

Fastweb response to the DG INFSO consultation on “Television without Frontiers”
Directive review process

5- Media Pluralism – What should be the European Union’s role?

Media pluralism is essential for the democratic process in the Member States and in the European Union as a whole. Fastweb shares the Commission’s view that maintaining and developing pluralism is a complex issue, which involves several players at different levels - with different responsibilities. While the task of ensuring pluralism in the media sector cannot be pursued through Community legislation, Fastweb is of the opinion that the Commission’s competition enforcement and policy monitoring is a continuing priority to promote and maintain media pluralism in the European Union.

The rapid development of new systems of delivery and technology is expected to soon make audiovisual contents available to a broader number of users¹ and increase their possibility of choice. In the current context of increasing media concentration, where convergence can easily become an incumbent’s playground, universal access to attractive and diversified audiovisual content is key, as it triggers new audiovisual services and on-line content, in the interest of guaranteeing pluralism and variety of broadcasting services. Unjustified restrictions to the circulation of contents could inhibit the benefits deriving from technological evolution, limiting the availability of diversified offers to final users - ultimately to the detriment of cultural diversity, freedom and pluralism of the media.

Vertical and horizontal integration is likely to determine restrictions to distribution and/or availability of contents. Competition law provides useful tools to prevent the creation of barriers to access to content (from the point of view of media operators) and distribution channels (from the point of view of audiovisual content producers).² In this respect, to the extent that any anticompetitive behaviour in the media sector bears a direct adverse effect on pluralism, it is Fastweb’s view that both the Commission and national Competition

¹ See European Parliament, Committee on Culture and Education, report on the application of Articles 4 and 5 of Directive 89/552/EEC (the “TV without Frontiers” Directive), as amended by Directive 97/36/EC, for the period 2001-2002 (2004/2236(INI)), point J; Brussels, 15 June 2005

² Restrictive practices can be pursued through Article 81 EC; unjustified refusals to provide access to contents are caught by Article 82 EC; the application of the EC Merger Regulation in the media sector should prevent the constitution or strengthening of dominant positions that may adversely affect the capacity of other operators to compete in the market.

Authorities have a crucial role to play, when assessing agreements, unilateral behaviours or mergers.

However, competition and competition law are not enough to ensure media pluralism. In particular, regulatory measures to ensure the widest possible access to contents and to distribution channels appear to be mostly relevant. This should include the possibility of defining obligations to deal – at certain conditions – for operators with significant market power who may have incentives to foreclose access to some contents.

A further issue concerns the independence and neutrality of companies collecting data and figures on audience and the economic situation of providers and operators. These data and figures are extremely important for pluralism and the correct functioning of the media markets. From a regulatory perspective, as recognised in the Commission's Issues Paper, the availability of up-to-date, publicly accessible and comparable figures is an indispensable instrument for any public authority (at international, Community and national level) to detect situations in which pluralism is endangered. It is therefore necessary that these figures and data be collected – in each Member State – according to standard, transparent and non-discriminatory criteria.

From another perspective, the independence of collectors of audience figures is indispensable for access to advertising, which is an important source of income for media operators. Competition rules may be useful to deal with situations where one operator, controlling a data collection company, uses its data as a leverage to foreclose the market of advertising. Similarly, merger control rules may prove useful to prevent that integration between data collectors and media operators leads to audience data being collected in a non-impartial way.

In Fastweb's opinion, however, the Commission's role in monitoring, exchanging information and comparing legislation should be enhanced. In this respect, the Commission could provide appropriate guidelines, by soft-law or administrative measures, to ensure that audience data in Europe are collected according to independent, objective and non-discriminatory criteria.