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Panel Contribution:

**Competition Rules and the Media: Are they determinant or
complementary?**

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Introduction

Let me make a few remarks on the topic of this panel from a European perspective.

With the integration of the EU Charter on Fundamental Rights into the New European Constitution, media regulation and the safeguarding of freedom of expression and information are gaining even higher prominence on the European Union's agenda. One key aspect is creating the right competitive structures for ensuring basic values in the sector.

Let me briefly comment on four issues:

- (1) The consensus on basic goals for the sector across Europe, as it has emerged over the last decade. We will have to keep that in mind in any EU related regulatory reflection ;
- (2) The market structure that has evolved – more or less in parallel in all European countries. Media in the European Union are now firmly grounded on the dual system of public and private broadcasting. This means that we are facing quite similar agendas across Europe, and I believe also in this country;
- (3) The safeguards for the public interest in the sector that we still need. Can we rely on the instrument of general market regulation as competition law controls offer, or do we continue to develop the specific controls and public interest tests to ensure constitutional goals in the sector?

And finally,

- (4) Let me also make a brief comment on the challenges of the digital transition and the New Media that will have to be kept in mind when checking the adequacy of regulatory structures.

Firstly, the European consensus on the basic goals

The debate at European level over the last decade has led to a broad consensus on basic goals that are widely shared across the EU:

- *Pluralism*, as the basic public interest test for the media sector.
- *Cultural diversity*, standing for the preservation of national identities.
- *Choice*, where we have to tackle the task to give access to the New Media that innovation and markets open up. And that last point will take much weight in the debates ahead.

The EU Treaty allows Member States to put into place their media regulatory framework largely to their choice. I do not think that I should go in these brief remarks into any detail of the legal framework for the media sector as it has evolved in the EU. Just let me mention the fundamentals on which EU policy in this area is built:

- The basic framework for the media at EU level is set by the Television without Frontiers (TWF) Directive, and the associated Directives. The TWF Directive is now under review, particularly with regard to adjusting its provisions to the New Media

- The European Convention on Human Rights sets Europe-wide goals.
In the medium term, an overarching framework at EU level will be set by the new EU Constitution. The Constitution includes under Title II the Charter of Fundamental Rights. Title II / Article 11 stipulates "... The freedom and pluralism of the media shall be respected".
- Plurality requires the availability of choice. Choice between different opinions and offers within the same media but also between different types of media: access to TV, Print and New Media. The development of open competitive market structures is therefore vital. This makes Competition Law application a vital component of sound policies in the media sector

I do not think that I should go in these brief remarks into any further detail of the EU legal framework for the media sector as it has evolved. Just let me also recall the protocol on Public Service Broadcasting, as annexed to the EU Treaty. The protocol says:

The provisions of the Treaty establishing the European Community shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest,

while the realisation of the remit of that public service shall be taken into account.

Secondly, the dual system as a firm ground for an open pluralistic environment

Across Europe, we have seen the initial structure of the eighties—national public service broadcasters based on licence fee—evolve into the dual structure of the nineties adding private broadcasters based on advertisement revenues. By the end nineties, pay-TV and pay-per-view had emerged as a third major group of actors.

The outcome of these developments is that media in the EU are now based firmly on the dual system: public broadcasters and private broadcasters that should compete on a level playing field for the attention of the audience. The coexistence of public and private broadcasters has become the ultimate guarantee for diversity and freedom of information—even if that coexistence is not always without problems and market power structures must be addressed.

Across the EU, some 45% of revenues of television / broadcasting now come from advertisement, the rest in nearly equal parts from public broadcasting fees and from pay-TV subscriptions—and competition for those revenue streams delineates the main battlefields in the media sector of today, and the competition cases that we are facing.

The diversification of revenue streams is reflected by a diversification of platforms and products:

- Free TV ;
- Pay-TV / pay-per-view ;

Progressively:

- Interactive ;

And now high on the agenda:

- The transition to digital, with broadband Internet as a new comprehensive multi-channel digital infrastructure on the horizon.

Market delineations are becoming a moving target. Though competition has developed, all of the main media markets have remained highly oligopolistic. This is a main challenge for media and competition regulators across our Member States.

Thirdly, which instruments are needed?

The EU Treaty allows EU Member States to put into place their media regulatory framework largely according to their own choice, and some of them have put in place very elaborate and forward oriented systems of regulation. We have of course on this panel representatives of major Member States media regulatory agencies.

About half of EU Member States have established intra-media and/or cross media ownership controls, choosing different approaches and/or mixes of limitations on audience shares, share capital, and number of licences held. In a number of Member States, these systems are under review.

At the EU level, general market regulation under the form of application of competition rules emerged as the main prominent instrument for checking market power and foreclosure in media markets that remain highly oligopolistic.

The main goal is to maintain a fair balance within the dual system between public and private broadcasters, and to avoid overt concentration and foreclosure of media markets. All instruments of EU competition policy are concerned: control of market concentrations; antitrust control, the prohibition of anti-competitive agreements and of abuse of market power with the aim of foreclosing competitors; state aid control, in order to avoid that markets are tilted unfairly in favour of the public broadcaster.

This has meant that both the European Commission, in its role as guarantor of the EU competition order, as well as national competition authorities have emerged as major actors the media arena. With the decentralisation of EU anti-trust powers under the reform of the EU's antitrust regulations as from 1st May of last year, EU national competition authorities and regulators will further increase their role in this area.

Fourthly, the digital transition

Let me then turn towards the future. A major challenge for the media scene of the EU - and I believe also for this country - will be how to handle the vast new opportunities that will be opened by the digital transition ahead.

In the 25 Member States of the European Union, 180 million households are equipped with TV sets. Europe has now more than 30 million digital households, 20% household penetration.

At the same time we are living a silent revolution that may overtake traditional concepts of digital TV more rapidly than we think: Rapid growing broadband Internet penetration.

Fully interactive Broadband Internet has now reached 33 million households across the European Union—a penetration of some 18 percent of

households, 7% of inhabitants, out of which 80% DSL telephone wire based, and 20 % cable, with wide variations between EU countries. Growth rates of broadband connection over the last year have been over 100%—very similar to the growth rates we saw in mobile during the build up of the mobile networks that subsequently entirely transformed lifestyles, consumer behaviour and the revenue structures in the telecom sector within a period of less than five years.

If this development continues, Europe may reach a broadband Internet (fixed DSL and cable, and mobile) penetration at fifty percent of households well before 2010. The media landscape will then look very different. New Media would rapidly gain in importance, and new markets and additional revenue streams would develop.

We must keep the development towards those new markets open. The market must not be tilted during the transition from analogue to digital in favour of any actor. An open dual structure must be maintained. Turning the digital transition into more choice and plurality in the media sector will be a key task for a media policy that aims at open pluralistic structures.

Let me then end on a general comment

The dual system of public and private broadcasters has proved a sound basis for ensuring pluralistic formation of opinions and securing democratic structures of open expression and uncensored exchange of information—a basic value for the European Union and vital for EU membership. European experience demonstrates that firm application of competition law and the development of resistant independent regulatory structures are a must to guarantee sustainable open structures.

The independence of sector specific media regulators and firm principles of freedom of expression, anchored firmly in the legal framework, are an indispensable condition for an open development. In addition, strong Competition Authorities will have to ensure that basic underlying market power structures are in check.

A basic issue over the next years will be to get this balance right—in the EU as elsewhere. The acid test will be how far the legal and regulatory framework will allow wider choice, freedom of expression, and an open society.

Thank you.