keep these costs low, whereas the diminished advantages of concentration restrictions had an adverse impact on all *Länder* and on other countries. Under these conditions media concentration control (and media regulation in general) necessarily degenerated into business location policy, and the de facto implementable concentration restrictions were bound to automatically fall short of those restrictions that would have been appropriate if all advantages and disadvantages, i.e. including external ones, had been weighed up.[2] In this re-

[1] The payoff matrix shown in Figure 9 also shows that the associated result is macroeconomically suboptimal (the term "macroeconomic" in the model examined here is taken to mean the sum of the net benefit of both countries A and B): Whereas mutual cooperation would generate a macroeconomic net benefit totalling +30+30 = +60 units the option of non-cooperation would lead to a net benefit of 0 units.

[2] The same applies to other fields of broadcasting regulation, for example, the control of the provisions laid down in the RfStV 1997 on the content and duration of advertising, on youth protection and on the plurality-safeguarding measures specified in Arts. 30 – 32 RfStV, in which the *Land* media supervisory authorities also have substantial scope for decision-making. For this reason there is a growing body of opinion in Germany calling for centralisation of the entire broadcasting regulation in the hands of Federal Government – or, taking into account the media policy jurisdiction of the *Länder* – in the hands of a joint institution of the *Länder* or of *Land* media supervisory authorities with nationwide jurisdiction.

spect the consequences of particularistic industrial policy interests are only one explanation for the outcome of the RfStV 1997,[1] which was criticised by many observers; the spatial externalities resulting from concentration control shaped by regional policy considerations are a further factor.

The fact that two new central bodies, the Commission on Concentration in the Media (KEK) and the Conference of Directors of the *Land* Media Supervisory Authorities (KDLM), have been entrusted via Art. 35 RfStV 1997 with the final investigation and control of concentration in the media sector in Germany, therefore, should be welcomed. Considerations relating to business location policy are not significant for these bodies or at least, as opposed to the earlier assignment of responsibilities, not systematically pre-programmed. It can now be expected, therefore, that all advantages and disadvantages affecting the larger, national sphere of relevance will be taken into account in concentration law decisions and that the formerly key question of business location – how these advantages and disadvantages are allocated between the individual *Länder* of the Federal Republic of Germany – will become less important.

3.3. The Necessary Replacement of National by Supranational Concentration Restrictions

Even when the competences for restricting media concentration are zoned up to the national level, externalities remain a problem if the media companies sell parts of their production abroad. This applies in particular to many German publishers,[2] to a lesser extent also to the German television providers, whose foreign market shares, as a result of language barriers and national differences in viewer preferences are still comparatively low, but which are nevertheless relevant taking into account the shareholdings in foreign television companies and in upstream and downstream value added segments.[3] Also the benefits of concentration restrictions operated by the national level therefore partly spread externally, i. e. outside the regulating nation state. For this reason also with nationwide competencies for concentration restrictions the intensity of the restrictions (to a smaller extent than with concentration restrictions of the local or regional jurisdictions) differ downward from the extent that is optimal from a global point of view. If as a result the internal net benefit becomes negative for the single nation states, they too trap into a prisoners dilemma, being forced to refuse national concentration restrictions from their internal (national) perspective, which would be appropriate with regard to its total, both internal and external consequences.

[1] See Section 2.2.

[2] The publisher Gruner+Jahr, for example, achieves over half of its turnover abroad (RÖPER 1999, S. 348). In the case of the Bertelsmann group business abroad even accounted for a corresponding figure of 71.9 % in the financial year 1998/99 (see o. V. 1999b).

[3] See on this aspect the KIRCH group and CLT/UFA RÖPER 1999, pp. 350ff, pp. 355ff. However, above all US-American media companies such as Time Warner, Disney and Viacom, and the News Corporation run by the Australian Rupert Murdoch have high international market shares. See for more detail HACHMEISTER/RAGER 1997.

The television providers can take advantage of this situation, if they – in the way that was explained for the German *Länder* – move into the state with the least national concentration restrictions ("forum shopping").[1] This would additionally increase the costs of the national concentration restrictions, and the net benefit for the nation states that impose such restrictions would diminish even more. Therefore the companies´ menace to exit often suffices to motivate the nation states to abolish or not to enforce their own national anti-concentration laws.

As these pressures will increase over time due to the spatial extension of the media markets (which was predicted in section 1.3. as a result of the increasing economies of scale and scope), due to diminishing technical problems of transmission via satellite[2] or Internet (Web-TV),[3] and due to the global assimilation of the media consumers´ preferences, in the foreseeable future "the private sector ... no longer can be ´tamed´ through national legislation".[4] There would then also be a risk of a decline of national standards in media concentration control (buzz-phrase: "race to the bottom"), which has been forecast for other policy fields, such as pay and social policy or human rights, in the wake of globalisation and which, quite rightly, is perceived as a threat to the national civil society.

From this perspective the successive replacement of a national by a supranational control of concentration is correct and necessary. By such a zoning up of competencies the spatial symmetry between benefits and costs of a concentration restriction – now at the larger spatial level – can be re-established, which in turn allows the enforcement of these supranational restrictions by the larger, supranational regime. It has to be taken into account, however, that this zoning up of competencies also requires a compromise regarding the intensity of the concentration restriction between all member countries of the supranational regime. According to the theory of collective decision making this compromise will be determined by the so called median voter. States that prefer a higher intensity are no longer able to realise it as a member of the supranational regime (as opposed to former times of national autonomy) but have to accept the lower intensity the supranational regime prefers (just as the member states that prefer a lower intensity have to accept this intensity). As this intensity defiitely exceeds the intensity that would materialise if the single nation states were to autonomously determine it according to the rationale of the "race to the bottom", it is favourable for the nation states to prefer the

1 See KOMMISSION DER EG, 1994, p. 38; similarly the Commission in the Green Paper on "Pluralisms and Media Concentration" (KOMMISSION DER EG, 1992, p. 353) mentions the risk of the formation of "paradis d´acceuil", i.e. of states, which try to attract media companies from other countries by lowering the intensity of its national concentration restrictions.

2 See e.g. MAI 1998, p. 106.

3 In the case of media offerings disseminated via the Internet, such as Web-TV, national regulations are even more difficult to implement than in the case of satellite transmission.

4 Wolfgang Clement, the Premier of North Rhine-Westphalia, cited from GEHRINGER 1999. Media concentration control is only one of the many areas which can no longer be properly regulated by a national legislation on account of high – and, in the wake of globalisation, increasing – supranational effects. Other fields include global environmental protection, combating (international crime), the implementation of human rights, or disarmament (see on this aspect, for example ZUNKER 1993 or KAISER/SCHWARZ 1995).

intensity of the concentration restriction which jointly is determined by the members of the supranational regime to the intensity which is optimal from the national point of view but which can no longer be realised in times of globalisation.[1]

3.4. The Optimal Size of the Regime that Determines the Intensity of the Supranational Concentration Restriction

What then has to be determined is the optimal size of the supranational regime – or, with regard to the frontiers of the existing nations: the kind and number of the member states of this regime. Assuming, as was the case in Section 2.4., that media companies in general operate worldwide, it would be appropriate *prima facie* to shift up competencies to a worldwide regime, since this would create a total spatial symmetry of the costs and benefits of media concentration restrictions and would prevent any of the misallocations resulting from spatial asymmetries previously outlined. These allocative advantages from the point of view of nation-states, however, conflict with the mentioned disadvantages (costs) caused by the fact that the preferences of supranational regimes differ increasingly from national preferences with the size of the supranational regime (or, respectively, with the number of member states in this regime).[2]

On the basis of these considerations the optimal size and structure of the supranational regime can be theoretically determined. For this purpose the costs and benefits of a spatial enlargement of the regime need to be totalled for alternative sizes of the regime.[3,4] Figure 10 illustrates this in a diagram that presents the size of the regime on the horizontal axis and the costs and benefits of supranational concentration restrictions on the vertical axes. It assumes that the benefits increase (degressively) and that the costs increase (progressively) with the size of

1 That does not necessarily mean that the globalisation reduces overall welfare of the nation states. However, the disadvantages of no longer being able to choose and enforce the nationally optimal standards have to be weighed up against the advantages of globalisation, viz. the increase in international specialisation and in the intensity of international competition and in the diminishing transaction costs of the international exchange of goods, services, capital and ideas. The relinquishing of national autonomy, therefore, is often a justified payment for the advantages of the globalisation. –Furthermore, this trade off is, however, not necessarily positive for all nation-states. For states, for which globalisation causes great disadvantages without offering considerable advantages, globalisation can also in toto reduce their welfare. Even this is justified from a global point of view as long as the net benefit is positive for the sum of all states. This can be taken for granted because of the overall advantages of globalisation mentioned above. That the (vested) interests of some states are jeopardised by the globalisation has to be accepted with regard both to the favourable increase of the united welfare of nations and to the necessary reduction of the large differences between these nations.

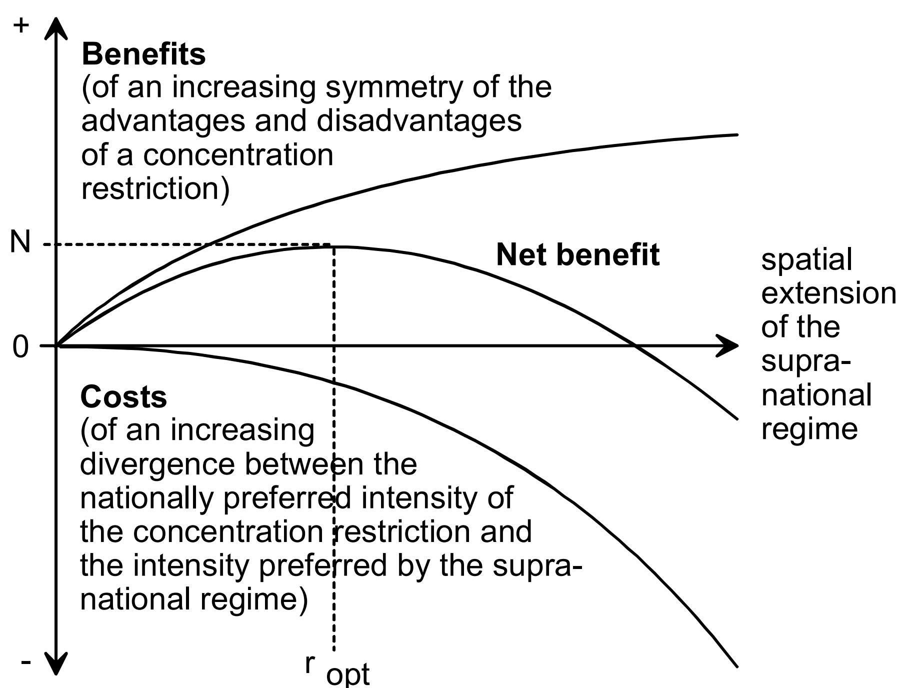
2 Here once again, the transaction costs of supranational decision-making concerning the intensity of concentration restrictions (that also increase with the number of member states) would have to be taken into account for a more realistic model.

3 The costs that are caused by divergences between the national preferences and the decisions of the supranational regime in the economic literature on federalism are called "frustration costs" (term used by PENNOCK 1959) or "expected external costs" (term used by BUCHANAN/ TULLOCK 1962).

4 In figure 10 we do not include the transaction costs of collective decision-making of the supranational regime that were mentioned in footnote 2 (that would also increase with the size of this regime).

the regime. Under these assumptions the optimal regime will not include all states in the world, but only appropriate states, in particular those in which the national media companies have considerable market shares (so that their inclusion into the supranational regime considerably increases the spatial symmetry of the effects of the supranational concentration restrictions) and those whose preferences concerning the intensity of concentration restrictions correspond to their own preferences (so that their inclusion into the supranational regime does not considerably increase the differences between the nationally preferred intensity of concentration restrictions and the intensity decided by the supranational regime).

Figure 10:
The Optimal Size of the Regime that Determines the Intensity of Supranational Concentration Restrictions



In Germany´s case, the European Community suggests itself as the optimal regime in this context. A considerable part of the foreign market shares of German media companies is restricted to the area of the European Community, and the German preferences concerning the intensity of concentration restrictions probably differ less from the preferences of the other member states than from the preferences of non-member states, especially from non-European states that do not possess international media industries. Furthermore, the European Community has already created common institutions (including a common media law),[1] which reduce the transaction costs of supranational decisions compared to the transaction costs of a new, additional regime founded especially for supranationally restriction of concentration in the media sector. And it has already prevented,

1 See DÖRR 1996; STOCK 1997a, p. 33, footnote 74, with further literature references; SCHELLENBERG 1997, pp. 224ff.; DÖRR 1998, pp. 10f.; FREY 1998.

through several, in some cases spectacular decisions, a number of company mergers that national law would have no longer been able to control.[1]

On the other hand, the media policy ideas advocated in Germany do not always correspond to the ideas of the other member states of the European Community, even if this is a relatively narrow supranational regime. With regard to the costs and benefits of concentration restrictions, especially with regard to conflicts with industrial policy goals, such as the protection of national media industries or of the European media industry vis-à-vis competition from the USA and Asia, the media policy targets differ considerably. These differences are rooted in part in the historical experience of individual states with a controlling influence of the media caused by concentration,[2] in part in the varying levels of economic development and the varying levels of national income.[3] But also the media policy ideas of the EU partly differ from the German ideas. Above all, the unilateral categorisation of the media (including television) as economic goods by Directorate-General X[4] makes it more difficult to cede national competencies to the EU and explains and justifies that the Federal Republic of Germany and its constituent states are only willing to cautiously and gradually transfer competencies to the EU.[5,6] Irrespective of its growing need in the wake of the globalisation of the media industry the extent and pace of a European media concentration control, therefore, will probably remain the subject of controversial political discussion in the years to come.

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1 Up until June 1998 the European Commission had taken 26 decisions on media concentration. The prohibition of the foundation of MSG Media Service and of the cooperation between Bertelsmann and Kirch for the Pay TV channel "Premiere" attracted particular attention. See ibid, p. 986f.

2 In Germany one of the reasons for the particular importance attached to the prevention of a controlling influence of the media is the fact that mass media (in particular radio) centralised and instrumentalised by the National Socialists was a major contributory factor to dicatorship and imperialism in the Third Reich.

3 If, for example, plurality of opinion is viewed as a superior good, whose relative benefit increases with a society's rising prosperity, whereas the relative costs associated with guaranteeing this plurality (in particular the loss of domestic incomes and jobs associated with reduced international competitiveness) are valued as lower with rising prosperity it becomes clear that, for example, poorer member states of the European Community favour less intensive concentration restrictions than the richer member states.

4 This becomes particularly clear in the "Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors and its Implications for Regulation" (KOMMISSION DER EU 1997). Especially in Germany, where television tends to be regarded as a cultural good and, consequently, its regulation is also entrusted to the *Länder*, this view has been vehemently criticised. See, e. g., KUHNE 1998.

5 See on this aspect FREY 1998, p. 1001.

6 The situation is made even more difficult by the fact that EU member states refuse to disclose their (varying) preferences in the negotiations dealing with a European anti-concentration policy, but try to present the national benefits they would derive from a European anti-concentration policy as small as possible in order to secure a "negotiating mass" which is as large as possible for the usual "package deals" in other policy fields. See for a general look at the logic of such package deals and the strategies applied BENZ 1992 and SCHARPF 1993.

Summary

1. The media sector is traditionally characterised by a comparatively strong horizontal, vertical and diagonal concentration. *Horizontal concentration*, in which a few market participants hold high market shares within a single value added segment (production, providing/publishing, distribution), is primarily attributable to so-called economies of scale, i.e. decreasing average costs with rising output. These economies of scale are attributable to the non-rivalness of consumption of media and to the falling marginal costs of media production. The main cause of *vertical concentration* of companies in different value added segments of one and the same medium are the so-called economies of scope, which result from the fact that some resources can be utilised in several value added segments without causing higher costs than if these resources were to be utilised in just a single value added segment. Economies of scope are also the main cause *of diagonal (cross-ownership) concentration* of companies that operate in the same or in different value added segments of different media. These result here if resources (once again as a result of non-rivalness or of cost curves with stepped fixed costs) can be utilised for the production, provision or distribution of different media without causing higher costs than those that would arise if a single medium was utilised. -- Foreseeable technological changes in the media sector, above all, digitalisation and technical convergence, will make these intramediary and intermediary economies of scale and scope even greater in future. This will lead to a further increase in horizontal, vertical and, in particular, diagonal concentration in the media sector.

2. Because of this concentration, a few suppliers have substantial market power, which enables them, for example, through collusive agreements on prices, quantities or quality or through the discrimination of suppliers and purchasers, to render economic competition ineffective. This diminishes the welfare of media users/consumers and hence of the economy as a whole. Concentration in the media sector also impairs journalistic competition (as the competition between alternative ideas and opinions), jeopardising the freedom of opinion as well as the political control and society's integration function and diminishing the political and cultural diversity of the media. Media law restrictions of concentration extending beyond general economic law that prevent this, therefore, generate a *social benefit*.

In the Federal Republic of Germany such restrictions are laid down in the German Interstate Broadcasting Agreement ("Rundfunkstaatsvertrag"). In accordance with the so-*called market share model* the Agreement seeks to prevent a media company from obtaining "controlling influence" ("vorherrschende Meinungsmacht"). Such a controlling influence is presumed to exist if the programmes attributable to one company achieve an average annual viewer rating of 30 %. All programmes are attributable to a company which that company either broadcasts itself or which are broadcast by another company in which the company has a direct holding of at least 25 % of that company's capital or voting rights. Controlling influence is also presumed if the rating is "slightly" below the 30 % threshold insofar as the company holds a dominant position in a related, media-relevant market or if an overall

assessment concludes that the influence is equivalent to that of a company with a viewer rating of 30 %. If a company is able to exercise a controlling influence as defined by law it is to be denied any further external growth; furthermore, it must then take appropriate steps to eliminate its controlling influence: The relinquishment of attributable holdings in other broadcasters, the reduction of market power on related, media-relevant markets and/or the provision of transmission time for independent third parties, and the appointment of advisory councils with pluralistic representation and effective programming influence.

Concentration restrictions, however, not only have advantages (benefits), but also disadvantages (*costs*). These comprise, on the one hand, the *transaction costs* which are associated with the measurement of market power and the implementation and control of measures designed to limit that power and, on the other hand, the *microeconomic costs* caused by such measures for the international competitiveness of the companies affected and the persons employed there (suboptimal company sizes, higher prices in comparison with competing foreign firms, whose market shares are not limited, and the associated reduction of turnovers, revenues, sales opportunities, etc.), which for their part also lead *to social costs* (among others, a diminished national income and higher unemployment).

The socially *optimal intensity of national concentration restrictions* can be determined in a model theory approach by balancing their benefits and costs for varying levels of intensity and by selecting that level of intensity at which the benefit surplus (the so-called net benefit) of concentration restrictions is at its highest. In practice this cost-benefit analysis requires societal discourse, in which the various population groups assess these costs and benefits, discuss them, and reach agreement on a compromise that enjoys the support of all members of society in the frame of a procedure designed to enable the formation of informed collective opinion.

Fundamental clarification is needed with respect to whether the collective decisions should be determined by the preferences of the citizens in line with the model of “design by machine” or whether they should mainly be guided by the (differing) judgements of politicians, bureaucrats and other experts in line with the model of “design by politicians”. The theory of representative democracy, which also fundamentally assigns citizens “consumer’s sovereignty” for collective decisions, would support the former solution; the approach of paternalistic delegation would tend to support the latter solution in the case of complex decisions whose benefits are harder for citizens to assess or whose benefits are generated later in time than their costs.

3. Attention must be paid in all approaches in the formation of informed collective opinion that the advantages and disadvantages of the decisions taken are internally effective, in other words: that they relate to the members (and only to the members) of the collective vested with decision-making powers. If some of the effects relate to third parties that do not have such powers this leads to so-called *external effects*, on the basis of which the decisions of the persons affected systematically diverge from the socially optimal decisions. -- With respect to decisions

relating to the restriction of media concentration this defect results, first and foremost, if the fixing or implementation of measures designed to limit concentration is entrusted to constituent states (in Germany: the federal *Länder*) and if the benefits of such measures extend beyond the sphere of the individual states (which is the case for media companies that operate nationally); the competencies need to be zoned up to the national level here in order to prevent such externalities and the associated misguided decisions (induced by local policy considerations).

This defect also results if the fixing or implementation of concentration restrictions is entrusted to the nation-states, but their benefits extend beyond national frontiers (which is the case for internationally operating media companies). The net benefit of national concentration restrictions can then become negative and can induce the individual countries to waive their issuance or implementation, even though they would generate greater welfare from the global perspective of all countries affected. From the viewpoint of the economic game theory the nation-states find themselves facing a so-called *prisoner's dilemma*, as a result of which the globally desirable intensity of concentration control cannot be effected. This risk is increasing due to the spatial extension of the markets of media companies (as a result of growing economies of scale and scope), the facilitation of business relocation enabled by developments in telecommunications technology, and the worldwide convergence of viewer preferences over time, especially since media companies can put pressure on nation-states by threatening to relocate business facilities abroad. That causes the danger of a decline of national standards in media concentration control (buzzphrase: "*race to the bottom*"), which has been forecast for other policy fields, such as pay and social policy or human rights, in the wake of *globalisation* and which has, quite rightly, been criticised as a threat to the national civil society.

From this perspective the *successive replacement of a national by a supranational control* of concentration is correct and necessary. The optimal size and structure of the supranational regime for this task can be determined theoretically, and it can be predicted from this theoretic model that a state will tend, firstly, to only include other states in which the national media companies have considerable market shares and will, secondly, only include states whose preferences for the intensity of concentration restrictions correspond with the own national preferences.

As far as Germany is concerned the European Community, which has already developed basic elements of a European anti-concentration control, suggests itself at the supranational level. However, the German media policy views do not at all correspond with the views of all other member states of the EU, nor do they fully correspond with the views of the European Commission (in particular, of the Directorate-General X). Irrespective of its growing need in the wake of the globalisation of the media industry the extent and pace of a European media concentration control therefore will probably remain the subject of controversial political discussion in the years to come.

Literature

Beebe, Jack: Institutional Structure and Program Choice in Television Markets, in: Quarterly Journal of Economics, No. 91, 1977, pp. 15 – 37

Benz, Arthur u. a.: Horizontale Politikverflechtung. Zur Theorie von Verhandlungssystemen, Frankfurt/New York 1992

Blankart, Charles Beat: Club Governments versus Representative Governments, in: Constitutional Political Economy, No. 3/1994, pp. 273 - 286

Breton, Albert/Scott, Anthony: The Design of Federations, Quebec 1980

Downs, Antony: Ökonomische Theorie der Demokratie, Tübingen 1968 (originally published as "An Economic Theory of Democracy", New York 1957)

Dörr, Dieter: Maßnahmen zur Vielfaltssicherung gelungen? In: Media Perspektiven, No. 12/1996, pp. 621 – 628

Dörr, Renate: Die EU und die elektronischen Medien. Eine Übersicht über die aktuelle Diskussion, in: epd medien No. 58 of 29. 7. 1998

Frey, Dieter: Die europäische Fusionskontrolle und die Medienvielfalt, in: Zeitschrift für Urheberrecht, No. 12/1998, pp. 985 – 1001

Gehringer, Thomas: Politiker als Akquisiteure. Staatsverträge schaffen keine Spielräume, in: Tagesspiegel of 15. 4. 1999

Gerbner, G. Führt Kanalfülle zu mehr Programmvielfalt? In: Media Perspektiven, No. 1/1991, pp. 38 – 44

Hansmeyer, Karl-Heinrich/Kops, Manfred: Rundfunkprogramme als Klubgüter, in: Matschke, Manfred/Schildbach, Thomas (eds.): Unternehmensberatung und Wirtschaftsprüfung, Festschrift für Günter Sieben, Stuttgart 1998, pp. 201 – 222

Hoffmann-Riem, Wolfgang: Regulating Media. The Licensing and Supervision of Broadcasting in Six Countries, New York 1996

Jakobs, Hans-Jürgen: Ende einer Ehe, in: Der Spiegel, No. 12/1999, pp. 88 – 90

Kaiser, Karl/Schwarz, Hans-Peter (eds.): Die neue Weltpolitik, Baden-Baden 1995

Kommission der EG: Grünbuch Pluralismus und Medienkonzentration, KOM (92) 480

Kommission der EG: Mitteilung der Kommission an den Rat und das Europäische Parlament, Reaktionen auf den Konsultationsprozeß zum Grünbuch "Pluralismus und Medienkonzentration im Binnenmarkt", KOM (94) 353

Kommission der EG: Grünbuch zur Konvergenz der Branchen Telekommunikation, Medien und Informationstechnologie und ihren ordnungspolitischen Auswirkungen, KOM (97) 623

Kops, Manfred: Rechtfertigen Nachfragemängel eine Regulierung von Rundfunkprogrammen? Arbeitspapiere des Instituts für Rundfunkökonomie an der Universität zu Köln, No. 72, Köln 1996, also published in slightly shortened form in: Kohl, Helmut (ed.): Vielfalt im Rundfunk, Konstanz 1997, pp. 151 – 183

Kops, Manfred: Prinzipien der Gestaltung von Rundfunkordnungen. Ökonomische Grundlagen und rundfunkpolitische Konsequenzen, in: Berg, Hans Joachim (ed.): Rundfunkgremien in Deutschland, 2nd edition, Berlin 1999, pp. 11 – 114 (1999a, previously published as Arbeitspapiere des Instituts für Rundfunkökonomie an der Universität zu Köln, No. 100, Köln 1998)

Kops, Manfred: Nationale Konzentrationsschranken und internationale Wettbewerbsfähigkeit von Fernsehveranstaltern, Arbeitspapiere des Instituts für Rundfunkökonomie an der Universität zu Köln, No. 115, Köln 1999 (1999b)

Kops, Manfred/Hansmeyer, Karl-Heinrich: Zur ökonomischen Begründung und Ausgestaltung einer föderalen Rundfunkordnung, Arbeitspapiere des Instituts für Rundfunkökonomie an der Universität zu Köln, No. 2, 3nd edition, Köln 1996

Kreps, David M.: Mikroökonomische Theorie, Landsberg/Lech 1994 (Engl.: A Course in Microeconomic Theory, 1990)

Kuhne, Helmut: Alles Konvergenz oder was? Das EU-Grünbuch: eine Auseinandersetzung, in: epd Medien No. 38 of 20. 5. 1998, pp. 9 – 15

Lehr, Thomas: Tageszeitungen und Online-Medien. Elektronisches Publizieren als produktpolitisches Instrument der Verlage, Wiesbaden 1999

Lipsey, Richard G./Chrystal, K. Alec: Positive Economics, 8th. Ed. Oxford 1995

Mai, Manfred: Der Strukturwandel in der Medienwirtschaft – Konsequenzen für die Medienpolitik, in: Mai, Manfred/Neumann-Braun, Klaus (eds.): Von den „Neuen Medien“ zu Multimedia, Baden-Baden 1998, pp. 93 – 116

Noam, Eli M.: A Public and Private Choice Model of Broadcasting, in: Public Choice, No. 55, 1987, pp. 163 – 187

Owen, Bruce M. et al: Television Economics, Cambridge, Mass. 1974

Paraschos, Emmanuel E.: Media Law and Regulation in the European Union, Ames/Iowa 1998

Pennock, R. J.: Federal and Unitary Government: Disharmony and Frustration, in: Behavioral Science 4, pp. 147 – 157

Pilati, Antonio: Digital strategies of European media companies, in: Lanham-Brown, Jo (Ed.): Media in Europe. The Yearbook of the European Institute for the Media 1998, no date and place of publication (Düsseldorf 1998), pp. 25 - 34

Röper, Horst: Mehr Spielraum für Konzentration und Cross ownership im Mediensektor, in: Media Perspektiven, No. 12/1996, pp. 610 – 620

Röper, Horst: Formationen deutscher Medienmultis 1998/99. Entwicklungen und Strategien der größten deutschen Medienunternehmen, in: Media Perspektiven, No. 7/1999, pp. 345 – 378

Scharpf, Fritz W.: Coordination in Hierarchies and Networks, in: Scharpf, Fritz W. (ed.): Games in Hierarchies and Networks, Frankfurt/Boulder 1993, pp. 125 – 165

Schellenberg, Martin: Rundfunk-Konzentrationsbekämpfung zur Sicherung des Pluralismus im Rechtsvergleich. Rundfunkstaatsvertrag und Landesmediengesetze im Vergleich mit den Kontrollsystemen in Frankreich, Italien und Großbritannien, Baden-Baden 1997

Seufert, Wolfgang: Auswirkungen der Digitalisierung auf die Entwicklung der Medienmärkte, in: Schumann, Matthias/Hess, Thomas (ed.): Medienunternehmen im digitalen Zeitalter, Wiesbaden 1999, pp. 109 – 121

Spence, M./Owen, Bruce M.: Television Programming, Monopolistic Competition and Welfare, in: Quarterly Journal of Economics, No. 91, 1977, pp. 103 – 126

Stock, Martin: Konzentrationskontrolle in Deutschland nach der Neufassung des Rundfunkstaatsvertrags (1996), in: Stock, Martin et al.: Medienmarkt und Meinungsmacht. Zur Neuregelung der Konzentrationskontrolle in Deutschland und Großbritannien, Berlin et al 1997, pp. 1 – 77 (1997a)

Stock, Martin: Medienpolitik auf neuen Wegen – weg vom Grundgesetz? In: Rundfunk und Fernsehen, No. 2/1997, pp. 141 – 172 (1997b)

Venturelli, Shalini: Liberalizing the European Media, Politics, Regulation, and the Public Sphere, Oxford 1998

Weber, Andreas: Entwicklungsprozeß von Presse und Rundfunk in Italien, Berlin 1997

Winsbury, Rex: Why a pan-European regulator for telecoms is only a matter of time, in: Intermedia, No. 10/1998, pp. 33 - 35

Zunker, Albrecht (ed.): Weltordnung oder Chaos? Baden-Baden 1993

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