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**Pluralism, the Single Market and the Citizen: The Conflict
over Agenda Setting in Media
Ownership Regulation**

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Pluralism, the Single Market and the Citizen: The Conflict over Agenda Setting in Media Ownership Regulation¹

1. Introduction: agenda-setting, complex organisations, and policy frames

Political scientists engaged in the explanation of the European Union (EU) policy process often underline the fluid characteristics of European public policy-making (Richardson 1996). It is the formation of public policy that has most often been contrasted with domestic policy-making (Peters 1996). National political systems have long-established institutional devices for coping with the complexity of policy formation, such as, for example, political parties and relationships between parliaments, governments and interest groups which have been established throughout decades if not centuries. By contrast, the adolescent (Mazey and Richardson 1993) or, according to a more recent study, ‘maturing’ (Christiansen 1996) institutions of the EU exhibit a very dynamic process of policy formation, to such an extent that some political scientists (most notably, Peters 1994:20 and Richardson 1996) have suggested that the agenda-setting process in the EU is concordant with the loosely integrated view of decision-making described by the well known garbage-can model (Cohen, March, and Olsen 1972). The general conclusion of this body of literature is that the EU is a ‘paradise’ (the term used by Peters 1994) for the agenda-setter, given the

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multiplicity of access-points that a purposeful advocate of a particular issue can use in order to enter her 'pet' solutions into the policy process.

However, as Peters has already noted, there is a fundamental difference between introducing an issue to the agenda and controlling the definition of the issue itself. In his words: "Agenda-setting is not just about having an issue considered actively by government; it is also about how that issue will be defined once it makes it on to the agenda" (Peters 1994:18, emphasis added). This leads to the conceptual distinction between agendas and alternatives as originally explored by Kingdon (1984). Even though agendas are relatively open in the EU, the process of controlling the definition of alternatives (i.e., what can be done in order to tackle a given problem, that is how to choose instruments and solutions) is exceedingly problematic. Indeed, this very 'paradise' can easily metamorphosise unto a complex and puzzling pandemonium. In this respect, another body of literature, concerned with the politics of problem definition (Rochefort and Cobb 1994) and issue-framing (Rein and Schön 1994) has shown how different interpretations of the same policy problem vie for attention and are advocated by different policy-makers. The point to stress is that not only does reality beg interpretation in order to be acted upon by human agents, and therefore policy problems are subject to interpretation, but, more importantly, that different 'frames' steer choices of alternative courses for actions, solutions, and policy instruments². This is why conflict arises around the definition of alternatives: a certain

² Framing is defined by Rein and Schön (1991:263 emphasis added) as "a way of selecting, organizing, interpreting, and making sense of a complex reality so as to provide guideposts for knowing,

‘frame’ will empower certain actors over other actors³. All in all, the definition of alternatives is a crucial aspect of power competition in the EU policy process.

The question which arises at this point is which actors are empowered or ‘disempowered’ in the definition of alternatives? Scholarly work on EU public policies asserts that the European Commission is perhaps the most important actor in EU policy formation. It is true that the European Parliament (Judge, Earnshaw, and Cowan 1994; Tsebelis 1994), the Council (Nugent 1994) and non governmental actors comprising ‘epistemic communities’ (as defined by Haas 1992:3- for an application to the EU policy process see Radaelli 1995; Verdun 1996) and interest groups (Mazey and Richardson 1993; Richardson 1996) have gained prominence in EU policy formation. However, the Commission appears to be in a pivotal position. Accordingly, attention ought to be dedicated to how the Commission in particular acts out its ‘alternative-setter’ role. This is a rather unexplored area. Research has been conducted on the different administrative cultures of the Commission (Abélès and Bellier 1996) and one author has suggested that it would be better to break down the monolith of the Commission and explore what occurs within the institution (Cram 1994). This is a valuable suggestion. Yet Cram’s analysis does not go further than note that different Directorates Generals (DGs) do different things: that is, in the case study, within the Commission, DG XIII’s IT policy formation proceeds differently than DG V’s social

analysing, persuading, and acting. A frame is a perspective from which an amorphous, ill-defined problematic situation can be made sense of and acted upon”.

³ This perspective on EU public policy is relatively new. A case study based upon frames and policy changes in the EU policy process is provided by Radaelli 1996.

policy. The crucial point to examine, rather, is another: how do different DGs compete for the definition of alternatives in the same policy area? With some notable exceptions (Bulmer 1994:363-364: CURRENTLY SEARCHING FOR OTHER POSSIBLE LITERATURE) this question has been overlooked by political scientists.

The literature on complex organisations (Pettigrew 1973; Scott 1995; for an application of this literature to political parties see Panebianco 1988) is useful here. In actual fact this literature interprets complex organisations as political systems.

Accordingly, the key research questions revolve around the characteristics of the competition for hegemony and leadership within the Commission as a political system.

Who competes for hegemony in a given policy area? What is the role played by problem definition in this competition? And finally, are there 'dominant coalitions' (i.e. between two or more DGs, or between two or more Commissioners) that can seize power in this peculiar political system?

This study will examine the politics of problem definition in the area of EU media concentration policy. The main aim of this article is to show how and why problem definition represents a crucial aspect of intra-organisational conflict and bargaining in the EU policy process, particularly by exploring the relationship between problem definition and the choice of policy instruments and solutions. A secondary aim of the article is to consider policy co-ordination in Brussels and intra-organisational conflict from a unique point of view. Conventional wisdom argues that policy issues are badly co-ordinated within the Commission (~~see the review of studies~~ in Stevens and Stevens 1996). The more or less hidden assertion is that the loose boundaries (in terms of

competencies) between one DG and another originate a very cumbersome and overlapping treatment of the same issue by different actors within the Commission. In its turn, this creates a problem of policy co-ordination. Stevens and Stevens (1996:10), who have recently reviewed the state of administrative reform within the Commission, contend that 'the conclusion to be drawn from the foregoing survey of diagnosis, prescription and action over the past two decades is a broadly negative one'.

However, it is argued here that infra-organisational conflict can be a resource rather than a disadvantage. It is certainly true that infra-organisational conflict inhibits a typical hierarchical policy co-ordination. But conflict has the great advantage of introducing different interests and multiple considerations into the policy process. Ultimately, conflict is one of the ways in which the 'intelligence of democracy' (Lindblom and Braybrooke 1965) works. There is a fundamental difference between intellectual cogitation and social interaction (as they were defined by Wildavsky 1987): the former reduces the choice of alternatives to 'telling' people what they have to do, whilst the latter uses the policy process for 'asking' people how to cope with problems. Media concentration policy, which bridges issues of democratic governance and industrial policy concerns, is an ideal candidate for raising this point. Different DGs in the Commission are not only parts of a complex political system: they are attached to societal interests, economic industries, public administrations and even different *Weltanschauungen*. Conflict within the Commission can therefore mean increased democracy in the policy process and a better use of social interaction. Under certain conditions, the policy process is too powerful a tool for 'asking' people what

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they want to do, thus transforming public policy into a democratic enquiry. As Aaron Wildavsky has observed:

“People make problems. How are they to be encouraged to do the right thing? How does one individual know what is right for others? What gives anyone the right to decide for others? How are preferences shaped and expressed? One way of shaping and expressing is to ask people, and another is to tell them. ‘Asking’ means setting up institutions (...) to help people evolve preferences. ‘Telling’ means deciding intellectually what is good for people and moving them in a predetermined sequence toward a preselected destination. Asking (which we will call social interaction or just plain politics) and telling (intellectual cogitation or just plain planning) both belong in policy analysis” (Wildavsky 1987:17).

This article examines the emergence of legislation for media concentration in the EU as a case study in agenda-setting. Concentration of the media industry has become a significant issue in the EU during the last decade. This is largely due to two consequential developments: new technologies and national deregulation. Particularly in the broadcasting industry, new technologies, such as geostationary satellites, digital transmission, and fibre optic cables have led to rapid market changes. Due to the large financial investments required by these technologies, media companies have engaged in mergers and acquisitions to amass the necessary financial capital. National governments have aided this by relaxing media ownership rules, including those restricting cross media ownership.

Deregulation at the national level has resulted in the appearance of numerous new commercial broadcasting operations, but also in an increase in media concentration and new forms of cross-media ownership and control. In an attempt to improve their market positions, media companies have combined strategies of diversification with those of internationalisation and vertical and horizontal integration. Indeed, as

documented by economic analyses, the very structure of the industry has been completely transformed by an impressive flow of international mergers and acquisitions, take-overs, and cross-national market planning⁴. In addition, innovations in technology are blurring distinctions between communication and media sectors. Consequently the definition of media markets and the measurement of competition is becoming increasingly difficult. What is most apparent, however, is that the main market operators in the media sector act at the European level and define their policies accordingly as the 'domestic' market has now become the European, or even global, market (Humphreys 1996). Companies' strategies, rather than solely the technological drive, have shifted the centre of gravity of media regulation to the European level.

How have these developments been processed by European institutions? Section two presents background information by providing a synthetic overview for present legal instruments for governing media concentration in the EU. Section three examines the policy process for specific concentration legislation and section four analyses in detail

⁴ See *Media Ownership and Control in the Age of Convergence* (1996) (Global Report Series, International Institute of Communications); Congdon, G., Green, D., and Robinson, B. (1995) *The Cross Media Revolution: Ownership and Control* (John Libbey & Company); Silj, A. (1994) *The new television in Europe* European Media Research Series (John Libbey, London); Pilati, A. et al. (1993) *Media Industry in Europe* Institute of Media Economics (Whitaker, London); Sanchez-Taberner, A. et al. (1993) *Media Concentration in Europe: Commercial Enterprise and the Public Interest* (European Institute for the Media, Düsseldorf); Booz-Allen & Hamilton (1992) *Study on Pluralism & Concentration in Media-Economic Evaluation* (European Commission, Brussels); National Telecommunications Industry Association (1990) 'Comprehensive Study on the Globalization of Mass Media Firms' Docket No. 900241-0041 (Washington, D.C.).

the behaviour of the European Commission as a complex organisation. Section five draws conclusions relating to the theoretical issues aired in this introduction.

2. Legal instruments for governing media concentration

Initially, it must be observed that in EU law there is no clear-cut legal competence for legislating for media-specific concentration. However, instruments for regulating concentration in the media industry are provided by competition law. Competition law can be applied to the broadcasting industry according to articles 85, 86, and 90 as defined under the Treaty of Rome. Competition law has thus been utilised in a number of decisions concerning the media industry⁵.

Since 1989, the Merger Regulation has required proposed mergers with global sales revenues of over five billion ECU to notify the Commission (specifically, the Merger Task Force within DG IV) for permission (decided within one month). This was used, for example, in 1994 when the Commission ruled against a joint venture for pay-television called Media Service GmbH (MSG) between Bertelsmann, Kirch and

⁵ ARD Decision [OJL 284, 03.10.89]; UIP Decision [OJL 226, 03.08.89]; Screensport Decision [OJL 063, 09.03.91]; Eurosport Decision [OJL 063/32, 09.03.91]; BSkyB/SkyTV Decision [1991]; Eurovision Decision [OJL 170, 22.03.93]; Sunrise Decision [IV/H176, 01.01.93]; Kirch/Richmont/Telepiu Decision [1994]; Bertelsmann/News International/Vox Decision [1994]; MSG Decision [OJL 364, 31.12.94]; Bertelsmann/Monti Carlo Decision [IP/95/1335, 1995]; Nordic Satellite Distribution Decision [20.07.95, see ET 20.07.95]; Holland Media Groep (HMG) Decision [IP/95/995, 20.09.95, see ET 21.09.95]

Deutsche Telekom (DT). DG IV ruled on grounds of market dominance as the deal was seen to foreclose the German market in pay-television to other European actors.

Despite the use of competition policy in regulating the broadcasting industry, concerns have been raised that it fails adequately to control media concentration due to problems of market definition and issues of pluralism (in such cases, large cross-media mergers fall short of the DG IV turnover thresholds). Accordingly, an attempt to accommodate the special status of the media industry under existing EU competition law has been made. Member states are permitted under Article 21 of the Merger Control Regulation, which stipulates that national authorities may protect “legitimate interests”, to enact national legislation to preserve media pluralism. As national legislation, of course, could not prevent European media concentration, the question still arises of whether media specific legislation at the European level needs to be introduced

Apart from statutory competition law, competition case law concerns the media industry. A number of European Court of Justice cases have dealt with the broadcasting industry. The first and most important of these was the 1974 so-called *Sacchi case*, which, in an indirect ruling, established that broadcasting be considered a tradable service as well as a cultural activity. A second case of much importance was the *Debauve case* of 1979 which established that any discrimination by a member state against a broadcasting signal due to national origin of that signal is illegal. These cases were followed by a number of others dealing specifically with the broadcasting and

cable industry⁶. These European Court cases are significant as the development of this body of media case law and the legal definition of broadcasting as of economic interest in terms of the Treaty of Rome established the legal competence of the Commission to engage in broadcasting policy-making. Indeed the 1984 *TWF* Green Paper⁷ makes reference to the *Sacchi* and *Debauve* cases. This is relevant for the legitimacy of any future Directive concerning media concentration. Significantly, in the absence of such future legislation on media concentration, EU law in this area will continue to be determined solely by competition law.

⁶ Case 262/81 Coditel SA, Compagnie Generale pour la Diffusion de la Television and others v Cine-Vog Films SA and others [OJC 271/9, 10.06.82, ECR 3381 ...3403]; Case 77/89 British Broadcasting Corporation and BBC Enterprises Limited v Commission of the European Communities [OJC 133/6, 30.05.89]; Case 163/84 Hauptzollamt Hannover v Telefunken Fernseh und Rundfunk GmbH [OJC 132/6, 10.07.85, ECR 3299-3319]; Case C-260/89 Elliniki Radiophonia Tilorassi - Anonimi Etairia v Dimotiki Etairia Pliroforissis and Sotirios Kouvelas [OJC 201/5, 31.07.91, ECR 2925]; Case C-98/92 P: European Broadcasting Union v La Cinq SA [OJC 310/3, 27-11-1992]; Case T-70/89 The British Broadcasting Corporation and BBC Enterprises Limited v Commission of the European Communities [OJC 201/13, 10.07.91, ECR II-0535]; Case C-288/89 Stichting Collectiev Antennevoorziening Gouda and Others v Commissariaat voor de Media [OJC 224/3, 29.08.91, ECR I-4007], ; Case C-98/92 La Cinq vs the European Commission [OJC 116/5, 07-05-1992, ECR II-0001]; Case C-23/93 Vereniging Veronica Omroep Organisatie v Commissariaat voor de Media [OJC 71/9, 05.10.93, ECR I-4795]; Case T-528/93 Metropole Television SA v Commission of the European Communities; Case C-23/93 TV10 SA v Commissariaat voor de Media [OJC 331/1, 26.11.94, ECR I-4795]; Case C-68/93) Shevill v Presse Alliance SA [1995 ECR I-289]; Case C-222/94 Commission of the European Communities v UK [1995 unreported]; Case C-11/95 Commission of the European Communities v Belgium [1996 unreported]

Finally, the effects of media concentration may be addressed by legislating in related policy areas. These could include copyright⁸, right of reply, transparency of ownership, working conditions for employees in the broadcasting industry⁹, the legal protection of encrypted broadcast signals, commercial communications¹⁰ and industry subsidy programmes. Recent Commission attempts have also been made to regulate new communications services (these include the internet, pay-television, pay-per-view, video-on-demand, electronic commerce and interactive television).

3. Investigating the EU policy process

Despite the EU's limited legal competence for legislating media concentration, the debate about legislation conducted between the various institutions of the EU has been going on for a long time. Initially, the legislative debate was placed onto the agenda of the Commission by the European Parliament in 1984 during consultations for the Commission's Green Paper *Television without Frontiers (TWF)*.

⁷ COM (84) 300 final, 'Television Without Frontiers, Green Paper on the Establishment of the Common Market for Broadcasting, especially by Satellite and Cable' 14.06.84

⁸ The Commission Green Paper 'Copyright and Related Rights in the Information Society' was adopted on 19.07.95. There was a 08-09.01.96 hearing on the Protection of Works in the Information Society which discussed the paper and it has since being debated by the European Parliament.

⁹ DG V (within its involvement with the Bangemann Group) is working on a blueprint for working conditions which includes matters of editorial control.

¹⁰ On 08.05.96 DG XV published a Green paper on Commercial Communications.

Following deregulation of the media industry at the national level in the mid-1980s and the advent of satellite broadcasting, there had been calls mostly from industry for liberalisation at the European level. The 1984 Green Paper proposed such a liberalisation. As negotiations over the *TWF* Green paper took place around the time of the 1985 Single European Act, there was an added incentive for the Commission to legislate in this area in the interest of Single Market objectives¹¹. Indeed, it was DG III (responsible at that time for internal market initiatives) which initiated the *TWF* Green Paper. The portfolio was held at the time by Commissioner Bangemann. During negotiations leading up to the Directive (after the Green paper was released in 1984) an accompanying debate on media concentration developed. The initial timing and the context of this debate set the stage for the *framing* of the issue by the Commission as one concerning the ‘internal market’. Other relevant European actors were entering the policy scene advocating different *frames* of the same issue.

It was the European Parliament which officially brought the issue of media concentration onto the agenda of the EU. Differently to the Commission, the EP chose to *frame* the issue within the context of pluralism. After the release of DG III’s 1984 *TWF* Green Paper, the EP produced a number of demands for legislation which could ensure pluralism. These demands came in the following forms: a 1985 EP Resolution¹² and a 1986 EP official request to the Commission. Then in 1987, the Legal Affairs Committee suggested two amendments to the draft Directive *TWF* which requested

¹¹ The 1985 White Paper “Completing the Internal Market” leading up to the Single European Act refers the media industry.

¹² PEDOC A2-102/85, 30.09.85

that the Commission be granted the legal resources to safeguard media pluralism (1987 *Barzanti Report*¹³).

During this time the Commission was not open to the requests of the European Parliament. DG III's internal market frame advocated that liberalisation of the media industry would automatically produce pluralism and diversity. Five years of negotiations eventually resulted in the Commission's 1989 *Television without Frontiers*¹⁴ Directive which was adopted under articles 66 and 57(2) of the treaties. The Directive established a legal framework for the cross border transmission of television programmes. It was complemented by the Council of Europe's Convention on Transfrontier Television, which was agreed upon in the same year. However, unlike at the national level where the deregulation of the broadcasting industry was accompanied by rules governing cross-ownership, the Commission Directive contained no provisions for anti-concentration measures despite the substantial calls from the European Parliament to include such a provision. The *TWF* Directive contains only one very limited measure which indirectly affects media concentration¹⁵.

¹³ PEDOC A2-246/87, 08.12.87

¹⁴ COM(94) 57 Television without Frontiers Directive 89/552/EEC.

¹⁵ This is that broadcasters must reserve 10% of their transmission time or alternatively at least 10% of their programming budget for European works by independent producers. This was designed to prevent concentration in the form of vertical integration of the industry, but in practice this provision has no teeth as adherence has often been ignored by national broadcasters with no consequence.

Following the adoption of the 1989 Directive, the calls from the EP for media concentration legislation became louder. In 1990 the EP *De Vries Report* called for the Commission to counteract the growing trend towards media concentration in Europe¹⁶. In February 1990 the EP presented a related Resolution on freedom of the press. In September 1991 the EP released a working paper *Media concentration and diversity of opinion in Europe* which concluded that “competition law is not a substitute for media law” and suggested laws for concentration, a European monitoring body, and a media code. A further Resolution of June 1992 called for harmonisation of national media regulations and the protection of pluralism¹⁷. The position of the EP, which clearly differed considerably from that of the Bangemann cabinet and DG III, prompted the Commission to embark upon a separate initiative for media concentration¹⁸.

Contrary to conventional wisdom which assigns an ancillary role to the EP in policy formation, the EP was hence instrumental in setting the agenda. Political scientists have already challenged conventional wisdom, by arguing that the EP can play the role of conditional agenda-setter (Tsebelis 1994). The policy area under examination here reveals however that the EP can go beyond that: indeed the EP was “the” agenda-setter in media concentration regulation.

¹⁶ PEDOC A3-293/294/90, 15.02.1990

¹⁷ PEDOC A3-153/92, 16.09.1992

¹⁸ In thirty interviews conducted by the author, Commission officials and media industry experts overwhelmingly stressed the importance of the EP in bringing the issue onto the agenda of the Commission. A senior DG XV official stated that “we could no longer ignore the requests of the Parliament.”

Thus the Commission had to play the rather unusual role of intervening in a policy agenda which had been set by the Parliament. Accordingly, the major initiatives of the Commission focused upon the definition of alternatives, i.e. “what to do” once a problem has reached agenda status. How did the Commission seek to define policy solutions?

The European Commission responded to the calls by the EP for media specific concentration law and has since been considering legislation. In 1990, the idea for a Green paper was announced by DG III, at the time responsible for the internal market, and interest groups were mobilised to submit opinions. After consultations, in December 1992 DG III released a Green Paper entitled *Pluralism and Media Concentration in the Internal Market*.

Although the term “pluralism” was in abundant use, the main argument throughout the 1992 Green paper was for the harmonisation of member states’ media concentration rules, as the Commission perceived that a “disparity” of national anti-concentration laws could be seen to “brake structural adjustment” in the internal market¹⁹. The Commission, as it had with *TWF*, continued to frame the issue as one of the internal market. The Green Paper called for consultation papers from interest groups to consider three possible courses of action²⁰. The Paper then underwent a wide

¹⁹ COMM (92) 480 “Pluralism and Media Concentration in the Internal Market” 23.12.92

²⁰ These were simply: 1 no action, 2 transparency action, 3 harmonisation action.

consultation process. Official opinions were given by the EP²¹, the Economic and Social Committee²², member states (which favoured no action), national interest groups, national government departments and European federations²³.

Due to the high political sensitivity of the issue of media concentration and the fact that the EP had increased its powers following the 1992 *Maastricht* Treaty, it was particularly important for the Commission to gain the support of the EP during this time in order to promote its initiative on media concentration. This proved difficult as the Commission had framed the problem of media concentration as one concerning the internal market, whereas the EP initiated the issue as a concern of pluralism. Three EP committees in particular were involved in dealing with the issue (and only these three). These were *the Committee on Economic and Monetary Affairs and Industrial Policy*, *the Committee on Legal Affairs and Citizens' Rights* and *the Committee on Culture, Youth, Education and the Media*. The economic committee was in favour of the initiative but cautious as to the Commission's competence to propose it and concerned that any initiative did not impede investment essential to the sector. The legal

²¹ The European Parliament Resolution (1994) "Pluralism and Media Concentration" A3-0435/93 was in favour of harmonisation.

²² The Economic and Social Committee (1993) "Opinion on Commission Green Paper" 93/C 304/07 was also in favour of harmonisation.

²³ This deliberate wide consultation was in line with the new policy of encouraging greater transparency within the Commission which was agreed upon at the 1992 Edinburgh summit. Before the transparency policy, the Commission only officially invited European federations to place their views. Of course, as organisations and groups were now represented both nationally and at the European level, they could be represented two or more times.

committee also focused upon the issue of community competence. There was hesitation on the part of this committee particularly because the rapporteur, a German, significantly considered media policy to fall under the state competence of the German Länder²⁴. For the cultural committee, the most outspoken on this issue, competence was not an issue, but pluralism was exceedingly important. The view of the cultural committee was most prominent in the EP resolutions. At this stage of the policy process, the Commission pursued its initiative without the direct support of the Parliament due to its different framing of the issue.

In 1993, the portfolio for media concentration was moved to DG XV (along with responsibility for the internal market). Through its subsequent Green Paper and common Commissioner Bangemann, DG XV sought additional support for the initiative through alliance with DG XIII. In this way, two In October 1994 DG XV published a second Green paper entitled *Follow Up to the Consultation Process Relating to the Green Paper on 'Pluralism and Media Concentration in the Internal Market- an Assessment of the Need for Community Action'*²⁵. The report was both a follow up to the 1992 Commission Green Paper and an initial response to a report of the (Bangemann chaired) Council of Ministers Higher Level Group, entitled *Europe*

²⁴Länder cartel authorities (divisions of state ministries for economics) are responsible. State broadcasting laws and the 1987 Rundfunkstaatsvertrag (an inter-state broadcasting treaty) have rules governing media concentration.

²⁵ COM (94) 353 final, 05.10.1994., Follow Up to the Consultation Process Relating to the Green Paper on 'Pluralism and Media Concentration in the Internal Market- an Assessment of the Need for Community Action'

and the global information society (referred to as the ‘Bangemann report’)²⁶. The Bangemann report, which is preoccupied with Europe’s competitiveness in the global information society, includes a section entitled ‘media ownership’ which calls for immediate legislation to ensure “the global competitiveness of Europe’s media industry” (European Commission 1994:13). The report restates internal market concerns stated in the first DG III Green Paper by referring to national media ownership rules as “a patchwork of inconsistency which tends to distort and fragment the market” (European Commission 1994:14).

In this second 1994 Green Paper the Commission argues that the responses to the first Paper and subsequent questionnaires support future legislation on media concentration by the European Commission²⁷. The Commission argued in the Green paper that this shift in opinion in favour of European regulation is due to EU’s legal uncertainty on media concentration law which was considered a disincentive to media companies’ investment. The second paper differs considerably to the first in that it noticeably focuses upon the *information society*. In particular it is argued that national restrictions on media companies constrict the growth of *the information society* within the Single Market. It also refers to shortcomings in national law for new technologies which is leading to fragmentation of the Single Market.

²⁶The Bangemann report was submitted to the European Council for its meeting in Corfu on 24-25 June 1994.

²⁷ Three Commission questionnaires were sent to interested parties. Written responses to the first are compiled in a five volume Commission document XV/9555/94.

In this way, DG XV has allied itself with the relatively successful DG XIII, responsible for initiatives relating to the *information society*. In the Green Paper, the Commission also detects a shift in opinion between the first and second questionnaires in favour of identifying audience share as the crucial criterion for measuring and controlling concentration. The choice of audience measurement as a policy instrument is significant since different policy instruments, of course, can lead to very different policy outcomes. The paper concludes by suggesting the initiation of new consultations, that audience measures be used in measuring media concentration, and that the Commission initiate a study of controllers based on national experience and law. The Green paper was followed by two more years of consultation by the Commission.

In direct opposition to these liberalising proposals of the Commission, the EP in January 1994 in its *Fayot/Schinzel Resolution*²⁸ voted in favour of tough restrictions on European media ownership. The Resolution urgently called for legislation to prevent European media companies from controlling too many media outlets and for measures to insure pluralism and diversity. These requests were strongly supported by the Economic and Social Committee.

In 1995, the Commission sought to fortify its position by bridging the gulf between the EP and the Commission. An attempt to close this divide was sought by Commissioner

²⁸ PEDOC A3-435/93, 05.01.94

Monti in a September 1995 speech to the EP.²⁹ During Monti's speech before the Cultural Committee (before the plenary assembly meeting), he declared himself to be personally in favour of an initiative which would seek to 'safeguard pluralism'. This was met of course with scepticism by MEPs, but was perceived as a positive step and a noticeable change from the Commission's past position³⁰. The Commission repeated its view in a Commission communication to the EP in October. This was an important step in the policy process as previous Commissioners had not made such a verbal commitment to the concerns of pluralism. In any case, it now appears that the EP has accepted the Commission argument for legislation in terms of the internal market³¹. Now that certain basic underpinnings of EU media concentration regulation had been agreed upon between the Commission and the Parliament, the stage was set for a formal draft proposal to emerge.

After six years of consultation, a proposal for a Directive on media concentration was submitted to the College of Commissioners by Commissioner Monti on July 24, 1996. The draft has since been reconsidered by the Chefs du Cabinet and resubmitted on September 4. As of January 1997, following some expected political heated debates,

²⁹ "Pluralism and Media Concentration" speech to the Committee on Culture, Youth, Education and the Media 26.09.85 by Commissioner Monti.

³⁰ In September 1994, DGXV Commissioner Vanni d'Archirafi, had opposed DGXV proposals for media concentration on grounds of pluralism, arguing that over-regulation could fragment the single market and create an inflexible environment for investment. In actual fact, DGXV bureaucrats responsible for the media concentration portfolio have found an ally in the Italian Commissioner Monti who has given priority to their initiative.

³¹ MEPs now seem convinced that this is the only way in which to legislate for media pluralism.

the need for a directive on media concentration has now been agreed upon by all the Commissioners. A proposal for legislation is expected to be submitted to the Council soon. The proposal is at present a priority for DG XV. It is important to observe that any resulting Directive will not only be important to DG XV but to the Commission as a whole. The Directive will be one of the very few examples of a bold initiative in the area of the Single Market. Upon examination of the 1996 work programme of the Commission, it is clear that this proposal is one of the few dealing with the Single Market³².

4. Commission involvement at the member state level

Currently the debate over regulation of media concentration is one of the most salient of issues within the EU: not only is the Commission preparing a draft directive, but member states are also extremely active in this policy area. Indeed the Commission's long policy process has been paralleled by similar negotiations for new media concentration laws at national levels. Those member states under the most pressure to change pre-existing rules for media concentration are those with combinations of the most deregulated media markets, most advanced communications infrastructures and the largest number of media consumers: namely, the UK, Germany and Italy. In July 1996, the same month the Commission submitted the draft directive to the College, there were significant steps in these three countries to change national regulation of media concentration. In the UK, new rules for media concentration were presented in the new July 1996 Broadcasting Act. In Germany, in July 1996, after a long process of

³² COM(95) 512 final - The Commission's Work Programme for 1996.

consultation and negotiation, the Länder agreed upon centralisation of media concentration rules in the revised state-media-authorities-treaty (Landesmedienanstaltenvertrag). Also in July 1996, in Italy, the Prodi government proposed a new authority for telecommunications and media following a long heated political debate. In all three countries, the anticipation or perhaps pre-emption of EU rules undoubtedly played a large role.

The interaction between the European Commission officials and national policy-makers and during revision of member state rules is quite interesting. During the respective policy processes, national experts (particularly those working at the European Media Institute based in Düsseldorf) were shared by the Commission and German state authorities meaning that there was a frequent exchange of ideas. In 1995 and 1996 a senior Commission official organised two expert hearings to discuss proposals for policy instruments for the revised German treaty.

Both the UK and Germany have adopted in their new legislation the utilisation of audience share measure as recommended by the Commission in its two Green papers³³. Considering the Italian government is the only one of the three supportive of EU initiatives for media concentration, the UK and German governments may be shooting themselves in the foot by adopting precisely those policy instruments suggested by the European Commission (regulating cross media ownership by utilising an audience share model for measuring concentration). Conformity of

³³ Indeed the Commission quite actively promoted the adoption of audience share at the member state level through prominent national contacts, interest groups and national experts.

European national legislation in this area, will make it easier for the Commission to propose EU wide harmonisation of media concentration rules. Of course, importantly, this embrace of the Commission's proposed policy instrument by the national authorities is not one-sided. The use of audience share, rather than the use of other policy instruments, was the only recognisable defence the Department of National Heritage and the Landemedienanstalten (in Germany and the UK respectively) could present in their turf struggle with the respective national merger authorities (the Merger and Monopolies Commission and the German Federal Cartel office) for jurisdiction in this policy area³⁴.

The situation in Germany is further complicated in that the Länder of Bavaria and North-Rhine Westfalia, which seat the media companies Kirch and Bertelsmann respectively, are at odds over media concentration policy. Not only do they house competing media companies but also opposing political parties (the CSU in Bavaria and the SPD in North-Rhine Westfalia). In reaction to dissatisfaction with the outcome of the Landesmedienanstaltenvertrag, which it considered to be too liberalising, Nordrhein-Westfalen in October 1996 did an about face and suddenly expressed support for the European initiative. Many SPD Länder followed suit³⁵. The

³⁴ Initially 'revenue' share was preferred by both the DNH and the Länder as a more desirable measurement. However, audience share was chosen in both cases as the policy instrument distinguishes this legislation from competition law. At a late stage in the UK policy process, there was an amendment to the Broadcasting Act opting audience share measure.

³⁵ This was communicated in 10.96 through the Staatssekretär, Rüdiger Frohn, in a speech entitled "Land-Bund-Europa: Überholtes Kompetenzgerangel? Der Rundfunk in der globalen Multimediawelt von morgen" at a public service conference, and by the NRW Minister for European Affairs, M.

Commission in this respect has consolidated support for its initiative both from the European institutions and the national levels.

5. Inside the Commission

So far the Commission has been considered as a unitary actor. However, as shown to some extent in section 3 the definition of alternatives witnessed the appearance of different positions within the Commission. Accordingly, it is useful to relax the assumption of unitary actor and to take into serious consideration the hypothesis that different DGs constitute separate actors. How do different DGs compete in the EU policy process? As already hinted previously, it is in the problem definition that competition between different DGs becomes manifest. Each DG advocates for a distinctive *framing* of the policy problem which is meant to maximise the relative power of that DG *vis-à-vis* the others. “What to do”, i.e. the choice of policy instruments, is dependent upon the construction of a particular frame for media concentration regulation. These different frames and their political role will now be examined.

Since the initiation of the policy process by the European Parliament there has been uncertainty within the Commission as to the organisational domain relating to the responsibility for policy-making in the area of media concentration. In 1992 when the portfolio for industry and internal market was separated into DGs III and XV respectively, the unit responsible for media concentration was moved to DG XV but

Dammeyer, in a speech entitled “Europa muß mehr Verantwortung für eine soziale und pluralistische Mediengesellschaft übernehmen” given in Straßbourg

the portfolio for media concentration remained under Bangemann (DG III) under temporary status. This can partly be attributed to the complicated political situation around the time of *Maastricht*, however the question as to whether media concentration constituted industrial or internal market policy remained and the utilisation of both arguments in the 1992 Green paper is more than apparent. One year later, the DG XV unit was again split into two units (*data protection* and *media and information society*). The media concentration portfolio which came under the DG XV *information society* unit remained under the DG III industry Commissioners Martin Bangemann and then Vanni d'Archirafi (who took office in 1993) for two more years until it was only first given to DG XV Commissioner Monti after the 1995 induction of the new Commission.

The Directorate General presently responsible for writing the proposal on media concentration and co-ordinating policy is now DG XV (responsible for the internal market). The other Directorate Generals within the Commission which are concerned with media concentration policy are DG I (external relations), DG III (industrial policy), DG IV (competition policy), DG X (cultural policy) and DG XIII (information society policy). The interactions between these DGs in this policy area and their separate conceptual 'framing' of the same issue of media concentration shall be discussed within this section. The Commissioners of the various DGs who are responsible for co-ordinating Commission media concentration policy-making are outlined in the table below³⁶:

³⁶ Up until 1993, Commissioners were appointed for four years. In 1995 there was a break in term due to enlargement and changes in DG portfolios. From 1995 onwards, Commissioners shall be

Group composition:	1989-1992	1993-1994	1995-1999
President	Delors	Delors	Santer
DG I	Andriessen	van den Broek	Brittan
DG III (industry)	Bangemann	Bangemann	Bangemann
DG III(internal market)	Bangemann	d'Archirafi	
DG IV	Brittan	van Miert	van Miert
DG X	Dondelinger	Deus de Pinheiro	Oreja
DG XIII (units A-C)	Pandolfi	Bangemann	Bangemann
DG XV	Scrivener	Scrivener	
DG XV (internal market)			Monti
DG XIX	Schmidhuber	Schmidhuber	Lifkanen

The 'External Relations Frame' (DG I)

DG I (for external relations) is interested in the media concentration portfolio as it encountered strong opposition from the US concerning broadcasting policy. The 'frame' advocated by this DG can thus be labelled the 'external relations frame'. US broadcasters, networks and producers were strongly opposed to the implementation of the European programming quota included in the *TWF* Directive and the US government took the issue to GATT. Reflecting concern to avoid conflict over competition policy, a United States-EC Antitrust Agreement was signed on September 23, 1991³⁷. This called for notifications and regular exchanges of information on antitrust enforcement activities and for the co-ordination of enforcement agencies. Any

appointed for five year terms. Commissioners responsible for the media concentration portfolio are indicated in bold.

³⁷ Agreement (1991) between the Government of the United States of America and the Commission of the European Communities regarding the Application of their Competition Laws, Article IV (2), Washington, DC, September 23, 1991; see also subsequent competition agreement OJC 95/145.

future Commission legislation on media concentration is subject to US notification and comment procedure.

Since this time, communications and audio-visual policies have continued to be high on the agendas of both G7 and World Trade Organisation (WTO) meetings. The issue of convergence between broadcasting and audio-visual policy was discussed at a G7 conference, *G7 and the Information Society*, in February 1995. At the WTO negotiations this year, special emphasis was given to communication sectors. When the Uruguay Round ended in 1994, the EU had obtained an opt-out for audiovisual products, however revisions are expected (particularly by the United States) due to the EU's new offer to liberalise telecommunications³⁸. Even the new US envoy to the EU, A. Vernon Weaver, has also put the audio-visual industry at the top of the US priority list³⁹. DG I Commissioner, Leon Brittan, is critical of DG XV's efforts to restrict the communications industry due to possible US retaliation in the form of trade sanctions.

Brittan also had domestic concerns in mind when initially opposing DG XV's July and September draft directive submission to the College of Commissioners. Representing UK concerns, Brittan was opposed to the choice of policy instruments in the draft which are not as comprehensive as those in the UK. In particular, a comprehensive

³⁸ Agence Europe (1997) 'Resumption of WTO negotiations is positive but several problems remain to be solved - clarification of EU position on audio-visual services' January 18, 1997

³⁹ In an interview with European Voice 25-31.07.96., Weaver states "I will not be shy about defending key US industries, such as the audio-visual industry, against new protectionist measures, however packaged."

definition of the controller (which is used in UK legislation in practice to contain News Corporation) was not contained in the draft. The forthcoming draft directive is expected to contain a more detailed definition or to accommodate the UK's particular media market situation.

The 'Industrial Frame' (DG III)

In both of the Commission's Green papers on media concentration the chief concern is the effect of national media legislation upon the EU's internal market. However, the first 1992 Green paper, was significantly influenced by what can be labelled as the 'industrial frame' advocated by DG III as it was written within DG III (at the time was responsible for both the internal market and industrial policy). Indeed the first Green Paper argued that Europe's media industry was hindered by extensively different ownership rules in each member state whereas media companies were attempting to pursue their activities and investments. DG III, which was at the time both anxious to kick-start its *information society* and perhaps eager to create conditions favourable to the growth of European champions, was particularly concerned with over-regulation of the media industry by the member states. The Green Paper was clearly intent on liberalisation of the industry. The present DG III (for industrial policy) is reluctant to adopt legislation *controlling* media concentration in Europe since such legislation may weaken strong European firms attempting to compete globally. In this respect, concentration in the European media industry could be perceived as fulfilling an industrial policy designed to make the industry more competitive⁴⁰. Future legislation

⁴⁰See J. Hayward (1995) *Industrial Enterprise and European Integration. From National to International Champions in Western Europe* (Oxford University Press).

on media concentration might have to allow for DG III's concern that the concentration of major European multimedia companies could fend off competition from non-European multimedia firms.

As a former German federal minister, DG III Commissioner Bangemann remains close to the German federal government and is mindful of domestic concerns. As the largest of European media firms in the EU are German (Kirch, Bertelsmann and Springer), any restriction upon their expansion would mean of course a restriction on what could also be viewed as both European and German national champions. There has been long-term dissatisfaction on the part of the German federal government with DG IV (and in particular Van Miert) for vetoing German mergers (Wilks and Gowan 1995a). As the largest EU member and with its corporatist tradition, Germany is often at odds with EU Merger Regulation decisions and has long advocated that a separate EU competition body be set up which would act independently from the Commission. In particular the decision by DG IV to prevent plans by Bertelsmann, Kirch, and Deutsche Telekom to set up Multi-Media Service (MSG) in 1994 was met with criticism by the cabinet of Helmut Kohl.

The 'Competition Frame' (DG IV)

DG IV holds the key policy instrument of the Commission, competition policy, and DG IV's approach to policy definition is characterised by what can be labelled as the 'competition frame'. Competition policy is the only policy by which the Commission has some direct decision making power and is not subject to approval by the Council of Ministers or the EP (Wilks and Gowan 1995b). For this reason any attempt to

remove existing powers from DG IV is a contentious issue both within the DG and for the Commission as a whole. Therefore DG IV is wary of the DG XV proposal, particularly considering that a significant number of DG IV merger cases have dealt with media industry⁴¹. It is also wary of any proposals which would set up an independent watchdog body for dealing with breaches of competition law (as suggested by the German government). Van Miert, as a Dutch Commissioner, is concerned particularly about protecting the market independence of smaller EU member states from dominance by firms situated in larger member states.

However, by allowing member states to enact specific concentration legislation for the media industry under Article 21 of the Merger Regulation, DG IV has in effect taken the position that its competition policy instruments are inadequate for controlling media concentration. This identification by DG IV of the media industry as one which may require specific legislation at the national level has fuelled the debate for media specific legislation at the European level. However, although DG IV agrees that media concentration is a 'special case', it believes that existing competition law could be expanded to encompass the media sector's special status. In January 1996, DGIV Commissioner Van Miert called, in a Green Paper on reform of the 1989 Merger Regulation, for merger thresholds to be lowered from five billion to 100 million ECU. If thresholds are eventually lowered this would weaken DGXV's proposal for specific media concentration regulation based on market share. DG XV's decision to measure media concentration by means of audience share rather than market share buffers it

⁴¹ See footnote 5.

from DG IV opposition. In this way, it can be justified that this form of measurement is used due to ensure pluralism which differentiates it from the pure adaptation of competition law. In defence, DG IV argues nevertheless that regulation can not keep up with technological change, especially when industries and markets converge⁴². DG IV is, however, unlike DGs III and XIII, not in favour of full liberalisation, particularly in the sphere of communications industries. It instead favours internal competition at the European level.⁴³

The 'Pluralism Frame' (DGX)

As already mentioned, the European Commission has no apparent legal competence for legislating on media concentration. Indeed one of the chief debates surrounding media concentration concerns the way in which it should be legislated. Under the

⁴² At the 24.-26..96 G7 conference DG IV Commissioner Van Miert stated: 'The recent case of Media Service GmbH (MSG) highlighted the tension inherent between alliance in the presence of exclusive rights and competition policy..... What is clear, of course, is that our responses, from the competition policy point of view, must be flexible and dynamic enough to keep up with the rapid change and development which characterises this area. Clearly, the growing multi-media sector will emphasise the role of competition policy since no sector specific regulation is capable of fully considering the impact of alliances implying sector convergence..... These are non-commercial issues which are best looked after by focused regulation, not apart of, but as a complement to competition policy.'

⁴³ On 10.02.96 ,DG IV Commissioner Van Miert stated at the Conference on European Public Service: 'In the interests of consumers, business and the industry itself it is important that policy does not preempt or straight-jacket market development with unnecessary regulations and standards. On this point we are in full agreement with our friends on the other side of the Atlantic. However, this does not mean a "blue-eyed" or "one-sided" approach to EU liberalisation and this will also be made very clear to our G7 partners.'

various treaties of the EU, only one article, which refers to the specific regulation of cultural concerns, seems to provide a potential legal basis for legislating for pluralism. This is Article 128 under the 1992 *Maastricht* treaty, the interpretation of which has only recently been agreed upon by Commission DGs III, X, XIII and XV. However despite its new interpretation, it is predicted that Article 128, which is DG X's only legal instrument, will continue to be weak and will not be applicable in regulating media concentration. This lack of a legal basis upon which to legislate for pluralism represents a fundamental structural weakness of the Commission as a whole.⁴⁴ There would be conflict even with a clear legal basis, however, without one, the debate revolves around political conflict which utilises legal instruments.

DG XV which deals with internal market initiatives is pushing for the harmonisation of member state laws under either article 100a (for the internal market, which classifies media as a product) or article 67 paragraph 2 (which views media as a service). These articles would require the co-decision procedure (Article 189b), which requires review by the EP and qualified-majority voting in the Council. By contrast, Article 128 would require co-decision and unanimity in the Council⁴⁵. In any case it is clear that any Commission initiative will require the co-decision procedure as

⁴⁴ The first pillar of the *Maastricht* Treaty, *the European Communities*, has been considered as inadequate as an intended EU constitution. See Wincott, (1993) 'The Treaty of *Maastricht*: an Adequate 'Constitution' for the European Union?'. EPPI Occasional Papers.

⁴⁵ When the Directive *Television Without Frontiers* was adopted under qualified majority voting, two countries, Denmark and Belgium voted against.

established in the *Maastricht* treaty⁴⁶. The decision by DG XV to base a Directive on Articles 100a or 67 is controversial. Indeed, the following question arises: if it is agreed that EU competition policy law is inadequate for controlling media concentration due of concerns of pluralism, why should pluralist objectives be reached with legislation designed to further the Single Market? The Directive would harmonise media concentration laws with the objective of protecting the Single Market, whereas the national laws it sought to harmonise will have been initiated to protect pluralism. In the Council of Ministers the Directive would be approved by ministers for industry and not ministers for culture. Principally, the basis for legislation, does not match the objective it attempts to reach. This is precisely the argument of DG X, the DG responsible for audio-visual policy. Its approach can be labelled the ‘pluralist frame.’

DG XV is clearly treading in DG X territory by legislating for media concentration. DG X also is close to the French ministry for culture (Collins 1994). It may not be insignificant that there were no French group responses to the 1994 DG XV questionnaire. It was indeed DG X which at the beginning of the policy process, was the first to take the European Parliament’s concerns about pluralism on board. The DG X Commissioner Jean Dondelinger, in particular, was quite outspoken against concentration of the media industry and as early as 1991 called for immediate

⁴⁶ This gives the European Parliament the right to a third reading and may require a conciliation committee in which the Council and Parliament with the assistance of the Commission attempt to reach agreement on draft legislation. Co-decision is a lengthy decision-making process which still has not established itself within the Community.

concentration measures⁴⁷. At the time, DG X argued that the media concentration portfolio came under its jurisdiction. DG X remains highly attentive to DG XV's present efforts to legislate and the Commissioner Oreja was the first to object formally to DG XV's proposal submitted in July 1996 on the same grounds. However, it seems DG X has since recognised that any legislation must come under the jurisdiction of a politically stronger DG in order for policy to be initiated in this area.

The 'Information Society Frame' (DG XIII)

DG XIII (Telecommunications, Information Market and Exploitation of Research) is interested in the media concentration draft Directive due to the DG's authority in the area of communications and technologies under the information society. The 'frame' therefore advocated by this DG can thus be labelled the 'information society frame'. This is a particularly successful DG having produced a number of directives dealing with telecommunications (leading up to full EU liberalisation in 1998) and satellite communications during the last ten years. It is also exceptionally well-funded in comparison to the other DGs and is therefore able to support more experts. With the continuing convergence between broadcasting and advanced telecommunication technology industries there is a high probability of a future merger between communications and media policy. Policy convergence would mean increased liberalisation of media markets.

⁴⁷ see Le Monde, 10.07.91

Commissioner Bangemann⁴⁸ who holds the portfolio for telecommunications and the information society is forthright in his interest in absorbing media concentration policy into his portfolio⁴⁹. It is clear that Bangemann considers media to be a part of the information society and there is much pressure on Bangemann to aid the realisation of the *Global Information Society* to which he promised his commitment at the G7 Summit last year in Brussels. Accordingly, the DG XIII has set up an ad-hoc working committee dealing with the issue of policy convergence. The Bangemann Group II, a forum of large European and American firms, is also considering issues of convergence⁵⁰.

⁴⁸ Bangemann like Delors before him, is clearly providing leadership to the College of Commissioners and his 1994 *Information Society* White Paper, like Delors' White Paper on *Growth, Competitiveness and Employment* is clearly providing a general policy framework for a significant number of policy initiatives.

⁴⁹ The issue of convergence is discussed by two DG XIII officials in Schoof and Brown (1995) 'Information Highways and Media Policies in the EU' *Telecommunications Policy* Vol.19, No.4, pp.325-338 wherein the authors stipulate that EU policy has not yet fully addressed the issue of convergence that is at the 'heart' of the information society. They argue that the information society requires a policy framework which encompasses all communication technologies and seeks to eradicate inconsistencies between policies in different media sectors. A similar paper, 'Regulating the convergence of telecommunications and broadcasting', was presented by Commission official M. Haag at the International Conference 'The Social Shaping of Information Highways' a DG XIII sponsored workshop in Bremen, October 1995. UNICE, representing industry at the 1995 G7 conference declared that "Distinctions between broadcasting and information services will become irrelevant". The OECD also has launched a study on convergence to be published in Outlook 1996.

⁵⁰ See "Building the European Information Society for Us All" First Reflections of the High Level Group of Experts Interim Report January, 1996 DG V/B/5.

In September 1996, DG XIII published a report entitled “Public Policy Issues Arising from Telecommunications and Audiovisual Convergence”. The report, which may be the basis to a future Green Paper and therefore represents the strongest show of opposition to the DG XV initiative⁵¹, spells out some chief differences between DG XV and DGs III and XIII. Firstly, the report makes no distinctions between telecommunications, different media markets, or market measurement of public and private enterprises⁵². For this reason, it has found support from large media companies such as Kirch and News Corporation which favour greater liberalisation of media markets and has met with opposition by public broadcasters such as the BBC and ARD. A second source of conflict between DGs XIII and XV surrounds a proposed authority for telecommunications and a possible one for media. DG XV is opposed to an authority for telecommunications which includes media, or that a separate body be set up for media. This bureaucratic conflict between DGs XIII and XV over the media concentration portfolio is of course not unique to the Commission, but reflects similar *turf conflicts* between the traditional ministries dealing with telecommunications and those for media at the national level. In European case, as Bangemann holds both the DG III and DG XIII portfolios and is a senior member of the Commission this strengthens these DGs position vis-à-vis DG XV (and of course Bangemann’s position within the Commission as a whole). With such a strong position, the ‘industrial’ and ‘information’ society frames have a large influence upon the “internal market frame.”

⁵¹ Also (see FT 1994 Emma Tucker, info soc, Bangemann tried to include media concentration under agency)

⁵² The DG XV draft directive however includes an opt-out for public service broadcasters if they are seen to be acting commercially.

However, it seems that both DGs III and XIII have recognized that for policy to be initiated in such a sensitive policy area, harmonisation along the “internal market” approach presents the only option. Both DGs also hold hopes that the DG XV will seek to liberalise media markets further than could be possible at the national levels.

The ‘Internal Market Frame’ (DG XV)

DG XV presently holds the media concentration portfolio. In line with the *internal market approach* DG XV wishes to harmonise national body authorities but in such a way that they do not interfere with the internal market. The ‘frame’ advocated by this DG can therefore be labelled the ‘internal market frame’. Clearly, DG XV does not want disparate national rules against media concentration to impede realisation of the Single Market in broadcasting foreseen by the 1989 Television Without Frontiers Directive. This leads us to the basic source of infra-organisational conflict which is that DG XV views media concentration as a “traditional internal market problem” which requires “the harmonisation of national rules concerning media concentration” whereas DGs III and XIII as has been shown view the media market as a long-overdue case for liberalisation.

Commissioner Monti who has held the portfolio for two years has added national interests. Much pressure for a European directive was exerted upon Monti’s cabinet from senior Italian politicians who sought to curb the expansion of Fininvest owned by Berlusconi (former Italian prime minister and now leader of the Freedom Pole coalition currently in opposition). Even though the situation has somewhat been alleviated by the flotation of Fininvest (now Mediaset) the Italian Parliament missed its

December reform deadline of Italian media ownership laws and has still not been able to come to a decision. It is hoped by many in the Italian parliament that this very salient national problem will be solved by EU legislation.

Remarkably, the Italian firm Fininvest and now Mediaset have also supported a European initiative. Mediaset wishes to see the inevitable limitation of Mediaset expansion at the national level matched by similar legislation limiting rival firms in other EU member states. Mediaset views itself in comparison to the German companies Springer, Kirch and Bertelsmann and to the UK News Corporation as a relatively small European player. For this reason, DG XV officials have experienced much cooperation and expertise offered by Fininvest and the ACT (founded by Berlusconi and backed by Fininvest).

6. Concluding remarks

In January 1997, the Commissioners agreed to the principles of the DG XV draft as submitted to the College of Commissioners on September 4. A special forum was set up between Commissioners Monti and Bangemann to better define the proposed policy instruments⁵³. Indeed, DG XV has succeeded in consolidating support for its initiative. Through years of careful consultation this support comes not only from the other DGs concerned, but also from other the European institutions, influential interest groups and in some respects, the member states. As shown, this has done by over time through DG XV's 'reframing' of the issue of media concentration to accommodate the sponsors of opposing frames. This phenomena is recognised by Rein and Schön as

⁵³ see European Voice December 18, 1996 to January 8th page 1.

“frame-reflective discourse” (1991:267). DGs I, III, IV, XIII, and XV shared “a common problematic situation that they have a shared interest in reframing and resolving, though they may initially see it in different ways” (Rein and Schön 1991:282). The now general acceptance and support by these formerly opposing frames for the Commission to legislate for European media concentration in terms of the ‘single market’ can be seen as the result of combining “advocacy of one frame with inquiry into others” (Rein and Schön 1991:286).

The investigation of policy formation suggested in this study has shown a number of features of the EU policy process which have theoretical relevance. First, a coherent application of the policy approach enables the researcher to discover actors empirically. Whilst the legal framework of the EU posits that the Commission is a unitary actor, the analysis of policy-making has shown that the Commission is a complex organisation in which different actors (i.e. the DGs with interest groups and national governments attached) compete. This is consistent with the insights provided by the literature on complex organisations, and at the same time is new to European integration literature.

Secondly, the competition over the media concentration portfolio within the Commission revolves around the definition of alternatives. This means that the distinction between agenda and alternatives, or in other words between placing an issue onto the agenda and choosing an appropriate “frame” for copying with that issue, has analytical potential and empirical relevance. Thirdly, as far as agenda-setting is concerned, this study has suggested that the EP, notwithstanding the definition of the

policy process provided by the EU procedures, can be the agenda-setter. The point to stress is that the role of the EP as agenda-setter emerged in the mid-Eighties, even before the Treaty of Maastricht widened EP competencies (and in any case the EP has not gained agenda setting powers with the Treaty on the European Union (TEU)).

The final conclusion relates to the consequences of the relative inefficiency (in terms of time and political conflict dissipated by the policy process) of EU institutions in copying with regulatory policies with high complexity and high salience. As shown by the quote by Wildavsky mentioned previously, inefficiency, under certain conditions, can be the price to pay in order to afford benefits of the intelligence of democracy.

The media concentration regulation policy process, after all, although inefficient has brought into EU institutions the consideration of alternative legitimate conceptualisations of the regulatory challenge represented by media concentration.

Given that this issue is of fundamental importance to the future destiny of democracy and of primary interest to the ordinary citizen, it can be argued that maximising social interaction rather than efficiency should be the major aim of the EU policy process.

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