“On the Way towards Securing Plurality across Different Media”

Summary of the Fourth Report on the Development of Media Concentration and Measures to Secure Plurality of Opinion in the Private Broadcasting Sector

The German Commission on Concentration in the Media (Kommission zur Ermittlung der Konzentration im Medienbereich, KEK)

1. **Summary**

Media Concentration and Ensuring Plurality of Opinion

Plurality of opinion in private broadcasting requires journalistic and economic competition. One of the relevant risks for plurality is a distinct tendency in media markets towards business concentrations and towards producing predominantly homogenous content with mass-appeal. A constitutive element of diversity of opinion is journalistic competition, i. e. competition for the acceptance of opinions and content which are disseminated by media companies. Therefore, the Interstate Treaty on Broadcasting (*Rundfunkstaatsvertrag* – RStV) refers to the audience share, a criterion indicating journalistic competition, as the main indicator for potential predominance over public opinion.

Constitutional Law

The obligation to secure diversity of opinion has its constitutional roots in the fundamental right of free reporting by broadcasters (Art. 5 (1) (2) of the German Constitution) which has been concretised by the case law of the German Constitutional Court (*Bundesverfassungsgericht*). Freedom of broadcasting requires statutory rules to ensure that the entire spectrum of existing opinions will be represented as fully as possible. These rules must be designed in such a way as to effectively prevent the risk of creating predominant power over public opinion, because any adverse developments would be difficult to reverse. The Interstate Treaty on Broadcasting provides a uniform standard for nationwide television programmes.

Interstate Treaty on Broadcasting

As a matter of principle, nationwide private broadcasters may broadcast an unrestricted number of television channels, unless the following applies: If a company and all channels attributable to the latter gain "dominance over public opinion" no further licenses should be granted for channels that would be attributed to this company. Likewise, no acquisition of additional shares in broadcasters by this company must be allowed. The KEK is exclusively responsible for monitoring compliance with the legal provisions in the context of nationally-transmitted private television channels.

The KEK's composition was changed by the 10th Amendment to the Interstate Treaty on Broadcasting which came into force on 1 September 2008. The commission of six experts was enlarged by six representatives of the German state media authorities. This allowed the legislator to abolish the Conference of the Directors of the State Media Authorities (*Konferenz der Direktoren der Landesmedienanstalten* – KDLM), an intra-administrative controlling authority which had been able to annul KEK decisions by three-quarter majority. The statute further provides that the state media authorities set up a central office for their joint bodies KEK, ZAK (Regulatory Affairs Commission), GVK, and KJM (Commission for the Protection of Minors in the Media). The central office is now situated in Berlin, following a decision of the General Conference of the State Media Authorities. Nonetheless the existing offices of KEK and KJM will continue to perform their tasks at their present locations until 2013.

Besides these organisational changes, the legislator amended the procedural rules for media concentration control. Section 37 (4) RStV takes account of a proposal by the KEK to entitle it to carry out all necessary investigations directly, instead of having to carry them out indirectly through the competent state media authority. Now the KEK, as well as the other joint commissions, has its own comprehensive information rights and investigative powers (sec. 21, 22 RStV).

The changes which were then implemented by the 11th and 12th Amendment to the Interstate Treaty on Broadcasting had no effects on the KEK's responsibilities to safeguard plurality. However, a declaration of the German States in the protocols to the 13th Amendment to the Interstate Treaty asserted their intention to "evaluate the existing plurality and media concentration rules in television as early as possible. This assessment shall also include such rules that might contribute to a diversity of local and regional broadcasting offerings in those German states where no regional window programmes exist."

European Law

Community legislation plays an increasingly important role in broadcasting. Although the European Union has no express authority to regulate the plurality of opinion, indirectly the European Union exerts influence on the basis of other competencies. However, the European Commission's principal concern is not ensuring diversity of opinion but rather ensuring competition and economic diversity.

In recent projectsthe European Union has emphasized the member states' competency to protect diversity. This is appropriate, considering that media markets are still essentially confined to national territories. A report on the development of a control mechanism against media concentration in the Member States which was commissioned by the European Commission in the context of the Reding Wallström scheme for the first time combined approaches of communications sciences with legal approaches.

The Impact of Online Media in the Plurality Context

Among the media markets, the online media have increasingly gained importance. With the growing relevance of the Internet for users the question arises what role the online media play in the process of opinion-formation. In addition it must be asked how far single players gain, or have already gained, influence on public opinion. Prompted by the growing influence of online media the KEK commissioned a report on this issue. This report titled "Die Bedeutung des Internets im Rahmen der Vielfaltsicherung" ("The meaning of the Internet in the context of securing plurality of opinion") was written by Professor Christoph Neuberger (Institute for Communications Sciences of Münster University) and Professor Frank Lobigs (Institute for Journalism of TU Dortmund University).

The report begins by analysing from the perspective of communications sciences the meaning of diversity of opinion, formation of opinion and impact on public opinion in the online environment. Contrary to the widespread perception that plurality was intrinsic to the Internet environment, this cannot automatically be deduced from the large number of existing content providers. Instead, several factors can be named that reduce diversity. Focusing on providers of relevant journalistic services, one finds a considerable dominance of Internet spin-offs of traditional mass media. These spin-offs tend to recycle content from other media. As a result, what happens is that the additional offering is often“more of the same”. The Internet medium is gaining of importance in terms of opinion-formation. However, due to the heterogeneity of the Internet, its relevance for opinion-formation should not be assessed with a view to the whole medium, but one should differentiate between types of offerings as well as between specific offerings. In the present report, a hierarchy of offerings was formed according to their degree of impact on opinion-formation, using as criteria their journalistic relevance, their journalistic genre, the status of their providers, the scope of media reference and their journalistic performance.

The second part of the report presents a media economic analysis of typical constellations of cross-media interrelations. This part focuses on Internet content service providers, which have a considerable impact on public opinion. The cross-media interrelations are systemized and assessed with regard to their potential impact on public opinion and their relevance. The key conclusions are: (1) Whenever traditional media companies offer content on the Internet which has not been edited, such offerings are usually only of a low relevance for public opinion-formation. (2) Due to their dominance with regard to professional journalistic offerings, the traditional media companies have altogether an outstanding impact on opinion-formation in the online world, in comparison to other Internet content providers. (3) By “extending” their content into the online market, conventional media companies significantly strengthen their impact on the public opinion. (4) The cross-media transfer of media content into the online environment has its benefits too: Never before has the “luxury of variety” for recipients of journalistic quality products been so great. The users can without cost receive the whole spectrum of various journalistic productions. (5) However, it is exactly this “luxury of variety” on the demand side caused by the strong competition which, on the other hand, might involve dangers for plurality on the supply side in the future. Therefore, in spite of the present variety of freely accessible online sources of journalistic information, the online media do not make a specific effective and cross-media oriented anti-concentration control redundant.

Concentration in the Private Broadcasting Sector

Development of the Television Offering

The number of nationwide private TV channels in the German language has continuously increased; it has more than doubled since 2003. On 1 July 2009, 135 nationally-transmitted and (at least predominantly) German-language private TV channels with a German broadcasting licence were broadcast in Germany. Nine of them were so-called full programmes. Additionally, twenty nationwide private foreign-language channels with a German licence were on the air.

With regard to the number of broadcasting groups no significant changes occurred. In the annual average of audience shares in 2009, the channels of RTL Group S.A. reached audience shares of 25,2 % and those of ProSiebenSat.1 Media AG audience shares of 22,0 %. Thus both broadcasting groups stayed below the 30 % threshold that is relevant under media concentration law. With an audience share of 42,9 %, the programmes of the public broadcasting stations counterbalance the channels of the two major private broadcasting groups. In 2009 all the remaining channels, including digital pay-TV channels, teleshopping channels, private regional television, foreign-language channels and so-called “open channels”, together reached an average audience share of 9,9 %.

The number of channels broadcast in **HDTV** standard in Germany is still comparably low, compared with other European countries. This is, inter alia, due to the high costs of HDTV conversion as well as to the low rate of digitalisation.

In Germany, mobile TV (so-called “Handy TV”) is presently only broadcast via DVB-T (Digital Video Broadcasting terrestrial) and UMTS. There are no specific mobile TV offerings, but customary terrestrial TV programmes can be received at no cost. Depending on the transmission area, this applies to between 9 and 32 channels. The mobile operators T-Mobile and Vodafone offer mobile TV services based on UMTS.

A growing number of users can receive television via the Internet (IPV and web TV), due to the increasing spread of broadband Internet access and the improved data compression. IPTV (Internet Protocol television) denotes the digital transmission of audiovisual content within a closed network via the Internet protocol. In Germany, IPTV has so far only been broadcast via broadband Internet connections. Presently only the three telecommunications companies Deutsche Telekom, HanseNet and Vodafone offer IPTV. In contrast to IPTV, WebTV includes audiovisual content which has specifically been formatted for the Internet and which is offered on websites in the (open) Internet. Anyone at anytime can download content mostly free of charge and watch it on their television.

Development of Groups of Broadcasters

The strongest group of broadcasters in terms of audience share in nationwide private television is, as before, **RTL Group S.A.** During the period under review, two further programmes were attributed to RTL Group due to the affiliation with Bertelsmann AG: auto motor which was launched on 15 July 2009, and sport Channel, of which the publishing house Gruner + Jahr indirectly holds the majority stake. The pay-TV channels RTL Crime, RTL Living and Passion were launched on 1 December, 2006. On the other hand, the channel K1010, which had been formerly attributed to RTL Group, as well as the telemedia service Traumpartner TV, which was broadcasted by a RTL subsidiary, both stopped their operation at the end of 2007. Considering RTL Group’s average audience share, the KEK has not, as yet, found that the Group held predominant power over public opinion in nationwide television.

At the beginning of 2007, **ProSiebenSat.1 Media AG** was acquired by the financial investors KKR and Permira. Following the takeover of SBS Broadcasting Group in mid 2007, ProSiebenSat.1 is now the second-largest European broadcasting group after RTL Group. At the beginning of the financial year 2008, Axel Springer AG completely sold its shares in this group. Advertising-financed television continues to be ProSiebenSat.1’s core business. However, the Group is strained with high debt.

During the period under review, subsidiaries of the **Walt Disney Company** acquired all stakes in Jetix Europe N.V., the broadcaster of the pay-TV children's channel JETIX (former stake: 75,1 %). The channel JETIX was then renamed Disney XD. In March 2007 the Biography Channel was launched, a joint venture of Disney, NBC Universal and The Hearst Corporation.

After comprehensive restructurings **Constantin Medien AG** has emerged from the then EM.TV AG. As far back as 2005, Constantin Medien AG (then named EM.TV Media AG) sold its stakes in Tele München Group, which on its part holds shares in the broadcasters of Tele 5 and RTL II. In 2008 Constantin Medien AG (under the name EM.Sport Media AG) sold its holdings in the broadcaster of the pay-TV entertainment channel Junior. Thus the conglomerate of former EM.TV AG has ceased to exist. In 2009 Constantin Medien AG added the channels LIGAtotal! and DSF-TV, both broadcast on the Deutsche Telekom IPTV platform, to its programme offering, up to then composed of the channels DSF, DSF-digital and erotic chillout.

News Corp. in 2008 acquired an indirect holding in Sky Deutschland AG (then: Premiere AG). In the course of 2008 and 2009 News Corp. successively increased its stake to 39,96 % and Premiere was renamed Sky Deutschland.

Discovery Communications, Inc. is one of very few media groups that pursue a veritable unrestricted global strategy. The company is active in Europe and the US as well as in the Middle East and Africa. In 2008 the group underwent a restructuring which, however, did not affect the German subsidiaries. As before, the following channels are attributed to this group: Discovery Geschichte, Discovery Channel, Animal Planet, Discovery HD and DMAX.

In 2007 **Viacom, Inc.** launched the comedy channel Comedy Central which replaced the channel VIVA Plus. Since January 2009 Comedy Central is only broadcasted as a window programme within the children's channel NICK.

In 2008 the US-American media group **NBC Universal, Inc.** completely gave up its shareholdings in NBC Universal International GmbH, broadcaster of the free TV entertainment channel Das Vierte. In the same year, NBC Universal sold its 8,2 % share in GIGA Digital Television GmbH, broadcaster of the channel GIGA Digital. In March 2007, The Biography Channel was launched, a joint venture of NBC Universal, Disney and The Hearst Corporation.

Since January 2009, a 100% subsidiary of Time Warner Inc., the Turner Broadcasting System Deutschland GmbH, broadcasts the nationwide pay-tv channel TNT Serie. Another subsidiary, Turner Entertainment Networks international Ltd., is broadcaster of channels which are licensed by OFCOM in the UK but which can also be received in Germany, i. e.: CNN, TNT Film (formerly: Turner Classic Movies), Cartoon Network and Boomerang, and it also produces the comedy format [adult swim] which is shown as part of the channel Sat.1 Comedy and as Video-on-Demand on the Maxdome platform.

Links between Television Broadcasters and other media-relevant related Markets

When assessing a company’s power over public opinion also its position on so-called “media-relevant related markets” must be taken into account. The first prerequisite to the consideration of a particular media market is its “media relevance”. Secondly, it is important to what extent such a media market is “related”, meaning how close it is linked to nationwide television. The degree of “closeness” can be determined from comparable performance features which characterize the potential influence on opinion. According to the legal practice of the Federal Constitutional Court (*Bundesverfassungsgericht*), these mainly concern the following three features of a medium: suggestive power, scope of effect and up-to-dateness.

Radio

In private audio broadcasting, nationwide offerings play a subordinate role with regional programmes prevailing. The provider structure in the private radio market mirrors the federal structure of Germany. The main reason for this fragmented market situation is the still predominant relevance of UKW frequencies. The digital terrestrial transmission standard DAB is not yet established in Germany. However, radio broadcasting still belongs to the most important mass media in Germany. With an average listening time of 184 minutes per day in 2009 radio was again the second most frequented media, second only to television. Over the long term, however, a continuous reduction of radio usage has been observed.

The most important audio broadcasters who also hold stakes in private television are RTL Group S.A., Hubert Burda Media Holding GmbH & Co. KG and Madsack GmbH & Co. KG. Despite each of these companies holding various stakes in radio broadcasters, no position has been achieved that would be comparable to the degree of concentration which incumbents possess in the television or newspaper market at national level. In addition, the regional or local radio markets are still characterised by a high number of broadcasters. However, there are only few private regional or local channels that have no stakeholders from the part of the large radio holdings. Particularly under the aspect of journalistic concentration, the various forms of cooperation in audio broadcasting could give rise to concerns about plurality. In this context, the influence of framework programme providers is significant, since they make essential programming decisions in order to standardize the tone of the programming they provide. This also applies to marketing companies such as RMS Radio Marketing Service GmbH & Co. KG.

Newspapers

On the daily newspaper market, a few publishing groups have large circulation shares. The nationwide journal Bild-Zeitung of Axel Springer AG holds an exceptional position, achieving an enormous reach of 11.63 Mio. These large publishing groups are opposed by a large number of small and medium-sized publishing houses which provide local and regional coverage. However, more than 40 % of German households and more than half of the administrative and urban districts are offered only one newspaper with local or regional information. A further increase in horizontal concentration which could also adversely affect the plurality of opinion is restricted by the control over press mergers. No considerable negative effects on the plurality of opinion are presently expected through the diagonal ties between the daily press and nationwide television.

Popular Magazines

Popular magazines play an important role in public opinion-formation. Current periodicals and magazines covering current events achieve a reach of 47.6 %. Otherwise, for example about one third of the population reads target group magazines around issues of motor vehicles (33 %), supplements (31.6 %), or weekly women's magazines (31.5 %). Current periodicals, among which are titles such as "Der Spiegel", "Focus" and "Stern", play an important role when determining the subjects of the socio-political discussion (agenda-setting). Target group magazines (for example women's magazines) and special-interest titles on subjects such as know-how, recreational activities, etc. may also have an influence on the opinion of its readers. According to the current approach of media concentration law to assess influence in nationwide private television, the assessment of the market as a whole is decisive also in the market of popular magazines.

The companies Bertelsmann AG, Bauer and Burda, the largest publishers of popular magazines, also hold stakes in nationwide private television. Particularly in the case of Bertelsmann AG, two strong market positions in the sectors television and popular magazines are combined, thus generating possibilites for cross-media marketing and cross-promotion.

TV Magazines

Four publishing groups operate on the market of TV magazines. Two of them, Bauer and Burda, also hold interests in nationwide private television. Springer Verlag and WAZ Media Group both hold stakes in local television in urban areas. Broadcasters with business ties to publishers of TV magazines are provided with the opportunity of influencing the readers' choice of programmes. Therefore holdings in this sector have to be taken into special consideration when making an assessment under media concentration law despite the possibly less extensive journalistic content of such magazines.

At present, it cannot as yet be assumed that TV magazines had already lost their influence as a source of information due to the Internet and to electronic programming guides. They still achieve high circulations and reach. It cannot yet be predicted whether in the course of digitalisation and an inherent enlargement of the programming choice, people will choose more and more EPGs over TV magazines.

Local Television in Urban Areas

With regard to local television in urban areas ("*Ballungsraumfernsehen*"), particularly in the Ruhr region, various broadcasting activities can be observed. center.tv Düsseldorf and center.tv Ruhr, two further channels of the center.tv group, have been launched in addition to the already established pioneers NRW.TV and center.tv Cologne. Besides this, Germany 1 Media AG and her major stakeholder Almond Media GmbH hold a particular position. They are present in four different urban areas, via their stakeholdings in the broadcasters Hamburg 1, tv.berlin, center.tv Düsseldorf and center.tv Cologne. Their influence is increased by the fact that at the same time this group, via their subsidiary G1 Media Vermarktungs GmbH, serves as the exclusive marketing agent of the mentioned broadcasters. In this network of “metropolis channels” G1 Media Vermarktungs GmbH takes influence on the broadcasters’ programming, as was already observed for other marketing networks. However, at present no dominance of a network by one single company can be observed, neither by its shares nor by its influence on the programming, which would make this company comparable with a nationwide broadcaster. Irrespective thereof, the broadcasting of local television in urban areas, with its focus on local and regional coverage, has to be deemed as a contribution to the plurality of opinion.

Telemedia Services

Generally telemedia services have a rather low impact on public opinion compared with broadcasting programmes. Nonetheless, some services may have a potential influence that is only slightly lower than the influence of a nationwide television channel.

At present, the shares of nationwide private broadcasters in telemedia services providers are rather limited. After RTL Group has given up its stakes in telemedia services providers, or these services have ceased to operate, only the other large group of nationwide broadcasters ProSiebenSat.1 Media AG holds stakes in telemedia services providers.

Fictional Programming

The analysis of the structure of the programming of several different free-to-air full programmes shows that although the share of fiction tends to decrease, on the whole there is nevertheless still a strong demand for fictional programming.

Over the long-term, the volume of commissioned fictional programming has increased considerably. However, such companies that are categorized as “dependent” on TV broadcasters or otherwise have ties to the broadcasters, have achieved a production volume which is on average four times higher than that of independent companies. This suggests that broadcaster-dependent companies are treated favourably when awarding contracts.

In the sector of TV productions, RTL Group appears to be the market leader. The production companies which are subsidiaries of the public broadcasters also have strong market positions.

For TV broadcasters, the integration of production companies and rights trading companies may for example have the advantage of reducing the risk when acquiring attractive content. On the other hand, by acquiring stakes in broadcasters producers seek to strengthen their market power by using these TV channels for broadcasting their own content and thereby reducing their distribution risk.

The relationship between production companies and television broadcasters is characterised by a high degree of economic dependence on the part of producers that are specialized in TV films and TV services. The broadcasters’ power of demand is higher the stronger the degree of concentration is in the market. Independent producers will find it more difficult to sell their content the more the broadcasters are integrated with the upstream production market.

Children's Programming Rights

The channels Super RTL, RTL and RTL II, which are under the aegis of the RTL Group, reached the highest viewer ratings among children, measured by the overall viewing time from 3:00 AM to 3:00 PM. The largest audience shares were achieved by Super RTL which is able to rely on the extensive content resources of its shareholder, The Walt Disney Company. RTL Group's strong position in the children's programmes sector is important with a view to potential long-term audience loyalty to this Group's channels. The main competitors are the public broadcasters.

Competition has been intensified by new special-interest children's channels. In particular, the US-American media groups Disney and Viacom have expanded their offerings. Besides two other broadcasters that are vertically integrated with production companies are active in the German market: the Belgian Studio 100 N.V. and Your Family Entertainment AG. Other market players include independent production companies which have particularly specialised in the production and distribution of animated films.

Sports Rights

As already observed in previous reports, there is still no concentration with regard to TV sports channels. On the contrary the number of newly licensed sports channels has increased. These are mainly niche programmes, for example dedicating their programme to a single sport such as football, riding or sailing.

In the market for sports rights specific conditions prevail. In part the market is marked by very intense competition. This applies particularly to the acquisition of football rights that, at least in Europe and Germany, is by far the most lucrative market. The German Football League ("DFL") undertook to transfer the TV rights as a package to the sports rights agency Sirius which, at the same time, was expected to edit the content before broadcasting it. This attempt was withdrawn after intervention by the Federal Cartel Office (FCO, *Bundeskartellamt*). The FCO not only criticised the corporate links between rights user and distributor. The FCO also criticised the allocation of rights by way of central marketing, pointing at the danger of a further monopolisation which may harm competition for quality products as well as freedom of the press and freedom of speech.

The vertical links between rights trading and TV broadcasting temporarily loosened with the withdrawal of RTL Group S.A. from Sportfive. However, by the foundation of UFA Sports GmbH, RTL Group has once again corporate links with a sports rights trading company. Ties exist also between Constantin Medien AG (DSF) and Highlight Communications AG via an option agreement and the exercise of voting rights.

Information and News Material

Television is still the main source of information about current events in politics and public life and therefore has a strong influence on society. Nevertheless, a change is under way.

The Internet has established itself as an information medium. Internet services comprise not only news coverage by single media such as newspapers, news channels etc. and news agencies but also include the services of search engines and the distribution of content which has been produced by the users (“user generated content”).

Both RTL Group and ProSiebenSat.1 Media AG each have an integrated news channel within their broadcasting group. If news material is centrally delivered to all channels of a group, and if they jointly use information sources this produces a risk of delimiting plurality through the possible homogenisation of content. A reason for this is a change in the programming profile: Documentaries and reportages, instead of news formats, belong to the most successful formats of both news channels. On the whole, both news channels could attain a slight rise in audience shares. When ProSiebenSat.1 Media AG announced in this context to consider fundamental changes to the programming concept of N24, this triggered a discussion about the role of private broadcasters, from a regulatory standpoint as well as under the aspect of their social responsibility.

Dangers for diversity arise from the vertical integration of news agencies and TV channels, from the monopolising of transmission rights to particular events, as well as from distribution of pre-prepared news coverage by a multitude of media providers. There is a higher chance to communicate pluralistic information if several independent companies are active in this field.

In recent years competition in the news market has become fiercer. Reasons for this are not only the distribution of news via the Internet, but also the economic crisis negatively affecting the newspaper and magazine market which had consequences also for the upstream news market.

Services Required for Accessing Digital Television and Pay TV

The technology of digital television has created new services markets. Multiplexing and digital-analogue conversion are additional technical services required by digital television, contrary to its analogue counterpart. With regard to digital pay TV, encryption, access control and subscriber management are also required. Pay TV programmes are offered in various packages that are arranged by the programme platform operators. The platform operator provides customer management and customer services not only for the customers of its own channels but also for those of third party channels. The arrangement of programmes into packages is similar to the activity of a broadcaster insofar as the broadcaster arranges content for an integrated programme, taking decisions as regards choice and evaluation of the content.

Other services which have influence on the use of programming content are (basic) navigators and electronic programming guides (EPGs). This becomes particularly relevant if the provider of an EPG is identical with the platform operator or with a content provider. Due to the higher variety of offerings, EPGs have a great impact on access to digital television. As against a basic navigator, an EPG does not merely create simple indices. Rather, it offers comprehensive programming information which has been edited and is delivered by the EPG provider as a separate service of its own. In terms of media law, EPGs are not regarded as broadcasting channels but as telemedia services, so that the regulations of the German Telemedia Act apply.

An essential component of the technical platform for digital pay TV is the decoder infrastructure of the set-top boxes. Due to Sky's (i. e. former Premiere's) change in business strategy, an open market for the purchase of decoders has developed. However, Sky defines technical specifications for satellite as well as for cable decoders and licenses technology to decoder producers.

For copyright protection, several Digital Rights Management (DRM) procedures have been developed. The DRM technologies allow to implement comprehensive and sophisticated restrictions on the use of the transmitted content, which especially includes time restrictions for the recording of a broadcast programme. This enables the DRM user to either completely restrict certain types of use or have it depend on the payment of a fee.

The growing relevance of the Internet has lead to a convergence in the field of television devices. Various manufacturers have developed own systems in order to allow Internet use via the TV screen. Due to the possibility of combining the use of broadcasting services and online content services in one single device, one speaks of "hybrid end devices".

Programme marketing platforms have increasingly taken on a more central role in the digital media landscape. Without the platforms' marketing services, smaller pay TV offers would not be able to access the end user. This does not necessarily present a problem as this process also establishes a division of labour between the content provider and the marketing agent which is customary in economic life and possibly in the interest of both parties. However, platform operators as "gate keepers" merit special attention with regard to ensuring plurality since they may, via contractual conditions, exercise influence on the make-up of programming packages and the access of content providers to the end user. For this reason it is preferable that operators of marketing platforms are not vertically integrated with broadcasters, although this is not legally mandatory.

Means of Transmission

Broadband cable remains the most widespread means of transmission, followed by satellite and terrestrial transmission. For the first time, IPTV has reached a 1 % share with regard to the users of all distribution channels. However, this new means of transmission does not necessarily bring along a more diversified offer; rather the same offer will also be available via this additional means of transmission. Digitalisation is mainly driven by digital satellite and terrestrial transmission. For the latter, the switch-over from analogue to digital has already taken place. The rate of coverage with digital terrestrial TV (DVB-T) now amounts to more than 90 %. Taking account of the digitalisation of means of transmission, the 10th Amendment to the Interstate Treaty on Broadcasting introduced a platform regulation (sections 52 et.seq.) which now applies to all platforms instead of being restricted to cable networks.

Satellite households are essentially supplied with television programmes by the satellite operators SES ASTRA S.A. and Eutelsat S.A. Both have in recent years expanded from mere transportation services towards distribution and marketing services, and have launched own satellite platforms. The German cable market has been affected by several changes of ownership and tendencies towards consolidation. The large cable network operators Kabel Deutschland, Kabel BW, Unitymedia and Orion Cable still dominate the market. In the context of the assessment under media concentration law it is important to understand structures in the broadband cable sector that may endanger plurality either by vertical or by diagonal concentration.

TV Advertising

The TV advertising market is highly concentrated. This not only applies to the broadcasters, where the channels of ProSiebenSat.1 Media AG and RTL Group together with the public broadcasters ARD and ZDF account for about 90 per cent of the gross advertising revenue, but also to the media agencies acting as intermediaries. According to the findings of the Federal Cartel Office, ProSiebenSat.1 Media AG and RTL Group form an oligopoly in the advertising market. This, too, impacts on the issue of plurality of opinion since the sale of advertising time continues to be the main revenue source in private television, and market-dominant undertakings are able to build barriers to entry for new competing advertising-financed broadcasters. However, private broadcasters seek to become less dependent on the advertising market. Due to the competitive pressure of a growing number of broadcasters that establish themselves in the context of digitalisation there is a need for new revenue models in order to secure the broadcasters' financial position. The gross advertising revenues may well continue to be on the rise, but at the same time the gap between gross revenues and net revenues is ever widening. Due to the effect of the global financial crisis, a concomitant advertising revenue crisis has added a significant burden for advertising-financed media companies. It has to be seen how product placement, which has been allowed by implementation of the EU Directive 2007/65/EU, will establish itself as an additional source of income.

2. Conclusions

In the foreseeable future, television will remain the leading medium („*Leitmedium*"). This justifies a specific concept of media concentration control specifically tailored to broadcasting and TV. However, the reach of the Internet has increased, while that of television has diminished in younger age groups. At the same time the activities of large media groups have long since given up to focus on a single media market but involve themselves in different media markets. In the interplay between different media lie new potentials for power over public opinion. An effective media concentration law must take these developments into account. Securing plurality requires an integrated approach which takes cross-media phenomena into consideration.