MEDIA, PLURALISM AND DEMOCRATIC ACCOUNTABILITY

Media and democracy: the perspective of the European Union

How is media concentration controlled in the EU?

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Democracy and the media is a binomial that highlights the interdependence between the two concepts. It is considered fundamental for the proper functioning of democracy that citizens have access to a set of plural and diverse means that allow them to access ideologically plural information; and as a result, be able to freely exercise their vote. In fact, the European Union's commitment to respecting the freedom and pluralism of the media and to defending freedom of expression —which includes the right to receive and disseminate information without interference by public authority— is enshrined in the Article 11 of the EU Charter of Fundamental Rights, which reflects Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

One of the crucial areas to ensure the proper functioning of democracy is to establish controls on the concentration of media ownership. According to Professor Robert Picard [1], property regulation is "equivalent to government action that determines who can own companies, which companies can participate in an industry, and the size and impact of companies in the market". Property can be controlled for reasons of competition, to support diversity of property and pluralism, and to maintain control of the media and communications".

> Establishing controls on the concentration of media ownership is one of the crucial areas in order to ensure the proper functioning of democracy

Within the European Union, two policies are responsible for setting the rules of the game in this area: digital policy and competition policy. Both have designed a set of actions to develop and achieve their proper functioning within the EU during what they call the digital decade (2020-2030). This article reviews the European guidelines for the concentration of media ownership. Specifically, it will analyze the latest actions designed by the European Commission to deal with them, accentuated by the COVID-19 pandemic and the spread of global misinformation.

European digital policy: guidelines for the protection of the media

The European Union's digital policy is one of the six priorities of the European Commission, led by Ursula Von der Leyen, for the period 2019-2024. The aim is for this digital transformation to work for people and businesses, while helping to achieve the goal of a climate-neutral Europe by 2050. This desire to digitize the economy as a whole has been met with difficulties such as the pandemic and at the same time with an increase in the phenomenon of misinformation.

The Commission has reacted by drawing up two action plans aimed at ensuring the proper functioning of the media and protecting European democracies. It will be in these documents where we will find the current lines of action of the community institutions. At the end of December 2020, the European Commission presents the Communication: 'The media in Europe in the digital decade: Action plan to help the recovery and transformation of the media'. This plan aims to accelerate the recovery, transformation and resilience of the media industry. It defines the structural challenges facing the audiovisual and media sectors, especially in the economic dimension (especially the difficulties in digital advertising markets) and technology (predominance of new audiovisual consumption through streaming platforms).

At the same time, the European Union approved the Action Plan for European Democracy

[2] also in December 2020. The Commission has placed the freedom of the media at the heart of its reports on rule of law. To address this, the Commission has launched several funded projects aimed at mapping violations of media freedom and defending threatened journalists, controlling the risks to media pluralism and supporting media journalism through collaboration, cooperation and exchange of good practices. The European Commission is co-financing projects led by the European Center for Freedom of the Press and Media (ECPMF) and its partners aimed at addressing violations of media freedom and pluralism in EU Member States and candidate countries. Grants have been awarded to the Center for Media Pluralism and Freedom of the Media (CMPF) for the development and implementation of the Media Pluralism Monitor (MPM), which provides an overview of the risks to freedom and media pluralism in Europe, analyzing four main areas: basic protection, market plurality, political independence and social inclusion.

Within the European Democracy Action Plan, one of the measures is to improve the understanding and public availability of information on media ownership. To achieve this goal, the Commission announced that it would co-finance the new Media Ownership Monitoring System. First of all, a pilot project has been launched to build a public database with relevant information on media ownership. The Euromedia Ownership Monitor (EurOMo) was created in October 2021, coordinated by the Paris Lodron University in Salzburg. Its main researchers are Professors Josef Trappel and Tomaz Tales. The amount of EU support for the project is € 1 million and the project is expected to last until September 2022.

This project should create a tool to provide relevant information to define policies and regulations that support media freedom and pluralism, clearly delimiting where the property is located, making potential problems more visible and thus helping to improve understanding of the media market. Specifically, the Monitor will provide a country-based database, which will contain information on media ownership, systematically assess relevant legal frameworks, and identify potential risks to media ownership transparency. The need for this tool has arisen due to the growing trends of concentration of ownership in digital and traditional media and the consequent risks to media pluralism.

> The Euromedia Ownership Monitor, created in October 2021, is a pilot project that aims to build a public database with relevant information on media ownership

Concern over this issue is evident in the statements made by the European Commission leaders in the press release of the launch of EurOMo. Securities and Transparency Vice President Věra Jourová said: “It is becoming increasingly difficult to understand who owns the media in the EU. This cannot be the case, because in a democracy, people deserve to know who provides the information. This new tool will help you understand the media market and future policy initiatives”. Internal Market Commissioner Thierry Breton added: “As a key pillar of our democracies, it is crucial to address and highlight existing threats to

the independent media. We remain determined to introduce new initiatives such as the Freedom of the Media Act and increase our support for transparency projects in the sector." [3].

The creation of EurOMo is in line with the Audiovisual Communication Services Directive, which sets out the need for national legislation to require transparency in the ownership of communication service providers. The deadline for the transposition of the Directive by the Member States has not yet been completed, although the starting date was on 19 September 2020. For this reason, the Commission sent 24 countries last September, among them Spain, a first warning for them to do so before the end of this year 2021.

The second part of the EurOMo project is complemented by the creation of a national database containing information on media ownership and a systematic assessment of both the relevant legal frameworks and the risks to transparency of media ownership. It is expected to be launched in 2022. The estimated budget will be € 500,000.

In addition to the actions being taken by the European Commission to obtain information on media ownership, it is also important to highlight the role of an international body, the European Audiovisual Observatory (OAE), in collecting data on audiovisual industry. Created in December 1992, its mission is to gather and distribute information about the audiovisual industry in Europe. The Observatory is a European public body made up of 41 Member States and the European Union, represented by the European Commission. It operates within the legal framework of the Council of Europe and works alongside a number of associated and professional organizations in the sector and with a network of correspondents. This international body monitors business movements that take place within the European audiovisual space and takes note of actions that may lead to market concentration. In 2017 he conducted a study "Media ownership – Market realities and regulatory responses" [4] which described the situation of the ownership of companies that were within the European audiovisual space.

The European Audiovisual Observatory has a MAVISE database that collects information on the ownership of audiovisual companies operating within Europe. It covers all audiovisual services and video sharing platforms under the jurisdiction of a member country of the Observatory. MAVISE may also include services available in Europe that are not included in the records of the European audiovisual regulatory authorities.

For audiovisual services, MAVISE provides the following metadata:

- Name of the service: trade name plus, when necessary, the indication of a specific territorial or linguistic version.

- Type of service: TV channel (TV), FOD (free on-demand service), TVOD (on-demand transaction video), SVOD (on-demand subscription video), VOD (on-demand video N/A), VSP (video sharing platforms).

- Country: the country listed in the national regulatory register of public service media.

For audiovisual services not registered in any of the countries covered by the European Audiovisual Observatory, the assigned country is an assumption of the Observatory based on a number of criteria, such as language, content and offices.

- Service provider: company (or person) that operates the service. Entity on the register of a European regulatory authority.
- Final owner: The highest level of ownership that controls the service.
- Status of the service: public, private or mixed ownership.
- Target countries: the main audience to which the audiovisual service is addressed from a geographical perspective that is communicated by the service or evaluated by the Observatory based on a series of criteria such as language, technical coverage, field of registration, programming/editorial agenda and others.
- Genre of service programming.
- Registration bodies: entities usually represented by the European audiovisual regulatory authorities that have registered an audiovisual service.
- Register name: name of the audiovisual service as it appears in the registers of the European audiovisual regulatory authorities.
- Country of jurisdiction: State of the EU or the European Economic Area of the European Free Trade Association under whose jurisdiction the service falls, in accordance with the Audiovisual Media Services Directive 2018/1808.

> The European Audiovisual Observatory also collects information on the ownership of audiovisual companies operating within Europe

The MAVISE database is a first tool for tracking the concentration of ownership, but once the information is disaggregated, you need a team to take the whole picture. EurOMo will probably be responsible for using this data and supplementing it with data from other sectors within the media industry.

EU competition policy: market control

In order to avoid the concentration of the media within the European internal market, the European Union has a set of instruments in the field of law and the practice of competition. Specifically, the regulatory framework is set out in Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). On the one hand, Article 101 TFEU

prohibits agreements between undertakings which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market. On the other hand, Article 102 TFEU prohibits the abusive exploitation by one or more undertakings of a dominant position in the internal market or in a substantial part of it.

In addition, Regulation (EC) no. 139/2004 on the control of concentrations between companies [5] establishes a register detailing those that occur within the European internal market. It also provides for special treatment for the defense of legitimate interests linked to the defense of the plurality of the media. Article 21.4 states: (..) Member States may take appropriate measures to protect legitimate interests other than those considered in this Regulation which are compatible with the general principles and other provisions of Community law. Public security, plurality of the media and prudential rules shall be considered legitimate interests within the meaning of the first subparagraph. Any other public interest must be communicated by the Member State to the Commission, and must be recognized by the Commission for its prior examination of its compatibility with the general principles and other provisions of Community law before the measures referred to above can be adopted (...)".

Within the scenario of the competition policy of the media markets, it has been observed that the deployment of digital technology has had a double impact: it has reduced the entry costs of the mass media, it has opened a strictly regulated market to a wide range of new actors, and at the same time has also led to a trend towards concentration of ownership as the business model of traditional media has evolved. This last consequence has highlighted that there is no access to transparent information about who owns these media, a prerequisite for a meaningful understanding of the market, which in turn is necessary for any concentration control. and/or regulatory intervention. In addition, this media concentration can clearly influence the development and preservation of culture, information, education and democracy.

The Directorate-General for Competition is responsible for ensuring compliance with competition rules in the media sector within the European Commission. The cases and policy initiatives it deals with aim to ensure that consumers can benefit from both a wider selection and unrestricted access to high-quality content at competitive prices, as well as increased technological innovation in the sector. It is the market dimension that worries them, but it is complemented by the actions taken by those responsible for the development of digital policy.

In the field of competition action, the Commission has carried out various actions related to restrictions on the cross-border sale of television content and licensed goods, thus contributing to the functioning of the internal market. The Commission has also carried out research into the distribution of e-books, with the aim of defending innovation in the sector or ensuring the rapid restoration of competition in such a fast-paced digital market.

> Digital technology reduces the entry costs of the mass media and

> has opened a strictly regulated market to a wide range of new actors. However, it has also led to a trend towards concentration of ownership

One of the areas that can affect the concentration of ownership is mergers between companies. One of the Commission's main concerns is that competition should not be significantly hampered and that access to key elements (whether content, technology or interconnection) should not be affected. In recent years, it has acted in several cases, such as the authorization of the acquisition of Scripps by Discovery (February 2018). The approval was conditional on Discovery's commitment to make certain television channels available to current and future television distributors in Poland at a reasonable rate. Another case was the authorization of the acquisition of Sky by Comcast, which was approved without conditions.

Conclusions

The various actions taken by the European Union have recently shown that the concentration of the media is a matter of concern to European leaders. The impact of the lack of transparency regarding media ownership has been evidenced at a time dominated by misinformation and the complete digitalization of media consumption. It seems contradictory that the sector whose business is information and content is one of the most reluctant to report on who their owners are. This is not new because it has always been so in the media industry.

The opportunity that arises today can be offered by coordinating action between the European institutions and the Member States; and the existence of digital databases that can work with algorithms that make the crossing of information a simple and up-to-date task. In this way, the result will be a real picture of the whole of the European space with the possibility of applying Community regulation and policies in a more agile and effective way.

What is clear is that the political will is there and some resources have been allocated to launching the tool to obtain data on media ownership. The challenge is to take action and enforce regulations when data is available. I hope it does not stay in one more act of European voluntarism.

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