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Structural Media Pluralism

## Media Concentration and Systemic Failures in Greece

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The Greek media landscape changed dramatically after the deregulation of broadcasting in the late 1980s. Despite a very significant rise in the number of media outlets, the level of ownership concentration is high in both the national newspaper and television markets, and has increased during the last decade. Moreover, a major problem of cross ownership has emerged. Strong anti-concentration rules were never enforced and legislation aiming to curb the economic power of media barons was blocked by the European Commission. The interdependence between political and media elites and the strong clientelistic relations that characterize the Greek political system are identified as the main factors behind the ineffective and contradictory nature of media regulatory policies.

### Introduction

The important role that the media play in shaping public opinion and the democratic process is recognized in Europe as a basis for special regulations to secure media pluralism. Under Article 10 of the European Convention on Human Rights, democratic states are obliged to protect and, when necessary, to take positive measures to ensure, diversity of opinion in the media. The European Parliament, the Commission and the Council of Europe have all underlined, in many reports and resolutions, the special democratic role of the media and the related need for pluralism, tolerance, and openness (European Parliament, 2008, 1994; European Commission, 2005a; Council of Europe, 2003).

Media pluralism is a concept that embraces aspects such as diversity in the ownership of media outlets, and variety in the sources of information, and in the range of content available to the public (Commission of the European Communities, 2007, p. 5). Diversity of ownership is therefore a necessary but not sufficient condition for ensuring media pluralism. Citizens' access to a variety of information sources, viewpoint diversity, and program diversity are also essential for media pluralism (K.U. Leuven-ICRI et al., 2009).

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Links between the level of concentration of media ownership and content diversity are indirect in most cases but there is a strong belief, shared among media scholars and regulators alike, that a high degree of concentration may constitute a threat for media pluralism. The dominance of a few leading players in the media market could be exploited to manipulate the supply of news and information, and influence public opinion. Regulating the ownership of media outlets has become the focus of public debate in most European countries, helped by the fact that it is far easier for regulators to apply ownership control rules than to attempt subjective judgments about program content (Klimkiewicz, 2010; Gardam & Levy, 2008; Open Society Institute, 2008).

In recent years the technological, economic, and social facets of globalization and liberalization have affected ownership structures (Peruško & Popović, 2008; Sarikakis & Chakravarty, 2006; Ozanich & Wirth, 2004; Doyle, 2002; Compaine & Gomery, 2000). They appear at the same time as challenges and as opportunities to media pluralism. On the one hand, digitalization and the Internet encourage diversity of information sources. On the other hand, digital convergence and the advent of transnational media conglomerates that operate in the wider information sector seem to strengthen a trend toward concentration of ownership. Under these circumstances, the question of how to regulate the media market becomes increasingly important.

European Union legislation does not provide for any legislation dedicated solely to the control of media ownership. An attempt to intervene at the Community level took place in the 1990s but was unsuccessful. Following the publication of the Green Paper on Pluralism and Media Concentration in 1992, the Commission proposed the harmonization of national restrictions in the area of media concentrations. However, the drafting of a directive on this hot issue proved to be politically unworkable.

The specifics of media markets in the various member states and the political sensitivities surrounding the subject were important issues in the discussions. In particular, the different countries did not accept that the criterion proposed, namely that of the audience, could be adjusted to the requirements of each country (Doyle, 1998; Hitchens, 1994). Finally, the Commission submitted a Communication to the Council and the European Parliament in which it refrained from any ambitious proposals and simply announced a second consultation phase (Commission of the European Communities, 1994) which led to no action.

Following the subsidiary principle, the rules aimed at providing plurality and diversity within the media industry are dealt with at a national level and under the supervision of the Commission, which checks that national rules do not hinder the functioning of the internal market (Karppinen, 2006; Harcourt, 2002; Kaitatzi-Whitlock, 1996). Competition law is the main tool for EU intervention in the media field. The merger regulation, in particular, plays an important role in keeping markets open to competition. But, given that non-economic factors carry little weight, it seems insufficient to deal with the threats to pluralism that media concentrations could pose.

The Directorate General for Competition has dealt with a number of joint ventures, acquisitions and mergers involving media companies. For example, in the 1990s, the Commission intervened twice to prevent a proposed joint venture involving Kirch Media Group, Bertelsmann, and Deutsche Telekom

(Hirsch and Petersen, 1998). Recently, the Commission examined a joint venture between BBC Worldwide and All3Media Germany (case no. COMP/M.5757), the acquisition of Digital+ by Prisa Telefonica and Telecinco (case no. COMP/M.5748) and a joint venture between Time Warner and CBS (case no. COMP/M.4142). In many of these cases, the intervention has had positive effects on pluralism. However, it can be argued that the decisions do not go far enough to promote media pluralism.

This shortcoming has been acknowledged by the European Commission and the European Parliament, which have published several documents in an effort to discuss the need for Community action in this field. The Commission emphasized in 2003:

Given the progressing concentration of the media sector and the proliferation of electronic media, the protection of media pluralism remains an important issue. Views are sought as to whether the Commission should re-examine the need for Community action in this field in more detail. (Commission of the European Communities, 2003, p. 22)

At the same time member states have implemented additional rules and as a result a variety of concentration control measures have emerged. The criteria used to determine dominance and unacceptable market concentration vary across Europe. Audience share, equity limits, voting rights, turnover, and market dominance have been used in different countries representing different regulatory approaches. Cross-ownership restrictions are also important in many cases. Measures adopted in most European countries in order to prevent monopolies or situations where companies exercise a significant market power appear to be heterogeneous, even taking into consideration the existing differences between national markets (Open Society Institute, 2008, 2005; Harcourt, 2005; Doyle, 2002).

The digital delivery platforms make it less feasible or even irrelevant to apply traditional ownership limits. A trend toward the liberalization of media ownership provisions is observed in EU countries. Less stringent numerical limits on the number of licenses that a single operator can hold or more flexible cross-ownership restrictions have been introduced. Rules to ensure fair access by third parties to conditional access systems of digital platforms remain important regulatory objectives but the control of concentrations in the digital environment is increasingly based on a set of flexible ownership limits (Open Society Institute, 2008; Ward, 2005).

The way media content is produced also has an impact on the overall level of plurality in the media (Ward, 2006). Readers who consult many newspapers and Web sites sometimes find they contain the same articles while television viewers who switch from one channel to another often complain about content uniformity. In addition, the deteriorating economic conditions in many segments of the media sector<sup>1</sup> have led to cost reductions and staff cutbacks negatively affecting content diversity. Many

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<sup>1</sup> For instance, in the USA, total paid circulation of daily newspapers fell 4.2% in 2008 compared with the previous year. That brings them down 11.9% since 2003. Advertising also has declined. The combined newspaper print and online advertising revenues declined by 27.2% in 2009 compared with the previous year. That brings them down 40.3% since 2003. Retrieved May 22, 2010, from Newspaper Association of

newspapers in particular narrow their reach and reduce the space, resources and commitment devoted to a range of topics. "Generic" editorial is increasingly being off-shored while syndicated and centralized newsrooms are being set up to create content that may be tailored for a niche market (Ala-Fossi et al., 2008; Pew Research Center's Project for Excellence in Journalism, 2009).

Clearly, diversity in the ownership of media outlets is not sufficient per se to ensure pluralism of media content. This is also affected by internal factors that determine how resources are managed. Generally speaking, we can differentiate between external or structural pluralism and internal pluralism (Commission of the European Communities, 2007; Doyle, 2002).

The former relates to the plurality of undertakings active in the market, with a belief that a monopoly or oligopolistic dominance of the market by a few major players constitutes a threat to pluralism. Regulatory practice is focusing on ownership structures and their potential impact on the news and information markets (Just, 2009; Iosifides, 1997).

The latter refers to quality and diversity of content and variety in the sources of information. The fair and diverse representation of and expression by various cultural and social groups, the co-existence of different media types and genres, the public's access to the whole spectrum of political and ideological viewpoints, and the representation of local communities and interests are important aspects of internal pluralism (K.U. Leuven-ICRI et al., 2009).

This article concentrates on issues of structural pluralism which are analyzed within the framework of the evolving Greek media landscape.

### **The Greek Media in Transition**

Until the 1980s, the Greek media scene was dominated by the public service broadcaster (ERT) that operated as a state monopoly. At the same time, the proprietors of even the largest publishing firms were persons who had emerged from the ranks of the industry and their business activities were limited to newspaper and periodical printing and publishing.

Of the nine entrepreneurs who were active in the national newspaper industry in 1980, four had no interest in any other company beyond the one that published and printed their paper. The rest controlled a total of just seven small and medium-sized enterprises, except those exclusively or primarily concerned with printing and publishing the Athens-based political dailies. Furthermore, six of these enterprises were general printers or publishing houses, and no newspaper proprietor appeared to have any significant interests outside the industry (Simmons & Leandros, 1993).

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America at <http://www.naa.org/TrendsandNumbers/Total-Paid-Circulation.aspx>; Revenue in local television fell by 7% in 2008 while the magazine industry also experienced a very significant drop in ad pages. Retrieved May 22, 2010, from The State of the News Media 2009 <http://www.stateofthemediamedia.org/2009/index.htm>

This changed in the early 1980s as big industrial and merchant capital generated from outside printing and publishing entered the national newspaper market for the first time. The replacement of "hot metal" with "cold type" composition led to capital restructuring and a dramatic transformation of ownership patterns. In some cases, the proprietors of well-established newspapers (*Akropolis*, *Kathimerini*, *Mesimvrini*, and *Vradini*) unable to implement modernization programs were forced to sell; while in other instances new titles were launched (*Ethnos*, *Eleftheros Typos*, *Epikerotita*, and *ProtI*) by entrepreneurs whose activities extended beyond the press.

The entry of industrialists, ship-owners and other business interests into the media scene was an important way for these interests to try to influence public opinion and to exert pressure in the political arena to the benefit of their business interests. The power and prestige that accompanies the possession of a political daily is certainly a strong influence behind the decision to acquire a newspaper—although this is scarcely something that is admitted publicly (Dunnett, 1988). However, the new opportunities opening in audiovisual media and the information sector in general must also be regarded as a factor that, since the early 1980s, has prompted the entry of capital into national newspapers.

In Greece, broadcasting is a constitutionally regulated activity. According to Article 15 paragraph 2 of the Greek Constitution, radio and television are transmitted under the direct control of the State<sup>2</sup>. The Council of State (Symvoulío Epikrateias), the highest administrative court, initially interpreted this constitutional provision in the sense that the legislator may choose either to establish a public monopoly, or to allow private broadcasting under the supervision of the state (Council of State, Decision 5040/1987). Beginning in 1987, the public monopoly was gradually abolished, and a mixed system of public and private broadcasting established.

Local, private, and municipal radio stations were allowed in 1987 and television stations in 1989, with licenses granted by the government on the advice of the Greek National Council for Radio and Television (ESR), the independent administrative authority founded in 1989. The ESR is a seven-member body, appointed by the Greek Parliament.

Law 1866/89, which abolished the state monopoly in the television market, gave priority to existing media companies and stated that among the criteria to be taken into account in granting or renewing a license to establish a TV station were the experience and tradition of the shareholders of the company in the field of mass media (Official Journal A/222/06.10.1989).

Even worse, the ESR failed to immediately establish strictly enforceable licensing and conduct rules. As a result, media owners grabbed transmission frequencies and commenced broadcasting in a legal void as regards licensing and company conduct. This arbitrarily acquired new power of certain media barons enabled them to demonstrate contempt and recurring signs of arrogance—not only toward politicians but also toward society and the National Radio and Television Council.

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<sup>2</sup> Retrieved November 20, 2009, from

[https://www.eispa.gr/opencms/opencms/epa\\_site/downloads/syntagma.pdf](https://www.eispa.gr/opencms/opencms/epa_site/downloads/syntagma.pdf)

Even when legislation existed, media entrepreneurs tended to ignore it, leading to frequent violations of advertising and copyright rules and labor legislation. Therefore, it can be argued that the Greek electronic media industry was thrown into anomie right from its inception (Leandros, 2000; Papathanasopoulos, 1993) and that Greece represents a case of "savage deregulation" (Hallin & Mancini, 2004; Traquina, 1995).

The entry of media barons into broadcasting strengthened their influence decisively. According to Mouzelis and Pagoulatos, "the owners of the media represent a center of power that no politician dares to question, unless he aims to commit political suicide. Their power is being reinforced by their dominant position in numerous business fields (telecommunications, information technologies, construction etc)" (2003, p. 22). During the last 20 years, successive governments have tried to promote transparency and limit concentration in the media sector<sup>3</sup>. However, as will be shown in subsequent sections of this article, their actions were contradictory and ineffective.

### Media Concentration

After deregulation in 1989, the number of private television stations increased steadily, and two decades later there were 135 private analog TV stations with a national, regional or local license (<http://www.esr.gr/news.php>, retrieved August 14, 2009). Despite the large number of outlets, five private channels that belong to conglomerates with activities in many sectors of the economy dominate the scene (Mega, Ant1, Alpha, Star, and Alter).

Beneath these five major players, a second layer of channels operates, achieving a fringe viability. It consists of tens of small channels with a variety of transmission ranges all competing for the same small population of viewers and a piece of advertising pie. Cut-throat competition threatens the commercial viability of the small channels as well as the market share of the dominant players inevitably destroying the possibility of a decent standard of programming content and leading to high levels of sensationalism (Papathanasopoulos, 2001).

Table 1 shows the TV stations' audience shares for the period 2000–2008 and how the total time spent by viewers is distributed to the stations. The combined share of the five leading private channels has declined slightly but remains at an extremely high level (68.5% in 2007–2008 compared to 74.9% in 2000–2001). All other private channels accounted for less than 16% throughout the period under examination.

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<sup>3</sup> Since 1990 the two main parties, New Democracy and PASOK, have interchanged in government.

**Table 1. Television Stations' Audience Shares, 2000–2008.**

TV Channels	2007–8	2006–7	2005–6	2004–5	2003–4	2002–3	2001–2	2000–1
ET 1	3.7	3.8	4.2	4.2	5.3	5.9	5.6	6.1
NET	10.4	9.6	10.0	8.7	8.7	6.0	4.5	4.2
ET 3	3.1	2.5	2.4	2.0	2.0	1.6	----	----
MEGA	17.6	19.0	18.6	18.4	16.7	18.2	20.0	22.1
ANT1	15.1	17.1	18.2	20.6	20.9	22.8	22.5	21.9
ALPHA	14.2	14.1	16.0	13.1	12.9	13.1	13.4	15.3
STAR	10.6	10.5	10.8	11.6	11.6	12.1	11.0	13.4
ALTER	11.0	9.8	8.8	10.8	11.5	9.9	7.4	2.2
Others	14.3	13.6	11.0	10.6	10.4	10.4	15.6	14.8

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NET	10.4	9.6	10.0	8.7	8.7	6.0	4.5	4.2
ET 3	3.1	2.5	2.4	2.0	2.0	1.6	----	----
MEGA	17.6	19.0	18.6	18.4	16.7	18.2	20.0	22.1
ANT1	15.1	17.1	18.2	20.6	20.9	22.8	22.5	21.9
ALPHA	14.2	14.1	16.0	13.1	12.9	13.1	13.4	15.3
STAR	10.6	10.5	10.8	11.6	11.6	12.1	11.0	13.4
ALTER	11.0	9.8	8.8	10.8	11.5	9.9	7.4	2.2
Others	14.3	13.6	11.0	10.6	10.4	10.4	15.6	14.8

Source: AGB Nielsen Media Research, TV Yearbook 2000–2008. The data cover the period from September 1 through August 31 of the following year.

A significant feature of the Greek broadcasting field since its liberalization in 1989 is the marginalization of the public broadcaster (Zacharopoulos, 2003). However, widespread dissatisfaction of the public over the standard of programming content in most private television channels is helping the public broadcaster to improve its position in recent years. The market share of the three channels (ET-1, NET, ET-3) of the public broadcasting company was 17.2% in 2007–2008 compared to 10.3% in 2000–2001.

The print media market is also characterized by a plethora of outlets. At the end of 2008 there were 162 daily regional newspapers and 37 Athens-based general interest, sports and financial dailies. Paradoxically, while the circulation of general interest dailies that are published in Athens and have a national reach is falling (104.4 million copies were sold in 2008 compared to 247.4 million copies in 1990 –see Table 2), the same cannot be said for the number of titles. Though many established newspapers suspended or ceased publication over the last 15 years, new titles, or old ones under new ownership, have sprung up.

**Table 2. Titles, Circulation and Concentration in the Greek National Newspaper Market, 1990–2008.**

Year	Number of titles	Total circulation (copies so	Average daily circulation	Percentage of circulation for top four companies
1990	19	247,387,173	834,415	59.0
1991	17	217,139,458	725,317	63.9
1992	15	187,869,942	622,605	70.8
1993	17	191,172,525	643,599	66.8
1994	19	192,931,558	710,402	64.6
1995	18	179,718,978	603,648	62.9
1996	18	190,810,135	667,459	60.8
1997	21	159,125,501	565,528	53.8
1998	24	140,849,223	499,771	55.3
1999	23	139,458,580	480,812	61.7
2000	27	142,377,863	518,522	57.3
2001	25	143,693,890	507,126	60.8
2002	23	135,796,149	462,187	65.7
2003	23	135,347,588	452,409	68.0
2004	23	140,328,823	471,954	69.2
2005	24	125,286,973	430,128	66.4
2006	24	120,022,292	404,715	69.4
2007	23	113,752,763	384,596	70.0
2008	22	104,354,166	351,670	69.7

Source: Derived from the Athens Daily Newspaper Publishers Association, *The Circulation of National Newspapers*, data published each year, 1990–2008. Retrieved August 14, 2009, from <http://www.eihea.gr>

Examining the annual data of the Athens Daily Newspaper Publishers Association, one sees that in 1990 there were 19 morning and afternoon general interest dailies published in Athens with an average daily combined circulation of 834,415 copies. In 2008 there were 22 titles with an average daily combined circulation of only 351,670 copies.

Despite the large number of titles, the level of concentration is high in the national newspaper market and has increased considerably during the last decade. As Table 2 shows, the four leading publishing houses controlled 69.7% of the market in 2008 compared to 57.3% in 2000, 62.9% in 1995 and 59% in 1990. They adopted diversification strategies during the last two decades and they were successful in developing their activities in different sectors of the media and beyond. These four publishers dominate:

Lambrakis Press S.A. publishes *Ta Nea* and *To Vima* (their combined share of the market was 29.6% in 2008), two more newspapers and 24 magazines. The company is also engaged in printing,



tourism, digital economy (portals and e-commerce shops), book publishing and reselling, press distribution, and marketing.

Kathimerini Publishing S.A. publishes *Kathimerini* (15% of the market in 2008), books and a range of magazines. The company operates an Internet information portal and is engaged in the exploitation of printing houses and presses.

Ch. K. Tegopoulos Editions S.A. publishes and prints *Eleftherotypia* (13.2% of the market in 2008), its Sunday edition, and magazines covering general and specialized interests that are distributed with the newspapers. The company also has strategic participation in companies that manage free-to-air television, book publishing, and call centers.

Finally, Pegasus Publishing S.A. publishes *Ethnos* (11.9% of the market in 2008), five more newspapers and 14 magazines. The company has subsidiaries in printing, the digital economy, audiotext services, bookbinding, press distribution, television, musical events, and TV productions.

The increase of concentration in the national newspaper market becomes even more apparent if we use the Herfindahl–Hirschman Index which is calculated by summing the squares of the individual market shares of all firms in the industry. The U.S. Department of Justice and the Federal Trade Commission regard markets with HHI between 0.1 and 0.18 (or 1000 to 1800) as moderately concentrated. Mergers producing an increase in the HHI of more than 0.01 potentially raise significant competitive concerns and may provoke scrutiny (Hoskins, McFadyen & Finn, 2004; Albarran, 1996). In the case of the Greek national newspaper industry, the HHI was 0.1566 in 2008 compared to 0.1126 in 1990, indicating a significant increase in market concentration. Thus, the Herfindahl–Hirschman Index and the four-firm concentration ratio are consistent with respect to the direction of change and point toward an increase in concentration in the national newspaper market since 1990.

### **Cross Ownership**

Moreover, a major problem of cross ownership has emerged. Whereas in other countries efforts were made and legislation was passed to discourage or forbid the concentration of media, in Greece law 1866/89 gave preference to the media companies in granting licenses for private radio and television stations, and several anti-concentration rules and restrictions were never enforced. In this way the government satisfied the media owners who aspired to strengthen their position in the new communication map of the country.

The political instability in 1989–1990 created favorable conditions for initiatives by the media owners to exercise pressure on the government. Papathanasopoulos points out:

As the battle for political power between New Democracy and PASOK proves to be more difficult than expected and the country is literally dragged into successive electoral confrontations, businessmen and publishers seem to realize the inadequacy of political

authority to stop them and continue their plans for the establishment of television stations. (1994, p. 251)

The result was the creation of a powerful oligopoly around a small number of media corporations that own national dailies, radio and TV stations, many magazines, and book publishing houses, and extend their activities to the new media, telecommunications, and culture.

The proprietors of the four leading publishing companies have important interests in the electronic media and three of them (Chr. Lambrakis, Chr. Tegopoulos, and G. Bobolas, the main shareholder in Pegasus Publishing) cooperated in 1989 to create *Mega* channel, which has consistently occupied one of the first two places in terms of audience share. The Bobolas family also controls a group of manufacturing and construction companies. The Alafouzou family which owns *Kathimerini* also controls *Skai* channel which started broadcasting on April 1, 2006 as well as four radio stations and a number of shipping and construction companies.

The group of companies controlled by the Bobolas and Alafouzou families can be characterized as general conglomerates that incorporate media enterprises in wider economic empires. Under these conditions the related problems of media concentration, cross ownership and instrumentalization of the media have become extremely important and in certain periods they have dominated the public debate and even the political life of the country (Skamnakis, 2006; Papathanasopoulos, 2005).

Due to the large number of media outlets, the problem in Greece is perceived to be the increase in media power and its impact on the political system rather than the need to promote plurality through improving the diversity of content. The media can pressure politicians by selectively exposing corruption, or by publicizing the activities of certain political figures or parties while ignoring others. Media owners can therefore exert strong influence on the political process and there are accusations that some politicians attempt to cultivate preferential relations with the media by offering state services and especially access to lucrative state contracts or by promising to do so in the future. An umbilical cord between media barons and some politicians may lead to "a mutual accommodating relationship of questionable legitimacy" (Mouzelis & Pagoulatos, 2003, p. 23).

On the other hand, political elites have an interest and systematically attempt to influence and up to a point control the media. The granting of television licences and the enforcement of anti-concentration regulation often becomes a political game and a tool in the hands of the government, which attempts to obtain tactical advantage over the media barons (Panagiotopoulou, 2004; Daremas & Terzis, 2000; Paraschos & Zacharopoulos, 1993).

### **The Greek Paradox**

It can be argued that the evolution of the Greek media system has been affected by the continuing relevance of clientelism in the sense that political actors promote the economic interests of the media owners in exchange for political support by the latter (Skamnakis, 2006; Hallin & Papathanasopoulos, 2002). However, as pointed out by Hallin and Mancini, clientelism is associated both

with a tradition of evasion of the law and with threats by the government to enforce regulations selectively (Hallin & Mancini, 2004, p. 137).

The interdependence between political and media elites explains—to a large extent—the “Greek paradox.” Strong anti-concentration rules that have never been enforced are introduced in parallel with a ‘savage deregulation’ of broadcasting and a “Greek patent” aimed at preventing companies interconnected with mass media businesses from obtaining public contracts.

Law 1866/1989, which allowed the operation of private TV stations and gave priority to existing media companies, also attempted to limit the concentration of media ownership. No physical or legal person could hold more than 25% of the shares in only one company that owns a television station (article 4, paragraph 1). This extends to relatives of that person, up to the fourth degree of kinship. Furthermore, according to Law 2328/1995, participation in more than two different categories of media (press, radio, TV) was prohibited (article 1, paragraph 10 – Official Journal A/159/03.08.1995).

In reality, that law was never enforced (e.g., *ANT1*, *STAR TV*, Alafouzou group of companies) and the same is true with respect to subsequent legal efforts. In 2001 an ex-member of the National Council for Radio and Television revealed that the Council examined the shareholders lists of the television stations of national range and discovered a number of infringements (Psychogios, 2001). Yet no action was taken.

#### **Media Companies and Public Contracts**

A constitutional amendment passed in 2001 (Article 14, paragraph 9) introduced new transparency and anti-concentration rules, barring those active in the press and electronic media from participating in other economic activities that bring them in contact with the state. The prohibition also covered relatives, dependents or intervening companies. Since then and until recently the incompatibility between the ownership of media companies and state contracts was at the center of a judicial and institutional debate in Greece and a hot political issue (Alivizatos, 2004). Indeed one of the key slogans of the New Democracy party in the parliamentary elections of March 2004 was its promise to crack down on corruption concerning state contracts with construction firms owned by conglomerates that also possess media holdings.

Initially, law 3021/2002 (Official Journal A/143/19.06.2002) allowed a relative to prove that he/she is financially independent from the owner of a media enterprise so that the principle of incompatibility does not apply. However, the Council of State decided that the provision included in law 3021/2002 is unconstitutional because the constitution essentially aims at preventing the media from exercising any influence in the procedure of contracting out public operations. The judgment considers that, having in mind the particular situation of relations between relatives in Greece, there is a community of interests that directly influences the financial activities of persons (Council of State, Decision no 3242/2004). As a result, on October 12, 2004, the ESR rejected an application for a certificate to a construction company owned by Leonidas Bobolas, acknowledging the identity of interests shared by him and his father Georgios Bobolas, publisher of *Ethnos* and shareholder of *Mega* television station.

The question of breaking the power of media entrepreneurs seeking access to lucrative public contracts was the subject of a new law introduced by the New Democracy government following its success in the elections of March 2004. The new media bill was voted by the Parliament on January 25, 2005, and made the ban on relatives up to the third degree of relation absolute (article 4 – Law 3310/2005 “Measures for the safeguarding of transparency and the averting of infringements in public procurement proceedings,” Official Journal A/30/14.02.2005). At the same time it set at 1% the minimum percentage of share capital of a media enterprise whose ownership legally precludes businesspeople from winning state contracts (in the previous law the threshold was 5%).

The new law also prohibited off-shore companies from participating with more than a 1 percent stake in a media company or in a company bidding for public contracts. ESR which was responsible for the application of the law, had to register all companies taking part in tenders for major public works and could revoke the license of a media company caught in breach of the law (articles 5–7).

The Federation of Greek Industries expressed its opposition to the law, describing it as a ‘Greek patent’ that will hurt competition and add huge costs to enterprises that are in no way involved in the media but do have transactions with the State. However the most important and at the end decisive challenge came from the European Commission. Following a letter of formal notice sent to Greece on March 23, 2005, and the reply from the Greek national authorities received on April 7, the European Commission decided to formally ask Greece to change law 3310/2005.

#### **The Intervention of the European Commission**

The Greek government claimed that threats to pluralism and objectivity of the media led to the introduction of law 3310/2005 and that the national legislature has sovereign power in this field. The Greek government considered that the aim of the incompatibility provision is to prevent the creation of conditions that could endanger the essential legal principles prescribing transparency.

The Commission rejected the Greek government's argument that the media could use their power to wield influence over the procedures of public procurement, which, according to the Commission, are to be conducted in a way that is not politically tainted. The Commission pointed out that law 3310/2005 breached the Community directives on public procurement and the principal of equal treatment of the participants, as well as the exercise of almost all the fundamental freedoms acknowledged by the EC Treaty.

The Commission's request took the form of a “reasoned opinion,” the second stage of the infringement procedure under Article 226 of the EC Treaty. Given that the law in question was already producing its effects, the Commission gave the Greek Government three weeks to reply and reserved the right to refer Greece to the European Court of Justice (European Commission, 2005b).

In its response sent on May 10 to Brussels, the Greek government announced that it will table a legislative amendment in Parliament by the end of May to postpone the implementation of the above law on public tenders for four months so that government officials can discuss this controversial legislation

with the European Commission. In early November 2005, the Greek Parliament voted a new act that did not automatically assume a conflict of interest when a media owner or shareholder bids for a public contract but it requires the existence of a judicial decision referred to the punishable act of corruption, committed by a public contractor (Law 3414/2005 –Official Journal A/279/10.11.2005).

Nevertheless, the European Commission decided to take legal action against Greece before the European Court of Justice concerning the compatibility of Joint Ministerial Decision No 24014/2005 on the evidence required for the application of Law No 3310/2005, as amended by Law No 3414/2005. That act provides that both participants and other so-called “interconnected” persons operating in the media market must systematically submit to the Greek National Council for Radio and Television a series of extracts from the judicial record as well as other certificates and statements, otherwise they will be disqualified (European Commission, 2007).

The Commission took the view that this decision introduced grounds for exclusion from public procurement in Greece that are incompatible with the Community directives and that it made the exercise of most of the fundamental freedoms more difficult or, at the very least, less attractive. The decision in question was therefore considered incompatible with Community law.

Greece’s reply of January 29, 2006 (in the form of a new draft decision) was not deemed to be satisfactory. Instead of the above documents, the new draft required tenderers—who must not have been convicted of any charge of corruption by means of a final judgment that has the force of *res judicata*—to make an official declaration. However, it still provided for the intervention of ESR, failing which the tenderer will be disqualified, before the signature of the contract and before any such decision has been taken with regard to the participant concerned. This draft decision was contrary to Community law because it provided a fresh reason for exclusion, namely in the event that the tenderer failed to submit the necessary documents to the Greek National Council for Radio and Television so that it can decide whether the tenderer may sign the contract.

Finally, on October 9, 2007, the National Council for Radio and Television decided to discontinue the issuing of certificates establishing incompatibility between the ownership of media enterprises and the conclusion of contracts with public entities. In fact, the competence of ESR is limited to issuing a certificate on the existence of such an incompatibility based on the exclusive condition that a final condemnatory court decision related to the offense of active corruption has been notified to the Council by the interested enterprise or by the Authority responsible for the tender.

In taking this stance, the Independent Authority takes full account of a previous Ministerial decision (published a month earlier) listing the supporting documents for the registration of all these companies with ESR. The Greek government has in fact finally accepted all the observations of the European Commission regarding the enforcement of three consecutive laws (3021/2002, 3310/2005 and 3414/2005) related to this subject. In view of these developments, the European Commission on October 17, 2007, announced the withdrawal of the infringement procedure concerning this issue against Greece before the European Court of Justice.

### **Recent Developments in Regulation and Policy**

The change of policy became even more apparent by a new law on "Concentration and licensing of media enterprises" which was voted by the Greek Parliament in July 2007 (Law 3592/2007 –Official Journal A/161/19/07/2007). The said law provides that a legal entity can own one television station broadcasting news and at the same time participate in an additional one, provided that this participation does not result in the control of the latter. The relevant market may be geographic (national–regional–local), content–based (information or other), or technological (broadcast or subscription). Dominant position may be declared whenever advertising space or time grows above a threshold (regardless the content).

With regard to the control of concentrations in the broader media market, the measuring criteria are the advertising expenses and the sales receipts. Moreover, a limit is set beyond which a (forbidden) dominant position is considered to have been reached. In the case of a company or an entrepreneur who operates in one media market (television, radio, newspapers, or periodicals) a share in excess of 35% constitutes a dominant position and the relevant figure is lower if there are activities in two or more media markets (article 3, paragraph 3).

Alongside the National Council for Radio and Television, the Competition Commission now also has the authority to enforce the said rules (article 18). Abuse can be asserted when there is: 1) direct or indirect price–fixing or other inequitable terms, 2) application of unequal terms in similar situations, and 3) unjustified tied sales. Sanctions may be also imposed in cases of concentration or of collusive practices.

The Competition Commission has been granted the competence to ascertain concentration of control, to take necessary measures, and to impose sanctions, and remains vested with all powers granted by the general provisions in force, particularly Competition Law 703/1977 (Official Journal A 278/26.09.1977). In essence, the legislature has recognized the inability of the National Council for Radio and Television to implement anti-concentration rules and attempts to strengthen legal provisions and monitoring procedures.

### **Conclusion**

Since the late 1980s, the Greek media system has been transformed by the entry of big industrial and merchant capital into the media scene, and by the "savage deregulation" of broadcasting. As a result a major problem of cross ownership and media concentration has emerged. In most cases important media companies followed diversification strategies, extending their activities in different sectors of the industry. There were also a number of general conglomerates that incorporated media outlets in their wider economic empires. Today, despite a large number of media outlets, a few leading players dominate the scene and account for about 70% of the television and national newspaper market.

The oligopolistic dominance of the media market limits structural pluralism and constitutes a threat to the diversity of information that is desirable in a democratic society. Furthermore, given the

opinion-forming power of the media, the increased influence of media barons has generated fears and allegations of preferential relations with some members of the political elite.

Regulatory responses to the problems of media concentration and cross ownership were contradictory and ineffective. On the one hand, the law that abolished state monopoly in television gave priority to existing media companies in granting a license and, more important, the National Council for Radio and Television failed to establish enforceable licensing and content rules. Even when legislation existed, media owners tended to ignore it.

On the other hand, legal provisions that attempted to limit the concentration of media ownership were passed through the Parliament but were never enforced.

Moreover, concerns about the instrumentalization of media led to a constitutional change and new laws aiming to bar entrepreneurs active in the media from taking part in tenders for major public works. Following infringement procedures by the European Commission, the Greek government was forced to abolish conditions that excluded the owners of media companies from public procurement.

The ineffective and contradictory nature of regulatory policies that attempt to promote structural pluralism is a symptom of the interdependence between political and media elites. In a media system characterized by clientelistic relations, phenomena such as law evasion and preferential treatment of certain entrepreneurs develop in parallel with the use of laws and regulations as tools in political games.

Media regulation is part of the political process. The concentration of ownership in a few hands is potentially dangerous, in that it means a concentration of influence that can be used for commercial, political, or personal gain. This has been recognized by politicians from all sides of the political spectrum to the extent that constitutional amendments strengthening transparency and anti-concentration provisions were voted in 2001. Moreover, allegations and questions about corruption concerning state contracts with conglomerates that also possess media holdings dominated the campaign during the Parliamentary elections of 2004.

In many European countries, the problems of media concentration and cross ownership have evolved in a climate of relative public indifference. In Greece by contrast these issues have remained at the center of the public debate throughout the period under examination. Yet, the political system failed in its efforts to curb the increase in media owners' power. Even worse, democracy has been subverted and diminished by the conditions of anomie that prevailed in broadcasting as media interests managed to manipulate the political process to their own ends. It seems that at the end of the day, despite all the allegations and promises, clientelistic relations ensured continuation of the alliances between media and political elites.

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