Chapter 3 Broadcasting reform

Introduction

The media are important, not only as a form of entertainment, but in a number of other valuable roles - each with a set of accompanying norms. The media give information on society and politics, indispensable in democratic societies where informed citizens take part in decision making. The norm is that the information is neutral, and that the journalist is independent. So, when recently *Le Monde S.A*. floated part of its shares on the Paris stock exchange the chief editor of *Le Monde Diplomatique* was forced to give a statement explaining how the independence of the magazine was safeguarded[1]. There is also a cultural aspect, although here the norms are more different. French audiovisual media are supposed to give audiences their share of French culture - and lest they forget this noble task programming laws containing quotas will remind them of it. German media are supposed to engender respect for other opinions by presenting a multitude of views - reason why television are overseen by broadcasting committees with representatives from all social groups.

The media are, as the examples indicate, a bit of everybody's business - a collective good, and the examples also indicate what that means: a fear of business and money, and a large role for government and society to ensure that they will remain the collective good they are. In media and broadcasting policy governments express what role they want the media to play and which instruments they can use to intervene. The EU has tried to change broadcasting from a utility into a thriving, liberalised, European market, to the utter dislike of some member states, but with enthusiastic support of others. In this chapter the implementation of the EU liberalising package for broadcasting will be evaluated. The broad variables of Chapter 1 (*regulatory re-*

[1] Ignacio Ramonet, "« Le Monde », la Bourse et nous", *Le Monde Diplomatique*, 12-2001.

newal, *market renewal*, *efficiency and innovation*, *price development*) will be operationalised for broadcasting, and the value of the variables will be established.

Part 1 first treats the special character of broadcasting. This has to be explained because it affects the origins and nature of state intervention in broadcasting and on policy and implementation. An overview of national pre-EU policies is given, and then the measures the European Union proposed for broadcasting are described. This includes a short discussion of the Commission's motives to intervene. A further focus is on the Television Without Frontiers directive, which will be outlined, and whose goals will be explained. Part 2 researches the four broad variables with indicators that are specific to the broadcasting sector and the goals of the Television Without Frontiers directive. Part 3 presents the findings.

PART 1: NATIONAL AND EUROPEAN POLICY INITIATIVES

A "pseudo utility"

While European governments have traditionally regarded broadcasting as a collective good, utility or public service, its nature is more complicated than that. What broadcasting shares with industries like railways, electricity and telecommunications is that declining (and actually close to zero) marginal cost are a basic and defining characteristic of media and information production and distribution (Mulgan, 1991:7). This causes market failure, which could, like in other utilities, be a ground for government intervention.

However, the relative clarity of the "pure" utilities is blurred by the fact that the production, (and sometimes distribution and transmission) of radio and television programmes is a task not only performed by public institutions but also by private companies. The state is present in public broadcasting organisations and regulatory agencies enforcing frequency control and/or programming policies, but in addition to these public organisations there is a large commercial and private media industry. A proportion of the movies, entertainment shows, documentaries, and news (referred to as "content") is not produced by the public broadcasting organisations who air the content, but simply bought. E.g., in the 2000/2001 television season BBC One filled

17.77 per cent of total television hours with "acquired programmes", and BBC Two 25.55 per cent. A total of _462m was spend on independent programmes, external facilities and acquired programmes, more than ten per cent of the operating expenditure of _3,192.7m for that year[2]. Rather than being sole providers, Europe's public broadcasting organisations are participants in a complex market, together with independent production companies.

Table 3-1: Turnover by top 50 audiovisual companies per country in the OECD area in 1994. In millions of US $. Of the 5 dominant companies (underlined) the percentage contribution to national audiovisual turnover is given in brackets, indicating their market power.

Country	Turnover ($m)	Companies (marked* earn more than 60% of earnings in broadcasting)
US	40761.8	Time Warner Entertainment (39.02%)*, Capital Cities / ABC*, Walt Disney Co (24.67%), CBS*, Viacom, General Electric / NBC*, Turner Broadcasting System*, Blockbuster*, TCI, PBS*, Home Shopping Network*, Liberty Media*, Tribune
Japan	38522.8	Sony (94.1%), Matsushita/MCA, NHK*, Fujisankel*, Nintendo*, Nippon Television Network*, Sega*, Tokyo Broadcasting System*, Toho*, Asahi Broadcasting*, Toei*
Germany	17348.5	ARD*, Kirch Gruppe*, Bertelsmann A.G. (63.15%), RTL*, ZDF*, SAT.1*
UK	11064.1	Thorn EMI, BBC (consolidated)*, Carlton*, BskyB*, Rank
France	4918.5	Canal Plus*, TFI*, France 2*, France 3*
Italy	4846.0	RAI*, Fininvest
Netherlands	4725.3	PolyGram*
Australia	3801.9	News Corporation Ltd (210.03%)[3].
Luxembourg	2994.8	CLT*
Mexico	1567.1	Televisa*
Canada	999.6	CBC – SRG*
Austria	928.5	ORF*
Switzerland	832.1	SSR – SRG*
Brazil	728.8	Rede Globo

Sources: OECD[4], Gershon, 1997:9.

A salient feature of this market is that it is dominated by transnational media corporations operating in a large number of countries, whose financial goals may be "incompatible with the political and economic objectives of the host nation. At issue is the control over the international marketplace of ideas, challenges to national sovereignty. the potential loss of national culture, and technological and product dependency" (Gershon, 1997:4-5). So, whereas in other, pure utilities the industry was at one time fully dominated by the government, in broadcasting there are powerful pri-

[2] BBC, 2001. Annual Report and Accounts 2000/2001.
[3] The net income of *News Corporation Ltd*. is larger than the turnover of the Australian market as a whole. News Corporation Ltd. is Rupert Murdoch's base of operation and it operates worldwide.
[4] OECD, 1997. *Communications Outlook*. p. 81.

vate companies with a potential to thwart the intentions of governments. The dominant companies, in the mid-1990s (table 3-1), were *Time-Warner Entertainment*, *Bertelsmann A.G.*, *Sony*, *Walt Disney Co.* and *News Corporation Ltd.* (Gershon, 1991:9).

The size and the international character of media markets form an industry that is in some respects very different from the (at least until the 1980s) somewhat unruffled world of utilities, where governments were for a long time the sole or most important players.

Further complicating the broadcasting industry, in comparison with the other utilities, is the role of media content. Broadcasting does not deliver neutral (in economic terms "homogeneous") products like gas or access to the telephone network, but products with a cultural value (Mulgan, 1991:181). This can easily put policymakers in conflicting positions: what is good for economic policy is not automatically good for culture policy (Gershon, 1997:116ff).

Another complication is the tendency towards concentration of both transmission paths and production in fewer and fewer hands. Technological and economic developments have resulted in the emergence of the integrated, transnational media corporation.

Traditionally the various media - newspapers, TV stations, publishers - were separate industries, in terms of technology and organisation (Hoogenboezem, 2001:56-60), but the following developments have been powerful integrators:

(1) Technological convergence. The technical convergence of broadcasting, computing and telecommunications, making it for instance possible to use a traditional computing channel like the internet for the distribution of news has eroded barriers between traditionally separate industries (Hoogenboezem, 2001).

(2) Information markets are subject to decreasing (or even close to zero) marginal cost (Gershon, 1991:4), which is in itself a powerful concentrating force.

(3) Market separation. Media companies try to reap as many benefits as possible by selling works to as many as possible audiences that form separate markets, either

because they are geographically dispersed, either because they have different budgets, or because they subscribe to or use different media channels[5].

Figure 3-1: Possible release sequence for a book. Each sequence can be repeated or copied in another country with a translation of each product.

Hardcover → pocket → movie → video
→ merchandising
→ cartoon format
→ computer games
→ network television → sale to other station

Source: based on Noam, 1991:31.

The more different the audiences one company can serve with the same product, the lower the production cost. Publishing companies understood this early on and started pocket houses to offer books a second life for audiences who were not willing to pay the full hardcover price, but the possibilities do not end there. A fully integrated media company can distribute one product through many venues (Noam, 1991:30-32, see also figure 3-1), and this is a powerful incentive to integrate traditionally separate activities like book publishing, TV and film production in one company.

(4) Economic rent. There is an economic rationale for buying own programmes rather than buying externally-produced programmes. Noam argues that basic economic arguments would always lead to a broadcasting monopoly (or vertically-integrated system) buying its own products in favour of externally-produced programmes: “It might be argued that a broadcast monopoly would not favor itself, but would let its programmes be produced by the cheapest bidder, relative to desired quality. But this implicitly assumes a perfectly elastic (i.e. horizontal) supply curve. As soon as one allows for the more realistic upwardly sloping supply curve, in which a higher market price increases the supplied quantity, a “producer’s surplus” exists (i.e., equilibrium is reached at a price where many programme producers are able to sell their product at a price higher than the minimum they would accept). This is also known as “economic rent.” By purchasing from its own programme subsidiaries, a

[5] This is where technical convergence helps reducing cost. A book could for example be distributed through two channels, a paper version and a CD Rom, without much extra cost. Once the original text exists in digital format, it can be distributed in many ways.

broadcast monopolist can therefore appropriate part or all of this rent or surplus to himself" (Noam, 1991:33).

These four forces have created the integrated media company and are the reason why for example Harry Potter is now not only a book, but also a movie, a video, a cartoon, a fanclub, a website, a computer game and a large number of other products like a Harry Potter calendar, diary, T-shirt, a *Lego* Harry Potter Castle[6] and a discount on a *McDonald's* Happy Meal for the lucky ones who kept the stub of the film ticket[7]. Not all of these products have of course been marketed by *Warner Brothers*, but the company earns whenever others use the Harry Potter image. The size and variety of the integrated media company is perhaps best illustrated by table 3-2, which charts the activities of the empire of perhaps the most famous media magnate, Rupert Murdoch.

Table 3-2: Current (2002) activities of Rupert Murdoch's News Corporation Ltd.

Film	20th Century Fox, 20th Century Fox Español, 20th Century Fox Home Entertainment, 20th Century Fox International, 20th Century Fox Television, Blue Sky Studios, Fox Searchlight Pictures, Fox Studios Australia, Fox Studios Baja, Fox Studios LA, Fox Television Studios
Television	BskyB, Channel V, Fox Broadcasting Company, Fox Sports Australia, Fox Televison Stations, FOXTEL, Gemstar-TV Guide International, Inc., SKY PerfecTV!, STAR, Stream
Cable	Fox Family Channel, Fox Family Worldwide, Fox Kids Europe, Fox Kids Latin America, Fox Kids Network, Fox News Channel, Fox Sports Enterprises, Fox Sports Net, FX Los Angeles Dodgers, National Geographic Channel
Magazines	Inside Out, Maximum Golf, News America Marketing, planetU, Smart Source, The Weekly Standard, Gemstar-TV Guide International, Inc
Newspapers	Daily Telegraph, Gold Coast Bulletin, Herald Sun, Independent Newspaper Ltd., Newsphotos, Newspix, Newstext, Sunday Herald Times, Sunday Mail, Sunday Tasmanian, Sunday Territorian, The Advertiser, The Australian, The Courier-Mail, The Mercury, The Sunday Telegraph, News International, News of the World, The Sun, The Sunday Times, The Times, Times Educational Supplement, Times Higher Education Supplement, Times Library Supplement, TSL Education, New York Post
Books	Harper Collins Publishers Australia, Harper Collins Publishers Canada, Harper Collins Publishers Children's Books, Harper Collins Publishers General Books Group, Harper Collins Publishers United Kingdom, ReganBooks, Zondervan
Other	BroadSystem, ChinaByte.com, ePartners, Festival Records, Fox Interactive, In Flight Network, Mushroom Records, National Rugby League, NDS, New Interactive, New Outdoor, Nursery World, Rawkus

Source: News Corporation Ltd.

[6] "Shops hit parents with Potter toys price hike", *The Observer*, 11-11-2001; "Mattel conjures up Harry Potter game", *The Guardian*, 26-02-2001; "Coke to cash in on Harry Potter", *The Guardian*, 20-02-2001.

[7] At least in The Netherlands as the author has observed personally.

Industrial development and early national policy initiatives

The industry

Broadcasting policy originally arose from the need to regulate access to and control over scarce radio and TV frequencies (Fraser, 1996:206, Noam 1991:3). However, intervention in Europe went far beyond regulating technical or natural scarcity. As Eli Noam describes: ”From the beginning, European governments participated actively in the control of broadcasting. They allocated radio frequencies, declared wireless transmission to be vital to military affairs, and kept a guiding hand on the new communications medium with its considerable political and economic potential. After a brief experimental phase in the 1920s, which included amateur and commercial stations, radio broadcasting was firmly taken under state control in most European countries. (…). When television emerged in the 1950s (following experimental transmissions in the 1930s), it was resolutely placed into the prevailing scheme of state radio broadcasting. This system was subsequently loosened into independent broadcast institutions, still closely controlled by the dominant social and political institutions” (Noam, 1991:3).

Frequency regulation was to become only a minor issue in the public broadcasting systems that emerged in Europe (Noam, 1991:3). Western European governments had wider concerns that included, or sometimes even focused on, programming and content issues. More than as a form of entertainment, broadcasting was seen as a way to express culture and distribute information. Active involvement, active media policies and financial support led to public broadcasting organisations that were “highly successful in creating quality programmes, and politically and culturally influential” (Noam, 1991:4).

In the 1980s and 1990s the industry underwent a major change. The emergence of “new media” (compare Fraser, 1996:206) increased the means of receiving television (and radio) and increased the number of channels to the home. In the first half of the 1990s satellite broadcasting and cable TV became alternative transmission techniques[8]. Whereas the increase in viewable channels in the OECD area between 1980

[8] There exist three ways (categories used by the OECD; OECD 1997, 1999, 2001) to transmit a television signal from a central point (the sender or broadcaster) to the recipient of the signal, the TV set in the individual home:

and 1990 is mostly a consequence of the growth of private terrestrial broadcasters[9], in the 1990s a growth of cable and satellite television was responsible for increasing viewable channels (table 3-3).

Table 3-3: Means of receiving television. Percentages in 1997.

	Households relying solely on terrestrial TV	Households connected to cable TV	Households with satellite dish
Denmark	1.27	57.0	41.8
France	71.38	11.6	17
Germany	16.14	52.7	31.1
Spain	86.17	3.6	10.3
UK	67.56	12	20.5

Source: OECD[10].

Parallel to the technical change was the industrial change, already mentioned above, of more private broadcasters (table 3-4), first terrestrial, but later eager to reap the benefits of the new technologies (Fraser, 1996:206).

Table 3-4: Growth of private and public channels.

	1980		1990		1995	
	Public	private	public	private	public	private
Denmark	1	-	2	-	2	3
France	3	-	3	10	5	22
Germany	10	-	12	7	10	19
Spain	2	-	2	10	4	10
UK	2	15	2	29	3	62

Source: OECD[11].

This technological change had as its main consequence that alternative transmission venues emerged, which would shake up the industry and, amongst other things, cre-

(1) *Terrestrial TV*: This traditional method, first used in the late 1920s (Burns, 1998:284-5) works by transmitting radio waves from a sender station on earth through the ether to individual TV receiver sets. The “transport layer” connecting transmitters and receivers is the ether, so a system of ether frequency management is needed to ensure dedicated frequencies not disturbed by noise of other (competing) stations.
(2) *Cable TV*: The second method is to distribute the signal to the households through a COAX TV cable. The signal containing the TV programmes is usually collected at a central antenna, and can originate from a terrestrial station or a satellite. In most countries local or regional cable companies, with varying degrees of government interference, exploit the infrastructure and distribute the content.
(3) *Direct satellite TV*: reception of a TV signal at a TV set with an individual satellite dish, an antenna that can receive a satellite signal without the intervention of an intermediate infrastructure like the TV cable company’s infrastructure.

[9] OECD, 1997. *Communications Outlook*, p. 72.

[10] OECD, 2001. *Communications Outlook*, p. 132.

[11] OECD, 1997. *Communications Outlook*, p. 72.

ate new chances for growing and maturing[12] private broadcasting and media industries.

National policies

In *Denmark* the absence of commercial radio and television for most of the 20th century should not come as a surprise given the political climate in the Nordic countries, emphasising welfare and social equality (Ugelvik and Ugelvik, 1997:215). In line with a certain nationalism (Ugelvik and Ugelvik, 1997:214) Denmark has also had a strong tradition of national public broadcasting. The reception of foreign radio and television was barred. The public broadcasting organisation (*DR*, operating television channels *DR1* and *DR2*) was founded in 1920 and its goal was to serve the needs of the public in a model that was very similar to the *BBC* model in the UK[13].

From the 1970s on the media landscape started to change. First, in 1974, broadcasts from neighbouring countries were allowed. Then in 1985, with the introduction of satellite television, the Danes could watch television programmes from anywhere. A limited form of competition was introduced when *TV2*, a public service channel that competed with the existing public channels, was introduced. Local channels also started to rise during the 1980s[14] (Larsen and Schlüter Hald, 1995:391-2). Thus the extension of the number of channels or viewing and listening venues that were made possible by new media technologies (Fraser, 1996:206) created more choice for audiences, but those technical and institutional developments did not fundamentally change the public character of broadcasting in Denmark.

Broadcasting in *France* was a public institution[15], subordinate to political interests. In the immediate post-war years de Gaulle's wartime experience exerted a large influence over the working of the media. During the war, exiled in England, de Gaulle had only been able to keep in touch with France through radio, and after the war he was thus inclined to keep broadcasting under strict government control. One of his

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[12] The emergence of large international media companies entered the public awareness in the 1980s, not in the last place because of the visible growth of Murdoch's *News Corporation Ltd*. which purchased media companies worldwide for a total worth of $ 7.3 bn. between 1977 and 1988 (Gershon, 1997:198) and became listed on a number of European stock exchanges during the 1980s. ("L'introduction à la Bourse de Paris de News Corporation Ltd. Les ambitions de M. Murdoch", *Le Monde*, 21-05-1988).

[13] Source: on line country profiles at the European Journalism Centre, Maastricht, The Netherlands.

[14] Ugelvik and Ugelvik (1997:214) point at a tradition of local autonomy in Denmark. Local stations fit that picture.

first decisions after the war was to set up a directorate general for radio under the ministry of information. During the Fourth Republic, and later, when de Gaulle returned to active politics the close control did not end. Opposing views were banned[16] or given very little attention. Only after 1968, when de Gaulle had left politics, radio and television became increasingly open (Noam, 1991:96-97), although the broadcasting establishment remained dominated by Gaullists until the early 1980s (compare Fraser, 1996:210).

The election of the socialist François Mitterrand as president would change the sector in the 1980s. A strong, state-centrist broadcasting system pursuing public goals would not have been an unthinkable policy for *La Gauche*. But, forced to subject France to the general economic climate of the 1980s because the nationalisations the socialist government initiated in 1981 were not able to turn around the fate of the French economy, Mitterrand chose a course of deregulation and liberalisation. (Fenby, 1998:123). The liberalisation of broadcasting that was part of this liberalisation package (amongst others allowing private channels) was welcome in at least one respect: it gave Mitterrand a chance to settle old scores with the Gaullist broadcasting establishment which had frustrated him in his period as opposition figure (Fraser, 1996:210). After the 1986 elections, after which the Gaullist Jacques Chirac became prime minister, *cohabitation*[17] started. This period saw an intensification[18] of liberalisation policies: in 1987 *TF1*, France's biggest public network, was privatised. Although there was concern about the public aspects of television[19], there was no strong trade union action of the kind that accompanied the privatisation of *France Télécom*. The privatisation of *TF1* changed the broadcasting sector dramatically. The other channels, including public channels, were faced with a formidable competitor and were forced to pursue more aggressive commercial strategies (Fraser, 1996:212). As is clear, France's broadcasting sector was undergoing structural change, from public to private sector. Well before European policy initiatives were to be imple-

[15] With, according to Fraser (1996:210) "heroic" intentions.
[16] This extended to entertainment. The singer Michel Sardou saw his song "Les Ricains" formally "deconseillée" on radio in 1967 because it suggested, contrary to (particularly De Gaulle's) myth , that the Americans had liberated France rather than the French resistance.
[17] An executive in which the president and the cabinet are of different political colour, in this case a Socialist president and a Gaulist cabinet.
[18] "M. Jean-Jacques Queyranne : 'La privatisation de TF 1 est un fiasco'.", *Le Monde*, 23-07-1987.
[19] "Un entretien avec M. Jack Lang 'La radio-télévision doit rester le bien commun des Français'." *Le Monde*, 08-01-1987.

mented four large private commercial networks were active: *TF1*, *La Cinq*, *M6*, and *Canal Plus*.

Two other enduring characteristics of the French broadcasting sector should be noted. The first is its propensity for bureaucratic conflict. Two departments were involved in decision-making, the Ministry of Culture and the Ministry of Communications, and during the 1980s, *énarques*[20] were not able to put aside their differences over a variety of issues that resulted for a large part from the fact they were client departments for different communities. The Ministry of Communication served the industry and its lobbies (networks, production companies), while cultural interests (e.g. directors, actors, independent filmmakers) were represented by the Ministry of Culture.

The second is its tradition of suspicion towards American broadcasting productions, if not an outright anti-Americanism, affecting broadcasting policy up to the level of threatening to block the GATT trade round in 1993 if audiovisual materials would not be exempted from free trade[21]. French TV and cinema are considered superior. References to "la tradition française de la qualité"[22] can be picked out of culture sections of French newspapers by the handful. According to Fraser the eagerness of the French government to launch its own direct satellite broadcasting network can be explained by the wish to offer an alternative to the commercial satellite programs of Luxembourg, which it considered a "Trojan horse for American television programmes". Typically, the project was never successful because it fell victim to the first enduring characteristic: bureaucratic conflict (Fraser 1996:211).

Media policy in *Germany* in the post-war era aimed at preventing the domination of the media by the government and strengthening its place in the democratic process. The Allied occupation forces played a crucial role in the organisation of the media,

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[20] Higher French civil servants are trained at the *École Nationale d'Administration* , or ENA, and they form a somewhat closed caste, generally referred to as énarques.

[21] "Culture wars", *The Economist*, 10-9-1998

[22] "Le neuvième Festival du réel à Beaubourg L'Angleterre selon le Free Cinéma", *Le Monde*, 06-03-1987. *Libération* (03-03-2001) printed the following story, of which the last line must be appealing to the French: "Le 18 mai 1999, un raout au New Amsterdam Theater, à Time Square, rassemble la presse et le staff d'ABC pour le traditionnel show annonçant la nouvelle grille de la rentrée d'automne. Parmi les titres des séries jetés en pâture à l'avidité des médias, plus trace de Mulholland Drive. Lynch, en route pour Cannes, où il montre The Straight Story, déclare: «Il n'en veulent pas, ils l'ont détesté.» L'un des jeunes acteurs du film, Justin Theroux, qui avait refusé au profit du projet Lynch de jouer dans Wasteland, sitcom pour teenagers qui, elle, sera bel et bien mise en chantier, renchérit: «ABC estime que l'Amérique veut Wasteland et pas Mulholland Drive, donc estime que l'Amérique

and they created a decentralised media system over which the government would have very little direct influence. In this basic framework public regional broadcasting organisations[23] with a monopoly on all radio and later TV broadcasting (e.g. *Bayerische Rundfunk*, *Norddeutscher Rundfunk*) were regulated by the German state governments or *Landesregierungen* who were responsible for both operational and programming affairs. They did not oversee the networks directly but through a corporate structure, the broadcasting board, in which the main representatives of German society (trade unions, employers, religious groups, educational groups) were represented. Some central coordination functions, as well as the collection of license fees, were delegated to the *ARD* (*Arbeitsgemeinschaft der Rundfunkanstalten Deutschlands*) (Denkhaus and Schneider, 1997:94).

In 1959 Chancellor Adenauer tried to create a channel under the control of the central government, which would also operate on a more commercial basis. The federal plan was challenged by *Länder*, who insisted that they were the responsible authority for broadcasting, and not the federal government. The federal plan was defeated in the Constitutional Court (Noam, 1991:80) in 1971[24]. The Court affirmed that a state monopoly was the most fitting form of organisation for the broadcasting sector, as long as there was a shortage of broadcasting frequencies and that the *Länder* were competent in matters of broadcasting law (Holtz-Bacha, 1991:221). So, a channel led by the central government in Bonn was out of the question, but the *Länder* were free to collectively create a second large channel in addition to the *ARD,* which they did with the creation of the *Zweites Deutsches Fernsehen* (*ZDF*).

Yet, indirectly the Court decision opened the way for commercial TV. The state monopoly was made dependent on the scarcity of frequencies, and the Court explicitly stated that its opposition to private initiatives was practical rather than fundamental (Denkhaus and Schneider, 1997:95). The Court did however uphold that modern television offered possibilities for one-sided propaganda and stated that the content of television could not, for that reason, be left to the free forces of the market (Noam, 1991:80).

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est stupide.» La chose la plus triste, c'est qu'elle a probablement raison". This author is not totally unsympathetic to this view.

[23] The legal form is "institution of public law" (Anstalt des öffentlichen Rechts)

[24] BverfGE, 1971

When, from the late 1970s, more bandwidth became available in the form of cable TV the scarcity rationale for public organisations was challenged. The Constitutional Court was unwilling to abandon its position completely and ruled in 1981 that although private cable initiatives ought to be allowed there should remain some public control over broadcasting.
The Kohl government, sensitive to business interests, did not want to discourage investment opportunities in broadcasting and new direct satellite broadcasting channels were launched in the early 1980s. From that time on the influence of the broadcasting initiatives from the European Community gave further liberalising impetus to Germany's own initiatives. (Denkhaus and Schneider, 1997:95).
According to Noam broadcasting in *Spain*, at the time of Franco's death in 1975, was "industrially obsolete, economically extravagant and intellectually reactionary". Television was a state monopoly, but there was considerable variety in radio stations, some of which were controlled by the state, some by the church, and some were in commercial hands (Noam, 1991:246)[25].
The constitution, drafted in 1978 after Franco's death, arranged that the parliamentary balance of forces determined the composition of a number of important bodies in the state, one of them the board overseeing the state broadcasting networks. In the political reality of the 1980s this meant that the socialists were in control of broadcasting (Hooper, 1995:55). The socialist government of Gonzáles, after its 1982 electoral victory, did not readily liberalise broadcasting, most likely because deregulation was deemed less important than the modernisation of the country in which strong public institutions were regarded as important. As Boix says: "Social cohesion rather than deregulation took precedence" (Boix, 1997:258). Court battles forced the government to open the market, and in 1986 a slow liberalisation was announced. (Noam, 1991: 247-248). The cautiousness regarding broadcasting liberalisation finds its expression in the legal statutes regulating it[26]. The basic rule was that broadcasting is an essential service provided by the state which can be executed by a licensed (private) party. Yet, private concessions were granted to a number of companies un-

[25] It could be argued that Noam in this assessment puts too much emphasis on a clear-cut "before" and "after" Franco's death. Pérez-Díaz argues that the development towards a liberal democratic civil society and polity started already some two decades before the death of Franco, and by the time of his death it was the Francoist state and the Francoist regime that "looked increasingly abnormal, exotic, and different" (Pérez-Díaz, 1993:35).
[26] Law 4/1980 on establishment of radio and television and Royal Decree 1160, 1989.

der new legislation, to *TELE5*, *ANTENA*, *CANAL PLUS* for terrestrial broadcasting, and for the same parties including *RTVE* for satellite TV (De Mendivil y de Aldama, 1995:621).

There is one aspect of political culture that merits being mentioned because it affects mass media. Pérez-Díaz calls attention to “disturbing patterns in the selection of public officials and their expansion throughout civil society, which suggests carelessness, an eagerness to occupy posts, and intense partisan spirit” (Pérez-Díaz, 1993:212). This general tendency shows up in mass media: “Radio licenses for example, have been handed out and pirate stations tolerated according to party criteria, while all the autonomous governments have tried to get their own radio stations” (Pérez-Díaz, 1993:213). So, in addition to the wish to build and strengthen institutions, political tutelage could also be invoked as part of the explanation for the low priority given to liberalisation.

Post-war broadcasting in the *UK* until the challenge of the system in the 1980s is public service broadcasting (Seymour-Ure, 1996:60). The charter of the *British Broadcasting Corporation* stated that public service broadcasting should “inform, educate and entertain”, and that standards should not be set at the lowest common denominator level (Seymour-Ure, 1996:64). The public corporation is funded through a licence fee, and the charter gives the government powers to control the *BBC*. In addition to the normal oversight, executed by special and general committees of inquiry[27], there are clear political pressures on the *BBC* every now and then. In times of war and international crises (e.g. Suez, Falklands) the government has wanted to exert some control over information, and, since the Home Secretary is also responsible for broadcasting, public order and public information may be at odds. Leon Brittan, as Home Secretary, protested to the *BBC* board of governors when the *BBC* wanted to broadcast a profile of two Irish extremists, after which the governors cancelled the documentary (Noam, 1991:120). It would however be an exaggeration to say that there is regular political control of the *BBC*. According to Seymour-Ure the board of governors protects “the broadcasters from politicians and pressure groups more than the other way around” (1996:62).

[27] E.g.: Sykes Committee (1923), Crawford Committee (1925), Beveridge Committee (1950), Pilkington Committee (1962), Peacock Committee (1986).

In the 1950s an important change of broadcasting policy occurred: commercial television was, after intense political debate, allowed. The Conservative election victory of 1951 brought Winston Churchill in Downing Street, and a combination of three reasons created a climate in which a commercial station would be acceptable. First, Churchill had some axes to grind with the *BBC*, as it had not (in his view) given him sufficient attention during his "wilderness years" in the 1930s (Seymour-Ure, 1996:90). Second, there was a general feeling that, given its importance, the media should not be dominated by one corporation (Noam, 1991:124). And third, the Conservatives wanted the state to be of less importance in running peoples lives; competition and choice of programmes would contribute to that (Seymour-Ure, 1996:90).

The new setting allowed commercial TV but was certainly not deregulated. The *ITV* networks were legally ordered to "inform, educate and entertain" (Seymour-Ure, 1996:66), and *the Independent Television Authority* (*ITA*), the public corporation awarding the regional franchises subject to *ITA* programme standards owned the transmitting infrastructure (Seymour-Ure, 1996:66). The duopoly remained stable until the 1980s. The Thatcher government sought to change the industry, and consulted with private sector broadcasting lobbies before drafting policies, while excluding the *BBC-ITV* establishment from policy making and keeping tight prime ministerial control (Fraser, 1996:207).

The technical argument - the increase of spectrum - was an important argument in favour of ending government intervention. As Margaret Thatcher said in her autobiography: "Scarcity of available spectrum had previously determined that only a few channels could be broadcast. But this was changing. It seemed likely that ever higher frequency parts of the spectrum would be able to be brought into use. Cable television and direct broadcasting by satellite (DBS) also looked likely to transform the possibilities. There was more opportunity for payment – per channel or per programme – by subscription. An entire new world was opening up" (Thatcher, 1993:635). So, since the duopoly was an answer to a problem that in the eyes of the prime minister no longer existed[28], the duopoly itself had better disappear. Initially the shake up of the market should have come from satellite television, but that tech-

[28] As table 3-3 indicates her conviction was wrong. Although the technologies did indeed exist the UK has been slow to pick up cable TV and satellite TV in large numbers. A majority of households still depends on terrestrial television.

nology did not bring about the revolution as it took long to become profitable, and thus did not become a real competitor (Fraser, 1996:208).

The 1990 Broadcasting Act did change the industry by putting the *ITV* franchises up for auction. The party who could pay the largest fee to the government (because that party could earn most advertising income) would get the franchise, albeit that the system included a limited "beauty contest" to see if the candidates could also inform and educate. The new *Independent Television Committee* could ignore a higher bid to grant the franchise to a quality bidder offering less money. (Seymour-Ure, 1996:70).

The nature of early reform

The changes that started in the 1980s all were going in the direction of liberalisation, although there were differences in the depth of the acceptance of the market as most suitable co-ordinating mechanism for broadcasting. In Denmark and Spain official support for liberalisation seemed lacking, albeit for very different reasons. Denmark was traditionally committed to public goods and they were understandably reticent when it came to liberalisation of broadcasting. Only a limited, almost experimental, form of liberalisation was carried out. Neither was the Spanish government an enthusiastic sponsor of liberalisation - it will be remembered that Court action was needed before the government gave in. It focused on rebuilding institutions after the death of Franco, and control over the media was an aspect of political tutelage that emerged (or re-emerged) in post-Franco Spain.

In France, Germany and the UK liberalisations were visible and widely supported projects, although the motivation differed. In France the socialists started a process of liberalisation, partly as a *Mitterrandist* revenge for *Gaullist* media domination earlier, and the process was deepened by the *cohabitation* government of Chirac, and fit its neo-liberal convictions. A similar development can be seen in Germany and the UK, where the respective governments were sensitive to business influence and ideologically committed to liberalisation. So, whereas Spain and Denmark did not really have their hearts in liberalisation, in France, Germany and the UK the media liberalisations were important and visible government projects. It should be noted that where liberalisation of broadcasting was proposed or carried out satellite television was seen as a means to improve competition. So contrary to the liberalisation of telecommunications, where ideas on competition focussed on limiting parallel infrastructures, in broadcasting parallel infrastructures were seen as contributing to competition.

The EU involvement

If there were initiatives to liberalise broadcasting, albeit with varying degrees of enthusiasm, why did the European Community, or rather the European Commission, decide to get involved in such a sensitive area as broadcasting?

Originally no basis was found in the Treaty of Rome - and hence no need was seen - to intervene in broadcasting, but in 1974 the Court of Justice ruled that a television programme was a service according to the Treaty[29]. The Commission did not react immediately with policy proposals. In 1974 public broadcasting was generally still limited to the use of a few terrestrial television channels, which did not give much room for expansion or fundamental change of the television organisation as it existed.

In 1980 the media environment began to move with the emergence of new media technologies and the maturing of the industry. When in that year the Court ruled that the EC could harmonise national television regulation in order to ensure the free circulation of TV programmes[30] the Commission had a powerful incentive and a legal title to intervene at the same time. The need for a Community broadcasting policy became urgent because the transborder television services, made possible by the Court, would face a multitude of different national arrangements (compare Gershon,

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[29] In Case 155/73[1974], Sacchi vs. Italy, a prejudicial decision was requested by the Tribunale di Biella in Italy. The case was brought by Guiseppe Sacchi, owner ofTele-Biella, owner of an unlicensed television distribution company who refused to pay a license fee for the reception and public viewing of programs of the state television monopolist, RAI, on the grounds that distribution of television signals was to be regarded as a service according the meaning of the Treaty, hence its free movement should not be obstructed by government monopolies. The local judge questioned the legitimacy of the license fee to RAI and asked a prejudicial decision from the European Court. The Court decides that the distribution of television signals is indeed a service under the Treaty, and that the rules on free movement of goods are fully applicable.

[30] In Case 52/79[1980], Procureur du Roi vs. Debauve, a prejudicial decision was requested by the Tribunal Correctional du Liege (Belgium). The transmission of foreign television programs and advertising was formally forbidden in Belgium, but the government had not acted while in Liege, Namur and Verviers cable distributors routinely transmitted foreign signals including advertising. When the Procureur du Roi (Public Prosecutor) finally took action it resulted in the case in which the Court asked for a decision of the European Court because the practice in Belgium seemed to differ from that in other countries and seemed incompatible with the ruling in the Sacchi case. The European Court of Justice ruled that the Commission should indeed take measures to harmonise broadcasting law in Europe.

1997:44). However, the field of action was restricted. Both Court rulings were based on the Treaty statutes on free movement of goods and services, so interventions of the Commission were restricted to the production and distribution of television. Content regulation was not a matter for the Commission[31].

The Commission drafted a Television Without Frontiers Green Paper[32] in which a "European broadcasting area" was proposed which would give all residents of the EC access to broadcasts from all other member states. In this it was helped by the new technologies: cable TV and satellite TV made it possible to receive more channels from over a longer distance, giving the viewing audience a real opportunity to enjoy a European market. The idea of a European broadcasting area went beyond simply viewing the *BBC* from Belgium or German *ZDF* from The Netherlands. The Europeanisation of production and distribution was an important part of the Commission's programme. A series of national markets with national producers and broadcasters would be replaced by large commercial broadcasting companies producing and distributing European programmes. Because of the increase of the market size and further economies of scale, European producers would be able to compete against the cheaper American production companies and ultimately the dominance of imported American programmes would end. The Commission sought to strengthen European competitiveness by enlarging the size of the market and so increasing economies of scale. A more vibrant market was to emerge, with a larger turnover[33].

This policy is laid down in directive 89/552/EEC (Television Without Frontiers) and amended by directive 97/36/EC (the "New Television Without Frontiers directive").

Reactions of the member states

The original Green Paper met with adverse reactions. National lobbies turned against the too "product-oriented" view on television. The cultural value of TV was underrated, and in the ultimate Television Without Frontiers directive much attention was devoted to regulating the content of TV programmes so as to do justice to the cultural and educational values of television. Yet, the original idea of opening broadcasting

[31] Which explains why the initial Commission intervention in broadcasting was executed by DG III (internal market and industrial affairs) rather than DG X (culture).

[32] European Commission, 1984. *Television Without Frontiers: Green Paper on the establishment of the common market for broadcasting, especially by satellite and cable* (COM(84)300).

[33] European Commission, 1984. *Television Without Frontiers: Green Paper on the establishment of the common market for broadcasting, especially by satellite and cable.* (COM(84)300).

markets to improve productivity and competitiveness was still a cornerstone of policy (Fraser, 1996:215).

In 1986 the Commission, now with a new, French, chairman, Jacques Delors, announced a broadcasting directive, also called Television Without Frontiers. The influence of the French media lobby on the directive is clearly discernable. At least 51 per cent of broadcast entertainment should be European in origin, and given the fact that France had the second largest media industry measured in exports (Fraser, 1996:216) the quota was an obvious ploy to favour that industry over the American media industry (Noam, 1991:293), not surprising given the outspoken anti-American French broadcasting politics.

The reactions of the member states to the directive were almost universally hostile. Of the countries in this research only France supported the directive (Noam, 1991:293). Especially the UK, pressured by Hollywood via the Reagan government, opposed the quota, but they also had qualms about European interference with broadcasting policy in general. Denmark opposed the directive for two reasons: first it denied the legitimacy of the EC to take legislative steps in broadcasting, not surprising given the ideas of the Commission, which were, after all, also aimed at opening markets, and thus at odds with the public broadcasting tradition of Denmark. Germany would not accept a EC policy because it saw the *Länder* as the main regulating authorities for broadcasting. Only Spain supported the directive, together with the other southern countries, in the hope of receiving structural funds support for their media industries. However, the main battle was between France, opting for liberalisation, but with protection of European/French values, and the UK, opting for a free market, period (Fraser, 1996:216-8).

In spite of opposition the directive was accepted and eventually became national law in European countries, although the member states were generally late with its legal implementation, and less than forthcoming with its administrative implementation. Fraser gives the following characterisation of the implementation of the directive: "Since the directive went into effect on 3 October 1991, its implementation has been largely a history of national non-compliance. The Commission has instigated infringement proceedings against most EU member states"[34].

[34] See table 3-7 for an overview of actions from 1992 to 1997.

There are some mitigating circumstances, such as developments in the audiovisual field[35] (compare Aubry, 2000:4) and the fact that the implementation gave rise to some legal problems that had to be cleared up in Court[36]. Eventually the Commission drafted an amending directive (97/36/EC). Although it is sometimes argued that the second directive removed major obstacles found in the first directive[37] - so condoning the member states whose implementation record was less than impressive - the thrust of the first and second directive is identical. The grand design of broadcasting policy does not change from the first to the second directive, so in spite of some legal difficulties and changes in the industry the member states cannot be excused for their failure to implement on these grounds alone. Broadcasting is hardly the only industry in which developments continue after governments have decided on some piece of legislation.

The directives

The consolidated[38] version of the Television Without Frontiers directive and the amending directive lays out three important changes for the European broadcasting markets (or audiovisual markets in EU parlance).

(1) Common Market: "Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of television broadcasts from other Member States"[39]. In fact, this is a potent and straightforward formulation of the

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[35] European Commission, 1996. *2nd Report from the Commission to the European Parliament, the Council and the Economic and Social Committee on the application of Directive 89/552/EEC "Television without frontiers".* (COM(96)302final), p. 2.

[36] Case 222/94 Commission v. United Kingdom; Case 11/95 Commission v. Belgium.

[37] 89/552/EEC did not "contain any provision specifying the criteria that determine the jurisdiction of member States over Broadcasters. The establishment of this legal connection is, however, essential to guarantee the actual implementation of the Directive's fundamental rule which stipulates that the broadcasting of television programmes across the territory of the European Union may not be restricted by the Member States" (Aubry, 2000:5). This seems is a problem in connection with cross-border broadcasting, certainly not the only aspect of the directive. Further, the new directive added rules on teleshopping, coverage of major events and protection of children (Aubry, 2000:4), which does not seem an adaptation to momentous changes in the industry.

[38] The period of analysis will include directive 97/36/EC which amends 89/552/EEC. Hence, in this outline of policy, the consolidated version of the two directives prepared by the Commission will be the basis of the description.

[39] 89/552/EEC and 97/36EC consolidated version, article 2a paragraph 1. The article was already part of the original 89/522 EEC, as Article 2 para 2.

Common Market[40] for broadcasting. It should be stressed that the Common Market for broadcasting is a means to an end: it should lead to consolidation of media production which in turn should lead to economies of scale which in turn should lead to lower *price development* and so to an improvement of competitiveness, in particular in the competition with media production companies located in the United States. This is a clear liberalising article since it frees stations from rules restricting commercial freedom imposed by national governments.

(2) European works: “Member States shall ensure where practicable and by appropriate means that broadcasters reserve for European works, within the meaning of article 6[41], a majority proportion of their transmission time, excluding the time appointed to news, sports, events, games, advertising, teletext services and teleshopping”[42]. With this article the European Commission regulates the number of European productions. It is of course not so much a liberalising measure as a piece of industry regulation. Given the view of the Commission of the relation between American and European media production in which American production companies have or are acquiring market dominance this article could be seen as a market measure to limit the dominance of American production companies in favour of the weaker European ones.

(3) Independent works: “Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10 per cent of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, or alternately, at the discretion of the member State, at least 10 per cent of their programming budget for European works created by producers who are independent of broadcasters”[43]. A broadcaster is defined in the directive as "natural or legal person who has editorial responsibility for the composition of schedules of television programmes"[44]. This article strengthens the position of

[40] Member States may deviate from this article in case broadcasts impair the physical, mental or moral development of minors or are inciting to hate on the grounds of race, religion, sex or nationality (89/552/EEC and 97/36EC consolidated version, article 22-1 and 22-2). Furthermore, the Court has ruled that cultural policy can be a pressing reason to justify a restriction of the free provision of services (Case 353/89, Commission vs. The Netherlands).

[41] Defines a European work as: originating from a Member State; under certain conditions originating from a European third state party to European Convention on Transfrontier Television of the Council of Europe; under certain conditions originating from other European countries.

[42] 89/552/EEC and 97/36EC consolidated version, article 4 para 1.

[43] 89/552/EEC and 97/36EC consolidated version, article 5.

[44] 89/552/EEC and 97/36EC consolidated version, article 1 para b.

media production companies against broadcasters who want to rely exclusively on the so-called "own productions".

The preamble of the directive further mentions:

(4) The prevention of dominant positions in broadcasting[45]. This emphasises that normal competition rules should prevail in this sector.

Broadly the EU has set a course of more private production and initiative and less state interference, within the limits of competition law and cultural policy (mostly relating to the protection of minors and the expression of national cultures in broadcasting).

PART 2: ASSESSMENT OF EXTENT OF IMPLEMENTATION

Limitation of scope and time frame

Broadcasting is a complex sector in terms of technology and industrial organisation, that now encompasses traditional radio, television, and the new media. In this chapter the investigation will be limited to television broadcasting, which is by far the most important service in what might be termed socio-cultural terms but also in economic terms. E.g., of the total Public Services Expenditure of the BBC in the 2000/2001 year only 22.89 per cent of cost was incurred by radio; the rest by television[46]. It is also dictated by the organisation and form of the data provided by the OECD in which broadcasting and television are almost seen as synonyms.

Variables and indicators

To make an assessment of the extent of liberalisation in national broadcasting regulation and national broadcasting markets the broad variables will have to be made

[45] 89/552/EEC and 97/36EC consolidated version, preamble, no. 16

[46] The percentage reflects expenditure on the main radio channels against main television channels alone. If the total *BBC* expenditure were taken, so including digital services, services as *BBC knowledge* and *BBC parliament*, License Fee collection cost, transmission cost and the cost of the *Open University Production Centre* the percentage would sink to 18.61 per cent . (Calculated from: BBC, 2001:68).

operational. The indicators used in the investigation of telecommunication are of little use since the organisation and the nature of the service in the broadcasting industry differ considerably from those in telecommunications. Hence, a new set of indicators that capture the most important changes in the industry while at the same time still measuring the liberalisation of the sector will be used.

Table 3-5: Overview of variables measuring liberalisation in broadcasting.

Main variables	Indicators
Regulatory renewal The extent to which an effective competition framework is implemented	1. *Implementation of core directives* 2. *Cross-provision restrictions* 3. *Ownership restrictions of TV services* 4. *Cross-media ownership restrictions* 5. *Foreign and EU member state investment restrictions* 6. *Public funding growth rate*
Market renewal The extent to which the market becomes competitive	7. *Market renewal score* 8. *Penetration of private viewable broadcasting channels*
Efficiency and innovation The extent to which the market is more efficient and innovative	9. *Growth of digital television subscribers*
Price development The extent to which *price development* decline	10. *Indexed broadcasting consumer price development*

The indicators for *regulatory renewal* first measure directive transposition (*implementation of core directives*). After this relatively straightforward test of legislative ability the quality of the national legal frameworks will be reviewed. As was discussed in the description of the sector most of the competition problems emanate from concentration in the media sector, so the prevention of concentration will be the basis for the evaluation. *Cross-provision restrictions*, *ownership restrictions on television services* and *cross-media ownership restrictions* measure respectively the extent to which cable and terrestrial infrastructures are separated, dominant positions in terms of audience sizes and the extent of separation of ownership of diverse media.

Two other aspects of the regulatory framework will also be measured. First, the restrictions on investments from other EU member states (*foreign and EU member state investment restrictions*). Because it is an important goal to “Europeanise” the sector to improve competitiveness with the US media industry large European-scale firms should emerge, and the regulatory frameworks should not prevent that. Second, the extent to which public financial contribution to the media declines (*public funding growth rate*) will be evaluated to see whether or not governments are serious in diminishing financial support for broadcasting. Continuous transfers of public funds would be a form of state support of broadcasting organisations distorting the working of the market. *Market renewal* is evaluated by looking at the relative position of public and private broadcasting, both in terms of the number of broadcasting organisations and their audience sizes (*market renewal score*) and the number of channels (*penetration of private viewable broadcasting channels*). This captures both actual developments and institutional changes. *Efficiency and innovation* was harder to test. Only regarding innovation have data pertaining to the actual number of digital subscribers been found and the analysis will be limited to that indicator. *Price development* has been evaluated through a calculated "Indexed broadcasting consumer price development".

Regulatory renewal

Implementation of core directive.

Two core directives set the stage for television broadcasting: the original Television Without Frontiers directive 89/552/EEC and the amending directive 97/36/EC. Table 3-6 gives an overview of the legal implementation of 89/552/EEC[47]. The implementation of the directive can be seen as a test of drafting and implementing legislation in a certain sector. However, just looking at the implementation dates will in this case not reveal how incomplete implementation exactly was because it does not reveal the actions taken against the member states.

Germany managed to implement the full directive on time so nothing will be subtracted from the maximum assessment score. Denmark and France were both late, implementing the directive in 1992. This is not terribly late, so a minor subtraction is justifiable. The formal actions are more or less of the same weight. France received a reasoned opinion, and while for Denmark things went only as far as receiving an Art.

[47] The implementation date for 97/36/EC (30/12/2000) is too recent to have been fully reported on by the European Commission. Further, the fact that the Commission drafted an amending directive in 1997 because of implementation difficulties and changes in the audiovisual field does not mean that it

169 letter, which is a lesser evil, the other letter for failing to notify (which much have left the Commission at around the same time Denmark's notification entered the Commission building) balances that. Both countries receive a score of 3.

Spain, two years late, and with a reasoned opinion against it is clearly below the level of Germany and Denmark. About three years have passed since implementation was due, so a lower score than France and Denmark is justified. The assessment score will be 2.

Table 3-6: Dates of implementing measures transposing liberalising directive.

Member state	Implementation of 89/552/EEC (Implementation date: 03-10-1991)
Denmark	**Late** • 31-12-1991 (law)
France	**Late** • 30-09-86 (law) • 04-04-87 (decision) • 23-09-87 (decree) • 07-12-87 (decision) • 11-07-88 (decision) • 20-04-89 (decision) • 20-04-89 (decision) • 18-01-92 (law) • 27-03-92 (decree) • 27-03-92 (decree) • 27-03-92 (decree) • 27-03-92 (decree) • 12-05-92 (decision) • 20-07-92 (decree) • 01-09-92 (decree) • 01-09-92 (decree)
Germany	**On time** • 1991 (law)
Spain	**Late** • 12-07-94 (law)
UK	**Late** • 1990 (act) • 1995 (regulations) • 1995 (legal notice)

Source: CELEX database.

is wholly unjustified to assess the members solely on their implementation of the first directive since there was no *principal* difference between the first and second directive.

Table 3-7 gives an overview of the formal actions taken under Article 169 (now 226). All the member states, with the exception of Germany, had to be forced into action by infringement proceedings under article 169 (now 226). Few directives have attracted so many formal actions against member states, and these data need to be a part of the assessment scores for legal implementation.

Table 3-7: Infringement proceedings against member states for failing to fulfil their obligations, from 1992 until 1997. The bold numbers are Commission file numbers. The table indicates that implementation of directive 89/552/EEC (Television Without Frontiers) was far from successful.

Member state	Legal actions
Denmark	**92/2160** no measures notified, Art. 169 letter in 1992 action terminated in 1993 **92/2198** not properly implemented, Art. 169 letter in 1993 terminated in 1997
France	**92/2164** not properly implemented, reasoned opinion in 1994 supplementary reasoned opinion in 1996
Germany	No actions
Spain	**92/2157** no measures notified, Art. 169 letter in 1992 reasoned opinion in 1993
UK	**92/2167** not properly implemented, reasoned opinion in 1993 referral in 1994 case C-222/94, judgement of 10/09/1996 terminated in 1997 **92/4089** not properly applied, reasoned opinion in 1995 referral in 1995 suspended in 1997 **94/2055** not properly applied, reasoned opinion in 1994 terminated in 1997

Source: Compiled from 10th - 15th Report on the Application of Community Law, O.J. C233/93; C154/94; C254/95; C303/96; C322/97; C250;98.

The UK hits rock bottom. The implementation is late by four years. Three legal actions, one leading to a Court judgement, is very poor implementation from the high legal ground that has to be taken in judging this aspect. The UK will receive the lowest score of 1. Table 3-8 sums up the assessment scores.

An explanation for problematic implementation in general has already been mentioned. Aubry (2000:5) pointed at legal weaknesses in the directive itself, and the motivation of the Commission to take action against member states (not properly implemented in five times out of seven infringement proceedings), indicates that indeed the member states were willing and actively working towards implementation, albeit rather unsuccessfully.

Table 3-8: Legal implementation of liberalising directive.

	Assessment score
Denmark	3
France	3
Germany	4
Spain	2
UK	1

Cross-provision restrictions

In broadcasting the various infrastructures were supposed to compete with another, but given the tendency towards concentration that is characteristic to broadcasting (as outlined in the paragraph "Industrial development and early national initiatives") regulation is needed to guarantee a lasting separation of broadcasting infrastructures. Without this regulation it is likely that physical infrastructures end up in the hands of one or a few broadcasters and that the physical infrastructures would be regarded as nothing more than technically alternative ways to reach audiences. Thus, forced separate operation or cross-provision restrictions are indicative of sound implementation of the competition aspects of the directive.

The indicator *cross-provision restrictions* thus measures, although somewhat crudely, whether or not the regulatory framework allows competition between infrastructures. The more organisations fall under the regime of this kind of forced separation, so the more comprehensive the measures are, the more effective is the competition between operators using different infrastructures. It is thus a measure of the quality of the regulatory framework. Table 3-9 gives an overview of restrictions on providing cable television and terrestrial television by the same organisation. Denmark and Germany have no specific regulation, while France, Spain and the UK have regulation in place. As far as the comprehensiveness of the measures is concerned: France aims the regulation at both cable and terrestrial operators beyond a certain threshold expressed in number of possible viewers, which is highly inclusive. Spain aims the regulation solely at terrestrial operators, meaning that cable operators are not restricted in any way. This has little practical consequences in the short run, Spain's cable sector being very small (see table 3-3). Yet principally it means that legislation is aimed at one group only, which in the long run could lead to competition problems. In the UK regulation is aimed at the BBC and commercial licensees, which is highly inclusive since it aims at all active broadcasting operators.

The countries that have no regulation each receive a score of 1. Of the three member states that do have regulation Spain is the member state with the least comprehensive system, for which the assessment score is reduced[48].

Table 3-9: Cross-provision restrictions and their comprehensiveness.

	Cross-provision restrictions	Comprehensiveness	Assessment
Denmark	no	-	1
France	yes	high (aimed at all specific operators above a certain threshold)	4
Germany	no	-	1
Spain	yes	low (aimed at terrestrial operators only)	3
UK	yes	high (aimed at BBC and commercial operators)	4

Source: OECD[49].

Ownership restrictions on television services

Cross-provision restrictions alone are not a sufficient barricade against competition problems. In countries where one infrastructure is dominant, for instance in France[50] (78.98 per cent of households rely on terrestrial television) or Spain[51] (89.18 per cent of households rely on terrestrial television) alternative infrastructures will not in the short run (and maybe not even in the long run) be a venue for competition, so additional measures to prevent domination on one infrastructure should be in place. And although the problem is most pressing for France and Spain, in the long run one infrastructure could become dominant in other member states as well. A robust framework takes long-term developments into account so concentration measures

[48] There is some empirical evidence that indicates that having this kind of regulation in place protects terrestrial television and prevents cable television from becoming the dominant means of television reception. In EU countries without specific regulation cable is the dominant means of reception (56.2 per cent) , while terrestrial reception is favoured by a minority (25.7 per cent). In EU countries with specific regulation the numbers are more or less reversed: 62.9 per cent depends on terrestrial TV while 22.7 per cent has a cable connection. Satellite is below 20 per cent in both types of country (OECD, 2001:160-61 and OECD, 2001:132). From a competition point of view that is a good thing because it leaves one reception channel intact (terrestrial) while keeping in place the opportunities of alternative operators on the other (cable). Where the regulation is not in place cable TV has simply replaced terrestrial television, which in the end will mean the loss of a reception venue - and thus of a competition possibility.

[49] OECD, 2001. *Communications Outlook*, p. 160-1.

[50] See table 3-3.

must also be in place in member states where the distribution of infrastructures (terrestrial TV, cable TV, satellite TV) is more even currently. Table 3-10 gives an overview of the status and comprehensiveness of measures.

Table 3-10: Ownership or concentration restrictions on television services and their comprehensiveness.

	Ownership or concentration restrictions on television services	Comprehensiveness	Assessment
Denmark	yes	extremely low	1
France	yes	high	4
Germany	yes	high	4
Spain	yes	high	4
UK	yes	high	4

Source: OECD[52].

Denmark has ownership restrictions, but only for local terrestrial television, the main provision being that one and the same individual cannot be a board member of more than one local station. This is hardly comprehensive, in particular given the fact that terrestrial television is fairly unimportant in Denmark (see table 3-3).

France has regulation to prevent concentration in television. The basic rule holds that no single entity may own more than 49 per cent of shares in a national broadcasting company, meaning that broadcasters cannot be owned with majority shareholdings by other companies who could be tempted to abuse their position of power by influencing programming. This specifically excludes the formation of media conglomerates of the Murdoch or Berlusconi kind, since a holding company could only end up with a series of minority shareholdings, and would always have to share its power with other investors. Probably for this reason *Canal Plus*, the French media giant has expanded abroad (Spain, Germany, Poland, Belgium) but not as much in France[53].

Germany is also governed by a simple, highly comprehensive rule: a single broadcaster may not achieve an annual average viewer share of more that 30 per cent . The measure, although designed specifically to guarantee pluralism in media content, implies that at least four broadcasters will have to exist and thus ensures competition (3 broadcasters each having no more than 30 per cent and one providing the remaining 10 per cent is the minimum).

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[51] See table 3-3.

[52] OECD, 2001. *Communications Outlook*, p. 162-64.

[53] “Flirtation and frustration”. In: *The Economist*, 09-12-1999.

Spain's regulation for terrestrial television restricts one "entity" from holding more than one licence, from holding control (direct or indirect) of more than 25 per cent of capital, or from holding shares in more than one licence owner. A national media giant cannot emerge, because no company can amass licenses, and majority shareholdings are not possible. The rather unimportant domains of cable TV and satellite television also have limiting provisions and can also not be the vehicle for a media conglomerate. In cable television there is simply a subscriber ceiling of 1.5 million, ensuring that no conglomerate will ever form. Satellite broadcasting has a capital control limit of 25 per cent . The measures are aimed at all possible participants and not at specifically mentioned organisations or limited entities, so they are highly inclusive.

The UK forbids the holding or controlling of licences for more than 15 per cent of the total television audience, for analogue television, and restricts control of digital programming services. A person or corporate body may not hold more than three licenses. The measure blocks concentration, and is not aimed at transmission technologies such as terrestrial, cable or satellite, but at analogue and digital signals - which happen to be the only two possible kinds of signals. Hence, the regulations are fairly independent of used technology and therefore highly inclusive.

Cross-media ownership restrictions

At the level of companies and holdings, excluding vertical and horizontal integration is important to prevent distorting production sequences of the kind pictured in figure 3-1.

Denmark and Spain have no cross-media regulation, so content can be swapped at low cost, creating a possibility of market failure. France has created four legal categories of media producers, and participating in more than two of them will lead to the revoking of broadcasting licences. The categories are: (1) producers of digital television services broadcast to more than four million people, (2) operators of radio stations serving at least 30 million people, (3) cable or satellite operators or distributors of commercial pay TV whose coverage area includes at least six million people, and (4) publishers of daily newspapers with general and political content accounting for more than 20 per cent of national newspaper sales. This regulation is rather specific - and therefore less robust; changes over time of the media landscape could make such specific regulation obsolete. Further, the threshold is rather high, one has to be “in more than two” categories to get into serious trouble. It is possible that unwanted production sequences arise - what about a sports magazine (not general, not political after all) owning a TV station?

Table 3-11: Cross-media ownership restrictions and their comprehensiveness.

	Cross-media ownership restrictions	Comprehensiveness	Assessment
Denmark	no	-	1
France	yes	low	3
Germany	yes	high	4
Spain	no	-	1
UK	yes	low	3

Source: OECD[54].

Germany’s regulation is simple (and therefore robust in time) and inclusive: a broadcaster active in both the television and another media market is not allowed to have influence on opinions corresponding to a 30 per cent viewer share. Additional restrictions for smaller, regional markets exist.

The UK does not allow combined ownership of radio and television licenses. Further, holders of a newspaper group having more than 20 per cent of total national circulation are not allowed to own national or regional television or radio licences, or own more than a 20 per cent share in a licence holder. The mutual exclusion of radio and television is curious because these media are hardly competing with each other, but are rather additional markets. The limitation of the behaviour of newspaper groups is problematic, because it is one-sided. What about a television channel owning a newspaper? Understandably the regulation is drafted with Murdoch’s media empire in mind, but is, precisely for that reason, not robust in time.

How effective is the legislation in preventing media domination? A superficial glance at media markets raises doubt as to the effectiveness of this regulation since in spite of it concentration does seem to occur and there are companies like *Bertelsmann*, Berlusconi, Murdoch and *Canal Plus* that seem to have a dominant position. Yet, no matter how large these companies are, and there is indeed no need to deny their sheer size (see table 3-1), they have, as a consequence of regulation, limited opportunities to expand in their home markets or in one country. As *The Economist* noted: “Companies wanting to grow look first to their home market. But European media firms mostly meet with nothing but frustration. Limits on spectrum have limited the number of commercial broadcasters so they often hit the ceilings set by ordinary competition law, precluding mergers between them. But even where deals would be possible, media businesses tend to be constrained by special rules limiting their freedom, because the media are seen as special."[55]. However, as this investigation shows, this does not count to the same extent for all member states .

Foreign and EU member state investment restrictions

The directive has as one of its explicit economic aims the "Europeanisation" of the broadcasting market, so a move away from national control and to the development of a sector with European scope. The consolidation of national industries into European industries should improve the competitiveness of European broadcasting with US media production. It would in this light be advisable, if not a necessary condition, to allow investments from other EU member states in national media companies for without that the European consolidation could hardly come to a start[56].

The regulatory frameworks are quite firm in allowing European capital to be invested in national broadcasting companies, with the exception of Germany's regulation. Germany has a license system, and licenses are issued on the basis of a review that also includes content criteria. Programmes must express the variety of opinions in Germany. This is a very soft criterion, and there is no guarantee that anyone except German broadcasters will be able to express the variety of opinions in Germany. The German government stresses that EU broadcasters should have no problem fulfilling the conditions: "In practical terms it is very difficult for foreign broadcasters from outside the EU to fulfil the criteria to receive a licence or to be selected for cable transmission"[57]. Yet, since the quality of the framework rather than its practical application is measured here the implication that investors from within the EU will somehow be able to get licenses is not quite satisfactory. There is no legal guarantee that companies seated in the EU will be treated differently from non-EU companies.

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[54] OECD, 2001. *Communications Outlook*, p. 165-66
[55] "Flirtation and frustration". *The Economist*, 09-12-1999.
[56] It could be argued that the true test of liberalisation would not be whether European investment is allowed, but to see if investment from any foreign country, so also from outside the EU, would be allowed. However, this investigation hopes to establish a picture of administrative performance in the implementation of EU policy, and not to investigate if the policy of the EU is the best possible liberalisation. Hence accomplishing the goals of the EU is what constitutes a success.
[57] OECD questionnaire 1998.

Since there is no clear and explicit exclusion of EU member states in legislation, as in other countries, Germany receives a low score.

Table 3-12: Foreign ownership restrictions broadcasting companies.

	Restrictions on EU ownership	Assessment scores
Denmark	No	3
France	Yes, but investors from EU member states are excluded from these restrictions.	4
Germany	Yes, there are licensing conditions for cable but foreign broadcasters from the EU should be able to fulfill these.	1
Spain	Yes, there is a 25% foreign holding restriction but EU capital is not considered foreign capital.	4
UK	Not for UK and European Economic Area member states	4

Source: OECD[58], OECD Questionnaire (France).

Assessing Denmark also poses a problem. One could be inclined to see a country that has no foreign ownership restrictions at all as having the most liberalised broadcasting market. If this were a study of liberalisation as such Denmark would no doubt be awarded maximum points. However, this is a study of *performance*, studying the aptitude of governments to implement *European* policy goals. The goal of the EU is not simply to liberalise broadcasting, it is to liberalise European broadcasting from restrictive practices of national governments to strengthen the sector against American domination[59]. The Danish broadcasting sector is in principle open to mergers and acquisitions from outside the EU, which is potentially hurting European policy. Hence Denmark receives a lower score, albeit slightly lower.

The system does seem to perform its functions, however. The absence of restrictions has led to cross-border media company participations, changing partners so fast that *The Economist* reserved the term “bed-hopping” for it[60].

Public funding growth rate

A quick test of regulatory or administrative “intent” is the extent to which public funds devoted to television broadcasting decline. If governments take the prospect of

[58] OECD, 2001. *Communications Outlook*, p. 167-68.

[59] A successful example to reach this through easier crossborder investment in the EU is the co-operation between Bertelsmann and Canal Plus. See: “Afin de mieux résister à la puissance américaine Canal Plus et Bertelsmann font alliance dans la télévision payante en Europe”. In: *Le Monde*, 23-07-1994.

[60] “Flirtation and Frustration”, *The Economist*, 09-19-1999.

a more market-dominated and less government-influenced broadcasting sector seriously, the budgets devoted to (public) broadcasting should decline.

Table 3-13: Public funding of television broadcasting market. Compound annual growth rates in percentages.

	1995 - 1997	1997 - 1999
Denmark	1.79	1.91
France	1.46	1.32
Germany	0.28	-1.34
Spain	..	-3.05
UK	0.22	11.81

Source: OECD[61].

Table 3-13 shows the public funding of television broadcasting in compound annual growth rates, in percentages, for the years 1995 - 1997 and 1997 - 1999. The figures are based on operating subsidies provided by public institutions and license fees paid by individuals. The number for Spain for 1996 - 1997 is missing in the original OECD data and the ultimate assessment will be based on the 1997 - 1999 data only.

Table 3-14: Public funding of television broadcasting market. *z*-scores and assessment scores.

	z-scores 1995 - 1997 CAGR	*z*-scores 1997 - 1999 CAGR	Cumulative *z*-scores	Assessment scores
Denmark	1.058244	-0.03811	1.020131	1
France	0.648601	-0.14032	0.508277	2
Germany	-0.81618	-0.60114	-1.41732	4
Spain		-0.89738	-0.89738	3
UK	-0.89066	1.676959	0.786297	2

4 = *-1.41732 1 -0.80795725,* **3** = *-0.80795725 1 0.60936275,* **2** = *0.60936275 1 0.41076825,* **1**= *0.41076825 1 1.020131.*

The assessment scores are attributed on the basis of the position of the cumulative z-score on the interval from highest negative annual growth rate in *z*-scores to the highest positive growth rate in *z*-scores, divided in four equal parts. The more negative the growth, the less public funding went to broadcasting. From the viewpoint of market liberalisation that is the most positive policy[62].

[61] OECD, 1999. *Communications Outlook*, p. 121, and OECD, 2001. *Communications Outlook*, p. 135.

Overview

Table 3-15: Overview of regulatory renewal assessment scores. Maximum = 24.

	Indicators						Variable
	Legal implementation	Cross-provision restrictions and their comprehensiveness	Ownership restrictions on television services and their comprehensiveness	Cross-media ownership restrictions and their comprehensiveness	Foreign ownership restrictions broadcasting companies	Public funding of television broadcasting market	Regulatory Renewal
Denmark	3	1	1	1	3	1	10
France	3	4	4	3	4	2	20
Germany	4	1	4	4	1	4	18
Spain	2	3	4	1	4	3	17
UK	1	4	4	3	4	2	18

Market renewal

The preamble of the original Television Without Frontiers directive (89/552/EEC) states that competition must not be distorted, which reflects the general climate of liberalisation in the 1980s and 1990s. Market forces should be driving broadcasting development, rather than state initiatives, the dominant characteristic of European broadcasting up to then. The effect of such a clear policy reversal should be observable on markets, where emphasis should shift from public to private broadcasting.

It has already been noted that commercial stations have entered the media landscape in all member states, but here the precise impact will be gauged, first by correcting the increase of private stations for the actual shift in viewers, second by looking at what channels have become available for viewers.

Market renewal score

Available data on the number of stations and the audience shares of public broadcasters make it possible to calculate the effect of liberalisation on public broadcasting, in terms of the decrease of viewers, and in terms of the number of broadcasting organisations responsible for viewer decrease, similar to the *market renewal* score calculated for telecommunications. The decline of public viewing audience is measured against a (theoretical) starting point of 100 per cent, arguing that there was a period in which audiences could only watch public television. The assumption is that

[62] It should be noted that this investigation measures the working of the market and not the quality of television programmes. For the latter, reducing public funding is a disaster.

if the liberalisation of broadcasting is successful the number of viewers to private stations should increase.

Table 3-15 shows the results of data gathering and analysis. The assessment is based on the sum of *z*-scores, assuming that the most liberalised market is the one in which largest number of commercial stations are active. However, the number alone would not be indicative of their impact, so the score for the number of stations is combined with the impact they have on the public broadcasting, measured in decline of audience share.

Table 3-16. Market renewal scores 1999.

	Number of private broadcasting organisations		Decline of public audience (%)		cumulative *z*-score	Assessment
	number	*z*-score	%	*z*-score		
Denmark	1	-1,60	32	-1,69	-3,29	1
France	6	1,07	58	0,75	1,82	4
Germany	5[63]	0,54	58	0,75	1,29	4
Spain	4[64]	0	51	0,09	0,09	3
UK	4	0	51	0,09	0,09	3

4 *=1.82 1 0.54,* **3** *= 0.54 1 -0.74,* **2** *= -0.74 1 -2.01,* **1***= -2.01 1 -3.29.*
Sources: OECD[65], BBC[66], CSA[67], ALM[68], ITC[69] .

Generally European broadcasting is becoming more competitive[70], but there are differences between the member states.

In Denmark *TV3* is the major commercial satellite and cable network. The public channels, *Danmarks Radio* and *TV2* are solely terrestrial stations, and with one commercial operator the broadcasting market is not really vibrant. This is in line with the strong commitment to public services in the Nordic countries (Lane, 1997:188) which would imply a strong support for public television, not only from the government but also from the viewing audience. Audiences have not turned their backs on public broadcasting in the numbers they have in other member states. However given

[63] This is the number of *terrestrial* television broadcasters taken from OECD, 2001. However, as the database the *Arbeitsgemeinschaft der Landesmedienanstalten* indicates, these stations also have national satellite and/or cable licenses.
[64] This is the number of *terrestrial* stations from OECD, 2001, checked against the *BBC Monitoring* data, which list major channels irrespective of their transmission mode.
[65] OECD, 2001. *Communications Outlook*, p. 142ff.
[66] BBC Monitoring 2001.
[67] *Conseil Supérieur de l'audiovisuel.*
[68] *Arbeitsgemeinschaft der Landesmedienanstalten.*
[69] *Independent Television Commission.*
[70] This conclusion is also supported by other research; e.g. Oto et.al., 1997.

Denmark's low scores on *regulatory renewal*[71] the quality of the regulatory framework could be an important reason why viewers *cannot* turn their back on public broadcasting even if they had wanted to do so. There is, after all, not much serious competition.

The high score for France, where *TF1*, *M6* and *Canal Plus* are the main commercial terrestrial channels, and *AB SAT*, *Canal Satellite* and *TPS* the main commercial satellite stations, reflects the quality of the regulatory framework and the dedication of the government to liberalise broadcasting, an explanation that is also true for Germany (served by five national commercial stations, *RTL*, *PRO 7*, *VOX*, *n-tv*, and *SAT 1*) where the Kohl government wanted to reform markets, and the UK, where the Conservatives led the reform program. High scores for these countries are not surprising.

What is surprising is the high score of Spain, where the reticence towards profound broadcasting reform that showed up in the analysis of policy proposals does not seem to be supported by the data. The four commercial stations (*Tele 5*, *Antenna 3 TV*, *Canal Plus*, *Quiero*) have a large impact on the behaviour of viewers, who have turned away from public broadcasting. The most likely explanation is that the reticence towards broadcasting reform was mainly characteristic for the years in which the *PSOE* of prime minister Gonzales was in power, while the *market renewal*, measured with 1999 data, reflects the change to the neo-liberal government of premier Aznar, in power since the elections of March 1996.

Penetration of private viewable broadcasting channels

The number of broadcasters does not have to be (and indeed is not) identical to the number of viewable channels. A company can hold more than one license or operate more channels and governments can allow transmissions from abroad (or outside the EU). All these factors may cause the number of channels and number of broadcasters to differ from each other. Separately neither the number of viewable channels nor the number of viewable channels would give an accurate description of the broadcasting market, together they may give a fairly sufficient picture.

Table 3-17 shows the number of channels a viewer could select, by status of the broadcaster. The number of viewable channels also measures (part of) the intention

[71] Sum or *regulatory renewal* scores is 10 while the average of sums is 16.6.

of the national governments to make available spectrum because in all countries in the sample some form of government intervention in the form of spectrum allocation and/or management, licenses, must carry rules or content regulation exists. In all countries the number of channels has increased[72].

Table 3-17: Viewable channels by status of broadcaster.

	1980		1990		1995	
	Public	Private	Public	Private	Public	Private
Denmark	1	0	2	0	2	3
France	3	0	3	10	5	22
Germany	10	0	12	7	10	19
Spain	2	0	2	10	4	10
UK	2	15	2	29	3	62

Source: OECD[73].

To come to assessment scores the data will have to be transformed to some extent because the number of channels in 1980 in a country should not influence the assessment. This is not a test of how varied TV broadcasting is or has become, but only of the change of the relative positions of public and private channels. The number of viewable channels might also be the result of a number of other factors such as technical factors or differences in the organisation of broadcasting (e.g. regional broadcasters). In this respect broadcasting is more complicated than for instance telecommunications, where all countries have a similar starting position with one powerful incumbent. To exclude these differences between countries the initial number of channels should not carry any weight, and in order to reach this the number of public channels in each country in 1980 will be indexed as 100, and all subsequent data will be expressed as a portion of that index.

Starting with indexes it is now possible to relate the data for the later years to each other by means of z-scores, so that the assessment also contains an assessment of relative progress in each country.

It seems prudent to exclude the UK from the technical analysis because liberalisation policy started early in the 1980s (the 15 private channels shown in table 3-15 were

[72] See also: “Infinite variety”, *The Economist*, 19-11-1998, on the increase of channels.

[73] OECD, 1997. *Communications Outlook*, p. 72. This Outlook was the last to contain these data, hence information on later developments is not available.

mostly direct satellite channels to whose transmission and reception the Thatcher government did not object) and preceded the efforts of the European Community[74].

Table 3-18: Indexed viewable channels.

	1980		1990		1995	
	Public	Private	Public	Private	Public	Private
Denmark	100	0	200	0	200	300
France	100	0	100	333,33	166,67	733,33
Germany	100	0	120	70	100	190
Spain	100	0	100	500	200	500
UK	100	750	100	1450	150	3100

Table 3-18 presents the first steps of the operations on the data: the indexing of raw data, with the public 1980 score as base. The next step is to capture the change in the private sector and the public sector in one number to make an assessment. Capturing the change between 1980 and 1990 and the change between 1990 and 1995 will do this respectively. Assuming that what governments want is more private and less public channels the following calculations have been made from table 3-17:

(1) Public channels (index) 1980 minus public channels (index) 1990 (column A).

(2) Public channels (index) 1990 minus public channels (index) 1995 (column B).

(3) Private channels (index) 1990 minus private channels (index) 1980 (column C).

(4) Private channels (index) 1995 minus private channels (index) 1990 (column D).

If the market moves in the direction the governments want, or should want according to European policy, the calculations under (1) and (2) should lead to positive integers because there are supposed to be less public channels in later years, and the calculations under (3) and (4) should lead to positive integers because in later years there are supposed to be more private channels[75]. Converted into z-scores to calculate the relative position of the member states the highest positive scores are for the best-performing countries while the highest negative scores are for the worst-performing member states.

Table 3-19 presents the results, and the conversion of data into z-scores to be able to compare changes in each country. The cumulative z-scores are used as the basis for

[74] However, the 1990 Broadcasting Act is the main national implementing measure for the *Television Without Frontiers* directive.

[75] So actually the supposed smaller indexes have been subtracted from the supposed larger indexes. Because the private and the public channels are supposed to move in different directions the calculations have been executed in the reverse order.

the assessment, according to the position on the interval from highest to lowest score divided in four equal parts.

France and the UK perform very well, with the other countries lagging. The developments in the UK are the result of the efforts of very active British satellite providers and the efforts of the Conservative government to break the power of the ITV-BBC duopoly through active liberalisation (Fraser, 1996:207-9). Similarly, the strong performance of France is entirely consistent with the market liberalisation started by the socialist governments and intensified by the Chirac government. The low performance of Denmark and Spain on the other hand is also consistent with the limited political and economic ambitions to liberalise broadcasting.

Table 3-19: Privatisation scores. z-scores, cumulative z-scores and assessment score.

	A. Public sector change 1980-1990		B. Public sector change 1990-1995		C. Private sector change 1990-1980		D. Public sector change 1995-1990		Cumulative *z*-scores	Assessment score
	Raw score	*z*-score	Raw score	*z*-score	Raw score	*z*-score	Raw score	*z*-score		
Denmark	-100	-1.47	0	0.65	0	-0.97	300	0.53	-1.26	1
France	0	0.63	-66.67	-0.53	333.33	0.46	400	1.09	1.65	4
Germany	-20	0.21	20	1.01	70	-0.67	120	-0.47	0.07	2
Spain	0	0.63	-100	-1.13	500	1.18	0	-1.14	-0.46	2
UK	0	-	-50	-	700	-	1650	-	-	4

4 = *1.65 1 0.9225,* **3** = *0.9225 1 0.195,* **2** = *0.195 1 -0.5325,* **1** = *-0.5325 1 -1.26.*

Problematic is the position of Germany. Under the Kohl government there was a clear intent to liberalise broadcasting, but this is not reflected in the (relative) growth of private channels. Here it should be remembered that in Germany the *Länder* play a large role in broadcasting regulation, so that the *Bundesregierung* must share its power. The regulating agencies at the sub-national level are also far more occupied with care for content or the educational and cultural value of television. The broadcasting boards include the main representatives of German society (trade unions, employers, religious groups, educational groups). Deciding on the number of channels being broadcast to actual television sets in homes falls within their jurisdiction. Commercial television, in the terms in which debates over television are framed in Europe, is (or at least was) almost synonymous with low quality so a certain unwillingness to allow commercial channels can have played a role in the broadcasting boards. So, the score actually shows the limit of the sphere of influence of the national government in Germany. The industrial organisation of broadcasting fell clearly within the influence of the *Bundesregierung* hence a high *market renewal* score when measured in organisations (see above), but the actual composition of viewable channel packages in the home is clearly outside the jurisdiction of the national government. The broadcasting boards decided television was not to fall victim to commercial television - hence the low score for Germany where a higher score could be expected given the national policy.

Overview

Table 3-20: Overview of market renewal assessment scores. Maximum = 8.

	Indicators		Variable Market renewal
	market renewal score	privatisation score (channels)	
Denmark	1	1	2
France	4	4	8
Germany	4	2	6
Spain	3	2	5
UK	3	4	7

Innovation

The single most important innovation in broadcasting is the adoption of digital technology. The traditional broadcasting signal is an analogue signal, that can only be read by dedicated apparatuses (a radio signal can only be "read", or made audible by a radio set, a television signal only by a TV set and so on).

The use of digital technology - whereby a signal is first changed into binary code - is currently leading to a merger of broadcasting and computer technology (Hoogenboezem, 2001), which *The Economist* compared to "introducing the internal combustion engine into a horse-drawn economy"[76]. That assessment may be somewhat exaggerated - the success depends partly on the wish of consumers to pay for digital television and there are signs that not in all markets or countries audiences show the same willingness[77] - but that digital television is the next technical step forward is hardly in dispute. The main effects of digital television would be to open up more

[76] "A digital future", *The Economist*, 19-11-1998.
[77] "On the blink", *The Economist*, 26-06-1997.

bandwidth and to create easier storage capacity with higher capacity than the traditional video tape[78].

The basic data used to measure digitalisation are (1999) number of households subscribing to digital packages in each of the three main transmission techniques or infrastructures. It will be remembered at this point that dominant transmission techniques do differ between member states. For that reason the data must be corrected for the size of the percentage of users, the percentage of households with a satellite dish, cable connection and the percentage of households relying on terrestrial television. Table 3-20 gives the basic data (digital subscribers) and the correction factor.

Table 3-21: Subscribers to digital packages in three transmission forms of television. In 1999 (percentage of population) and the correction factor (percentage of all households).

	Digital satellite users	% all households with dish	Digital cable users	% all households connected to cable	Digital terrestrial viewers	% all households relying on terrestrial
Denmark	0,566038	41.8	1,226415	57.0	0	1.27
France	4,35533	17	0,543147	11.6	0	71.38
Germany	0,632603	31.1	0,948905	52.7	0	16.14
Spain	3,156566	10.3	0,126263	3.6	0	86.17
UK	3,846154	20.5	0,083612	12	0,923077	67.56

Source: OECD[79].

In table 3-22 the calculation made is: % digital users x % all households = weighed digital users. This figure is then converted into *z*-scores.

Digital television, by 1999, was not an astounding success in the member states, with low percentages of subscribers. This means that the liberalisation initiated by the European Union has not been translated in large effect on innovation. As far as the limited effect differs per member state, the UK leads the way, which supports the observation of *The Economist* that “Britain is the world test site for digital television”[80], but even in the world’s test site a secret study commissioned by the BBC found that digital television had an uncertain future, mostly because consumers would not be willing to pay more[81]. *The Observer* frankly wondered if digital television was dying on its feet[82]. Given that state of affairs, the very limited success of the

[78] “Grabbing a slice of Sky’s pie”, *The Economist*, 02-11-1997.
[79] OECD, 2001. *Communications Outlook*, p. 148.
[80] “Grabbing a slice of Sky’s pie.”, *The Economist*, 02-11-1997.
[81] “Digital TV's future blurred, says study.”, *The Guardian,* 13-09-1999.
[82] “Will digital TV be the weakest link?”, *The Observer,* 03-12-2000.

introduction of this innovative technology in other member states should not come as a surprise.

Table 3-22: Weighed and rounded user scores. *z*-scores, cumulative *z*-scores and assessment scores.

	Satellite		Cable		Terrestrial			
	Weighed digital users	*z*-scores	Weighed digital users	*z*-scores	Weighed digital users	*z*-scores	Cumulative *z*-scores	Assess-ment score
Den-mark	24	-0.78	70	1.37	0	-0.45	0.15	2
France	74	0.99	6	-0.60	0	-0.45	-0.05	2
Ger-many	20	-0.92	50	0.76	0	-0.45	-0.61	2
Spain	33	-0.47	1	-0.78	0	-0.45	-1.69	1
UK	79	1.16	1	-0.76	62	1.79	2.19	4

4 = *2.19 1 1.22,* **3** = *1.22 1 0.25,* **2** = *0.25 1 -0.72,* **1** = *-0.72 1 -1.69.*
Source: OECD[83].

Overview

Table 3-23: Overview of innovation assessment scores. Maximum = 4.

	Indicator subscription to digital TV	Variable innovation
Denmark	2	2
France	2	2
Germany	2	2
Spain	1	1
UK	4	4

Price development

The measures of Brussels should in two ways affect *price development*: the larger companies that market consolidation creates should have lower cost, because of economies of scale, an advantage which in turn should be passed on to the consumer in the form of lower *price development*, and the increase of competition should make broadcasting companies want to lower their *price development* to attract more consumers. However, pricing is difficult to measure, because few consumers pay directly for separate broadcasting services. Most consumers pay through licence fees, cable subscriptions, or very indirectly through advertising[84], only in (sports) satellite

[83] OECD, 2001. *Communications Outlook*, p. 132 and p. 148.
[84] "On the blink", *The Economist*, 26-07-1997.

TV channels[85] pay TV is dominant. Further, earnings on retransmissions are arbitrary since their cost are sunk. All in all, a complete picture of cost developments in broadcasting would be hard to assemble. Moreover, most companies will not be forthcoming in providing information because of the commercial sensitivity of such data.

The only available data somewhat indicative of a development in cost and *price development* are the consumer price development statistics printed in table 3-24. These data are not readily available and have been calculated from other OECD data (see Appendix to Chapter 3).

Table 3-24: Indexed broadcasting consumer price development.

	1995	1996	1997
Denmark	100	105,741	120,81
France	100	94,10	100,21
Germany	100	103,47	114,55
Spain	100	99,61	112,38
UK	100	111,13	115,74

Calculated from: OECD[86].

Table 3-25 gives an overview of indexed consumer *price development* for broadcasting services. Using cumulative *z*-scores (for 1996 and 1997) the relative position for each year (the process) can be given in one number, which will be used as the basis for the assessment score.

Table 3-25: z-Scores of the indexed broadcasting consumer price development. In 1996 and 1997 and assessment scores

	z-scores 1996	*z*-scores 1997	Cumulative *z*-scores	Assessment scores
Denmark	0,457222	1,05417	1,511392	1
France	-1,35884	-1,63611	-2,99495	4
Germany	0,102933	0,23664	0,339572	2
Spain	-0,49925	-0,04675	-0,546	3
UK	1,297939	0,392049	1,689988	1

4 = *-2.99495 1 -1.8237155,* **3** = *-1.8237155 1 -0.652481,* **2** = *-0.652481 1 0.5187535,* **1** = *0.5187535 1 1.689988.*

Scores are attributed on the basis of the position of the cumulative *z*-score on the interval from highest to lowest. Since *price development* is expected to decrease the more standard deviations below the mean a country's position, the higher the assessment score.

[85] "Pay-TV around the world", *The Guardian*, 22-02-1999.

Overview

Table 3-26: Overview of price development assessment scores. Maximum = 4.

	Indicator Broadcasting consumer *price development*	Variable Price development
Denmark	1	**1**
France	4	**4**
Germany	2	**2**
Spain	3	**3**
UK	1	**1**

PART 3: FINDINGS ON THE EXTENT OF IMPLEMENTATION

The general picture

Fraser concluded in 1996 that the *initial* impact on national broadcasting of the Television Without Frontiers directive was limited. What is the situation now, more than five years later? Table 3-27 gives the general overview of the extent of implementation in the member states and allows to draw conclusions not only on legal implementation but also on the wider effects of the policy on national markets.

Table 3-27: Variable and overall scores for extent of implementation in broadcasting. Maximum score = 40, Mean = 26.6, Standard deviation = 7.13.

	Extent of implementation	Regulatory renewal	Market renewal	Efficiency and innovation	Price development
Possible maximum	**40**	24	8	4	4
Denmark	**15**	10	2	2	1
France	**34**	20	8	2	4
Germany	**28**	18	6	2	2
Spain	**26**	17	5	1	3
UK	**30**	18	7	4	1

With an average score of 26.6 out of a possible maximum of 40 implementation cannot be termed unsuccessful - particularly in view of the fact that the broadcasting industry is complex, and that the cultural and educational aspects of broadcasting have made reaching policy agreement difficult. But however big the problem to get

[86] OECD, 1999. *Communications Outlook*, p. 120, p. 127, and p. 128.

agreement on a joint broadcasting policy may have been - Fraser (1996:214) calls it a "Euro policy muddle" - once the policy was there and the initial problems were overcome the member states were actively implementing the directive. There were problems with the implementation of the first package, but the analysis here has focussed on more recent years, and it shows that the initiative of the Commission to draft a second directive and, as it were, give European broadcasting policy a second impulse was largely effective.

The relative positions do not differ too much - except for that of Denmark. Where the other member states in the sample all have *regulatory renewal* scores that are relatively close to the highest possible score and to each other, Denmark reaches less than 50 per cent of the possible maximum score[87].

Table 3-28: The weak areas of the member states. Based on indicators with an assessment score of 1 or 2.

Member state	Low score on:	Rank
Denmark	• Cross-provision restrictions • Ownership restrictions on TV services • Cross-media ownership restrictions • Public funding of television broadcasting market • Market renewal score • Privatisation score • Subscription to digital television • Broadcasting consumer price development	5
France	• Public funding of television broadcasting market • Subscription to digital television	1
Germany	• Cross-provision restrictions • Foreign ownership restrictions • Privatisation score • Subscription to digital television • Broadcasting consumer price development	3
Spain	• Legal implementation • Cross-media ownership • Privatisation score • Subscription to digital television	4
UK	• Legal implementation • Public funding of television broadcasting market • Broadcasting consumer price development	2

Why does Denmark have such an eccentric position? Most likely the explanation lies in the traditionally public character of broadcasting in Denmark - a character it did not want to change. Fraser writes that "Denmark categorically refused to recognise the EC's legitimacy in the broadcasting sector, mainly because the Danish govern-

[87] Without Denmark the standard-deviation would be 3.42, so Denmark's low score almost doubles the deviation!

ment wished to maintain closer cultural links with Scandinavian countries belonging to the Nordic Council" (Fraser, 1996:217). Its categorical refusal to recognise the EC's policies seems to have led to a case of "pseudo implementation". Denmark has transposed the directive to the satisfaction of the Commission, but that is about all it has done. It scores low (meaning an assessment score of 1 or 2) on no less than eight indicators, out of nine indicators researched.

What else do the weak areas (table 3-28) reveal? France, the member state with the highest score, has only two weak areas, of which the high public funding of broadcasting is revealing. Even when successive socialist and Gaullist governments have committed themselves to the market, and even when the liberalisation of broadcasting goes, as the data indicate, very well, the most obvious development - less public money to broadcasting - does not happen. This is a tribute to the public spiritedness of the French and another characteristic feat for the Colbertist nation.

The weak areas of Germany are a mixed bag and do not point in a certain direction. Germany does not keep its cable and terrestrial infrastructures apart, it is in principle relatively hostile to foreign investment, the number of TV channels does not grow fast, direct broadcasting *price development* remains high (but the German consumer pays in a multitude of other ways), and digital television does not get off the ground. It seems that this is more indicative of the effect of the general trials of implementation hampering perfect implementation here and there than of any malicious intent to frustrate European policy, as is clear in the case of Denmark. The same counts for Spain and the UK where weaknesses in unrelated areas that do not indicate clear soft spots or malicious political intentions.

As the data indicate there is now significant change in the European broadcasting sector, although the success of the Television Without Frontiers directive has been slow in coming partly because of the complexities of the sector. In the next chapter the rail transport sector, a pure and comparably uncomplicated sector, will be analysed, which can answer the question if sector complexity is the only explanation for slow liberalisation.

Appendix to Chapter 3: calculation of the broadcasting consumer price development

These data are not readily available and have been calculated from other OECD data. The OECD does supply data on subscription revenue and subscribers. Revenue divided by quantity sold or subscribers equals price however, so this is the calculation made here. The data available are:

(1) The total subscription revenue given by the OECD[88]. Generally these are "revenues from subscription to cable networks and to encrypted airwave and satellite channels". These are treated as the gross revenue of all broadcasting companies. The OECD data are given in US$ (millions).

Table 3-29: Total subscription revenue. Millions of US$.

	1995	1996	1997
Denmark	223,72	243,94	255,58
France	2116,38	2260,3	2373,8
Germany	2270,64	2523,93	2829,18
Spain	416,02	479,19	556,56
UK	1719,75	2196,98	2732,27

Source: OECD 1999[89]

To remove the effect of the fluctuating dollar the data are recalculated in local currencies (table 3-30).

Table 3-30: Total subscription revenue. Millions of national currencies.

	1995	1996	1997
Denmark	1252,83	1414,85	1686,83
France	10560,74	11572,74	13862,99
Germany	3247,015	3811,13	4894,48
Spain	51877,69	60713,37	81480,38
UK	1083,44	1406,07	1666,69

(2) The number of cable television subscribers[90]. This is the quantity sold for part of the market, cable TV.

Table 3-31: Number of cable TV subscribers.

	1995	1996	1997
Denmark	1190000	1240000	1260000
France	1885000	2108000	2280000
Germany	15800000	16670000	18700000
Spain	401346	438629	462339
UK	1326842	1872962	2373548

(3) The number of subscribers to Direct Broadcast Satellite[91] is the quantity sold for the other part of the market, encrypted airwave and satellite channels. Most likely this category is too large because it

[88] OECD, 1999. *Communications Outlook,* p. 120.
[89] OECD, 1999. *Communications Outlook*, p. 120.
[90] OECD, 1999. *Communications Outlook*, p. 127.

includes people who subscribe to satellite channels not having their company seat in the same country. There are however no data available to make that kind of corrections, so the whole category has been included.

Table 3-32: Number of direct broadcast satellite subscribers.

	1995	1996	1997
Denmark	207000	252000	297000
France	772630 (estimate)	987065 (estimate)	1201500
Germany	8745534 (estimate)	11172767 (estimate)	13600000
Spain	738000	900000	1130000
UK	3698000	3995000	4305000

Source: OECD[92]

The data for 1995 and 1996 for France and Germany had to be estimated, because they were missing from the original OECD data. The factor used to diminish the given data for 1997 is the average Compound Annual Growth Rate for the EU members (15) as far as they had been given (for more countries data on 1995 and 1996 were missing). The CAGR's as far as they have been given are:

Table 3-33: Compound Annual Growth rates DBS subscribers. Average is 17.84727.

Belgium	7.53
Denmark	19.78
Finland	23.9
Greece	27.48
Ireland	7.42
Italy	27.52
Luxembourg	15.47
Portugal	9.99
Spain	23.74
Sweden	25.59
UK	7.9

The following calculation has been made to make an estimate of 1995 and 1996:

(1) Number for 1996 = number for 1997 - 17.84727 per cent .

(2) Number for 1995 = number for 1996 - 17.84727 per cent .

The next calculation was the actual price calculation for each year and each country:

Price = Subscription revenue / (Cable TV subscribers + DBS subscribers)

The numbers resulting from this operation were indexed, based on 1995 for each country. The numbers contain the following weaknesses:

(1) The number of subscribers is in all likelihood too high because the category satellite subscribers contains an unknown number of subscribers to foreign stations.

(2) The 1995 and 1996 estimates for satellite subscribers in Germany and France can only be trusted up to a certain point.

[91] OECD, 1999. *Communications Outlook*, p. 127.
[92] OECD, 1999. *Communications Outlook*, p. 127.

(3) The cable TV and direct satellite markets do not cover the total broadcasting market because terrestrial TV and other markets are excluded. For the countries in the sample the cable and satellite market contribute the following to the whole broadcasting market: Denmark 31,67 per cent , France 33,38 per cent , Germany 23,96 per cent , Spain 20,25 per cent and the UK 26,23 per cent . So, the validity of these figures is quite low.

(4) To these weaknesses should be added the general remark about financing broadcasting markets made in the chapter, that direct contributions by subscribers are only part of the total revenue of broadcasting firms.