

RELATIONSHIP BETWEEN OWNERSHIP OF MEDIA AND ITS INDEPENDENT POSITION

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Background

The relationship between ownership of media and its independent position is a relatively recent issue in Europe, becoming topical only in the early 90's of the last century. In the United States, the issue of ownership in general, along with its repercussions on the market, has been raised since the end of the 19th century. To recall, the famed First Amendment to the United States Constitution guarantees freedom of opinion, speech, assembly, religion, but it does not exempt the media from the legal obligations applied to all other economic branches. This factor especially gains weight in the context of the famous antitrust act which rested upon the belief that it is the spirit of competitiveness and rivalry that best serves the interests of society, rather than concentration of economic power in one place.

The 1890 Sherman Antitrust Act, until the mid-20's of the last century, was practically irrelevant for the media sector since the press and radio did not cross state borders, which means they could not be the subject of federal acts. The appearance of big news agencies – AP, UPI and International News Service – and their ruthless struggle for the media market, together with the ensuing disputes, announced the start of implementation of the antitrust act in the media sphere. At the same time, this was the nucleus of the future process of media ownership concentration, intensifying with the appearance of television and introduction of categories of joint and cross ownership.

When the media ownership issue grasped the Old Continent, divergent opinions surfaced, precisely as a result of divergent interests. The public at large is not too

aware of the fact that the European Parliament (EP) had insisted on limiting media concentration, to which the European Commission (EC) was not explicitly opposed, but it did show surprising ignorance and indifference, later qualified as an EC media policy failure.

There is no need to stress that these disputes slowed down the media transformation process in post-socialist countries, or countries in transition, which were striving for European standards, in particular with regard to limiting media concentration, an obstacle to creating a plural media landscape.

The necessity of ensuring an independent position for the media and its pluralism was accepted by the oldest European institution – Council of Europe (CoE), when it became aware that media ownership concentration directly affected media content, reporting style and editorial policy itself. There is wide-spread opinion among experts that media ownership concentration is even more dangerous than economic concentration in the classical sense, the reason being precisely the unimagined potentials of manipulating public opinion. This is in line with the argument that the right to information is a fundamental, not a derived human right, and analogous is the power of this fundamental human right to overturn the stand on the necessity or appropriateness of monopoly in business and economy.

It is indicative that the issue of media ownership concentration is still more pronounced in European Union (EU) countries than in countries in transition. Regulation and/or deregulation disputes are evident, which is an artificial construction. Neither can regulation be excluded, nor can media deregulation be solely relied upon. The point is complementarity of regulation and deregulation, with the term deregulation containing significant elements of media self-regulation. These and similar controversies, or artificial dilemmas/constructions, are a result of lack of clear vision on how to regulate the media. This has a particularly negative reflection on the media transformation process in countries in transition. Thus, we are witnesses to frequent changes in media legislation or amendments being passed to existing legislation.

As a rule, poor and underdeveloped countries resort more to media control, including media ownership. True, media ownership is often identified with media monopoly, which is not necessarily a rule, or practice. In developed democracies, ownership of a part of the media, without interfering with editorial policy, has turned out in the long

run to be a wise political move, with an abundance of positive social and cultural characteristics and influences. A paradigm in this sense is the example of the BBC, especially in the context of recent attempts by the British government to stigmatize this highly regarded and reliable media institution (David Kelly case and Lord Hutton report). One can talk in similar terms about French and German state radio, noting however that there have been no scandals of this sort there. Examples of government-sponsored US broadcasters are a different story, in particular after September 11, 2001 and the wars in Afghanistan and Iraq.

The war on terrorism shows that western democracies, United States first of all, tend to justify the involvement of their governments and political elites in the media sphere, but not the involvement of governments from the rest of the world. This is partly interpreted as a remnant of a spirit of paternalism and the missionary movement.

Virtual Ownership

That the issue of ownership structure and potential impact on media independence and pluralism will knock on the doors of the region – South East Europe, more narrowly West Balkans – is shown by last summer's Bled conference and confirmed by a recent conference on the same issue held in Sarajevo, organized by the Council of Europe and Communication Regulatory Agency of Bosnia-Herzegovina (RAK).

In light of the short time between the two conferences, nothing significant happened in terms of changes in ownership character and ownerships structure and other conditions and modalities. Joint elements of the two conferences remain:

- small and split market;
- large number of media outlets, especially broadcasters, and
- existence of parallel markets in line with lingual boundaries.

The example of Albania can serve as a paradigm of artificial grafting of media legislation in a country with a specific cultural and political tradition. There, someone decided practically to copy a media law from a German province!

Lack of ownership transparency is an importance characteristic of the media in the region, while media ownership is almost solely motivated by an intention to exert political influence using the media.

The example of Macedonia is illustrative. The print media there survives exclusively thanks to what is called the gray subsidy zone mechanism. This means advertising in line with political correctness, rather than by following the rules of the market. In an extensive report from the Bled conference, this practice is attached to Moldova and Hungary, while Bosnia-Herzegovina is not mentioned in it.

Privatization has generally taken place spontaneously, and in BiH, in the early stages – it was uncontrolled.

The media ownership structure in neighboring Croatia is one of the most heavily guarded secrets, despite the fact that legislation clearly and unambiguously prescribes the obligation of disclosing this and similar information in a prominent place. Hence someone's witty remark that we are witnessing phantom or virtual media ownership.

A controversial anti-concentration law is formally in effect in Croatia, according to which a person can own all the dailies in the country, but cannot at the same time own even one local radio station, not to mention TV, internet, SMS...

Punitive provisions in new media legislation in Croatia are rigorous, but not a single penalty has been pronounced to this day despite wide-spread violations of the law. To illustrate, the print media still does not state in a prominent spot in the paper its ownership status and structure, circulation and returns, i.e. the number of unsold copies.

The author of the item on Croatia, our Zagreb colleague Stjepan Malovic, says at one point that "privatization in Croatia was a synonym for crime and plunder," adding that media privatization was no exception.

The Catholic Church also constitutes an impressive media group in Croatia: "The state and the Church are the two biggest media owners and this is the crucial problem of the Croatian media landscape," concludes Malovic.

The media market in our eastern neighbor – Serbia – offers great potential, but it is still insufficiently used. It is indicative that media freedom in Serbia is no longer jeopardized by current policies, but primarily by business and capital interests. Profit, unfortunately, has pushed back the profession and everything that goes with it.

Our colleague Tarik Jusic, Media Center Sarajevo, is the author of one part of the report on Bosnia-Herzegovina. Right before the Sarajevo conference on media ownership, the Bosnian edition of his paper from the Bled conference was published, together with a regional overview made by Sandra Basic-Hrvatin and Brankica Petkovic, both working with the Ljubljana-based Peace Institute, which organized the regional conference in Bled, Slovenia, together with SEENPM (South East European Network for the Professionalization of the Media).

The conclusions of the BiH report from the Bled gathering, as well as the conclusions of the Sarajevo conference, state that there are no cases of media concentration in BiH. Therefore, regulations passed towards the end of last year should be viewed in the context of prevention. *Rule 21/2003 on Media Concentration and Ownership of Electronic Media* is an integral part of the *Law on Communications of Bosnia-Herzegovina* (in effect as of April 1, 2004) and it prohibits joint ownership of local broadcasters, especially in cases of coverage of the same population. The key provision states that a natural or legal person cannot own two or more radio or television stations. The rule limits joint or cross ownership of broadcasters and the print media, specifying that a natural or legal person, who owns a radio or TV station, may at the same time own a print media outlet. This rule also allows broadcast licenses to be transferred.

Instead of a conclusion

Does ownership structure substantially determine the independent position of the media? In an ideal type of democracy, namely in a non-existent society of perfect harmony, a question formulated this way would be superfluous. In conditions of an imperfect world and society, overturned values, twisted visions and similar aberrations, media regulation – has no alternative.

“To monopolize freedom destroys it,” states a decision passed by a US court back in 1957 on the issue of media monopoly. One must recall, therefore, that media

pluralism and content diversity are prerequisites of development of democracy and civil society, especially in countries in transition.

The Sarajevo conference, entitled "Media Concentration and Pluralism Regulation," fully supported the Council of Europe and SEENPM conclusions and the recommendations of the Bled conference, held on June 11-12 this year, which, with the aim of protecting media pluralism and media market development, particularly accentuate the necessity of active inclusion of state bodies and institutions, relevant institutions of the media community, as well as civil society and NGO representatives. This is precisely in the spirit of our support for complementarity of regulation, deregulation and self-regulation of the media.

Note: The proceedings of "Media Ownership and Its Impact on Media Independence and Pluralism" were published in English in hard copy and electronic version. Contact person: Brankica Petkovic, Peace Institute, Ljubljana, tel. + 386 1 234 77 20, or mail: brankica.petkovic@mirovni-institut.si

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