



MAGISTERARBEIT / MASTER'S THESIS

Titel der Magisterarbeit / Title of the Master's Thesis

Media ownership in Europe, the case of Vivendi

verfasst von / submitted by
Elisa Visigalli

angestrebter akademischer Grad / in partial fulfilment of the requirements for the
degree of

Magistra der Philosophie (Mag. phil.)

Wien, 2017 / Vienna 2017

Studienkennzahl lt. Studienblatt /

A 066 841

Studienrichtung lt. Studienblatt /
degree programme

Magisterstudium Publizistik-
u. Kommunikationswissenschaft UniStG

Betreut von / Supervisor:

Univ.-Prof. Dr. Katharine Sarikakis

Eidesstattliche Erklärung

Hiermit erkläre ich an Eides Statt, dass ich die vorliegende Arbeit selbstständig und nur unter Zuhilfenahme der ausgewiesenen Hilfsmittel angefertigt habe.

Sämtliche Stellen der Arbeit, die im Wortlaut oder dem Sinn nach anderen gedruckten oder im Internet verfügbaren Werken entnommen sind, habe ich durch genaue Quellenangaben kenntlich gemacht.

Wien, Juni 2017

Acknowledgment

Many people have supported me during my studies and in particular during the writing of my master thesis. I want to use these last sentences to thank everybody.

My family has always believed in me, especially when I was insecure. They have supported me in every decision and in every period of my life. Moreover, they allowed me to study as long as I wanted, also motivating me to follow my interests. A personal thanks goes to my parents and my sister, which are my rocks, and to my grandmother that as well as my mother, suffers for my absence, but tried not to show it.

Another particular thanks, is dedicated to all my friends that from different parts of the world always find a way to stay close to me and make me laugh, to support me and offer me their knowledge that was also fundamental for the writing of this work. I want to thank my boyfriend for the perseverance that he has, and for making every problem that I have disappear.

During the winter semester 2015/2016 I attended a research seminar about freedom of expression, with professor Katharine Sarikakis. From this seminar came a project, developed by me and two other students, Anna Gerhardus and Andreas J. Martin, and supervised by the professor and her research assistant Izabela Korbiel. The professor gave us the possibility to explore this project some more, in order for it to become a master thesis. I want to thank my supervisor and her assistant for their insightful feedback and the discussions that we had together. I want to thank my colleges for this incredible journey that we have done together and for the cooperation for the collection of the data regarding the main network.

Table of contents:

Introduction.....	8
1. The evolution of the media market	11
2. Methodology of the network analysis	19
2.1. Identification of the companies involved in the investigation	21
2.2. The criteria for the collection of data	22
2.3. The creation of the networks	23
2.4. The creation of the main network.....	23
2.5. MAVISE database problems and inaccuracy.....	24
2.6. Remark on the data collection	26
3. Network analysis.....	27
3.1. Description of the network.....	27
3.2. Results including Vivendi	29
3.3. Conclusion	31
4. Methodology of the policy analysis	33
4.1. Identification of what needed to be investigated and how	33
4.2. Identification of the policy to analyse.....	34
4.3. The process.....	34
5. Policy analysis.....	35
5.1. European competition rules	38
5.2. The period between 1985 and 1995.....	41
5.2.1. The first policies in Telecommunications sector	42
5.2.1.1. The British Telecommunications case.....	42
5.2.1.2. Green Paper on the Development of the Common Market for Telecommunications Services and Equipment.....	43
5.2.1.3. Directives on infrastructure and competition	44
5.2.1.4. Green Paper on the liberalisation of telecommunications infrastructure and cable television networks ant the following consultation	45
5.2.2. The first policies in Audiovisual Media sector	49
5.2.2.1. Television without Frontiers Directive.....	49

5.2.2.2.	Green Paper on Pluralism and media concentration in the internal market	51
5.2.2.3.	Green Paper: “Follow-up to the Consultation Process Relation to the Green Paper on “Pluralism and media concentration in the internal market”	52
5.3.	The period between 1995 and 1999.....	56
5.3.1.	New Audiovisual policies after the period of consultations	56
5.3.1.1.	The Draft Directive on media ownership.....	56
5.3.2.	The implementation of telecommunications competition	58
5.3.2.1.	Full Competition Directive	58
5.3.2.2.	Green Paper on Convergence of the telecommunications, media and information technology sectors and the implications for regulation	59
5.3.2.3.	Green Paper on the results of public consultations that followed the Green Paper on and the implications for regulation	59
5.4.	The period between 1999 and 2004.....	62
5.4.1.	The electronic communications regulatory framework	63
5.4.2.	The application of the Television Without Frontiers Directives.....	66
5.5.	The period between 2004 and 2014.....	67
5.5.1.	The Audiovisual Media Service Directive	68
5.5.2.	The new regulatory framework for electronic communications	69
5.6.	The period between 2014 and 2017.....	70
5.6.1.	The new regulatory proposals	70
5.7.	Conclusion	72
6.	The conflict for the control of Mediset	75
6.1.	The Italian audiovisual landscape.....	75
6.2.	The Italian audiovisual legislation	77
6.3.	Vivendi enters the Italian telecommunications market	80
6.4.	The deal between Vivendi and Mediaset.....	81
6.5.	Vivendi changes strategy and begins to buy.....	83
6.6.	The juridical development	87
6.7.	The influence of Vivendi in the Italian audiovisual landscape	89
6.8.	The Network analysis.....	90
6.8.1.	Network of the interconnections of the owner of Telecom Italia in 2014	90

6.8.2. Network of the interconnections between Bolloré Group and Fininvest in 2017	91
6.9. Discussion about the case	92
7. Conclusion	95
8. Appendix	102
8.1. Appendix I, European Commissioner Martin Bangemann	102
8.2. Appendix II, main network	104
8.2.1. Appendix IIA, main network characterized by companies activity	104
8.2.2. Appendix IIB, main network characterized by country of establishment	106
8.3. Appendix III, main network focus on the Italian companies	108
8.4. Appendix IV, network of the interconnections of the owner of Telecom Italia in 2014	109
8.5. Appendix V, network of the interconnections between Bolloré Group and Fininvest in 2017	110
9. Abstract	112
10. References	113

Most used abbreviations

AGICOM	<i>Autorità per le garanzie nelle comunicazioni</i>
AVMSD	Audiovisual Media Service Directive
BEREC	Body of European Regulators for Electronic Communications
CEC	Commission of the European Communities
CONSOB	<i>Commissione Nazionale per le Società e la Borsa</i>
ECT	EC Treaty
EP	European Parliament
EU	European Union
ICT	Information and Communications Technologies
IT	Information Technology
ONP	Open Network Provision
OTT	Over The Top
SIC	<i>Sistema integrato delle comunicazioni</i> (Integrated communications system)
TEEC	Treaty establishing the European Economic Community
TFEU	Treaty on the Functioning of the European Union
TU	<i>Testo unico della radiotelevisione</i>
TVWFD	Television Without Frontiers Directive
VOD	Video on Demand
IBID	Ibidem

Introduction

Audiovisual and telecommunications sectors have lived in the last thirty years a rapid evolution. This overwhelming process involved a whole of events that happened together and that were one the causes and the stimulus of the other. The passage from states monopolies to a liberalized market, was an incentive for technology to develop but, at the same time, the technological development permitted this transition. Liberalization in audiovisual and communication market, together with the technological development lead to convergence that allowed the creation of new kinds of services that were, in turn, the cause and the stimulus of concentration in the market.

Starting from this first reflection it is possible to declare the study area of this master thesis:

what shapes audiovisual market?

This area of study can be faced starting from different points of view and implies us to answer many other questions. It makes reflect on which kinds of enterprises have more influential power in the audiovisual market, how those companies influence the legislative process, how they manage to maintain their power. The project brought us to consider this as the broader study area and then every one of us have individualized another more specific research question.

The process, that started from the technological development, and that brought to the convergence in media market, has created a dens weave of business interconnections between media companies and telecommunications companies. This network of relationships is difficult to catch because it can be realized by advertising accords, acquisitions, or creation of new joy ventures. These kinds of deal are many and not always clear. Reading the literature, that since years has been written about this topic, become clear that all companies are interconnected by one of this type of relationship. Those alliances made us think that companies, which “on paper” should compete, have an undermined competition stimulus.

In my master thesis, I'm going to answer this research question:

how have the competition and ownership issues shaped the audiovisual market at the European level?

The European institutions discussed about media ownership regulation since the approval of the Television without Frontiers Directives in 1989. Despite different tries during the years a European policy regarding media ownership was never approved. The result of that is that every national state has his own ownership legislation that makes the matter complicated and unclear. The motivation of that was a widespread lobby that the companies made when the discussion began to be important.

The European Audiovisual Observatory, an organisation that should collect and spread information about the audiovisual market has created the MAVISE database that through a database makes available audiovisual information for free. This instrument created to assure transparency in the market has some inaccuracies that made the collection of the data for the research challenging. After months spent consulting the database we can surely say that the information reachable in the database are confusing, not updated and incomplete.

The key study presented in this master thesis regards the dispute between the famous French media company Vivendi SA (from now on Vivendi) and the Italian Holding Fininvest S.p.A. (from now on Fininvest) for the ownership of the Italian media company Mediaset S.p.A. (from now on Mediaset).

The interesting element of this controversy is that the French media company is already well established in the Italian market because it is the main owner of Telecom Italia S.p.A. (from now on Telecom Italia). Despite the ownership of Telecom Italia, Vivendi decided to find a deal with Mediaset that involved the complete acquisition of the society Mediaset Premium S.p.A. (from now on Mediaset Premium) from the French media group and an two-way exchange of the 3.5% of the stock between Mediaset and Vivendi (La Repubblica 2016; Filippetti 2016). Even if Vivendi had signed the contract, the company decided to not fulfil it. Since this event, the two media groups began a complex dispute.

In December 2016, the controversy became even more complicated. The French company began to buy stocks of Mediaset in the stock market. This process was fast, the 13 December, in one day, the company increase his properties of Mediaset from the 3.5% to the 12% (Vivendi 2016) and after eleven days it achieved the 28.8% of the stock (Fontana and Licini 2016). This action was not welcome from the main owner, the Italian holding Fininvest that reacted to this threat involving the Italian communication competition authority called *Autorità per le garanzie nelle*

comunicazioni (AGCOM), the Italian *Commissione Nazionale per le Società e la Borsa* (CONSOB) and a juridical authority in Milan (Ricciardi 2016).

With a big sponsorship initiative TIM became the main sponsor of a famous music festival broadcasted by the Italian public broadcaster RAI S.p.A. (from now on RAI). This show that was on air for five evenings, was followed approximately by the 50% of the share, that add with the share gained by the channels owned by Mediaset make more than 60% each evening.

The network of the company that we selected allows us to demonstrate that all the companies that we selected had an ownership connection with, at least, another. We also demonstrated how important and extensive vertical integration is in the audiovisual market.

With the case study, I decided to go in great deep in one acquisition case. This is a great picture of the situation of the audiovisual and telecommunications market because it permits me to focus on one event that at the same time can be considered as representation of the all network. The case shows how big enterprises buy each other. It also shows how vertical integration is became fundamental in the sector and at the same time how strong and how tactical can be advertising deals.

The methodologies that I chose are the policies analysis and the network analysis. The policy analysis provides the explanation of the situation of the market as it actually is. The network analysis could be considered as a picture of the market as it is at the moment. That has the aim to help me to find out which are the companies that are connected in the market. To build the network there were used the data present in the database edited by The European Audiovisual Observatory called MAVISE database. Thanks to this data collection it is possible to show only the ownership relationships between companies.

In the first chapter I will discuss the process that brought to concentration of the media. I will expose my research question and how it evolves from the broader area of study. The second one exposes the network methodology that I chose and how I have set up the analysis. The third chapter is the one dedicated to the network analysis. The fourth chapter explained the methodology of the policy analysis. The fifth contains the policy analysis. The sixth is the last chapter before the conclusions (ch:7) and is dedicated to the case study.

1. The evolution of the media market

There are different points of views about how media concentration affects the society. In his work, Winseck (2008) exposes the two different approaches of the scholars to the issue. Some scholars argue that it has a direct influence on democracy, on the contents shared by the media, on what people think and on their view of the world (see Harrison and Woods 2000; Warf 2007). One remarkable consequence of ownership concentration for the society is the effect that it had on the contents that mass media share. They affirm that big enterprises produce contents that they themselves and powerful nations influence. This influenced democracy and culture, for example citizenship and linguistic domination. One example of such argumentations is the study of Warf (2007), who in his study argues how the political views of Rupert Murdoch are extensively present in the news published or shared in his media empire. On the other side, there are other scholars including Winseck (2008) arguing that such connection, even if interesting and important, is too difficult to prove. More specifically, it is difficult to prove a direct link between the media owner, the media content and people's beliefs, also because the research regarding media effects has limitations. Another and more provable problem that the author suggests is that these companies' conglomerates do not use the money to invest in better productions. The more channels they have, the lower is the budget they use for the production of programmes and journalistic information, i.e. there are less employees and expensive shows are replaced with cheaper ones (Winseck 2008). This behaviour is a natural consequence of a less competitive market. When the market does not have a good degree of competitiveness, the stimulus for investment in technologies and innovations is lower.

We are living in a time of multiple media possibilities. The channels available are continuously growing. They are also replicable on different platforms: TV, internet, smartphone. This can fool people leading them to the conclusion that more channels entail a larger variety. This assumption is wrong, because if the number of existing companies owning the channels decreases the plurality is easily destroyed (ibid.). Thanks to conglomeration, this restriction of plurality gets even more unclear. The ownership regulation in Europe is vague and do not promote clarity so that if someone knows that a channel is owned by company "x" and the other channel is owned by company "y", but doesn't know that company "x" is a subsidiary of

company “y” or vice versa, the perception of the plurality can be higher than what it really is.

The role of the media is having an increasing importance in our society and the conglomerates are gaining power. For this reason, it is fundamental to investigate and to be conscious about who owns them and which interests they have (Murdock 1982; Hibberd 2007)

There are many different views about competition and how much in depth the legislator should regulate it. As Winseck (2008) shows, many believe that thanks to the new technologies, limits to media concentration are now obsolete and that now the number of media available for people is greater than before. At the same time the author underlined that other scholars think the exact opposite thing the author uses as example the research of Bagdikian (2007) who pointed out that the number of companies that in USA control half or more of the media market, namely broadcasting, newspaper and film, has fallen from fifty in 1983 to five in 2004 and that those five companies have the power to decide what citizen want to know, watch and learn. The point is that those seeing more media fragmentation are those looking at the availability of channels and different platforms, but not the source diversity (Winseck 2008). If there are more channels controlled by the same giant corporations the ideas, the way of life, the culture etc., are always coming from the same source. As I will explain in the chapter where I expose the case study, the digital switchover has allowed an increase of channels in Italy, nevertheless those channels were owned from the same media groups that had already a relevant share in the market. That means that this increase of channels availability was not connected with an increase of pluralism.

The reason why competition regulation is important, is because every move, every deal these giants make, is always and only for economic reasons and precisely therefore it is important to defend the citizens’ rights in such a delicate sector.

The more a company tries to obtain power and deals in the audiovisual sector, the more are the possibilities that this company obtains a dominant position in the market. Such a behavior is still legal in Europe, but it gives a clear image of the structure of the market and it facilitates the abuse of a dominant position. The connection between competition and concentration is clear “When concentration is

high, there is a high potential for big players to use anti-competitive and collusive behaviour to squelch competition” (Winseck 2008, p. 36).

The studies published so far do not provide a clear explanation of the ownership picture of the market in our time. Overall, they tend to be less interdisciplinary. There are different papers with a focus on the economic aspect (see e.g. Gassot 2005; Murdock 1982; Picard 1996; Trillas 2002), other studies describe the law aspect of ownership (see e.g. Blackman 1998; Burri-Nenova 2007; Gardini 2014), others then focus on the impact that media ownership has (see e.g. Harrison and Woods 2000; Warf 2007; Winseck 2008), while some scholars use a sociological approach for the issue (see e.g. Arsenault and Castells 2008; Bagdikian 2007). The result of this fragmentation is that the issue is not faced homogeneously and entirely. The aim of this thesis is to create a work that, alone, takes into consideration more discipline to make the issue clearer.

The main research question of this master thesis is:

how have the competition and ownership issues shaped the audiovisual market at the European level?

Over the last thirty years the audiovisual landscape has drastically changed. There are different motives for it, but none of is more important than the others.

The first factor triggering a change of the field was the technological progress in the form of digitalization and the media convergence that radically changed the way those medias work (Blackman 1998).

The convergence allowed for the transmission of different signals trough one infrastructural network. This opened huge possibilities and new market opportunities, especially for big corporations. The media convergence is an important issue in our times. Telecommunications and media companies historically used to be separated due to their different infrastructures, different market dynamics and rules. The media convergence has changed this balance. Through the internet, for example, it is now possible to play games, watch movies or TV shows and make calls so that the companies, that at the beginning were isolated in their respective market fields, began to add new services to their offer (Blackman 1998; McChesney and Schiller 2003; Burri-Nenova 2007).

Additionally, technological convergence has further consequences. Thanks to new technologies and new communications platforms people can produce their own content, share this through different platforms and reach a huge audience. Convergence allows the audience to be “active” in sharing, but also in the reception choice. Digitalization and convergence bring new ways of accessing and consuming content. That is one of the reasons why the media market is moving more and more in the direction of the vertical integration (Blackman 1998; Burri-Nenova 2007; Arsenault and Castells 2008). Furthermore, the transformation of the transmission from analogical technology to digital one makes the files innumerable and duplicable.

The second factor that extensively improved the sector was the deregulation of the field during the late eighties and nineties.

At the beginning in the television sector and radio sector there were national monopolies due to the limited infrastructure possibilities (Arsenault and Castells 2008). In the 1980s commercial broadcasters were introduced in many Member states.

The European legislators started in late eighties and nineties a deregulation process to open the audiovisual and telecommunications market to competition, the process lasted many years. During this time the European lawmaker firstly discussed and later opened to competition issues such as the access to infrastructure (Ward 2007; Arsenault 2011). As I will illustrate in the chapter about the policy analysis, the legislator did not impose a strict legislation on competition, he preferred to please all the companies up to a certain extent creating an overall ineffective legislation.

The consequence wasn't a competitive market, but a market dominated by a few numbers of large groups (see e.g. the researches of Ward et al. 2004). The policy analysis is dedicated to go into great detail about how this legislation evolved, especially the first policies at the beginning of the process.

The third factor was an unimplemented privatization of the telecommunications companies. In the 2000s in Western Europe almost all telecommunications incumbents were under the shareholder control of their state. Exceptions were at that time Telecom Italia, British Telecom, Telefónica SA (from now on Telefónica) and Telecom Eireann (Trillas 2002). The situation has not changed over the last fifteen years. Germany, for example, is the second largest shareholder of Deutsche Telekom and has the 14.87% of the stock (Il Sole 24 ore 2016), France has the 23%

of the stock Orange being the main owner and also the Swedish state is the main owner of his ex-telecommunications-monopolist with 37.3% of TeliaSonera (TeliaSonera 2016).

The fourth factor was the consolidation of giant enterprises through big mergers and acquisitions. The expansion of media companies is related to the managerial abilities of the leaders and their egos, but also of the consolidation of political links to gain contacts with political leaders and overcome regulatory obstacles. A clear example is visible in Great Britain with Rupert Murdoch and the Prime Minister Margaret Thatcher and in Italy, with Silvio Berlusconi and the Prime Minister Benedetto Craxi that established a good relationship (Picard 1996). The British Prime Minister did not report the acquisition of The Times and Sunday Times by Rupert Murdoch to the Monopolies and Mergers Commission despite the Australian businessman already owned at that time the English newspapers Sun and News of the World (Travis 2012; Douglas 2013). Silvio Berlusconi and Bettino Craxi were united by private friendship already before the decision of Berlusconi to come into Italian politics and create a party.

A clear advantage that Silvio Berlusconi gained through his friendship was the adoption of legislative measures to defend the broadcasting of his channels (Menduni 1993; Hibberd 2007; Gardini 2014)

In 1980 Silvio Berlusconi was the first to create a commercial channel, Canale 5, able to share the same contents in all regions in Italy. Two others private channels were born in Italy a few months later owned by two other companies. Between 1982 and 1984 Berlusconi bought those private channels and the Italian market, recently liberalized, had become highly concentrated due to these acquisitions. At that time the holding Fininvest, that manages the block of shares of Berlusconi's family, owned 80% of the private channels available in Italy (Grasso 2013; Gardini 2014).

In 1984 the courts of several big Italian cities considered these operations unfair and decided to block the broadcasting of Rete 4 and Canale 5 in the respective regions. It is in this particular situation that it is possible to see how the friendship helped Silvio Berlusconi. The Prime Minister Craxi decided to intervene with some decrees, the first was the so called *Decreto salva Berlusconi*¹ (Gardini 2014).

¹ (= Berlusconi Decree)

A further reason for a company to expand is the need for resources. This is the case for example of companies that own networks that make exclusivity deals or create joint ventures with content producers to be sure to carry some contents that the competitors cannot offer. In these cases, the expansion of the properties acts as an assurance for stability: the higher the geographic variety of the company the safer it is in the case of an economic crisis in one state. In such cases the incidental effect would affect the company only marginally (Picard 1996). This is the case of a horizontal integration which is an expansion where company buys other companies with the core activity in the same field to assure stability. The need of resources pushes companies to pursue also a vertical integration strategy so that the company can reach the autonomy in the production. Concentration of properties is, for those reasons, linked to vertical and horizontal integration.

For Picard (1996) there are also opportunistic expansions. This kind of expansion is developed through acquisition of either companies that are close down or through disinvestment of media properties.

Ownership concentration has been a crucial aspect in the field in the last decades. The domino effect created by ownership concentration implies that a bigger company has more power. The word “power” in this case means capacity of companies to conclude better deals, leverage partnership and influence the business practice of others media companies (Arsenault 2011). Concentration creates a bottleneck in the market. Newcomers are pushed out by the big players through entrance barriers protecting them from competition.

When big companies make deals with each other, there is no space for smaller ones. To survive they need to be incorporated into a big one or make deals with them. These two possibilities bring advantages to both kinds companies, even though they are disliked by the public opinion. The small enterprises can offer global products through the capacities of the larger ones. The big ones can achieve the regional level using the capillary diffusion in the territory of the local companies (Arsenault 2011; Arsenault and Castells 2008).

Even companies that are often depicted as rivals, such as Microsoft and Apple, are connected through a dense web of partnerships, cross-investments and personnel. [...] These multimedia conglomerates simultaneously compete and collude on a case-by-case basis according to their business needs. (Arsenault 2011, P.108)

The tendency towards a monopoly in telecommunication and audiovisual market can be attributed to the costs of this kind of industry. Fixed costs are high and marginal costs are low. Since with an oligopolistic market there is less competition between companies, the price of the services can be higher and less competitive. This is another advantage that the companies can have from the monopolistic behavior (Gassot 2005).

The aim is to own or control the greatest number of diversified media through partnership and investment. An important aspect here is the attitude of the companies to make deal with companies that do not have their business in the same field. Convergence is encouraging vertically integration of companies and alliances (Blackman 1998; Arsenault and Castells 2008; Arsenault 2011).

Convergence encouraged the fifth cause that changed the audiovisual market in the last thirty years. Companies conglomerates search scale and scope economies. Convergence brought companies to react to these new possibilities with vertical integration. By adopting this kind of market behavior, they can obtain a cost reduction in the production chain and benefits of economies of scale and scope (Blackman 1998).

Economies of scale exist, when an increase of production corresponds to a decrease of the final price of the good. Economies of scale are present if, with the increment by a certain percentage of all the production factors and maintaining the previous quantity of each factor, the production increases disproportionally. Economies of scale can be internal or external. The internal ones are obtained by the company autonomously, in this type of economies the market, industry or environment they operate in do not influence it. The second kind of economies of scale is influenced by the way the industry of the company is organized (The Economist 2008; Giovanetti 2013).

In economies of scope the companies have an advantage from the production of similar products, rather than being produced by different companies. The advantage of this kind of production is that the resources can be completely used, avoiding waste and with a slight effort it is possible to offer a broader product choice. This kind of enterprise can also be conglomerated, forming corporate groups that own other companies that produce different products with the aim of splitting up the financial risk over different products (ibid.).

The last event that brought changes in the media sector was globalisation that incremented competition in all fields of the market (Warf 2007). To defend themselves from competition companies created a web of interconnections able to defend them from new enters. According to the researches of Bagdikian (2007) the big five US media companies are all partners so that they are not really competing with each other. That way they avoid external competition. To do that they have created a total of 141 joint ventures.

All these changes happened simultaneously and to some degree influenced each other. Simultaneously they caused the transformations that brought the audiovisual market to be as it is today.

After a brief introduction of the audiovisual market, it is possible to declare area of interest of my thesis:

What shapes the audiovisual market?

The aspect that I find important is the economic one. More specific the competition and ownership rules in the audiovisual market. The research has an importance in two fields, the economic one and the communications one. It is an interdisciplinary study because it considers together communication science and economics issues. Less competitive markets influence freedom of speech. Ownership concentration led a lower number of companies to control the media, giving the public fewer possibilities to deal with different cultures.

Harrison and Woods (2000) underlined, that if most of what it is available in the audiovisual market is produced in USA, the culture, the political landscape, the customs that we will know, will be strictly influenced by that. In the same manner, if most of the available contents are produced only in one Member State of the European Union, the culture represented in those contents is just the one of the most "powerful" state. The two authors also argue that in their opinion, the European legislation is less successful under the aspects of the defence against cultural dominance.

2. Methodology of the network analysis

The methods used in this thesis are the network analysis combined with the policy analysis. The network analysis was fundamental for this thesis since it permits to show which companies are related, which companies are the most connected on the market and which companies' activities are most linked to the others. The interpretation of the network can show if there is a vertical integration or if a horizontal one is still preferred. The network analysis of the market can help to build a clear overview of all the partnerships, such as direct acquisition joint ventures and so on.

To understand today's audiovisual and telecommunications market it is not only important to have an image of it, but the policy analysis is also important as it allows to understand how the field and its development are regulated. The policy analysis permits also to follow the evolution of the policies regarding the media from their starting point until the convergence. This process also required an evolution of the way the telecommunication and audiovisual services were ruled.

Networks are structures where nodes are linked together. Nodes can be social actors but also companies, machines and so on. Links can have different characteristics (Arsenault 2011) and are created by an exchange of resources (including immaterial ones). The definition of resources in the network analysis is broad, these can be for example attention between social actors, but also: appreciation, knowledge and money. When this exchange of resources stops, the relationship does not exist anymore.

The better a node is connected, the better it can reach resources. Society works through networks. A clear understanding of the net in examination can help understand its dynamics in all its social aspects. As Castells (2000) says, we are living in a new society that is made up of networks. An example that he shows to make this statement more comprehensive, is the one of the economy. Economy in our time is based on electronic networks that allow financial transactions. The financial transactions create another network of financial transaction and so do production sites and so on. As Arsenault (2011) writes, networks are the structures guiding contemporary media and communications companies.

The internet, which has become fundamental for our life, is, too, a network. As Hassan (2004) underlined, the process that has brought us to become more interconnected lasted around ten years. After the diffusion of the internet, emails, smartphones and so on will follow. Digital networks have influenced the economy and our society so mightily that it is now difficult to think of an activity of our society where such networks do not play a central role. It is for this reason that the author affirms that digital networks were a real revolution at the beginning of their diffusion, however, that doesn't hold true anymore. The people have embraced them so extensively that digital networks are now taken for granted as part of our society, not only in the economic sector but also in private life. Networks are an old form of social organization which are now everywhere. Castells (2000) called this new society the network society.

The first step of the network analysis was the identification of what was important to be investigated and how to do it, for this reason we started with the decision of which kind of relationship we wanted to find. We decided to investigate the ownership between companies. This kind of relation is the most durable one. Deals between companies can be fast and difficult to trace. To do that, we decided to use the database called MAVISE edited by the European Audiovisual Observatory.

The Observatory was created in 1992, it is a public service organisation and is part of the Council of Europe. The institution includes 41 member states and the European Commission that represents the European Community. Its aim is to collect and make information about all audiovisual markets in Europe available to assure transparency in the field². The data available in the database concerns the 41 countries that are member of the observatory. In the data, services available in one or more of the member-countries of the Observatory are also included, even if they are established in a state that is not a member of the European Audiovisual Observatory. The update of the data available in the Database takes place every year in autumn³.

² European Audiovisual Observatory, <http://www.obs.coe.int/web/obs-portal/home> 8.04.2017

³ MAVISE Database, <http://mavise.obs.coe.int/about> 21.04.2017

2.1. Identification of the companies involved in the investigation

The second step was to identify a set of significant companies for our study. To define a boundary for the research we decided to analyse the ownership connections starting from a precise number of companies and to proceed looking only at the companies under their ownership. If the subsidiaries had subsidiaries in turn, these controlled companies were also included in the sample. In the case a company had other owners, these owners were included in the network, this was also valid for possible owners of owners. However, even if these companies were included in the network, their possible subsidiaries were excluded.

An example of this process can help to clarify this process. Telecom Italia was included in the network, together with its subsidiaries, because it has been a subsidiary of Vivendi (Vivendi 2015a) since 2015, a media company we selected at the beginning as it is relevant for our network. Telecom Italia "Cubovision" owns MTV Italia S.R.L. as subsidiary, which has MTV Networks Europe as a second owner. We did not research whether MTV Networks Europe had any subsidiary under his control but we collected the company from the data. In these cases, we then tried to find out if the company had other(s) owner(s), in this example there were two owners: MTV Networks Europe INC as main owner and Viacom INC (Viacom Media International Networks) as second owner. We added them to our data without looking if those other companies had, in turn, other subsidiaries. We continued this process until there was an owner indicated.

The companies involved in this analysis are the famous Pan-European and European media and telecommunications companies. These are the same firms that are analyzed in the publication of June 2016 by the European Audiovisual Observatory by the authors Gilles F. and Deirdre K. 26 companies were individuated: 21stcentury Fox, Altice, AMC Networks, Bonnier, Deutsche Telekom, Discovery Communications Liberty Global, M7 Group, Modern Times Group, NBC Universal / Comcast, Orange, RCS/RDS, RTL Group, Sanoma, Scripps Networks, SKY PLC, Sony Corporation, Telecom Austria, Telefónica, Telenor, TeliaSonera, Time Warner Inc., United Media Group, Viacom Inc., Vivendi, Vodafone, Walt Disney Inc.

Apart from this, we have also included British Telecom, Bertelsmann and Bouygues in the group of significant companies, so that we had 29 selected companies in the end.

The decision to also add other three companies was a consequence of different motivations. British Telecom was added in the network as subsidiary of one of the 27 companies, Deutsche Telekom (DT) (Deutsche Telekom 2015)⁴. The decision to include Bertelsmann was different, on the 5th February 2001, the German company became the main shareholder of the RTL Group (RTL Group 2001). As explained before, we originally decided to exclude the subsidiaries of the companies that were owners of one of the companies without being subsidiaries of one of the 27 selected companies from the network. We decided to make an exception in this case due to this company's importance on the German market. For the same reason, we decided to include TF1, the broadcaster of Bouygues. The broadcaster was mentioned in the work of Gilles and Deirdre (2016) but excluded from the research because its market was only focused on the national territory, even though it was one of the first fifteen TV groups in Europe (Gilles and Deirdre 2016).

2.2. The criteria for the collection of data

The type of ownership was coded according to the information given by the database. For each company the MAVISE Database has a section called "Companies under direct, indirect or partial control". Under this title there is a list of companies listed by the type of ownership, which is divided in Main Owner, Owner 2 and Owner 3.

We coded this intensity of relation in a different manner to make it visible in the network. To understand the intensity of the relationship, the arrows are of different dimensions and colour (grayscale). The bigger the dimension's arrow and the darker, the higher is the level of ownership. There is also the possibility that the company,

⁴ We decided to consider British Telecom before have seen the data reachable in the MAVISA Database. Proceeding with the analysis, we found out that the ownership connection that links British Telecom with DT was not already present in the MAVISE Database (see ch.: 2.1.1.6.). Nevertheless, we analysed the companies and founded other connections. The reason why I mentioned British Telecom as company add in addition of the 27, is indeed because the connection in the network between DT and British Telecom is not visible.

even if reported in the list of direct, indirect or partial controlled companies, does not have an explicit owner. In this case, we decided to code the relationship as the less intense one.

To understand the kind of integration, either horizontal or vertical, or both, we needed to know the main activity of each company. We decided to follow the detailed descriptions used by the database. The database divides the companies in 12 categories: TV Group, Telecom/IPTV, Operator Broadcaster, Cable Operator, Packager of TV Channels, Provider of VOD Services, Investor/Holding or Media Group, Companies with some broadcasting activities but main activity other than broadcasting, Operator TV to Personal Mobile, Channel, DTT Transmission and Satellite Operator. Some companies had no activity specification, for this reason we decided to create a category to classify the unknown activity.

Another information we collected about the companies is the establishment. This was important because it allowed to show where the companies are present. We identified 43 states where there were established companies involved in the network.

In the main network, the business activity and the country of establishment are both visible when looking at the colour of the nodes. For this reason, in this thesis, there are visible network identical to the one representing the activity (ch:8.2.1.) and the one representing the country of establishment (ch:8.2.2).

2.3. The creation of the networks

The forth step was to create 30 separated networks, one for each company. The aim was to have a clear look of the different subsidiaries that each company has. In this step, we had already found a clear connection between the 30 companies. To realize the visualisations of the single networks, we used the program UCINET.

2.4. The creation of the main network

The fifth step was to put all the data together to create a unique network including all companies. Since many companies were listed as subsidiaries of more than one

company and therefore were repeated in different networks, we dropped all the duplicates. In the end, we obtained a network made of 720 companies.

During this step, the program for the network analysis UCINET was substituted with another one called PAJEK, due to the limitations that the first program has when the number of the nodes are higher than 500.

2.5. MAVISE database problems and inaccuracy

On the website of MAVISE it is possible to find a list of some database's limits⁵. In the following paragraphs it is possible to find a brief explanation of the most important one.

It is unclear where some companies are registered. It can happen that services operated in one country, without being licensed in the country or in any others. Conversely, some services may be registered in more than one country. There can be several reasons for that, for example, they operate both within and outside the UE; in some states a registration is essential to share in DTT even if the company has already registered in another UE member state. The company could have also changed their establishment country and that the new location had not yet been updated in the regulators lists of licenses. Another limit to the collection of the data signalled in the database regards the identification of the most relevant on-demand services, that is because this kind of information is often not accessible.

Apart from the problems that are underlined in the database, we found other problems and inaccuracy during the collection of the data.

The data provided by the MAVISE Database is often not available in the double directions. It is possible to find a specific connection between two companies following one way of the ownership chain, but when consulting the connections starting from another point of the same chain, the results given by the database are different.

An example of this is the ownership of T-Mobile (UK) Limited. MAVISE indicates the company as "Companies under direct, indirect or partial control" of Deutsche

⁵ *MAVISE Database*, see note n 3

Telekom AG⁶. Opening the page dedicated to T-Mobile (UK) Limited, the main owner shown in the page is the company Everything Everywhere Limited⁷. However, starting this consultation from the web-page of the company Everything Everywhere Limited⁸, it is not possible to find any connection with the company T-Mobile (UK) Limited since there are no companies listed in the table of companies under direct, indirect or partial control.

Something unclear that we found often was the degree of control that the companies had on the others. The first problem is that the Database does not list the percentage of ownership or the company's vote power. Moreover, even if the companies were reported in the list of companies under direct, indirect or partial control, in a lot of cases, when we opened the web-page of those companies, there was neither an indication of companies that were the owner, nor indications of other owners. In these cases, the level of ownership that we indicated was the less important one. To be clearer, I will give an example for both of these cases.

In the web page of Sony Corporation⁹, many companies are listed that have no specification of an owner on their pages, some of them are Axn Italia S.R.L.¹⁰, Chello Movieco CE Services GmbH¹¹ and Mgm Channel Poland Limited¹².

One other example of this problem is the one of T-Mobile (UK) Limited that I mentioned above. As aforementioned the database indicate the company as company under control of Deutsche Telekom AG, but in the page dedicated to T-Mobile (UK) Limited, the main owner shown on the page is the owner of company Everything Everywhere Limited and there is no indication of the degree of control of Deutsche Telekom AG.

Furthermore, the data is often not updated. In January 2016, the Competition and Markets Authority of the UK approved of the company's sale Everything Everywhere Limited to British Telecom. The company is a joint venture established in 2010 that

⁶ MAVISE Database, Deutsche Telekom <http://mavise.obs.coe.int/company?id=2053> 20.04.2017

⁷ MAVISE Database, T-Mobile (UK) Limited <http://mavise.obs.coe.int/company?id=4413> 20.04.2017

⁸ MAVISE Database, Everything Everywhere Limited <http://mavise.obs.coe.int/company?id=6785> 20.04.2017

⁹ MAVISE Database, Sony Corporation <http://mavise.obs.coe.int/company?id=7183> 20.04.2017

¹⁰ MAVISE Database, Axn Italia S.R.L. <http://mavise.obs.coe.int/company?id=2175> 20.04.2017

¹¹ MAVISE Database, Chello Movieco CE Services GmbH <http://mavise.obs.coe.int/company?id=2881> 20.04.2017

¹² MAVISE Database, Mgm Channel Poland Limited <http://mavise.obs.coe.int/company?id=6532> 20.04.2017

has had as previous owners, FT and DT. DT obtained 12% of the stock of British Telecom from the transaction and has become the main owner of the company (Deutsche Telekom 2015). After more than one year the connection is still not visible in the MAVISE Database.

It is important to underline that the categories that the MAVISE Database uses are often imprecise. An example of that is the categorization of the company Telefónica. The database defines it as a company “with some broadcasting activities but main activity other than broadcasting”¹³. Nevertheless, MAVISA indicates Deutsche Telekom, a telecommunication company like Telefónica, as “IPTV operator”¹⁴. Still, we decided to follow the indications given by the database. Some companies were listed in two categories at the same time. In these cases, we decided to take the first one in consideration.

2.6. Remark on the data collection

A difficulty that we found was the definition of the companies' main activity. The MAVISE database gives us an indication but with more researches, watching the website of the companies, it was extremely difficult to identify which kind of company it was in some cases. As Iosifidis (2005) claims, the definition of the service used to be easier in the past. It was simple to distinguish between a radio, a television and a telecommunication service as the range was small and the services offered were restricted. That brought easily defined markets for each medium.

¹³ MAVISE Database, Telefonica <http://mavise.obs.coe.int/company?id=3459> 20.04.2017

¹⁴ MAVISE Database, see note n 6

3. Network analysis

3.1. Description of the network

The network that was drawn after the collection of the data regarding the ownership interconnections of each company that we selected is available in Appendix II. In this network, as well as for the others network's visualizations that are described in this work, the position and the distance of the node among each other has no meaning. I have tried to distribute them into the area in a way that would allow a better comprehension. For this reason, in the cases where I needed to speak specifically about a determined company, the disposition of the companies could be different from another visualization.

The arrows represent the links between the companies. Their directions represent the direction of ownership. That means that the company that is closest to the point of the arrow is the one that is owned by the company at the arrow's other end. A gray scale of colour differentiates the lines. There are three intensities of colour which represent the three different kinds of ownerships we found in MAVISE.

For main ownership, the arrow is black and has the biggest point of the three. For the companies that MAVISE indicated as "second owner", the arrow is smaller and dark grey. For "third owner" and in the cases where the company was in the list of companies under direct, indirect or partial control but without the relationship being visible on the web-page of the company (see i.e. Sony Corporation¹⁵ and Axn Italia S.R.L.¹⁶, or Sony Corporation and Mgm Channel Poland Limited¹⁷) the link is represented by the thinnest and palest arrow.

Appendix II is divided in two subchapters. Both of them show the ownership links among the 29 companies that we selected for the research. The two visualizations permit to observe the network starting from two different points of view.

The first visualization permits to see each company's different activities. The companies are marked with different colours for each business activity. The second visualization permits to see the same companies identified by their country of

¹⁵ MAVISE Database See note n 9

¹⁶ MAVISE Database See note n 10

¹⁷ MAVISE Database, See note n 12

establishment. In this case, the different colours represent the country of establishment.

The aim of these two visualizations is to get different information. The first graphic shows the most recurring business activities of the companies involved in the research through colours. The second one allows to see how extensive this network is and in which countries the most companies are established. After each network, a table clarifying the meaning of the colours as well as the references is provided.

Since there are 720 companies involved in the network, showing the names of all of them was impossible as the names covered all interconnections. To have an understandable visualization, the tags presented in the graphic are one of the most important companies.

It is possible to see an extensive predominance of the broadcasters (452) in the first network. The second and third most present category of business activity are respectively: the IPTV operators which are 41 and the TV groups which are 36.

It is possible that these final results are not precise. The reason for that is that we found two obstacles in the identification of the category. Firstly, some categories were imprecise. An example of inaccuracy was where two companies, for example two telecommunications companies like Deutsche Telekom and Telefónica were described by two different categories of activities. Secondly, some companies had two business activities. In this case when more than one activity was indicated, we decided to make the first category as the most important one. Lastly, some had no category at all. In this case, we decided to create a category for those companies. In the end, there were 32 companies without a business activity.

This kind of visualization permits to observe which kind of companies is connected with each other. It is possible to see a tendency of television groups that own different broadcasters and some telecommunications companies, see for example Bouygues and 21Century Fox, but there is no telecommunications company that controls a TV group.

In the second network, the one that illustrates the country of establishment, it is possible to notice that the most recurrent state is the United Kingdom with 126 companies, followed by France with 99 and Germany with 58. This visualization permits to see how much a company is present on different national markets. In the

following appendix I decided to do a visualization of the main network underlining only the companies established in Italy. Since there are only 27 in the network those are not visible unlike those established in the UK, but since the case study will put the focus on the Italian market, having a visualization that underlines that could be interesting.

3.2. Results including Vivendi

The first thing that stands out in the graph is that there is only one big network and not many smaller ones. This result is an incredible important one because it means that all the 29 companies that we selected in the first place are connected through ownerships relationships. We understood this only after we had put all the data together to obtain the visualization.

At the beginning, we had a single visualization for each company's network, but we began to see some connections after having elaborated the data so that all the repeated companies, that were double or more because they were in the network of more than one company were removed, we became conscious of all the links.

It is important to underline that ownership connections are just one type of connection companies can have. Another kind of connection can be advertising deals or contents (exclusivity) deals. The connection we found is just one of the real connections that these companies have. This means that when we look at the network we must always think that those connections represented are just one kind of connection typology and that the real number of interconnection is significantly higher.

The network is represented by clusters that are connected by some nodes which are mostly joint ventures. It is possible to see that media groups tend to connect with each other as well as with telecommunication companies which are their products' providers.

Secondly we can see a tendency to vertical integration in the network since different media groups own telecommunications companies, cable companies and so on. At the same time, what we see is a horizontal integration, since companies with the same core business are also connected with each other.

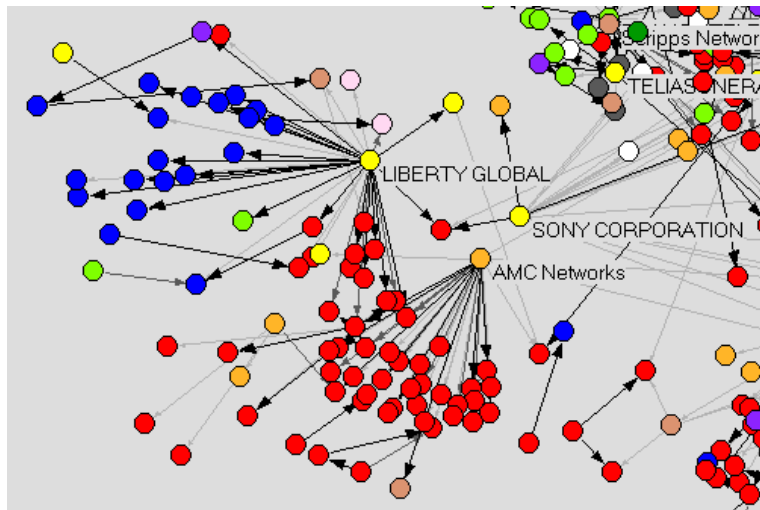


Figure1

Looking at a section of the network (Figure1), it is possible to see the vertical and horizontal integration.

Liberty global is a media group (yellow) directly connected to two other media companies and indirectly connected to two other media companies. This is a clear horizontal integration where companies with the same activity connected to each other to reach more stability.

Liberty Global's vertical integration is easy to see thanks to the different colours. The company is indeed connected to broadcasters (red), cable TV operators (blue), packagers of TV channels (pink) and so on. When a company is vertically integrated, it can reach autonomy from other companies and for this reason an audiovisual enterprises that wants to be autonomous needs to own companies that produce content as well as a company that distributes it as for example cable TV operators or packagers of TV channels. A table with the complete explanation of the colours is available in Appendix IIA.

The claim that there is in the last time a tendency to vertical integration in the audiovisual market does not mean that companies refuse horizontal integration. It means, as it is possible to see in the example of Liberty Global, that the horizontal integration is no more the only kind of expansion. It also means that, if a company has to choose between an investment in an enterprise with the same business or an

investment in a firm with a different one, it is likely that it would choose the second option.

The tendency I would expect to find in the future is an even bigger transfer of interest from a horizontal integration to a vertical one. An example I will be analysing in my case study is the possession of Telecom Italia. In 2013, Telefónica the Spanish competitor, owned the Italian telecommunication company but in 2014, the property changed and Telecom Italia was bought by Vivendi (La Repubblica 2015; Scarano 2015), a media group. The horizontal integration is not going to disappear, but it is possible to expect that companies will consider it more strategic to be linked with other companies across the value chain.

The network of Vivendi will be discussed in the sixth chapter. However, taking a look at it (Appendix V) at this point can help to have a better comprehension of the big network, since the case study is a perfect and simplified example of the bigger and tangled network.

3.3. Conclusion

Even though MAVISE was created by the European Audiovisual Observatory to enhance transparency in the audiovisual market, through our research we noticed many inaccuracies in the database and as a result we were forced to turn to different resources to investigate it. There is a lot of information missing, like the companies' activities. The inaccuracy that I mentioned before in the chapter dedicated to the method, like the fact that sometimes the data provided by the MAVISE database is often not available in the double directions makes me think that a lot of information could have been lost.

The ownership degree is another vague aspect of the database. There is no information about the percentage of stock or vote power that the owner has and that is something that a precise tool created to spread transparency in the field should have. Furthermore, the presence of companies in the list of companies under direct, indirect or partial control and the disappearance on the web-page of the company of any connection with the supposed owner confuses the person wanting to reach the information even more.

Another piece of information that the European Audiovisual Observatory should offer is a detailed warning of the last update for each company in the respective web-page. I do not think that the statement that the MAVISE database is updated once a year in autumn is enough since they also claimed that “significant market developments are added on a continuous basis”¹⁸. This vagueness makes it impossible to understand when each company was updated last.

It is important to notice that the database indicated no owner for companies like Deutsche Telekom¹⁹ and France Telecom²⁰ and TeliaSonera²¹ when in fact the state those companies were established in is the owner. This is a fundamental information the database should give, however, one can get this information only through different and specific researches outside the MAVISE database.

After having seen how transnational this Pan-European company is, it is clear that a European regulation should help assure transparency and an unambiguous regulation.

¹⁸ MAVISE Database, see note n 3

¹⁹ MAVISE Database, see note n 6

²⁰ MAVISE Database, France Telecom <http://mavise.obs.coe.int/company?id=2061> 28.04.2017

²¹ MAVISE Database, TeliaSonera <http://mavise.obs.coe.int/company?id=5923> 28.04.2017

4. Methodology of the policy analysis

The policy analysis is a “client-oriented advice relevant to public decisions and informed by social values” (Weimer and Vining 2011, p. 24). As for all academic researchers in the social sciences, the aim of this analysis is to permit a better understanding of the society (Weimer and Vining 2011). I used the analysis as a tool to understand and explain the network. The situation of the interconnections between companies that are visible in the network needed a deep description of the evolution of the regulation that had ruled the field.

Since my research question was: How have competition and ownership been regulated in the audiovisual market at the European level, my focus was on competition and ownership regulations.

I decided to start looking at the general rules for competition published in the Treaty on the Functioning of the European Union (TFEU).

4.1. Identification of what needed to be investigated and how

I decided that what I needed to investigate was the evolution of the regulation. The motivation was that this process could give a better overview and clarification of the network of ownership between companies that is now characterizing the audiovisual market. To do that I individualised the most important directives that were published from the beginning of the European legislative power in the field up to today.

The sources that I decided to consult are the same that Weimer and Vining (2011) suggest as literature review, official publications and researches of the authority or body as directives, green papers, public consultations; publications of interest groups and books, papers and also newspaper articles.

I decided to consult directives and green papers because these are official documents published by the UE that respectively ruled and stimulated the discussion about an issue. Furthermore, I decided to examine public consultations because they are a good tool to understand what the companies wanted from the legislator. I also considered it fundamental to use law books and papers to have an interpretation and

an expert point of view. The newspapers articles are also taken in consideration because they make it possible to gain insight in the past.

4.2. Identification of the policy to analyse

The most important policies in the audiovisual and telecommunications field are: the Open Network Provision Directive, the Television without Frontiers Directive, the Draft Directive on media ownership, Full Competition Directive, the electronic communications regulatory framework and the Audiovisual Media Service Directive. With them I analysed other directives that were secondary to the core attention of my thesis, nevertheless, I briefly described to provide an overview of the whole situation.

4.3. The process

When the broader objectives and a first introduction of the competition law were clear, I individualised the objectives that the legislator had at the beginning, when he first obtained the power to regulate the audiovisual field, for example the overcoming of national monopolies. After that, I started to analyse the milestones that have shaped the audiovisual and telecommunications fields. I tried to understand what their principal goals were. To understand that, I found it helpful to consult the section of the European directives where the institution using it explains the aims and the landscape that contributed to the creation of the document. I used law books and papers alongside. After having understood the aim of the policy, I started to go back to see the discussions in form of consultations and green papers that have taken place before the approval of the bill.

5. Policy analysis

The regulation of media fields is not a straight line. It had more and more variations. In his history it needed to be adapted to different pressures. In this policies analysis, I will try to analyze the legislation framework. How it evolves from the beginning to the present. I will focus my attention on one hand, to the historical evolution of the legislation, on the other hand, I will try to show how the legislation was influenced by pressures. Sometimes the regulation that was adopted, was not the most efficient one. It happens also that, after discussions and consultations, it did not go through. Furthermore, sometimes, some lacks were meaningful. As Iosifidis (1997) pointed out, it is possible to see an example in the case were, in a public consultation for pluralism, media ownership and competition, consumers associations were not involved. It is for sure something that make think. Citizen were not lessened, in a consultation that discuss a regulation that should defend them.

The legislative power of Europe in telecommunications and audiovisual field begun at the end of the eighties and increased until now. During the analysis, is important to remember the origin of the Telecommunication and Audiovisual sector as historical monopolies. The first period was followed by liberalization of the market, that brought to the creation of big corporations. These growing giants had, as principal aim, the creation of economies of scale and scope. It is also important to remember, that those empires were efficient economies of scale and scope only if they had the ability to expand vertically. The last consequence of this evolution chain is that, vertical integrated companies, often obtain dominant position and can abuse of their power as gateway in the market. I will use the terms dominance and gatekeeper both following the economical definition.

Dominance is a position of power obtained by enterprises when their actions are independent from the behaviour of consumers and competitors. A clear sign of dominant position is the freedom to increase the price of the service without lose customers (OECD 2004). When a company has so much power, it clearly has the control of the market and that means it can control who can and who cannot enter the market. Gatekeepers have the ability to control, obstacle or prevent the entrance of the market of new players (ibid.).

Show the historical evolution of legislation is the simplest part of this chapter. The most difficult part is to understand and to show how interests group and member states contribute to shape legislations, which were their argumentations and what did they obtained. As Arsenault and Castells (2008) argue, Companies that are real giants now, are the consequence of the past legislation that have ruled this market-sector. Simultaneously, those giants are their self the agent of such regulation, because they have influenced it.

European Institutions have adopted an important tool to build a preliminary idea of what interests groups and member states think about an issue. They use public consultations. Using those basis, they decide what the next move will be. At the same time, it is also a roller coaster between Europe and Member State to obtain or to not lose the power to shape the issue. Europe have tried to understand which were the intention of member states and member states were, in turn, influenced by European initiatives or draft policies even if than, those were not put through. I used public consultation to try to understand which arguments were followed by whom. Of course it is difficult to find how did lobbies worked. It is not clear and public. To do that I will use in addition of scientific papers, official documents like directives or recommendations, also news articles that were published at that time.

In the past, each sector had its own distinct legislation and the issues that were regulated had a certain level of differences. In the telecommunications sector, for example, the core attention was put on the regulation of competition, market entry, service pricing and so on. The content that was sent by these kinds of networks were unregulated because they were considered a private matter. The Television sector was exactly the opposite. the legislator used to place attention on the content and the market competition was not considered a central issue. With the concentration on this issue, these different focal points became a problem (Blackman 1998). The audiovisual sector had typical characteristics. The first, and maybe the most important, the scarcity of channels in the hands of either less families or public companies. Another one is the widespread conviction that television was the most pervasive medium. Those were good justifications to let the legislator regulate which contents were admitted to protect, for example, children (Verhulst 2002). During the years, the convergence have allowed new kind of services. The legislator has adapted the regulation to this new market landscape.

It is difficult to predict whether there will be a complete convergence of medias in the future. There are some scholars, as for instance Professor Noam, suggesting that there will never be a complete convergence between media sectors. His idea is that, a strategy to approve effective legislation, is to legislate about the function and not the technology shared by the different services (Gassot 2005). This is also the trend that is observable in the evolution of the European legislation. At the beginning there were sector specific regulations, focusing on the technology used by the different types of media and not on the function. Later on a different approach has been introduced. The starting point of this new regulation typology begins with the Electronic Communications Framework and continues during the following years.

Due to linguistic differences between the member states companies operate mostly in national markets, rarely also in sub-national ones. At the same time, because of the globalization, the market is increasingly moving towards ownership concentration. The last important aspect to consider is the change in production caused by digitalization and new technologies (Monti 2001). For every step European legislators have tried to tackle and prevent improper companies' actions.

Another effort that leads to convergence is the need to create a broader definition of the market. If an operator pursues an activity in a convergent market, it is likely that this activity involves more than one sector. This is the case of a vertically integrated company. The question that needs to be addressed in order to define the market is, if this operator is a company in multiple markets or in a single larger one. This landscape is also a good starting point for the creation of new markets. The change of the old markets and the birth of new ones leads to difficulties in finding a clear definition of it. Another point that adds difficulties to the issue is that, in order to discover the power and the position of companies in a market characterized by vertically integrated company, competition authorities need to have access to different markets. For example, if a company produces his own contents, the authority could need to access to the production market but also the distribution one (OECD 2004).

This kind of regulation has different goals. After almost thirty years of competition legislation in the telecommunications and audiovisual field, the overcoming of national monopolies in both sectors might be possible. It might consist in an open and competitive market where cheating behaviour of big companies is prevented by ex-ante regulation and controls, but if necessary also with ex-post measures. Further

there might be an open market where new companies have the possibility to survive without being bought by a dominant company and at last there might be a market where big companies really compete among each other. According to the published literature it is plausible to believe that, at least the last goal, has not been achieved (see e.g.: Arsenault 2011). To understand whether all these goals have been reached, it is necessary to consider the policy analysis together with the network analysis, which was presented in chapter 3.

The structure that I chose is a time period that coincides with the period of the European Commission Presidency. The reason why I decided on this division is that it gives a better idea of what contemporary happened in the telecommunications and audiovisual legislations, while including a brief introduction of what happened during this period. In the chapter, there are five different time periods which correspond with five different subchapters (from ch. 5.2 to ch. 5.6), since there are Presidents that have carried out more than one mandate. At the end, I will write some final thoughts (ch. 5.7). Before starting with that, I will continue the chapter with a brief introduction of basic European competition rules (ch. 5.1).

5.1. European competition rules

The principal aim of competition regulation is to preserve technological innovation and future technological development. In the audiovisual sector, the discipline of competition is specific. There are many different interests involved. Companies, Member states and citizens have different needs and they need to be protected in different ways. Policy objectives are important. Examples of such objectives could be plurality and quality of the service. Different legislative objectives defend specific interests and needs and outline where competition regulation in the audiovisual field must intervene.

The first European competition legislation was fixed in articles 85-90 of the Treaty establishing the European Economic Community (TEEC). The following rewrite of the Treaty resulted in a change of the article's number. The basis of European

competition in the EC Treaty (ECT) was fixed under articles 81-86, and in the TFEU these articles became 101-106²².

Article 101 of the TFEU, previously article 81 of the ECT and 85 of the TEEC, disciplines deals. The article forbids accords which prevent, restrict, or distort competition. It admitted such accords only if they encourage the production or distribution of products. In this instance, the exceptions to these accords are in line with the internal market's objective. These exceptions present problems because they need individual approval by the Commission. This process is difficult and burdensome; it cannot be done frequently during the year. There are proposals to improve this process and make it faster. Some ideas would be: making the decision process shorter so more decisions can be made, or increasing the number of institutions with decision-making power (Papathanassopoulos and Negrine 2011).

Article 102 prohibits abuse of a dominant position. Article 103 affirms that the decision-making institution in the competition field is the Council (TFEU). This body is responsible for providing the regulation that permits the implementation of the principles expressed in the articles 101 and 102. It is interesting to note, that the power is not entrusted to the elective institution of the EU, the Parliament, or to the executive institution of the EU, the Commission. It is given instead to the Council, which is the body where governments of member states are represented and where they have more influential power. Member states agree to give up internal power to discipline this issue, but maintain a central role by giving the Council this power, more than what they would have, if they had given it to another European institution.

Article 104 states that, so long as the Article 103 is not applicable, member states maintain the power to regulate the field, following the enforcement of the Treaty. The Article 105 of the Treaty claims that the Commission can judge if a Member State is breaking the principles of articles 101 and 102. The Commission makes the decision public and the Member State must adapt their behaviour to what the Commission says. The last Article (106), states that even if public companies and companies with special and exclusive rights exist, they cannot obtain advantages undermining what the Treaty imposes (TFEU).

²² European Commission, <http://ec.europa.eu/competition/antitrust/legislation/articles.html>
23.01.17

There are two different opinions about competition rules and competition authorities. On the one hand, some believe that competition authorities and legislation for media competition are no longer possible. They claim that, considering the frenetic rhythm of this market, authority bodies are too slow to react. Another argument is that legislation is now obsolete because the market can correct itself. A basic principle of legislation is that it is not possible to create new regulations without a sufficient reason. There are two triggering factors that justify legislation. It is possible to regulate an issue only if there is either a market failure, or if there are some achievable social, economic or public interest goals. They claim that those justifications no longer exist. On the other hand, there are others that are convinced that competition regulation is still important. Mario Monti, in his speech and Colin R. Blackman in his works, claimed that these conditions are still present. Monti and Blackman argue that we can already see cases where competition is threatened. Anti-competitive actions pursued by companies with dominant position can be permanent without intervention and legislative action. Furthermore, they stress the fact that, given the market, the possibility to be competitive, is not an assurance for a real transformation of the market in a concrete competitive one (Blackman 1989; Monti 2001).

The most common market failure in the field is caused by barriers. In situations where there is no perfect competition, such as incumbent monopolies, companies that benefits from this situation have the power to create barriers to defend the gained position (Blackman 1989). Through the analysis, it will become clear this is an important issue for companies as well. Companies are often asked in consultations to eliminate bottleneck facilities, and to implement an Open Network Provision (ONP).

Professor Noam argues in Europe, where the broadband is mostly based on Digital Subscriber Line (DSL) and where there is no significant cable television infrastructure, the market has a high gatekeeper power and price-setting ability. That means that companies in Europe have vast power, and consequently it is necessary to have significant protective regulation (Gassot 2005). Competition rules in the field are necessary. They can prevent abuse of dominant position, open the market and permit companies to oppose each other. In recent years, the cross-ownership between content producers and owners of communication networks has reduced the efficacy of competition policies in the field. Creation of monopolies seems to be

inherent in this particular field. The reason being is that the production of content has high fixed costs, followed by low marginal costs that consist of reproduction and modifying of the content (Iosifidis 2005).

It is clear that competition rules involve all markets, but as of recent, one hears frequently about media or telecommunication acquisitions. The reason for the high resonance of this kind of economic transaction could be the size of the transaction. Media and telecommunications companies are large and powerful enterprises. For this reason, these kinds of companies normally involve a complex structure of commercial relationships, which often require an investigation by the authority (ibid.).

5.2. The period between 1985 and 1995

Between 1985 and 1995, Jacques Delors chaired the Commission. He was the first and last to make three mandates as President of the Commission. He was first elected in January 1985²³. In June 1988²⁴, the Council confirmed him. As a result of the Maastricht Treaty coming into force, his presidency was extended until the beginning of 1995. This was a significant mandate because it was clear that it was to be a transitional Commission with only a two-year term (Endo 1999). During this ten-year period, the European legislation began their telecommunications and audiovisual sectors.

Apart from these sectors, there were many efforts during this ten-years-period. The second half of the eighties was characterized by large support in European work and identity. In March 1985, member states agreed to establish the single market before 1992. At the end of the eighties, the fall of the Berlin Wall created a new dynamic in Europe. In 1990, the Schengen Treaty was adopted and signed by five member states, coming into force by 1995. Also in 1990, the civil war in Yugoslavia and the First Gulf war took place. This combination resulted in economic stagnation. The last important step was the Maastricht Treaty (ibid.).

²³European Union, https://europa.eu/european-union/about-eu/history/1980-1989/1985_en
17.01.2017

²⁴European Union, https://europa.eu/european-union/about-eu/history/1980-1989/1988_en
17.01.2017

5.2.1. The first policies in Telecommunications sector

5.2.1.1. The British Telecommunications case

Despite several individual cases concerning public telecommunication operators and the extent of the legal monopoly that was reviewed in the eighties by the Commission, the most important case was that of British Telecommunications. This was the first case which allowed the Commission to apply Article 90 TEEC, which concerns Competition Law, to companies with exclusive and special rights, in the telecommunications sector. For this reason, The British Telecom case could be considered a starting point for the application of competition law in the sector. Another reason this case is so important is that, after the sentence in 1985, the ruling of concurrence was extended to telecommunications companies as well (Ungerer 1995; Gardini 2014). After this case, the Commission wrote the Green Paper on the Development of the Common Market for Telecommunications Services and Equipment. In this document, the Commission fixed two important targets: the setup of a European telecommunications network, and the encouragement for the creation of low-cost services. The Directive that came to follow the Green Paper was that of Directive 88/301/EEC, published in 1988, pertaining to competition in the markets in telecommunications terminal equipment (Gardini 2014).

There are two important milestones in telecommunication legislation. The first one is the Open Network Provision Directive. This was an essential step in the field. After the implementation of ONP the field changed drastically. In the beginning, the telecommunications companies were state monopolies. The infrastructure they built in many years is far reaching in the national territory. When the legislator decided to liberalize the market, the infrastructures became a problem. New companies should have invested a large amount of money to build a parallel network, thus discouraging new players from entering the market. The legislator decided for this reason to oblige the owners of infrastructure by renting out the networks to others operators.

The second milestone is the electronic communications regulatory framework. This regulation is now quite old, as it was first approved in 2002. After these, the legislator approved some updates that adapted the regulation for the new efforts of the market.

In 2009, it published a new framework, but it did not drastically modify the previous. In 2016, it proposed a new legislation, showing much it impacted the discipline.

5.2.1.2. Green Paper on the Development of the Common Market for Telecommunications Services and Equipment

The Green Paper on the Development of the Common Market for Telecommunications Services and Equipment, (COM(87) 290 final), was published in 1987. Different events influenced the political landscape at the time. The Community had two years to achieve the goal of a single market by 1992. This objective stimulated a lot of reforms and big expectations. At the same time, the telecommunications market was largely focused on national incumbents, who while satisfied with their monopoly, were conscious that a change was near and inevitable (Ungerer 2012).

The Document explains the basis for which the Commission saw a community action necessary. The telecommunication field was born as public service shaped by national policies. These national policies created a consistent legislation gap between Member states. National policy foundations also permitted national telecommunications monopolies to form. In the presentation of the Green Paper, the Commission says that, considering the difficulty at that time to create new criteria for all the new legislations in the near future, one should take also cognizance of the fact that member states were beginning a long process of analysis and operation in the field to arrive at the decision. Considering the constant technological development, the Commission thought important the settlement of some criteria to influence the direction of this process. At the beginning, and for over 140 years, the telecommunications sector provided only one service. In the eighties, it evolved from one to a dozen. The Telecommunication sector was accelerating. This was a clear signal for the Commission that a probable explosive growth was forthcoming. The Commission stressed the importance of the sector: "Telecommunications have a great influence not only on services in general, such as financial services, transport and tourism, but also on trade in goods and on European industrial co-operation" (CEC 1987, p. 4). The centrality of the sector for Europe was also pointed out through the prediction that, in a period spanning only 13 years, the Gross Domestic

Production (GDP) of the Community produced from telecommunications would increase from two per cent to seven per cent (CEC 1987).

The Green Paper stressed the existence of three objectives. The first one was liberalization. It must happen in a gradual way before achieving full liberalization of voice and networks by 1998. The second objective was structural reform. The reform should have been realized with the separation of operation and regulation. The third objective was scale. The objective was to create a market where growth could be assured by a general authorization regime (Ungerer 2012).

5.2.1.3. Directives on infrastructure and competition

In 1988, the Directive on competition in the markets in telecommunication terminal equipment was approved (88/301/EEC). In this text, the Commission halts special and exclusive rights regarding the infrastructures. This habit allowed and permitted the monopolization of the market without reason (Gardini 2014). In favour of this liberalization, the Commission recommended in Article 7 that companies let the consumers end the contract if it was stipulated before the elimination of the exclusive or special rights (CEC 1988). This Directive was a big step for concurrence and two others directives rapidly followed it.

Two years later, in 1990, the European Council approved two Directives. The first one pertained to the establishment of the internal market for telecommunications services through the implementation of ONP, 90/387/EEC. The other, pertained to competition in the markets for telecommunications services, 90/388/EEC. Through these policies, the authority divided the management of the infrastructure from the services (Gardini 2014). The reason these directives are important is because the directives were both fostering the ONP on one hand, and the liberalization of the market on the other (Harcourt 2005). The structure of the Directive on ONP, imposed a separation between regulatory and operational functions. This document had a similar structure as the previous Terminal Equipment Directive. This document pertains also to the removal of special and exclusive rights. In the Directive approved two years before, member states could limit the provision of services only to ensure some requirements such as, for example, maintenance of network integrity (Council

1990). Two years after that, the Council thought it was also time to eliminate this exception to make a further step toward a complete liberalization.

The Commission brought to light that special rights impeded technological development. That is why the legislator quickly decided to eliminate the exceptions. Both Directives were created out of this to implement Article 90 TEEC (Ungerer 1995). The OPN Directive established rules for transparency and against discrimination.

5.2.1.4. Green Paper on the liberalisation of telecommunications infrastructure and cable television networks and the following consultation

The Green Paper on the liberalisation of telecommunications infrastructure and cable television networks was a partial regulation that discouraged non-European companies from investing in trans-European services, limiting concurrence and maintaining a high price level for European consumers. In the Council Resolution published in July 1993, it asked for a Union policy on infrastructure. The Green Paper that followed was created to begin the regulation process to overcome this obstacle. The same Resolution asked for a package of measures with the aim to implement the telecommunications regulatory framework. This was the first step that needed to be taken before a much bigger step: the liberalization of public voice telephony services in the 1998 (Berben and Clements 1995; Preiskel and Higham 1995). The report presented by the Bangemann group had a large influence. This Document, "Europe and the Global Information Society", was submitted in 1994. The Recommendation was addressed to the European Council and asked member states to liberate their infrastructure and services still under monopoly in telecommunications sector (Preiskel and Higham 1995).

On 25 October 1994, the European Commission adopted Part I of a Green Paper on the liberalisation of telecommunications infrastructure and cable television networks, COM(94)404. The European Commission created this section to decide a basic set of rules and timetable. The Green Paper suggests that the liberalization process should be done in two steps. The first step should be the elimination of all restrictions regarding the use of infrastructure, whether the infrastructure is owned, or it is owned

by a third party. This should gather satellite communications services, terrestrial telecommunications services, mobile networks and microwave links. The commission suggested the use of cable TV infrastructure for the previous listed functions. The second part of the process regards licensing. The providers of networks for the services that have been liberalized in the first phase should permit the use of this infrastructure for the supply of public voice telephone (CEC 1995a; Preiskel and Higham 1995).

After three months, the Commission published the second part of the Green Paper, Com(94)682. The European Commission created this section to stimulate the discussion, regarding universal service, interconnection and interoperability, licensing procedure, the conditions for fair competition, employment, the information society and the international dimension. The Commission stressed the importance of maintaining universal service. Even if it was an essential redefinition of those services, their function was still important. The new definition was crucial because, thanks to the latest evolution of the technology, a new range of basic services were available and it was important to include them in the new definition. In any case, the amplification of this service should not include non-telecommunication issues. The European Institution thought it was important to set a minimum of common service and infrastructure under the new definition of universal service. It also wanted to create a common framework for the financing of those services, even if the specific regulation was entrusted to member states. The document affirms that all players should participate in either providing or financing the universal service (Preiskel and Higham 1995). The universal service issue was also an important part of the consultation which followed the document. It was stressed that those services were important. At the same time, some were afraid that the protection of universal services could have been used to slow down the liberalization process.

Besides universal services, the licensing procedure was, of course, a central issue in a liberalisation process. The Green Paper suggests that this issue can remain under the legislation of member states but also proposes a European framework. The framework proposes that the licences for telecommunications infrastructures may only be limited in few particular cases. The rules must be clear, non-discriminatory and announced in advance. As for the matter of the conditions for fair competition, the Commission stressed the importance of implementing the EC competition rules with a focus on interconnection (*ibid.*).

The principal aim of this Green Paper was to eliminate the many restrictions preventing access to telecommunications infrastructure and to prove that eliminating such restrictions would not hurt universal service. The commission expected many benefits from the liberalization. Examples of such benefits would be: creation of new opportunities for the European telecommunications sector and a reduction of the tariffs price. The commission expected new opportunities because they predicted major investment by public and private, therefore reducing the infrastructure bottlenecks (ibid.). The document called for a radical re-examination of the previous structure. This approach of the European Union gave equal importance to all the technologies establishing impartial principles as cost-based tariffs and interconnection for universal service (Berben and Clements 1995). It will become clear that the authorities assigning all technologies equal importance is an important issue.

The Council of Ministers did not endorse the two-step plan for liberalization devised by the Commission. This was not a problem for the Commission that acting on the Treaty could adopt Directives without involvement in any other institution. For this reason, on December 1994, the Commission proposed a Directive regarding cable TV liberalization (Preiskel and Higham 1995). The proposals discussed in the Green Paper were followed by a public consultation; in May 1995 the Commission had the duty to present the results (CEC 1995a).

The consultation process began after the publication of the first part of the Green Paper and continued after the publication of the second part. The organizations involved in this consultation were more than 200. Hundreds of them responded sending written answers. The rest were taught in meetings organized between February and March 1995 (CEC 1995b).

There were many issues discussed in the consultations. The removal of special and exclusive rights for networks was one of them. Mobile operator companies, customers and telecommunications equipment manufacturers believed the deadline established for 1998 needed to be brought forward for all telecommunications services who were open to competition. Others, like fixed network operators, did not want an advanced deadline. Those operators also stressed that, with an open access to the infrastructure, they probably could not afford to invest anymore in universal services and in infrastructure in less profitable areas (ibid). Of course, companies that did not have infrastructure insisted on the necessity of open access

so they could grow and use infrastructure of the previous monopoly at a reasonable price.

As far as universal services, many organizations argue that while they might be important in a liberalized market, no one should use them as an argument to postpone competition. But they also believe that these two issues were not in antinomy. They stressed the point that universal services in period of monopolies were also not always present. At the same time, the ones who wanted a liberalised market, saw it as an opportunity to improve the quality of services. Up to this point, consumers, operators and service providers thought that universal services were only voice telecommunication, but they also believed the list of services contained in this term should be actualized together with the evolution of the technology and user demand. Trade Unions then, underlined the importance of universal service as a cohesive instrument, as they connect peripheral areas with the bigger ones (ibid.). Universal services were a difficult issue. It was essential to protect the existence of such services for the community, but at the same time those services were controlled by a monopoly which could slacken concurrence.

Another topic focused on fair competition, open access and ONP. As for ONP, some operators and companies asked for an OPN framework that involved not only dominant undertakings, but also all of the companies and new players that were or wanted to create a bottleneck infrastructure. The most probable bottleneck at that time was the local loop. Consumers continued to worry about the issue of alliance. They hoped these alliances could offer better competition, as opposed to reinforcing the position of the involved companies in the market. In order to assure fair competition, cable television companies and fixed networks told network operators and utilities that there would be an obligation to separate the account. The majority of the operators agreed on the necessity of accounting separation between different activities. The majority of the organizations were in favour of the ideas of the Green Paper, a paper designed to fight business restrictions, because it could stand in the way of convergence (ibid.).

In terms of licensing, some companies claimed that the Green Paper seemed to want to distinguish between licences for telecommunication infrastructure and licences for telecommunication services. They argued that if this were approved, the results would be artificial distinction between the two activities, and it would likely also prevent vertical integration and economies of scale (ibid.).

To summarize the principal ideas, fixed network operators were content with the deadline for the liberalization, while the other responders wanted to advance it. Universal services were recognised as important; however, they could have been used to prevent the introduction of concurrence. ONP was important to assure fair competition and to the elimination of facilities bottlenecks. Some also saw separation of accounting as important, but for others any distinction was only artificial.

As previously mentioned, at the beginning of the policy process in the late eighties, there were specific policies for telecommunications and audiovisual sectors. For this reason, not only was the telecommunications sector influenced, but the audiovisual sector developed some novel policies as well.

5.2.2. The first policies in Audiovisual Media sector

In the beginning, the EU did not regulate the audiovisual sector. In 1993, with the Maastricht Treaty coming into force, this issue was added to the jurisdiction of the EU. European policies in terms of the audiovisual sector began nevertheless before this point. This came as a result of the audiovisual market changing rapidly with the appearance of many television broadcasters and satellites. In 1984, with The Green Paper on the Establishment of a Common Market in Broadcasting in place, the EU's policy process in the audiovisual sector began. This first document having the scope to stimulate discussion was followed in 1989 by the Council Directive 89/552/EEC, better known as Television without Frontiers Directive (TWFD) (Burri-Nenova 2007).

5.2.2.1. Television without Frontiers Directive

During a 1985 discussion that preceded the final approval of the Television without Frontiers Directive, the European Parliament Legal Affairs Committee stressed the core problem of media concentration in many amendments; nevertheless, the Council approved the directive without rules regarding media concentration (Iosifidis 1997). This policy creates the foundation for a common single market for media. The European Directive allows member states to develop stricter rules in the field that can be applied specifically to the broadcasters under their legislation. The TVWF

Directive asserts that the broadcasters must follow and conform only to the legislation of the Member State where it was established. When the broadcaster complies with the legislation of its own state, then it may also broadcast in other member states without having to undergo further checks or controls. The State that receives the transmission may only do a secondary control in extraordinary cases. The directive also encouraged the promotion of European works, advertising, protection of the public and the right to reply (Burri-Nenova 2007). 1989 is a significant year, after which many of the policies that shaped the media market were published.

The TVWF Directive included in the Article 26 the draw of a Report that should help the legislator to adapt the Directive to the evolution of the field and to control how member states applied it. Five Reports followed the directive from 1995 to 2006, to track the development of the application of the Directive. These reports pointed out problems and new ideas to modify the directive. In part D of the first report (official name: COM (95)86 final), it is possible to find a proposal for a revision of the Directive. This was justified by three causes. It was the first report following the approval of the Directive and it was preceded by consultations to understand which difficulties each Member State had encountered. The second factor resulted from consultations with professionals between 1994 and 1995. The last cause was the analysis of trends in the audiovisual industry published in the Green Paper and the Commission's work on the Information Society (CEC 1995c).

In 1990, the European Parliament adopted a resolution on Media Take-overs and Mergers in which it underlined the importance of control and limitation of market concentration. The reasons that were given were economically framed, but also sector specific. The concentration on media landscape limits the freedom and the variety of sources. With this resolution, the European Parliament urged member states to adopt laws to control media concentration. A Communication from the Commission followed this act. It recognised the inability of Articles 85 and 86 of the TEEC to rule the complexity of the multi-media ownership issue (Iosifidis 1997). At that time, the European authorities were aware that a sector specific competition law was necessary. The European Commission decided to undertake a long process of investigation and consultation, to make the new legislation possible. The first step was the publication of a Green Paper.

5.2.2.2. Green Paper on Pluralism and media concentration in the internal market

In 1992, the European Commission published the Green Paper on Pluralism and media concentration in the internal market: an assessment of the need for Community action, COM(92)480 final. This document focuses on the European concentration in media sectors even if it was widely influenced by industrial pressures and the political beliefs of Directorate General III, the Directorate General for industry (Papathanassopoulos and Negrine 2011). The Green paper from 1992 resulted from a consultation with a modest number of companies from the sector. The main issue in the Report is the difference of legislation between the Member states, which impeded the circulation of the material. The proposed solution was a reduction of the difference between regulations, in order to foster a common market and a maximum limit of audience shares in a multi-market inclusive newspaper, radio or television of 30 percent ownership. The document was divided into four parts; the first of which argued three different kinds of pluralism. Pluralism can be assured by editorial content, the number of channels or the number of media owners (Harcourt 2005).

Assuring pluralism through the differentiation of content is the most difficult option. For this reason, the commission seems to prefer monitoring of the media owners. The second part described the situation of controllers in Europe. This section reported that in most member states the three biggest television channels controlled over 80% of the share. The third part explained how member states had ensured pluralism leading up to this point. The last part was made up of propositions to intervene and to find a solution for this problem. The first solution did not provide any national solution and let member states decide on their own. The second option was a recommendation to ensure transparency in media ownership between national authorities. The third was an European harmonisation of the rules through a directive, a regulation or the institution of an independent committee. The Commission recognized in the Green Paper that, even if there is a connection between competition and pluralism, because competition can have positive effects on pluralism, those issues are separated (CEC 1992; Iosifidis 1997).

The European Parliament responded quickly to this document with a Resolution in which it asked for a multinational legislation to ensure diversity of opinion and pluralism in Europe. After the Commission's publication, a selective consultation process began. The document is divided in four parts (Harcourt 2005).

In February 1993, the Commission sent out the first questionnaire. The addressees were 16 European associations, 15 media companies and 2 consultation groups. The 15 media companies belonged to only three member states respectively: two from Germany, five from Italy and six from the United Kingdom. The questionnaire focused on two policy instruments: audience share and definition of the controller. In April 1993, the Commission organized a hearing and invited the groups who responded to the Questionnaire. The event was not a success because the discussion was unfocused and it brought about no decision. The meeting was in some ways a success, as by the end it was clear to the Commission that the core of this mess was a misunderstanding of the first Questionnaire. The Commission decided to send a new Questionnaire in July of 1993 called the complementary Questionnaire. The second Questionnaire was a tool used to discover the intention of national governments in the field of media ownership legislation and to find out which companies were involved in their national legislation and decision making process. This Questionnaire would have been easier. It was short, only a page and the matter was not argued too much in great detail. The argument was between audience and definition of the controller. The idea was to use the audience as an indicator of the power of the company. The Commission proposed to use it to control media concentration. Some groups responded to the commission saying the question concerning the audience was not clear. The Commission replied with a study about the audience. At the end, there were 28 responders: 12 associations and 12 media companies. The majority of groups were against European legislation (ibid.).

5.2.2.3. Green Paper: "Follow-up to the Consultation Process Relation to the Green Paper on "Pluralism and media concentration in the internal market"

In 1994, two years after the Green Paper, the commission published another one: a follow-up to the consultations in relation to the Green Paper called, "Pluralism and

Media Concentration in the Internal Market- an Assessment of the Need for Community Action". This Green Paper is divided in three different sections, after the clarification of the consolidation process and in analysis of the consultation process they discussed different policies instruments.

Throughout this analysis, one sees that similar interest groups provide similar answers. Federations such as the European Newspaper Publishers Association, the Association of Commercial Television, the European Publishers Council, the Federation of Associations of Periodical Publishers, large media groups such as Fininvest Comunicazioni, News International plc and News Corporation were against any European action, which was option one. There were varying arguments. The most popular argument fought to intervene in cross-media ownership issues, thereby eliminating restriction through deregulation, as opposed to combining different member states regulations which would bring only more regulation in the field. Many medium sized companies agreed with a possible European harmonization action such as: Independent Television, Channel Four Television, Pearson plc and Gruppo Editoriale L'Espresso. The principal argumentation was that a transnational harmonized and liberalized market could be the only solution that allowed them to continue to exist without the necessity of being bought (Iosifidis 1997). The answers seen so far are far from surprising. The big companies, with consolidated position in the market, try to maintain their privileges affirming that there is no reason for a European action. Option one would leave things as they are. Through voting for this option, they would be trying to maintain the status quo by avoiding ownerships rules. The one action that can improve their situation is, of course, deregulation. Also, the reaction of the medium-size companies is not surprising. They must compete with giants that control a large part of the market. Without a harmonized legislation, the risk is that the giants would be always be bigger.

The European Broadcasting Union was in favour of transparency measures. This option was also supported by Zweites Deutsches Fernsehen (ZDF) and Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (ibid.). These answers were maybe influenced by member states. Public service broadcasters, even if often independent organizations, are in some degree controlled by the state. It is possible that member states, who would not want to lose power in the field of media, influenced their answers.

The majority of professional or worker organisations were in favour of an intervention. The European Graphical Federation, the European Committee of Trade Unions in Arts, Mass Media and Entertainment (EGAKU), the Broadcasting, Entertainment, Cinematograph and trade Union and the Comité des Industries Cinématographiques et audiovisuelles des Communautés Européennes et de l'Europe extracommunautaire (CICCE) stressed the need for common minimum rules for media ownership. EGF also asked for a Commission intervention for issues like the press, advertising concentration and so on. EGAKU and CICCE asked for better development in cultural policy with the ability to maintain pluralism and cultural diversity. The International Federation of Journalists' idea was that the ownership issue should be regulated through National legislation, and the only duty for the Commission should be to ensure that all member states were in the position to adopt regulations in the field (ibid.).

In its feedback, the Economic and Social Committee (ESC) affirmed its contrariety to the decision of the Community not to act to assure pluralism. They also affirmed that creating a competitive market does not directly encourage pluralism. The option to go for separate national-level legislation to assure transparency and rules on media ownership was rejected by the ESC as well as by the Parliament. They answered that the actions should be taken at community level (CEC 1994).

The Commission did not include consumer associations in their consultation. This choice is questionable. The EU does not consider citizens represented through consumer associations, even if policy regarding concurrency, ownership and pluralism are taken in the name of citizens (Iosifidis 1997).

To have a general overview of the answers, it is possible to summarize the ideas in a brief and generalized resume. Big media groups and broadcasters supported option one, which was no European action. Public service broadcasters supported the second option, a recommendation to ensure transparency in media ownership between national authorities. The majority of professionals or worker organizations, medium-sized broadcasters and media companies sustained the third option, European harmonization.

Following the first two sections, several policy instruments that the Commission considered valid to the ownership issue are discussed. One of them was audience control. The commission noted that interest groups were more favourable to this

proposal in the second questionnaire. This shift was important for the commission because audience control was a good instrument to separate competition law from media ownership law (CEC 1994).

This document also brought new technologies into its focus. In 1994, two studies were published on audience share. These two studies, along with a third, were sent to influence groups one year later. The three questionnaires were not very different from each other. The first one investigated the opinions about share and controllers. The second one was a second draft, an unsuccessful simplification of the first one, and the last one was more focused on the policy instruments that could be adopted. The core issue of the third one was the measuring of audience share to measure media ownership (Harcourt 2005).

In the end, 36 replied, split among 18 companies, 13 association and 5 member states. Germany and the UK responded against the proposal. Luxemburg and Denmark were neutral, and Sweden could not find an official position due to the internal disagreement between opposing authorities. Four different Swedish authorities, indeed, answered the questionnaire, two in favour and two negatively. In 1995, Germany, the UK, Denmark and Sweden, all states that decided to respond to the questionnaire, decided to modify their national laws. Also, Italy and Greece decided to modify their laws, even though they did not reply to the questionnaire. In the same year, the results of the three questionnaires were put together and the main opinions of the influence groups were summarized. The final result was given to the European Parliament, giving them the input for a Directive on media ownership. Mario Monti, the new Directorate General of the European Commission XV for internal market, was elected in 1995. He strongly advocated for a European initiative to assure common rules on acquisition. He submitted the Draft Directive to the Commissioners College in July 1996 as well as in December of the same year (ibid.).

5.3. The period between 1995 and 1999

In January 1995, Jacques Santer becomes President of the European Commission²⁵. The Kosovo war characterized this period. Even if this territory was not part of the European Union, the war influenced the dynamics of it. Four years later, in January 1999, the President Jacques Santer and his team were accused of allegations of fraud and mismanagement. After this scandal, the Members of the European Parliament had a vote to decide the future of the Commission. The censure motion did not reach the two-thirds majority necessary to sack Santer and his team. Even with this result, more than 230 members, a simple majority, expressed itself against the continuation of the mandate. A reason for this result could be the fact that the Members of the European Parliament could only vote for all 20 Commissioners and not for a single Commissioner. Despite this result, in January, President Santer rejected the idea of stepping down (European Voice 1999b; European Voice 1999a). The January vote was not the last problem that the Commission would face. A committee of five experts investigated the situation and found more proof of fraud, waste and wrongdoing (Harding 1999a). On 15 March 1999, the Commission decided unanimously for a mass resignation. All Commissioners agreed, even if some of them argued against it. Some argued because they believed it was wrong to take collective responsibility because of one person's wrongdoing (Harding 1999b).

5.3.1. New Audiovisual policies after the period of consultations

5.3.1.1. The Draft Directive on media ownership

During the elaboration of the Draft Directive in 1996, there was intense lobbying from big media groups such as News International, Springer ITV and CLT; however, at the same time, small companies, consumer organizations, etc. supported the Commission (Harcourt 2005). On 24 July 1996, the Directive was also badly received and obtained objections, especially from two commissioners, one from Great Britain and another from Germany. Competition Commissioner Sir Leon Brittan

²⁵ http://europa.eu/european-union/about-eu/history/1990-1999/1995_it 17.01.2017

and Industry Commissioner Mr. Martin Bangemann thought the Directive was too strict. Mr. Marcelino Oreja, the Spanish Audiovisual Commissioner, agreed with the initiative (Harcourt 2005; Jones 1996). The name of Mr. Martin Bangemann was already cited in this work (chapter 5.2.1.4.) because of the Report that he wrote on Europe and the Global Information Society in Appendix I it is possible to find a description of the Report and a brief discussion about this politician. The Appendix I is written with the aim to give a better picture of the Commission's dynamics and, as previously stated, the opposition work of Bangemann influenced the destiny of the Draft Directive.

In a debate on 4 September 1996, Commissioner Monti stressed his principal interest in relation to the Draft Directive. His aim was to have specific and common rules for cross-border acquisitions to permit companies to deal with companies established in other member states. The core interest of the European Parliament, to assure pluralism, was secondary for him. Stimulating annotations came from Consumers Affairs Commissioner Emma Bonino and Agriculture Commissioner Franz Fischer, who together with the German Industry Commissioner Martin Bangemann argued that every Directive should concern cross-border acquisitions. At this point, the main objections came especially from three Commissioners. Again, there was Competition Commissioner Sir Brittan, who thought that there was no need for action in the field, and there was Industry Commissioner Bangemann, who was partially in favour. He wanted a Directive, but he also wanted more reflection on potential difficulties or risks. Audiovisual Commissioner Marcelino Oreja, agreed with an action, but not one put into effect through a Directive, as it was not the best approach (Jones 1996).

Thanks to this strong opposition, the final draft was not as strict as it was at the beginning. The national audience share allowed was higher: 10% for multimedia and 30% for monomedia, instead of 25% at the regional level and 10% at the European level. It also included a flexibility clause. The clause authorized Member State to modify the limit-giving derogations to specific companies. This is because there were too many companies already exceeding the limit. This was in light of the smaller countries where, for example, the audience limit could be easily bigger than the limit. Despite the mentioned oppositions, the Directive received a simple majority in 1997 (Johnstone 1997; Harcourt 2005).

Despite this support, Commissioner Monti decided to withdraw the proposal because of the incredible high pressure from the lobby, especially that of the European Publishers Council (Papathanassopoulos and Negrine 2011). After this decision, a lot of different events, such as the dissolution of the European Commission before its natural end, resulted in the Draft Directive being left out. Even if the legislation was not adopted, it was an important step; it brings this issue to a European level and the national level for some member states: Germany, Ireland, Romania and UK adopted share as instrument to calculate market power. Lobbying in this field continued into the following years (Harcourt 2005).

5.3.2. The implementation of telecommunications competition

5.3.2.1. Full Competition Directive

Following the trend given by the Bangemann Report and the Green Paper on telecommunications infrastructures and cable television networks, the Commission approved the Full Competition Directive 96/19/EC that amended the Directive 90/388/EEC. This was the last step for the liberalization of the infrastructure. The Directive abolished all special and exclusive rights regarding the infrastructures. Even if the ONP Directive was born to abolish the exceptions conceded by the previous Terminal Equipment Directive, there were some exceptions regarding exclusive rights, which the Commission conceded in 1990. At that time, the Commission thought it was too dangerous to open the market in voice telephony because the development of the infrastructure was mostly derived from telephony. The opening of the provision of this service could have threatened their financial stability and could have posed an obstacle for the performance of the telecommunications sector (CEC 1996). The new Directive also abolished the number of companies that could enter the market. It also imposed that member states must assure that all companies wanting to provide services or networks were actually able to provide services or networks (CEC 1996: Art 2). With this legislation, it is important to see that through an open network is assured concurrency, and not through the building of parallel infrastructure (Gardini 2014).

5.3.2.2. Green Paper on Convergence of the telecommunications, media and information technology sectors and the implications for regulation

In 1997, the European Commission published a Green Paper on Convergence of the telecommunications, media and information technology sectors, and the implications for regulation towards an Information Society approach: COM(97)623. This paper argued for possible future competition between telecommunications companies and broadcasters for the control of the market, and insisted for a liberalization initiative allowing media companies to enter in the telecommunications market and vice versa. It also recommended a new authority for media and telecommunications (Harcourt 2005). In the document, which was intentionally full of questions to stimulate public interventions and debate, the Commission proposed some new approaches to prepare to react to convergence in a timely fashion (CEC 1997). This document was followed in 1999 by a Communication, COM (1999) 108 final, which aimed to explain the results and the process of the public consultation.

5.3.2.3. Green Paper on the results of public consultations that followed the Green Paper on and the implications for regulation

The consultation process consisted in two periods. The first period, from 1997 to 1998, concluded that convergence of media, and more specifically between technological platforms and network infrastructures, was not something in the distant future, but something that was already a reality. The consequence of this first finding was the need of modernization of the regulation. An improvement could be a legislation that could be applicable to infrastructure, without distinction for the type of service that those networks delivered. The responders opted for a horizontal approach to the regulation. In July, the second period of consultations began. The new questions were about: "(i) access to networks and gateway facilities;(ii) investment, innovation and content production, and (iii) balancing regulation between public interest and competition considerations" (CEC 1999b: II). In the end, there were 80 responders. Between them there were some famous telecommunications companies such as: Telecom Italia, British Telecom, KPN Telecom, France Telecom, Telefónica, Sonera Corp (Finland) and Telia AB. The responders also included some

Broadcasters such as: Bouygues, Bertelsmann AG, Vivendi, Canal +, British Broadcasting Corporation (BBC), ARD/ZDF and organisations as: European Telecommunications Network Operators' and Association and Independent Television Commission (CEC 1999b).

The responses about access to networks outlined two trends. The first trend said that the core attention of regulation should be put on service-based competition, or to stimulate the birth of an infrastructure-based competition. Among those who were oriented to this category of regulation, there was an equal division between those who preferred service-oriented and the ones who preferred infrastructure-based competition regulations. In general, companies which recently entered the market, as well as well-established Broadcasters, preferred service-based law. The reason for this is that broadcasters wanted to reach all the platforms that the convergence process was creating. They believed in open access to the network and the local loop which could promote the development of new services, such as Video on Demand (VOD). At the same time, they wanted to reach consumers without having to invest considerable capital in the infrastructure, especially in the local loop.

Telecommunications companies were completely against this. The arguments were that an open access infrastructure and local loop would discourage the enterprises from creating new infrastructures. Telecoms proposed a managed network and interface for the local loop (CEC 1999b). The answers came as no surprise. Broadcasters, who offer services, wanted service-oriented concurrence legislation. They wanted open access as a tool to offer their services. Telecommunications companies, which are more focalized on the infrastructure, stirred up the problem that, with an open access infrastructure, no one would be interested in the future to invest to improve them. Local loop unbundling, which is the process that allowed multiple operators to use the local infrastructures that connected the bigger network to consumers, was a disincentive. The reason is if every company could use the infrastructure of the previous incumbent for a derisory price, no other company would create a new one or attempt to improve the old one. Creating new infrastructure in this case also means giving advantage to the competitor. Of course this argument was enclosed by the fact that telecommunications companies hoped for a managed network to maintain their position in the market.

The second recurring topic was that regulation should focus simultaneously on convergence and on competition. Sector specific legislation goes in hand with

addition to concurrency regulation. Those responders followed three different mindsets. Some preferred to follow the guidelines of competition legislation. Some thought that sector specific rules needed to be abandoned after a transitional period, in the run-up to a competitive market. In this transitional period, specific legislation should assure competition. As consequence, issues like standards and bottleneck would be solved. Respondents emphasized the need of setting European standards to foster the development of an Information Society. Some interviewees, a part of them broadcasters, proposed “reasonable and non-discriminatory access to Electronic Programme Guides (EPGs), Application Programming Interfaces (APIs) and Set-top box” (CEC 1999b: p. 4). Telecommunications and Information Technology (IT) companies proposed instead, a regulation of infrastructures that were gateways, similar to the regulation of internet browsers, meaning a direct application of competition rules. The third group was in favour of sector specific regulation. Those who gave this answer justified this kind of intervention with two motivations. First, they wanted that public interests, not fixed in the general competition law, to be fixed in sector specific regulation. The responders assured that there was no conflict between public interests and the fostering of an open and competitive market. Furthermore, almost all the responders considered the separation of content and infrastructure regulation a good idea. The second reason was to assure certainty of investors, and rapid reactions to anti-competitive behaviour, through sector specific regulation (CEC 1999b).

Public Broadcasters stressed two topics they considered important. The first was that broadcasting needed sector specific regulations for the present and the future. They claimed that cable television also needed regulation. They wanted “must-carry” law to assure that public broadcasting would continue to be accessible for all the public. The public service needed an assured access to frequencies, even if it was a less profitable service. In this way, it would prevent the action of possible network operator gatekeepers who could prevent public service. Opponents, as before, defined this initiative as a disincentive for investments. Many responders believed that communication infrastructure needed to be considered an essential service (ibid.). As before, even if those are public companies, and they use the argument of the importance of public services, they are companies that have their core business in services. As before, such companies asked for an open access to be free from investing money on the infrastructure.

Another act that followed the Green Paper on Convergence of 1997 was a Communication from the Commission towards a new framework for electronic communications infrastructure and associated services – the 1999 communications review, COM(1999)539 final. The most important issues in this Communication was the concept of technological neutrality and convergence that made the old legislation obsolete (CEC 1999a; Gardini 2014). The term “technological neutrality” was a concept developed in this field after the convergence. It refers to the idea of non-discrimination between technologies. Adopting a technological neutral view, the legislator did not express his self in favour of, or against a specific technology. The legislator instead regulated the service in a manner to assure the same service equivalent regulation among technologies (CEC 1999a: Summary).

5.4. The period between 1999 and 2004

In May 1999, Romano Prodi was approved by the Parliament as president of the European Commission²⁶. The presidency, at this time, was full of efforts. Three of the most important objectives at that time were: The Euro, the expansion and the European Constitution. The Euro was introduced during Prodi’s tenure as President of the European Constitution. The introduction of the new currency brought with it several new objectives for the Commission. Such objectives included the control for possible violations of member states joining the Euro, helping them solve technical difficulties and coordinating the operations. Another important issue in this period was expansion. Europe wanted to increase the number of member states. In 2004, the European Union annexed ten more States and opened negotiations with Bulgaria and Romania. The Constitution was the only large failed project. Even if the project was abandoned following the negative referenda with the French and Dutch, the work and the negotiations to create it were many and difficult (Kertzer 2015).

During these years, it is possible to see a drastic change in the shape of the matter. With so-called “Electronic Communications Framework” it is finally possible to see results of the convergence, even in the European policies. The previous Telecommunications regulation had a mechanistic approach. In this period, the legislator was ready to adopt an economic approach more oriented towards

²⁶ http://europa.eu/european-union/about-eu/history/1990-1999/1999_en 19.01.17

competition principles (CEC 2006). An important step in this policy was the introduction of technological neutrality.

5.4.1. The electronic communications regulatory framework

After the Green Paper from 1997 on Convergence, public consultations and the Communication that introduced the concept of technological neutrality, a group of proposals about electronic communication services were published in 2000.

The European Parliament and the Council approved in 2002 those motions. The aims of these Directives were to try to discipline not the technology, but the service. Among all the new aspects of regulation, a new European Forum was introduced, the European Regulators Group. The duty of this group was to produce Guidelines for the analysis of market power, and to help the discussion process between institutions (Harcourt 2005).

It is possible to see that the legislator adapted the terminology that he used for the new technological convergence. The switch is observable in the choice of the terms. The legislator replaced the term “telecommunications”, used for example in Commission Directive of 1990 on competition in the markets for telecommunications services 90/388/EEC and the Full Competition Directive 96/19/EC, with the term “electronic communications”. This new nomenclature began with the Communication from 1999 and continued through the policies that followed (Gardini 2014).

The electronic communications regulatory framework consists of seven directives. The first one, approved on 7 March 2002, is the Framework Directive, 2002/21/EC. This Directive focuses on a common regulatory framework for electronic communications networks and services. The aim of which was to organize all the directives regarding electronic communications. The main topics of this document were: the deregulation of the sector of electronic communications, the separation between the functions of regulations from the operative one (to assure the independence of the national Authorities), and the adoption of rules for the management of the scarcity of resources (EP and Council 2002c).

At this time, the directives that came under the framework were: 2002/19/EC, 2002/20/EC and 2002/22/EC (also approved the 7 March 2002) and the 97/66/EC,

approved the 15 December 1997. The 2002/19/EC Directive regulated the access to, and the interconnection of, electronic communications networks and associated facilities. This Directive is also called the Access Directive. The principal aim being to stimulate the concurrence among companies for services and for infrastructure. In this case, the word “access” indicates the obligation to make accessible the resources to another company that respects certain conditions (EP and Council 2002a). Directive 2002/20/EC concerns the authorization of electronic communication networks and services; it is also called the Authorisation Directive. This is the Directive that established the deregulation (EP and Council 2002b). The 2002/22/EC Directive, concerning universal service and users' rights relating to electronic communications networks and services, is also known as the Universal Service Directive. Following this Directive, member states must offer all their citizens some services with a determined quality standard and an affordable price, as listed in the document (EP and Council 2002d). The Directive 97/66/EC concerning the processing of personal data and the protection of privacy in the telecommunications sector was amended early after the adoption of the Framework Directive. On 12 July 2002 the European Parliament and of the Council adopted the Directive on privacy and electronic communications, 2002/58/EC. Basically, it updated the old directive's rules that the protection of personal data has to be in line with the new technologies of electronic communications, irrespective of the type of technologies used (EP and Council 2002e). The Commission added the Competition Directive 2002/77/EC on 16 September 2002 to the electronic communications regulatory framework. The last regulation under the electronic communication framework is the Decision on a regulatory framework for radio spectrum policy in the European Community, or the Radio Spectrum Decision, 676/2002/EC (EP and Council 2002f).

The issue disciplined in the Directive 2002/77/EC is the competition in the markets for electronic communications networks and services. The previous Directive, set in 1990 on competition in the markets for telecommunications services, has been modified several times. For this reason, the Commission decided to adopt new regulations. Member states must stop giving exclusive and special rights to the incumbent. In Article 2.2, it was ruled that that all member states must take measures to ensure that all companies which have interest in offering electronic communications services can actually offer them. They also must assure that

companies that want to create or extend electronic communications infrastructures can do that (Gardini 2014; CEC 2002). Article 3 obliged Member State to take measure to prohibit public vertical integrated corporations, which provide electronic communications networks in a dominant position, from practicing discriminatory behaviour against other companies to derive advantage. Together, the two articles, are a clear fillip for concurrency, and a concrete step to try to destroy old monopolies and oligopolies present in the sector (CEC 2002). This is an important Directive for the telecommunications field because it came in a time that was ready for a complete liberalization (Nikolinakos 2006).

Also in this regulation, we can see that the legislator adopted new terminology. Examples are terms like "telecommunications services" and "telecommunications networks" substituted with "electronic communications services" and "electronic communications networks". The lawmaker made these changes in order to follow the convergence phenomenon. These new definitions incorporate all electronic communications services and or networks involved in the transmission of signals by cable, radio, optical fibre or other electromagnetic medium in one definition. This comes as consequence of recognizing transmission and broadcasting of radio and television programmes as electronic communication. This new definition is also comprehensive of the fibre networks that allowed third parties to send signals using their own equipment (CEC 2002: 7).

After the Full Competition Directive in 1996, three relevant markets were undivided: landline telephony, mobile telephony and rented lines. After the Regulatory Framework for Electronic Communication, the Commission published a Recommendation, C(2003)497 final, that increased the relevant market from three to eighteen. However, after a short period, the commission decided in 2007 to reduce the number of relevant market from eighteen to seven with another Recommendation in 2007, C(2007)5406 (Gardini 2014).

The relevant markets are those that need particular surveillance because they have more concurrency risks. This quick change of direction should be interpreted as a success for the legislation. The new operators entered the market, while the others licensed operators were able to compete in the different markets, even when there were essential facilities which were not replicable (ibid.). What happened with the definition of the relevant markets is a sign that the Directive on competition in the markets for electronic communications networks and services actually created a

competitive market. In less than five years, the critical markets decreased by more than a half.

5.4.2. The application of the Television Without Frontiers Directives

In the meantime, the European Commission had published two Reports for the application of the TVWF. In 2001, the institution spread the third one. In the third report published in 2001, (COM(2001)9 final) the second chapter illustrates the development of the audiovisual market between 1997 and 2000 in Europe. This section explained that many private broadcasters made strategic deals with each other as a solution to the challenge that came from new technologies. These deals were concluded with other enterprises in the audiovisual sector but also with other sectors, such as internet and telecommunications companies (CEC 2001, section 2).

In the conclusion, the Commission stressed that technological and internet development were profoundly changing the broadcasting market, and that the directive should be adapted for those new challenges. The impact of the developing technology and market was left to the fourth report (CEC 2001, section 7). The Resolution of the European Parliament in the third report on the application of the TVWF Directive, Document A5-0286/2001, regrets that the Commission did not offer an analysis of the concentration and did not discuss the implication that it had in the audiovisual market. The Resolution was also conscious of the need for a revision of the TVWF Directive and asked for the inclusion of some new issues that became important in the new audiovisual landscape, such as webcasting on the internet, video streaming, electronic programme guides an, etc. (EP 2001).

In the fourth report, COM(2002) 778 final, the development of the audiovisual market between 2000 and 2002 is explained. One of the most important changes was the increase of the number of channels available via terrestrial, satellite or cable. In 2001, in just one year, they increased by over 25%. Also, the digital packages proposed to the public increased by 2/3 and the service at the beginning of 2001 was available in almost all member states. There was a remarkable increase of 21% in the number of European homes that received channels directly or through collective antennas; however, the market remained almost unchanged for the cable industry.

As in the previous Report, the Commission stressed the tendency of private broadcasters to make strategic alliances (CEC 2003a).

Also another Green Paper from 2003 on services of general interest discussed the issue of media concentration. The Commission claimed that ten years following the first Green Paper, on Media Concentration in the Internal Market which did not develop in the official initiative on media ownership, concentration in the market was even worse. The institution asked for an action to protect media pluralism threatened from concentration in the market and the proliferation of electronic media (CEC 2003b).

5.5. The period between 2004 and 2014

Between 2004 and 2014, José Manuel Durão Barroso chaired the Commission. He was elected twice as President of the commission. The first election was in November 2004²⁷ and, in September 2009 he was confirmed for another five years²⁸. The objectives he wanted to achieve in his first mandate were: to increase the competitiveness of Europe with the aim to transform Europe in the world's most competitive economy in five years, and to promote the expansion of Europe (European Voice 2004).

This period was very active, both in the EU and in other parts of the world. There was the Iraq war, beginning in 2003 and ending after eight years, which also involved some member states. The economic crisis also began in 2007 in the USA and then diffused worldwide. This crisis fuelled scepticism about the EU in many member states. An important step for the EU was also the approval of the Lisbon Treaty in 2007, which came into force in 2009.

An important issue discussed in the period was a campaign for rules about roaming. It began in 2007 with a proposal by Neelie Kroes, the telecommunications Commissioner, and continued with operator lobbying. In 2013, the legislation was still only a proposal (Kanter 2013).

Twenty months after the end of his second mandate, he accepted a position in the famous investment bank, Goldman Sachs, which caused reactions and

²⁷ https://europa.eu/european-union/about-eu/history/2000-2009/2004_en 17.01.2017

²⁸ https://europa.eu/european-union/about-eu/history/2000-2009/2009_en 17.01.2017

investigations from the Junckers Commission to understand if he had violated some European rules when he accepted the job. Barroso declared that his behaviour was correct, that he had not violated any rules and that during his mandate he was not a lobbyist for Goldman Sachs (Maxwell 2016).

The Convergence during these two mandates was well established, and the future policies that were adopted in Europe were conscious of that. A new definition of audiovisual media services brought a broader number of services under the regulation, and VOD services began to be ruled.

5.5.1. The Audiovisual Media Service Directive

After 18 years and many new revisions of the TWFD, the Audiovisual Media Services Directive, (AVMSD) 2007/65/CE, was approved in 2007. The review of the previous Directive began after the Fourth Communication on the application of the TWFD. Hearings with stakeholders took place and 6 urgent issues were pointed out. Media pluralism was among these issues. The Directive brought many important improvements to the discipline. It had to apply to all content services. The previous legislation had focused on the delivery model and there was an asymmetry between the disciplines as consequence. The AVMSD gave a broader definition of audiovisual media service. It defined the elements that must be present to be considered an audiovisual media service and therefore more services were brought together under the discipline of this directive. The new directive introduced two categories of audiovisual media services: the linear and the non-linear. The linear gathers the services that are shared based on a programme schedule. The non-linear has a catalogue from which the public can actively choose the content that they want to see (Burri-Nenova 2007). This was an important step in the legislative and developmental process; European intuitions recognized the evolution of the technological landscape and, in the light of the broader definition of audiovisual media service, introduced new definitions of services in the regulation. Although not the main issue of this thesis, another revolutionary change in the field brought from the AVMSD concerned advertising. As mentioned in the recital 57, the European Parliament and the Council adopted these new rules because users could, through the use of new technologies, avoid advertising (EP and Council 2007). This issue will

not be further analysed; however, I have mentioned this issue to show that the legislation was brought about by many different factors.

5.5.2. The new regulatory framework for electronic communications

The adoption process of the regulatory framework was a complicated process. The deadline for the application was July 2003, but some Member states needed more than two years for the transposition. The last one was Greece, who approved a National law in January 2006. In November 2005, before Greece adapted this legislation, the Commission had already undertaken a new consultation asking the opinion of the interest groups. In February 2006, the Commission published a Communication on Market Reviews under the EU Regulatory Framework Consolidating the internal market for electronic communications, COM(2006) 28 final, which was an important step in the construction of the review (Brandenburger and Janssens 2006).

In the Article 7 of the Framework Directive, the Commission established that National Regulatory Authorities (NRAs) must report to the Commission and other NRAs about new regulations concerning their market definition and significant market power that they want to impose or abolish on the market. Thanks to this Communication, the Commission was provided an overview of the situation and the application of the framework regulation in each Member State. In the Communication of 2006, the Commission listed the problems that had come out through the consultation mechanism. In addition, it proposed what needed to be considered with more attention in the revision of the framework. For example, the Commission found that NRAs had reacted similarly to analogous market failures. Nevertheless, even if the remedies were similar, the difference between Members states regarding the development and implementation of those remedies is clear. Differences that have important consequences for the internal market are ones regarding methodologies for cost orientation. The Commission suggested that the next revision of the regulatory framework could possibly achieve greater consistency (CEC 2006). In 2006, the revision route of the framework began. At the end of the same year, a Communication on the review had already been published (Brandenburger and Janssens 2006).

The adoption process of the new framework was long. In 2007, the legislative proposal was published and the publication in the Official Journal occurred in December 2009. the name of the new regulatory framework was Telecoms Package. This new framework was composed of two Directives and one Regulation. The new documents were: the Directive 2009/136/EC, Citizens' Rights that amend the Universal Services Directives, 2002/22/EC and the Directive on Privacy an electronic communication, 2002/58/EC; the Better Regulation Directive 2009/140/EC (which amended the Access Directive), 2002/19/EC, the Authorization Directive, 2002/20/EC and the he Framework Directive, 2002/21/EC, and the Regulation 1211/2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office, that substituted the European Regulatory Group adopted with the Decision 2002/627/CE (Gardini 2014). The principal aim of BEREC was to help the application of the European regulation, and to promote competition in the internal market and investment. It also gave the Commission power to implement the EU legislation for electronic communications²⁹.

5.6. The period between 2014 and 2017

In June 2014, Jean-Claude Juncker became President of the European Commission³⁰. Also in 2004 his name was proposed for this post, but the Luxembourger declined the offer (Banks 2004). In this period, Europe is tackling new efforts. With the economic crisis that brought stagnation and growing scepticism around the EU, the EU acknowledges the growing support of extreme right wing parties caused both by the crisis and by the influx of refugees. This situation brought Member states to elect extreme rights leaders, and, in the case of the Great Britain, to decide to leave the Union.

5.6.1. The new regulatory proposals

²⁹ *Body of European Regulators for Electronic Communications*, http://berec.europa.eu/eng/about_berec/what_is_berec/ 16.01.17

³⁰ *European Union*, https://europa.eu/european-union/about-eu/history/2010-today/2014_en 27.01.17

In May 2015, the Commission wrote a Communication about a Digital Single Market Strategy for Europe, COM(2015) 192 final. In this Communication, the Commission explained why a Digital Single Market in Europe is fundamental. The Institution stressed the importance of Information and Communications Technology (ICT), not only as a field of itself. These technologies, like internet, are fundamental for every sector, and especially important for the functioning of the economic system. They are so integrated in our life and in our economy that they have changed the way we work and live. The third chapter of the Communication covers telecom rules and also speaks about audiovisual services. The Commission pointed out that ICT can be a large stimulus for the economy and that competitiveness in the telecommunication sector increases investment in the sector. Even if the sector had increased its degree of competition last time and services had improved and prices were lower, it would suffer from the fact that national markets are still dominant. That is why national markets are isolated from one another. The next step that needs to be done is a law that once and for all opens this national market to a common single one. The commission tries to stimulate this process with a series of proposals, even if it believes the adoption of the Telecoms Single Market package is the most important one.

A first essential step is the adoption of the Telecoms Single Market package which the Commission expects will provide clear and harmonized rules for net neutrality and will set in motion the final elimination of roaming surcharges in particular for data (CEC 2015: ch.3.1)

The Commission is satisfied with the legislation that already exists to rule the audiovisual services sector. The Communication explained that consumers used internet to reach audiovisual content. New technologies such as smartphones allow them to receive those services wherever they want. The audiovisual services that the public actively search are the VOD. The AVMSD already ruled these kinds of services even if they have lower regulation than the normal one. The difference between the regulations is explained by the fact that when the consumer makes use of such services it is more active and has higher level of control of contents. This kind of regulation has permitted the market to develop into an active market and it is important to assure that the market will evolve in harmony with the development of new technologies (CEC 2015).

The Digital Single market is a priority for this Commission. In the Communication of 2015, the Commission gave advanced warning of a series of proposals that the Institution would make in 2016. On September 2016, a Communication on Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society, COM(2016) 587, was published. In the same month, a proposal was published by the European Parliament and Council for a Directive establishing the European Electronic Communications Code COM(2016) 590 final/2. This Communication proposes a new Directive that summarizes and simplifies the four existing Directives. Such Directives make up the Framework, Authorisation, Access and Universal Service. The other improvement that the new Directive offers is the possibility to adapt it to the new structure of the market. The market of electronic communication now has the possibility to divide the provision of communication services and provision of networks (EP and Council 2016a). Together with the proposal of this Directive, a proposal was published for a Regulation establishing the Body of European Regulators for Electronic Communications, COM(2016) 591 final. In the frame of this proposal, the Commission stressed the importance of strengthening the role of BEREC to assure a more efficient framework regulation. In a Resolution TA(2016)0009, of January 2016, the European Parliament stressed the fact that the BEREC needed more financial and human resources (EP and Council 2016b).

5.7. Conclusion

The main reason why European legislation began to control the audiovisual market was an economic one. The aim was to create a common market; however, the importance of this medium in promoting cultural and political integration in Europe should not to be undervalued. At the same time, it is difficult to preserve both aspects. In the past two decades, audiovisual policies have tried to foster market competition and preserve media pluralism. These two contradict each other. On the one hand, the legislator seems to be inclined to support market forces, while on the other; it emphasizes the importance of preserving media pluralism in recognizing the value of public broadcasting (Mansell 2011; Harrison and Woods 2000). This affirmation is difficult to balance. On the one hand, it would seem that if the legislator wants to preserve and to achieve public interests it must impose rules that partially restrict the freedom of companies to be competitive. On the other hand, it has been

shown that in the public consultation that followed the Green Paper on Convergence, many responders seem to believe that the public interest is not in contradiction with the concept of an open and competitive market.

It is interesting to see the evolution of the regulatory approach. European Institutions began with a vertical regulation approach in the late eighties. This approach slowly changed to a horizontal one, in response to the new efforts born in the market. As I pointed out in the introduction of this chapter, there are many benefits of using such approaches. The first is that the legislation is structured around the activities that must be ruled. Technological neutrality is the second benefit that this approach offers. In the evolution of the legislation shown in this chapter, it is clear how these fields continue to converge closer together.

Europe began to rule audiovisual and telecommunications fields about 30 years ago. One of the most important aims was to change the market from a monopoly regime to a competitive one. In those years, European Institutions have approved Directives, held public consultation, wrote Reports, Communications and Recommendations. Despite this commitment, the picture of the market now is something different. Companies are more connected than ever. The aspect that is important to underline now is that the process that should have assured competition has in fact allowed the exact opposite.

State monopolies do not exist anymore. Even if there are companies such as TeliaSonera or DT that still are in the possession of governments, for example the Swedish government, which has the 37.3% of the stock (TeliaSonera 2016) and the German government, which has the 14.87 % (Il sole 24 Ore 2016), this goal was achieved.

Even if there are scholars, that declare to be content with the results that the policies have reached and declare that, thanks to the liberalization process that started in the late eighties in the European telecommunications field, the market has experienced some important changes. For example, incumbents in the landline market in 2009 had only 65 percent of the market. That means that, even if incumbents still are in a dominant position, users also have other choices (Ungerer 2012). I believe that the consultations were too oriented towards big companies, rather than towards consumers and consumers associations. A solution to achieve these goals could be to create some legislature with higher levels of restrictions, more control with

transactions in the field and more authorities with decisional power to make the process faster.

Despite having tried, it was not easy to find and show the pressure that incumbents made to influence the decision process. I used public consultation results and news articles to obtain more information. I decided to start consulting the newspaper *European Voice*, now called *Politico*, because Harcourt (2005) quoted it in her book, *The European Union and the Regulation of Media Markets*.

I recognise that the result of this work just scratches the surface and that other studies could be more precise. To cover almost 30 years of policy process in 30 pages was possibly too ambitious. I made this decision because I was convinced that, for my thesis, it was important to see the bigger picture. In doing this, I decided to focus more of the analysis on past legislation. The last subchapter, from the new regulatory framework and the following regulations are intentionally less vast. The motivation is that I consider the basis of the regulation more important for my thesis, than what has recently happened.

The market looks the way it does today because of the mile stones that were approved years and years ago. Understanding how legislators made such decisions and what they entailed is important. The draft directive of 2016, for example, did not have enough time to impact the market, or at least is difficult to see what impact it may have had with the data that I collected.

6. The conflict for the control of Mediaset

The case study that presented in this master thesis regards the dispute about the ownership of the Italian media company Mediaset between the famous French media and content company Vivendi and the Italian holding Fininvest.

Since summer 2016 the Italian newspapers are reporting the evolution of the quarrel between firstly, the French media group Vivendi and the Italian one Mediaset, and lately between Vivendi and Fininvest, which is the main owner of Mediaset.

Starting from some months before April 2016 the two companies have worked to find an economical agreement for the creation of a bigger pan-European media group (La Repubblica 2016 a). The signing of the binding contract took place in April but only few months later the French company declared his intention not to fulfil the deal (Balestrieri and Ricciardi 2016).

Vivendi was already present in the Italian market as the main owner of Telecom Italia, and wanted to expand his position in this country.

In order to understand what has happened between the two enterprises it is important to provide a brief explanation of the Italian audiovisual landscape, the Italian audiovisual regulation and to look at the previous steps of the French company in the Italian market.

6.1. The Italian audiovisual landscape

The Italian audiovisual landscape has evolved in a similar way to others in Europe. At the beginning the audiovisual services were offered by the public broadcasting that in Italy is called *Radiotelevisione Italiana S.p.A.* better known as RAI that had the monopoly of the market. In 1980 Silvio Berlusconi created the first Italian commercial channel which was able to reach all the national territory. After few months in the same year, two others commercial channels were created and, within four years, Mr Berlusconi bought them. The Italian audiovisual market had the possibility to become competitive, but became instead an oligopoly. This market situation continued for many more years and it only began to change when all the

transmissions were completely transferred to the digital technology in 2012 (Gardini 2014). The digital switchover seems to have permitted the entrance of a brighter quantity of sources even if the market remains concentrated.

Even though the most followed companies are still the public broadcaster RAI and Mediaset, in the last years also Sky Italia, Discovery Italia and Cairo Communication have been obtaining a slowly increasing success (AGCOM 2016).

With regard to the free-to-air broadcasting, the two major operators distance extremely the competitors for what concerned the revenues. In 2015, RAI earned the 48% of the total income while Mediaset obtained the 35%, which together makes the 83% of the total profits. The second commercial media group for income in 2015 was Discovery Italia, with almost the 4% of the total profits followed by Cairo Communication at around 3%, Sky at almost 1% while other operators accounted for the remaining 9%. Notably, only Discovery and Sky have increased their share of total income from the previous year respectively by 0.6% and 0.2% (ibid.) which is a signal of the slow growth of these companies at the expenses of the incumbents.

The audience ratings for the free-to-air broadcasters is now better split among this growing amount of channels, as RAI and Mediaset are slowly but constantly losing their public. During the period between 2010 and 2016 the audience ratings of all the RAI channels together decreased by 4.5 percentage points from 41.3% in 2010 to 36.8%. The channels owned by Mediaset suffered a similar but even worse decrease, as in those six years they lost 6.1 percentage points of share of audience with a final amount of 31.5% in 2016. The exact opposite trend was experienced by companies like Discovery Italia that in 2010 had only the 0.4% and in 2016 reached the 6.7% and Sky which increased its audience ratings by 2.9 percentage points ending with a 7.9% of share of audience in 2016 (Devescovi 2016).

The digital switchover has eliminated the problem of the spectrum scarcity so that the channels continue to increase. However, as Murdock (1982) underlined, the increase of channels does not mean that the information received by the public has different original sources. As it is possible to see from the AGCOM annual Report (2012), indeed in 2011 there has been an increase of channels coming from the same media groups that had already a relevant share in the market. Examples of this trend are the new channels Italia 2, La5 and TgCom24 all introduced in the market in the same year by Mediaset.

Also the pay per view is characterized by a high level of concentration in Italy as Sky in 2016 has almost the 76% of the total income, followed by Mediaset Premium controlled by Fininvest through *Reti Televisive Italiane* RTI S.p.A. with a profit of the 19% and the remaining 5% split among other operators (AGCOM 2016).

Overall, Italy can be considered as a country where the audiovisual services are still delivered with old technologies. In the Italian audiovisual market almost all the income is still related to traditional platforms. The 90% of the public watches the traditional digital television, the 32% of the consumers used the satellite decoder and the 29% make use of internet devices to reach audiovisual content. Also, the VOD is less popular in Italy. Netflix, for example, entered the Italian market only in October 2015 (AGCOM 2016). The cable television technology is not present in Italy³¹.

In the visualisation available in Appendix III, it is possible to see the main network, which was previously analysed, with a focus on the Italian companies. This visualisation was created in light of the case study dealing with the Italian market. Since the focus was on a specific national market, an overview its interconnection could be helpful.

This visualisation does not have as first aim to add new information. It is in fact similar to the visualisation showing the companies based on the country of establishment (Appendix IIB). It just aims to focus the attention solely on the Italian companies. Overall, 27 Italian companies are part of the network; however none of them is one of the main companies that we selected for the research.

6.2. The Italian audiovisual legislation

The Italian audiovisual law was characterized by a difficult and lengthy evolution since the Italian Constitutional Court needed to intervene almost every time a new regulation on the matter was approved by the Parliament. Lobby pressures also mightily and manifestly marked out this field.

As Hibberd (2007) argued, the most significant example of clientelism of the eighties in Italy between political forces and private media was the series of favours that the

³¹ Mavise, <http://mavise.obs.coe.int/country?id=18>, 13.03.2017

Italian ex-Premier Benedetto Craxi made to his friend Mr. Berlusconi. Those are the *Decreto salva Berlusconi* of 1984 widely wanted by the ex-Prime Minister Craxi in the wake of the blackout of the Mediaset channels in some big Italian cities caused by the decision of some magistrates.

After that the first decree was deemed unconstitutional by the Italian Parliament, Mr. Craxi proposed the so-called *Berlusconi-bis* and to be sure that the decree would be transformed in an ordinary law, he threatened to bring down the government. As a result, the decree became the law 10/1985 (Gardini 2014). The pressures made to help the friend were so explicit that the public opinion began to call such decree with the name of the person that had benefitted from it and not, as usual, with the name of the minister who proposed it (Menduni 1993). After some years the Constitutional Court tried to stimulate the legislator to produce a new regulation. According to the Court the text of the law was indeed unconstitutional in the part where it sentenced that the national audiovisual competition was only between two subjects and therefore it did not guarantee a real pluralism of the sources (Gardini 2014).

In the years that followed these events, there has been a constant rebound of legislation between the Italian Parliament and the Italian Constitutional Court. The principal unconstitutional matter that the Parliament neglected and continued to propose again was the concentration limit, which adversely affected pluralism. In order to be consistent with the principles of the constitution, it was necessary to establish a threshold for the number of national channels that a single company could have. The Parliament tried at first to give the priority to the already existing channels, by allowing for a maximum of three channels per company, exactly the number of channels owned by both Mediaset and RAI. After the intervention of the Court (sentence n 420/1994) the legislator reduced this number from three to two, giving an extraordinary authorization to the company with already three channels to continue their work. This permission was meant to be temporary, but the Parliament did not establish any deadline for such authorization. Also in this case and in the following ones the Court intervened (i.e. sentence n 466/2002) but this vain rebound ultimately permitted for the consolidation in the years of the two incumbent companies (Ward et al 2004; Hibberd 2007; Gardini 2014).

When Mr. Berlusconi was elected as Prime Minister³² of Italy, the businessman was also able to control RAI that, together with his channels made the 90% of all

³² Silvio Berlusconi's mandates:

broadcasters that operated in the national territory and reached around the 80% of the public share (The Economist 2001; Hibbed 2007).

A demonstration of the power that the ex-Prime Minister had on the RAI was the rapid removal from their position in the RAI shows of some journalists, after Mr. Berlusconi publicly declared that they were badly using the resonance of RAI (EP 2004; Corradino 2012).

The European Parliament resolution of 2004 on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights) affirms that the concentration in the audiovisual market in Italy was the most concentrated in the EU as Mediaset and RAI reached together an overall share of audience of around 90.5% and that they absorbed 96.8% of the public resources. The resolution criticized the continual rebound between the Italian Parliament and the Italian Constitutional Court affirming that

in Italy the broadcasting system has been operating in extralegal circumstances for decades, as repeatedly recognised by the Constitutional Court, and in the face of which the efforts of the ordinary legislator and the competent institutions have proved ineffective in re-establishing a legal regime (EP 2004).

Mediaset was also guilty of having a dominant position, situation that the law (law 247/1997) prohibited. The resolution also underlined the presence of pressures and censorship that the govern had undertaken with respect to the public broadcasting (ibid.).

In the light of this landscape, the Parliament approved in 2004 the Italian audiovisual law called Gasparri law, named from the Italian Minister of Communications that developed it. The President of the Italian Republic stopped the first bill of 2003 that the Italian Parliament had already approved because it did not respect the previous sentence of the Constitutional Court (Il Sole 24 Ore 2003; Ward et al 2004). The following Gasparri law was created in accordance with the indications of the Italian Constitutional Court. Moreover, they incorporated in the Italian discipline the indications contained in the European Directives, the TWFD and the electronic

- I: 10.05.1994 - 17.01.1995;
- II: 11.06.2000 - 23.04.2005;
- III: 23.04.2005 - 17.05.2006;
- IV: 08.05.2008 - 16.11.2011

communications regulatory framework. The law one year later flowed into the *Testo unico della radiotelevisione* (TU), d.lgs. n. 177/2005 (Gardini 2014).

The article 43 of the TU rules that the same subject cannot directly or indirectly has authorisations for the transmission of more than 20% of the television or radio shows shared through terrestrial transmissions. Subjects are also subject to an income threshold of 20% of the total amount of the income in the *Sistema integrato delle comunicazioni*³³ (SIC). Furthermore there is the prohibition of dominant position in all the markets that are part of the SIC, which are free-to-air television, pay-TV, radio, newspapers and periodical³⁴. The companies that in the electronic communication business have incomes that are higher than the 40% of the total income of the market, cannot earn even indirectly or through connected companies more than the 10% of the total income in the SIC market.

Many words have been spent on the Gasparri law. One of the problematic issues was that it was favourable for Mediaset. Moreover, the relevant market in the SIC were individualised only six years after the establishment of the law and the threshold limits defining the dominant position for each of those markets were decided after other six years. Practically, this part of the regulation has never been implemented (Carli 2017).

The Italian legislator successively modified the TU in 2010 to conform it to the AVMSD of 2007 and it was renamed as *Testo unico dei servizi media audiovisivi e radiofonici* d.lgs. 44/2010. However, the article 43 did not have any variations.

6.3. Vivendi enters the Italian telecommunications market

Telefónica was the main owner of Telecom Italia before Vivendi bought it from the Spanish company. Telefónica controlled the Italian telecommunication company indirectly since September 2013 through the Argentinean holding Telco which owned 22% of the stock of Telecom Italia. On the 18 September 2014 the shareholders concluded a contract which established the dissolution of the Argentinean holding. After the approval of the Argentinean antitrust authority, the owners of the holding

³³ Integrated communications system

³⁴ AGCOM, <https://www.agcom.it/sistema-integrato-delle-comunicazioni-sic> 25.003.17

received a percentage of the 22% of stock of Telecom Italia (La Repubblica 2015; Scarano 2015).

The companies involved were Telefónica, which received the 14.77%, Generali which received the 4.32%, Mediobanca and Intesa Sanpaolo which both received the 1.64%. After the authority approved the transaction, the deal between Vivendi and Telefónica became concrete. In the agreement, the two companies decided to exchange some properties between each other, so that Telefónica had to transfer all the stock in his possession of Telecom Italia to Vivendi, which was the 8,3% because the Spanish company had already sold part of its stock, and Vivendi gave the 100% of the company Tlc Gvt to Telefónica (ibid.). In the Appendix IV it is possible to observe the network of ownership interconnections around Telecom Italia.

In the following months the French media and content company accumulated more stocks by buying directly in the market and from other companies another overall 6.6% of the stock. On the 24 June 2015 Vivendi replaced Telefónica as the reference shareholder of TIM with the 14.9% of the stock. At that time however, it was not part of the board of directors. At this point Vincent Bolloré, the businessman leading the Bolloré Group, which controls Vivendi, declared to have a long term plan for the Italian market and to be ready to invest roughly 10 billion euros in it (Vivendi 2015a; Licini 2015). Hindsight, this announcement hints to the fact that the French businessman was already thinking about a possible acquisition of Mediaset.

6.4. The deal between Vivendi and Mediaset

In April 2016 Vivendi concluded a deal with Mediaset that involved an economic exchange but also the beginning of a collaboration for the production of content (La Repubblica 2016a).

The financial part of the contract consisted in the complete acquisition by the French media and content group of the loss-making pay TV Mediaset Premium. At the time, the company was owned by two companies Mediaset with a share of 89% and by Telefónica SA with the 11%. Furthermore, in the contract there was a two-way stock exchange between Mediaset and Vivendi for an amount of 3.5%. There was then a

three-year clause. In the first year Vivendi was obliged not to buy any stocks of Mediaset. The second and third year the French company was not allowed to increase the share more than 1.5% so that the French company could possibly reach a threshold of 5% of Mediaset share. Fininvest instead, had the possibility to increase his properties of Mediaset by an additional 5%, which is the limit imposed by the law before being obliged to launch a tender offer. The companies had moreover a bilateral three years lock-up that prevented both companies from selling the share obtained after signing the contract (La Repubblica 2016; Filippetti 2016).

The second part of the contract regarded on the one hand, a united production of contents, and on the other hand the creation of a single OTT platform, joining together the already existing ones, namely the Italian platform Infinity owned by Mediaset and the French Watchever owned by Vivendi (La Repubblica 2016).

However, after signing the deal Vivendi did not fulfil its obligations. After some months the company had not notified the European Antitrust Authority about the acquisition of Mediaset Premium. When Mediaset understood that Vivendi was making a step backwards, the Italian company tried to make them comply with the contract. After an urgent request from Mediaset to adhere to the contract and especially to notify the authorities about the acquisition of Mediaset Premium, on the 25 July Vivendi decided to propose a new deal. They claimed that they would not respect the contract, thus confirming the worries of the Italian media group. The motivation of Vivendi was that according to its analyses, the earnings of the pay TV were conflicting with the results provided by Mediaset (Balestreri and Ricciardi 2016; Capozzi 2016a).

The new deal proposed by the French company was completely different from the original one. Instead of the complete acquisition of the pay TV, the French media and content group wanted only the 20%. The loss-making company, that was the central part of the first contract, had lost 85 million euro in 2015. The explanation of Vivendi was that, when they signed the contract, the data that they received about the company were overestimated. The proposal was then to maintain the two-way exchange of the 3.5% between the Italian and French companies in the light of an increase of the ownership-stock of Mediaset up to 15%. After this communication the quotation of the Italian media group decreased by -6.93% on the stock exchange. The Berlusconi family drastically rejected this proposal. As a matter of facts, if they

had accepted they would have lost the direct control over their company (Balestreri and Ricciardi 2016; Capozzi 2016b).

On the 19 August 2016, Mediaset decided to turn to the State Prosecutors in Milan. The Italian media company wanted to force the French company to comply with the binding contract and to pay 50 million euros for every months of delay from the 25 July 2016. The first reaction of the Italian media group was mild. In its request to the authority, the Berlusconi family was not demanding for a total compensation, which would have cost to Vivendi 1.5 billion euros. Instead it just asked for a penalty for the delay and for the fulfilment of the obligations of the contract (Filippetti 2016). The first session of the prosecution was arranged for the 21 of March 2017 (Balestreri 2016). On the 23 of August also Fininvest decided to turn to the state prosecutors in Milan asking for compensation worth 570 million euros at the expense of Vivendi for bad publicity, which was associated with the drop of the stock price of Mediaset (La Repubblica 2016b). Also for this measure the session was arranged for the 21 of March (Ansa 2017a) Nevertheless, Vivendi tried to convince the Italian company that finding a new deal was still the best solution for everyone. The enterprise pointed out that for the Italian group it would have been important to have TIM on its side because of all the advertising contracts from which Mediaset was benefitting and also for the media platform owned by TIM, where Mediaset Premium could share his content (Bennewitz 2016a).

When in October Italy's main private television group was finally sure that there were no chances that Vivendi would fulfil the contract, it asked for another intervention of the court of Milan. The request was the seizure of the 3.5% of the French company. The juridical authority decided to arrange quickly a hearing on the 8 of November to decide if the request was feasible or not (Fontana 2016). The Italian media group decided then on the 17 of November to withdraw its request in the light of a new deal with Vivendi (Bennewitz 2016b).

6.5. Vivendi changes strategy and begins to buy

In December 2016 the controversy became even more complicated. The French enterprise began to buy stocks of Mediaset in the stock market. On the 12 of

December 2016 Vivendi announced that it had already bought the 3.01% and that it aimed to become the second biggest shareholder of Mediaset with a share between the 10% and 20%. The company was forced to make this announcement because the Italian law obliged the buyer to inform both the Italian supervisory authority for the financial markets, called *Commissione Nazionale per le Società e la Borsa* (CONSOB), and the company that has been bought when the threshold of 3% of the stock is overcome (Bennewitz 2016c). Thereafter, Vivendi started a fast raid on Mediaset's shares.

On the 13 December 2016 in a press release, only one day after the other announcement, the company informed the public that it had surpassed two other important thresholds during the day, the five percent and the ten percent and that it had arrived to the 12.32% by the end of the day (Vivendi 2016). This rapid raid brought the share value of Mediaset to increase by 31.86%, an increase never registered before (Ricciardi 2016).

Mediaset and Fininvest reacted badly to the news and reacted with two press releases defining the operation an "hostile takeover". Furthermore, Fininvest decided to buy more share capital arriving almost at the 40% and reported the behaviour of the French company to the Prosecutors Office in Milan and to the CONSOB in order to get the enterprise indicted for market manipulation (ibid.). In the meantime Mr Berlusconi, who was conscious that, to respect the law, Fininvest was not allowed to buy enough stock to protect Mediaset, was searching for help to defend his empire. He turned to two Italian banks Intesa Sanpaolo and Unicredit for support (Agnew 2016).

On the day after, the Prosecutors Office made official the request of Fininvest and began an investigation to understand if there was a manipulation of the share price of Mediaset to facilitate the acquisition of a higher amount of stock. On the same day the share of capital owned by the French giant reached the 20% (Randacio 2016). All the actions of the French media giants were considerably rapid. In two days the company was able to buy directly in the stock market, which means without doing an exchange with another influent owner, the 17% of the shares of the Italian media group.

Mr Bolloré, who is famous for his aggressive methods (see e.g. Agnew 2016; The Economist 2016), had already been prosecuted in Italy for market manipulation

involving a different financial operation. Between September and October 2010 he did some strategic acquisitions to artificially increase the price of the Italian holding Premafin, which was the main owner of an Italian insurance company, with the aim of urging the company Groupama to buy a percentage of Prematin. For those actions, the CONSOB judged him guilty of manipulation of the share price and he obtained strict measures. The sentence obliged him to sell the stock of Premafin, disqualified him for eighteen months to sitting on the boards of directors of companies listed on the Italian Stock Exchange, and made him pay a fine worth 3 billion euros (Gerevini 2016).

The situation for the Berlusconi's family was complicated, they had already reached the threshold of stock that Fininvest could buy in Mediaset without being obliged to launch a takeover bid and they did not want to launch it. At the same time they were afraid that Vincent Bolloré was ready to reach the 30% and then, as the Italian law impose, to start a compulsory takeover bid.

When a buyer overcomes the threshold of thirty percent the Italian law establishes that it is obliged to offer to buy all the shares in the market at an overpriced price and is obliged to buy all the stocks that after the announcement other owners want to sell³⁵. In this specific case if one of the actors would have decided to proceed with a public offer, this offer would have been extended also to Mediaset Espana and to Ei Towers (Massaro 2017), the telecommunication company that owns the infrastructure that share the contents of Mediset (Ei Towers 2015).

The last defence that the Berlusconi family could trigger, was to try to convince some investors, with whom Berlusconi had personal ties, to back his position. The aim was to encourage enough investors to obtain another overall 10% of vote power so that to secure the 50% of the vote power in the company. Since for participations lower than 3%, according to the Italian law there is no obligation of communication, it is difficult to identify with certainty the allies that the Italian family claimed to have found. It is possible to imagine that some help could have come from the historical ally Mediolanum, a bank that probably already owned some small percentage of stock (Livini 2016).

Two other Italian banks which could have helped, Intesa San Paolo and Unicredit, could not intervene in the dispute because they both are advisors of the main Italian

³⁵ Treccani <http://www.treccani.it/enciclopedia/offerte-pubbliche-di-acquisto/> 23.03.2017

private television group. Mediobanca then has the trickiest position, as his investors indeed are Ennio Doris, the founder of Mediolanum, Mr. Bolloré but also Mr. Berlusconi (ibid.). The relative network is available in the Appendix V.

On the 15 December 2016 the Italian communications Authority called *Autorità per le garanzie nelle comunicazioni* (AGCOM), let Vivendi know that the so-called Gasparri law imposes certain concentrations limits. Even if the events that were happening were still legal, the Authority decided to warn against probable future violations. The authority made reference to the fact that Telecom Italia reached in 2015 the 44.7% of the electronic communications market. As underlined in the previous chapter, according to the Gasparri law, companies that in the electronic communication business have incomes higher than the 40% of the total income cannot earn more than the 10% of the total income in the SIC market, whereas Mediaset in 2015 earned the 13.3% of the SIC (IP 2004; Il Fatto Quotidiano 2016). At that time the operations were still legal, as Vivendi had just the 20% of Mediaset, a percentage still allowed by the Gasparri law (Iotti 2016).

On the 22 December 2016 Vivendi announced that it had bought the 28.80% of the Mediaset stock, which corresponds to the 29.94% of vote power (Fontana and Licini 2016). Ten days after the announcement through which the French giant declared to be in possession of more than the 3% of the stock of the Italian media group, Vivendi had already swiftly increased his properties to reach the 28.8% of the stock. After this last step, the raid of Vivendi stopped, since the enterprise did not want to launch a public offer.

At the beginning of January the stock of Mediaset was divided, with a great degree of certainty, among four groups of investors: Fininvest with the 40%, Vivendi with the 30%, other institutional investors with the 15% and the other 15% in the hand of smaller investors. Among them, Mr Berlusconi claimed there was a large group that was on his side. As a result, the Berlusconi family was sure to reach more than the 50% of voting rights so that all the actions of Vivendi would be ineffective (Massaro 2017).

On the 24 February 2017, the Italian media announced two different news. The first one was that Vincent Bolloré and the managing director of Vivendi, Arnaud De Puyfontain, were investigated for stock manipulation. Mediaset and Fininvest accused them because they thought that the breach of the contract was only a

strategy to turn down the price of the stock of Mediaset in order to easily take the company over. The price of Mediaset in the stock market, which was 4 euros per share before the breaking of the deal, plunged to 2.5 euros per share after the start of the conflict (Ferrarella and Guastella 2017; Elli 2017). The second news was not an official one, but just a rumour. The news was that Rupert Murdoch was interested in buying Premium, the Pay TV that, after the failure of the transalpine alliance, was still in the hands of Mediaset. The two companies confirmed anything (De Rosa 2017), but the interests from Mr. Murdoch regarding the Italian media company are not new. In 1999, indeed, Rupert Murdoch offered seven thousand billion lire (equivalent to about 3.6 billion euros) for Mediaset. Mr Berlusconi that decided to continue his business in the media refused the offer (Livini 2017). The possibility of the acquisition of Mediaset Premium by Sky would be an important concentration move in the Italian market. As we saw before the income of Sky in 2016 in the pay TV were 76% of the total income and the ones of Mediaset Premium were the 19%.

6.6. The juridical development

On the 21 March 2017, the first session of the process for the damage caused by the missed fulfilment of the contract by Vivendi took place. The state prosecutors asked for the permission to judge the two lawsuits of Mediaset and Fininvest together since the claims of the two companies have the same origin, which is the collapse of the deal (La Repubblica 2017). In the same hearing also Vivendi asked for a compensation, claiming that since they broke the deal, Mediaset have libelled the French company. Fininvest as well asked for a new compensation. The original deal had a threshold of 5% of the stock of Mediaset, which Vivendi could not overcome for three years (Ansa 2017), while since the 13 December 2016 they substantially overcame it.

Before the decision of the AGCOM regarding the position of the French media group in the Italian market, the authority made some investigations. The researches had the aim to find out if Vivendi did violate the Gasparri law and if the company is allowed to own the stocks of both Telecom Italia and Mediaset in those percentages. On the 23 March 2017 Vivendi was listened by the AGCOM and the following week Mediaset was summoned (Gerosa 2017; Ansa 2017). In the hearing the French

company claimed not to control neither Mediaset nor Telecom Italia. Despite the declaration from the company, the authority controlled the influence of Vivendi in the rebuilding of the board of directors of Telecom Italia (Bennewitz 2017).

The hearings and inspections that the Italian communications authority undertook, merged into a sentence on the 18 April 2017 (AGCOM 2017). The decision of the Italian authority was that Vivendi acted against the article 43 subsection 11 of the TSUMAR. According to the Italia law, companies that control 40% or more of the Italian electronic communication market cannot earn more than the 10% of the total income in the SIC market. The authority calculated that the income of Mediset was at around the 13% of the SIC (Santarpia 2017). Moreover, according to the authority, Vivendi had an influence in Telecom Italia as well as in Mediaset. These were the reasons that brought the AGCOM to conclude that Vivendi had an illegal position in the Italian market. The sentence declared that the French company had sixty days to formulate and present to the authority a strategy that would make the company compliant with the law (AGCOM 2017). Ultimately, the company needs to reduce to below the 10% its influence in one of the two Italian companies. However, it seems that Vivendi is not obliged to sell the stock of one of the two companies as for the AGCOM the vote power matters while the stock percentage per se does not. Therefore, the French company could take the decision to permanently disable the vote power coming from all the stock exceeding the threshold of 10% in one of the two companies (Olivieri 2017). Vivendi has one year to make itself compliant with the decision. In case it does not, the French media company would receive a penalty ranging between the 2 and the 5 percent of its revenues (Fontanarosa 2017).

Vivendi reacted with a press release claiming that the company will defend its rights asking for an appeal to the Regional Administrative Court (Tribunale amministrativo regionale, TAR) and to the European Commission (Vivendi 2017a). Mediaset has now the power to ask for an order freezing the stock in the hands of Vivendi which exceeds the threshold of 10%. By doing so, Mediaset could then modify its by-laws and introduce the majority vote, thus assuring Fininvest of a higher degree of control (Fontana 2017)

6.7. The influence of Vivendi in the Italian audiovisual landscape

Apart from providing an interesting example of both media concentration and horizontal and vertical integration, this study gives me the possibility to show how alliances between corporations are also made through other types of deals.

As I previously mentioned, the Italian telecommunications company has sizable advertising deals with Mediaset but it also has increasing interests in strategic alliances concerning advertising contracts and commercial deals with the Italian public broadcaster.

This kinds of commercial transactions are even harder to make explicit than the ownership contracts. It is possible to find trace of them on the newspapers and in the press release of each company, but there is no database that collects them systematically. The problem of these contracts is that they are blurry and often they are valid for a short duration of time.

During February 2017 the Italian public broadcaster has organised the famous yearly festival of the Italian music known as *Festival di Sanremo*. Like in the edition that has taken place in 2016 (TIM 2016), also in the edition of 2017 had as main sponsor TIM, the brand name of Telecom Italia which is the abbreviation of Telecom Italia Mobile (TIM 2017). This year for the first time ever, as underlined by the managing director of the company which administrates the advertising for RAI, Mr. Piscopo (2017), a single company bought the four advertising privileged positions, which were traditionally divided among four different business sectors, thus becoming the only sponsor.

Unlike the previous year, the festival of 2017 was characterized by the fact that it came right after the new rebalance of the Italian media field that made Vivendi the second major investor of Mediaset, which should be one of the major competitors of RAI S.p.A.

It is not clear how much did TIM pay for the sponsorship. However, Mr Piscopo (2017) informed the public that the total advertising revenues of the *Festival di Sanremo*, which also includes smaller sponsorships, amounted to more than 25 million euros.

The *Festival di Sanremo*, which in the Italian culture has always been an important event, obtained a great success this year, registering during the first evening the best success of audience in the last 12 years (Il Fatto Quotidiano 2017). With a public share that in the first evening was equivalent to about the 50.4% of the total, summed with the share covered by the channels under the direction of Mediaset, accounting to more than the 12% of the total, Vivendi had a total share of more than 60% for five days (Traversa 2017).

TIM was mightily present in the show. Firstly, it bought the official hashtag #Sanremo2017 putting its logo at the end of it. The hashtag has been used by 177.8 thousand users for a total amount of 2.5 million tweets (Custodero 2017; D'Acquisto 2017). Second, they created the TIMusic prize which was awarded on the last night of the festival to the artist whose song was the most listened during the last day of the competition (TIM 2017). Third, during the last evening there was a whole performance in the theatre which reproduced the spot of TIM36 (Gu. 2017, D'Acquisto 2017).

6.8. The Network analysis

6.8.1. Network of the interconnections of the owner of Telecom Italia in 2014

The network available in Appendix III represents the interconnections of the owners of Telecom Italia in 2014.

The aim of this network is to shed light on the ownership landscape of Telecom Italia. For this reason the companies represented in the network are the ones involved in the deal between Telefónica SA and Vivendi: Tlc Gvt, Telecom Italia and their respective owners.

In the network, even if it is basic and simplified, it is possible to notice two important things. The first one is that, even if indirectly, the Bolloré group was already connected with Telecom Italia. The second interesting element is that Fininvest was already present in the network and it was connected to Bolloré group through Mediobanca.

³⁶ <https://www.youtube.com/watch?v=6-Ce5EocGUA>

To have a more understandable interpretation of the graph, the companies are marked with different colours for each business activities. After the network a table clarifies the meaning of the colours.

The information about the data used to create the network comes from the annual reports of the companies involved and newspapers articles. The references are listed in the Appendix II after the network.

6.8.2. Network of the interconnections between Bolloré Group and Fininvest in 2017

The network that is available in Appendix VI represents the interconnections between the two principal companies, which are the subjects of the dispute that I describe in this chapter.

This network has two main aims. On the one hand, it shows the interconnections between the two companies and on the other hand, the different kinds of activities that the respective controlled or owned companies have. Since the company structure is easy to find in the official documents of each company (see e.g. Vivendi 2015b p. 7), the network did not have the aim to give an exhaustive image of the companies' structure. For this reason in the network companies that have activities unrelated to the media and telecommunications sector have been excluded.

The bank Mediobanca is included in the network because it creates a connection between the holding Fininvest and the Bolloré group, that was already well established at the beginning of all the dispute. I have not reported only this two companies as owner of the bank because Fininvest is the fifth main owner. I considered correct to indicate all the companies that have a stock percentage bigger than that of the Italian holding. It was at the same time important to report it because, after adding also the other owners, it is possible to notice that Fininvest has a direct ownership that correspond to 2% but also an indirect one through Mediolanum.

The network is a clear example of vertical integration since it is possible to see the ownership connections between content creators, content providers and infrastructure owners. Indeed the two companies control cinemas, newspapers, VOD and so on. The horizontal integration is visible in the interconnections between the

two media groups Vivendi and Mediaset and among the three banks Mediobanca, Unicredit and Mediolanum.

To have a more understandable interpretation of the graph the companies are divided in two geographical sections, one for the Italian companies and another one for the French ones, and marked with different colours for each business activities. After the network a table clarifies the meaning of the colours.

The information about the data used to create the network comes from the annual reports of the companies and from the information provided in their official websites and in the one of the CONSOB. The references are listed in the Appendix III after the network.

6.9. Discussion about the case

This case is a great picture of the situation of the audiovisual and telecommunications market in Europe. It shows how big empires buy each other. It also shows how vertical integration has become fundamental in the sector and at the same time highlights the strategic importance of advertising deals.

This operation involves three national markets, the Italian one, the French one and the Spanish one since Mediaset is brightly present in the Spanish market with Mediaset Espania.

Vivendi is the perfect example of an integrated company. Under his control, the company has subsidiaries that are active in the creation of music, pay-TV, production of movies, mobile games, radio and so on. The control of content providers is fundamental for a similar empire. It is for this reason that Vivendi considers Telecom Italia of central importance in his property.

The events that are happening on the Italian audiovisual market are far from stable. The juridical scenario is still open for different reasons at this point. The decision of the AGCOM seems to put some limitations to the expansion of the French company. At the same time an appeal from Vivendi could cancel the previous sentence. Others important juridical decisions that haven't been made include the investigation about

market manipulation of the CONSOB and the Milan court, the process about the unfulfilled contract at the Milan court, and, even if less important for my thesis, there is the accusations for bad publicity that the two Italian companies involved in the dispute have moved to Vivendi and vice versa.

I previously affirmed that the market scenario is still open because not only do the sentences have the power to modify the balance but also the reactions of the companies about those sentences, especially if they are open like the ones of AGCOM.

On the one hand, the Italian authority has judged the position of Vivendi in the Italian market as illegal. On the other hand, it did not offer a binding solution but let the French media and content group decide how to proceed. The sentence obliges the French company to re-establish a market position in compliance with the Italian law. That means that the control of the French media group has to decrease in one of the two Italian companies.

It is difficult to say which company they want to continue to control. Moreover, as some news papers speculate, the French company is still not obliged to sell its stock but only to lose its vote power that exceeds the threshold of 10 percent in one of the two companies.

From the press release that Vivendi published on the 21st April it seems that Vivendi has already made his decision. As it is possible to read, the French empire seems to have a long term interest in a project for Telecom Italia. They explain how important the integration in the value chain of companies that produce contents and companies that distribute them is in a convergent market like the media and telecommunication market. They affirm that “Vivendi sees Telecom Italia as a key distribution asset playing a major role in its ambitious plan to become a world class provider of premium content” (Vivendi 2017b).

In a meeting with the stakeholder De Puyfontaine, the chief executive officer of Vivendi, has claimed that the principal interests of Vivendi are content creation and distribution and for this reason the investments in the two Italian companies are both important. The Chief Executive Officer of Vivendi affirms to still hope for an agreement with the Italian media company (Corriere della Sera 2017).

Something that can also change the current landscape is the possibility of Vivendi to ask for an appeal to the TAR and or to the European Commission, actions that can overturn the previous judgement.

For the future, it would be interesting to observe the choice that Vivendi makes. It can choose between a vertical integration pointing its attention on Telecom Italia on a horizontal one choosing Mediaset. If obliged to make a decision, on the basis of the literature published and on the basis of the result of the empirical analysis of this thesis, I suspect that it would choose vertical integration. Telecommunications companies are now essential for big media groups which need a trusted content provider.

7. Conclusion

In this master thesis I have tried to understand the dynamics of the audiovisual market in the frame of a broader study area which was: What shapes audiovisual market?

The evolution that has characterised this field has drastically changed the dynamics of the market. The main causes were: convergence that brought vertical integration, deregulation that led to the privatization of telecommunications companies and the introduction of commercial channels, the phenomenon of consolidations of giant empires connected with ownership concentration and the search for scale and scope economies, which have created a new and incredibly interconnected landscape that imposes a new understanding of the audiovisual market.

The convergence opened to the possibility of the transmission of different signals through one infrastructural network. This led to the end of the historical structural separation between audiovisual and telecommunications sector.

Since, thanks to the technological development, the infrastructure limitations were surpassed and for this reason, national monopolies were not necessary anymore, began a process of deregulation in the eighties. This process was associated with the passage of telecommunications companies from national monopolies to private companies and, in the audiovisual field, with the introduction of commercial channels without the overcoming of public broadcasters. Some of the new private broadcasters became giant empires in few years (Warf 2007; Arsenault 2011)

The consequence of this rapid growth was a concentration of ownership that obviously brought bad consequences for the competition (see e.g. the growth of Mediaset between 1980 and 1984). This process became more and more emphasised until today, where the audiovisual market is a web of interconnections. When big companies collaborate, the smaller ones struggle to survive alone. They need to be incorporated into bigger ones or have to make deals with them (Arsenault and Castells 2008; Arsenault 2011).

The connection between big companies is also a strategy that bigger companies use to defend the market from competition. Big companies tend to look for links with other companies that have interests in fields different from their own. The aim of this

is to create vertically integrated companies. To increase their profits, another tendency of the enterprises is to search economies of scale and scope (Blackman 1998).

All these innovations had a fundamental impact on the audiovisual landscape because compromises the quality of the services and the freedom of the population to be free to gain information from different sources.

To specify the area of my research I identified a more focused research question which was: How have the competition and ownership issues shaped the audiovisual market at the European level?

Following a combination of two methods respectively: the network analysis and the policy analysis, I firstly traced the picture of the audiovisual and telecommunications market in Europe with the network analysis, and then continued to analyse the most important policies that have shaped the European market. The policies that I have considered were not always ratified in an official act. What was important to underline in those cases, was the reasons why they did not go through at the end.

For the network, we selected 29 big Pan-European companies and companies with a high importance on national territory. The data we searched for were ownership connections between companies. To do that, we decided to use the MAVISE database.

The European Audiovisual Observatory edited the database and should assure transparency in the field, but the inaccuracies that it has almost represents an obstacle for that. The information presented in the database is often incomplete, un-updated and starting from different points that do not match.

We selected the companies which are the most famous Pan-European and European media and telecommunications companies. We included all the companies analysed in the work of Gilles F. and Deirdre K. (2016) in our research. Since all the big European companies and not only the Pan-European ones were important for us and since those authors' research considered only Pan-European companies, we decided to add three more companies that they had excluded because their importance was imitated to their national market.

We individuated three kinds of ownership: main owner, second owner and third owner. The Database MAVISE supplied this division and does not have a clearer

description. We also collected information about each company's business activity and their country of establishment. We used the first information to show the kind of integration that the market has, the second information, instead, was used to show in which country each company had made investments in.

To define a boundary for the research we decided to analyse the ownership of the 29 companies selected and to proceed looking only at the companies under their ownership. If the subsidiaries of these 29 companies had other subsidiaries in turn, those companies were also collected, as were the subsidiaries of the subsidiaries if there were any.

We reserved a different treatment for the companies that were cited as additional owners. Those owners were included in the network as were their possible owners. However, even if these companies were included in the network, their possible subsidiaries were excluded.

We firstly collected the data for each of the 29 companies and created a network for all companies. After this first step we proceeded by creating a main network with all the companies. Once we had put all the data together and eliminated all the companies that were reported twice or more because they were in the network of more than one company, there were 720 companies involved in the network.

When the networks were still divided it was difficult to see the interconnections but what we obtained after having put the data together was a single network. All the companies had a direct or indirect connection with at least one of the other big companies. These interconnections are a fundamental result in the master thesis. It confirms everything the literature has written on this issue but with a focus on the European market.

Another of the most important demonstrations of this master thesis was that the tool developed by the European Audiovisual Observatory could not be considered as reliable. As I showed, the classification of the category in which each company is divided into is sometimes given with strange criteria (see e.g. Deutsche Telekom and Telefonica, two telecommunications companies that have different activities for the database).

The network that I developed shows some important elements. The first is that all the companies that were selected at the beginning of the analysis were concretely

connected among each other. The second is how this conglomerate creates a large number of joint ventures to be in connection apart from direct acquisitions. Bagdikian (2007) already underlined this tendency in his work which claimed that the five biggest companies in the USA were connected through 141 joint ventures.

After having used the MAVISE database to create a picture of the European audiovisual market, I understood that to collect precise data it was important to investigate the data using other sources. To collect the data for the case study I decided to use other sources for collect more precise data and also because, since these events are recent (end of the year 2016), the database had not yet updated the ownership connections. The sources that I used were newspapers but mostly the annual reports that the companies published.

The policy analysis was fundamental for the research. While the network shows a picture of the market situation, the policy analysis provides an explanation.

It is interesting to notice the way this field work seems to encourage and stimulate monopolies. The reason is that the production of content has high fixed costs and their reproduction and modification has low marginal costs. This means that to produce contents, the company has to invest a high amount of capital and such an amount is reachable only if the company is big enough and has less competition. To reduce competition, the companies try to be linked with each other so that companies that seem to be competitors collude to limit the competition.

In the telecommunications and audiovisual fields the most common market failure is to be addressed to barriers. When in the market, the competition that has not completely reached companies can benefit from this situation by setting barriers to assure their position in the market.

What we can see right now in the market is that the companies are more connected than ever. Even if the legislator had aimed to overcome national monopolies and to introduce competition, the scenario that we can see now is not a competitive one.

The tendency in the market, as we saw in the analysis of the network, is the one of vertical integrated companies. Over the years, this tendency put the legislator in the condition to change the approach to legislation. European Institutions began with a vertical regulation approach. This approach has gradually changed to a horizontal one over the years. The legislator was almost obliged to change his approach on the

matter. The convergence and the vertical integration created a new kind of market and the new approach allowed the legislator to legislate around the activities that needed to be ruled and not on the technology that shares this service.

After about 30 years from the foundation of the European competence in the audiovisual and telecommunications fields, assuring transparency about ownership and competence is still difficult. The reason why the European legislator began to discipline the telecommunications and audiovisual fields was to create a common market (Gardini 2014). The importance of those media for the culture in Europe should not be forgotten. It could be difficult to find a balance between on the one hand, incentivizing the creation of a competitive market and preserving the market pluralism and public broadcasters in the light of stimulating the cultural aspect of the media in Europe on the other. It seems that to defend the public interests, the legislator should disadvantage the competition between the companies. Despite this, many interest groups think that public interests do not necessary threaten the competition in the market (CEC 1999b).

After the network analysis and the policy analysis, it became clear that the deep study of a case was a good clarifying example. For this reason, I choose to put the focus on a current event of acquisitions between media groups.

The case study that presented in this master thesis is one example that permits to analyse almost all the main network's dynamics in greater depth. What we can see in the structure and the investments of Vivendi is a perfectly vertically integrated media group. The political pressures underlined in the Italian history in the field are a national version of what happen on a European level.

The Italian telecommunications and audiovisual regulation was extensively influenced by the power of Mr. Berlusconi even before he became a politician (see e.g. the so called save Berlusconi Decree). The current regulation, the so called Gasparri law, that followed into the TU, was created in favour of Mediaset and was than omitted in some of their parts so that, for example the threshold limits defining the dominant position for each of the SIC markets, were decided after more than ten years after the adoption of the law (Carli 2017).

The vertical integration is visible in the type of companies that the French media group owns. They have direct connections to companies that distribute their content like Telecom Italia and VoD platforms for example Watchever and the Bolloré Group,

the owner of Vivendi, owns newspapers directly or indirectly, cinemas, for example Gaumont, channels, for example Canal+, telecommunications companies, music companies and media companies. The control of these companies permits the group to reach the public in French, Italy, Spain but also Africa, Poland and Vietnam, since Canal+ is also established in those countries (Vivendi 2015b).

What happened between Vivendi and Mediaset was interesting because it showed the dynamics of acquisition between two media groups. The previous contract between the two media empires was also really interesting because it was created to reinforce both companies thanks to the two way exchange of 3% of the stock that the two companies should have exchanged. The contract was also the basis for the creation of a joint VOD platform and for creating content together

When the dynamics of the deal changed, and Vivendi decided not to fulfil it, the one thing that was able to interrupt the takeover of the French company was the law. The Gasparri law, even if widely criticised because created to please Mr. Berlusconi and favour the business of Mediaset, imposes limits of market concentration in Italy. Vivendi overcame this threshold of market concentration imposed by the law so that already owning Telecom Italia; it could not also own a company as influential as Mediaset.

It is also interesting that, even if it was clear since the beginning of the takeover that the position of Vivendi as owner of both Telecom Italia and Mediaset was probably against the Italian ownership law, the French media company decided to do it anyway.

The motivations behind Vivendi's decision could vary and it is impossible to be sure about them. It is possible to assume that the French company had acted like that because they were sure that at some level of the juridical process they would have won. It is also possible that controlling Mediaset even for only a few months could have brought some advantages for Vivendi. Furthermore, the French company could have done this just to hinder the Italian company. It is possible as well, that Vivendi thought that Mediaset would, at some point, accept a deal.

As aforementioned, it is now impossible to know why Vivendi did begin this acquisition. Maybe it would be possible to stipulate some more plausible hypotheses in the future when more information becomes available.

The protection of media concentration coincides with the protection of citizens. If the information that a citizen receives are all made by the same source, the people are not free to be informed from different sources and that means that they could be influenced from it (Warf 2007; Harrison and Woods 2000). As I claimed in the first chapter, it is difficult to demonstrate a direct link between the owner of the media and the peoples' belief even if there are scholars that have tried to do it (see e.g. Warf 2007). It is easier to demonstrate that the bigger a media empire is, the less it will invest in quality programs and editorial stuff.

If these connections between the companies are not visible and clear the population, they will never understand how this problem is real, actual and predominant in the audiovisual market. The thesis had the scope to show the present situation and demonstrate how and why making clearness in the field is so complicated.

Protecting the national media concentration is not enough and for this reason the creation of a European legislation to control it and to inform the citizen about the ownership issue is important.

8. Appendix

8.1. Appendix I, European Commissioner Martin Bangemann

Martin Bangemann was the Director-General for Industry for three mandates. He is famous for the publication of a Report on Europe and the Global Information Society in 1994. The report recommended that the Commission proceed to a complete liberalization in the telecommunications sector and to liberalize, in more detail, the infrastructure and services still under monopoly. In the report, he and his group also denounced the problem of media ownership. The problem was that many Member states had approved their own ownership rules, to assure plurality. The report defined them as, “a patchwork of inconsistency which tended to distort and fragment the market” (Bangemann Group 1994: p.23). It continues, explaining the negative aspects of them: “They impede companies from taking advantage of the opportunities offered by the internal market, especially in multimedia, and could put them in jeopardy vis-a-vis non-European competitors” (ibid.).

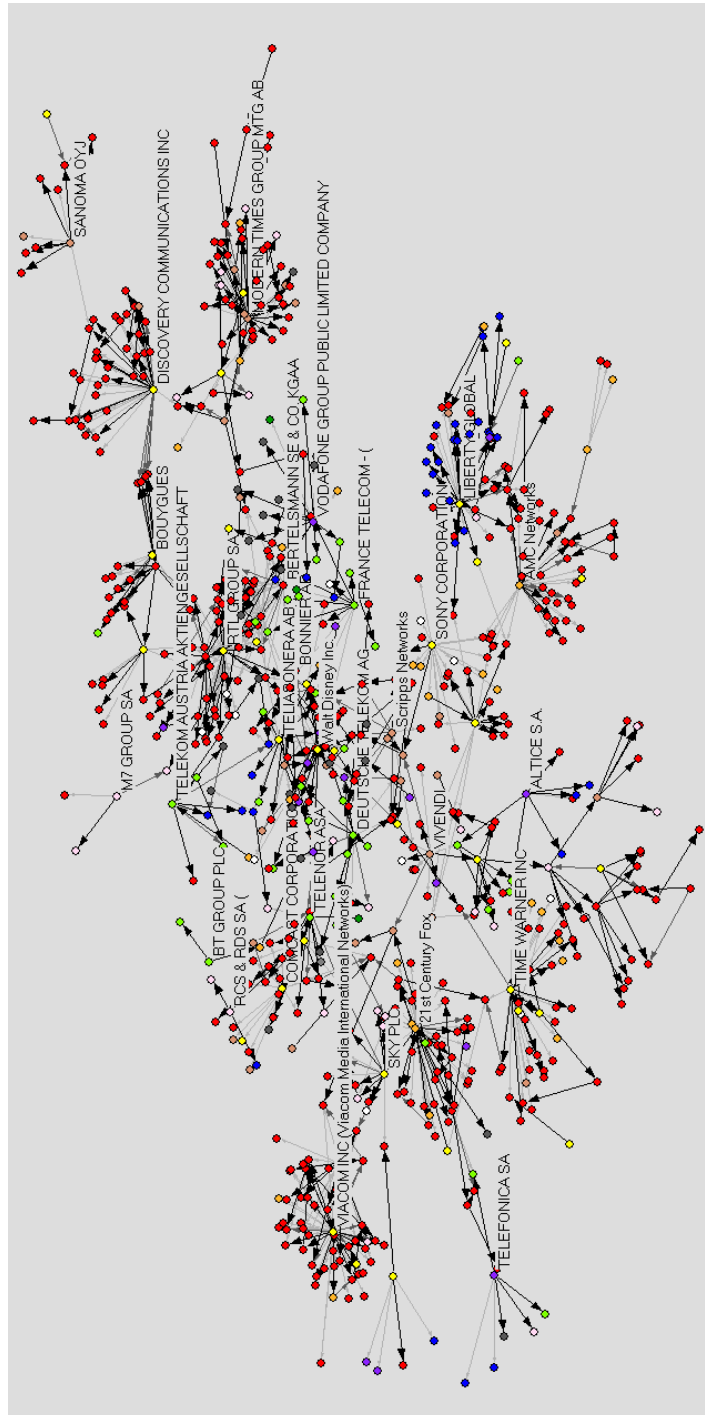
The proposed solution was a reaction by Europe to avoid such divergent regulations. In the report, there was also a subchapter dedicated to competition. It said competition is the key element of the European strategy. For this reason, the group encouraged that competition rules should be adapted to new efforts that new technologies are bringing (ibid.). At the same time, it is possible to see his opposition work in the regulation of ownership in media files. In the following section, it is explained that thanks to his work the Draft Directive was firstly pruned and then abandoned.

Another important and meaningful aspect of his biography is that in July 2000 he became part of the directive of the telecommunication company Telefónica. The announcement was made one year before, in 1999, but the ex- Commissioner needed to wait for a year (European voice 1999e). The problem in this case was that, unlike the habits of many Member states where it is forbidden to accept a job that had something in common with the position that the person was heading in the government, for commissioners in the European landscape it is permitted. Even if President Prodi wanted to demonstrate that he was ready to fight against mismanagement, he could do nothing to stop Bangemann (European voice 1999c).

The Commission, to pursue his aim of his job, needed to receive sensible information from companies. It is important to foster a trust relationship between the Commission and companies. The job that Martin Bangemann accepted with Telefónica risked to undermine this relationship even if Bangemann declared he would not disclose any confidential information that he obtained holding the position of Committer (European Voice 1999d; Jones 1999).

8.2. Appendix II, main network

8.2.1. Appendix IIA, main network characterized by companies activity

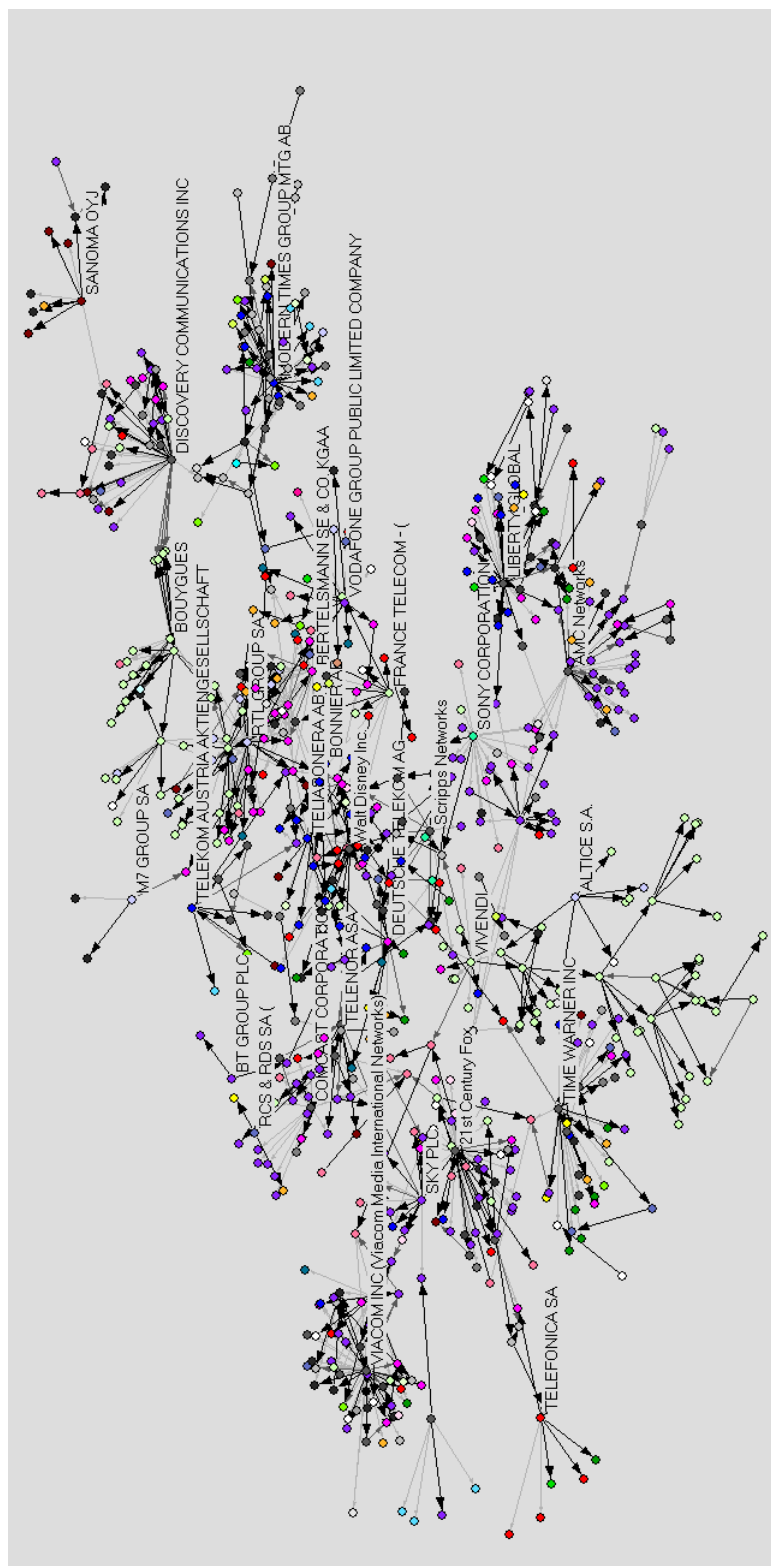


- ?
- Broadcaster (thematic channel(s))
- Cable operator
- Companies with some broadcasting activities but main activity other than broadcasting
- Investor, Holding or Media Group
- Media Group
- Operator TV to mobile phone
- Packager of TV channels
- Provider of VOD services
- Satellite operator
- Telecom/ IPTV Operator
- Terrestrial transmission (digital)

References:

MAVISE Database

8.2.2. Appendix IIB, main network characterized by country of establishment

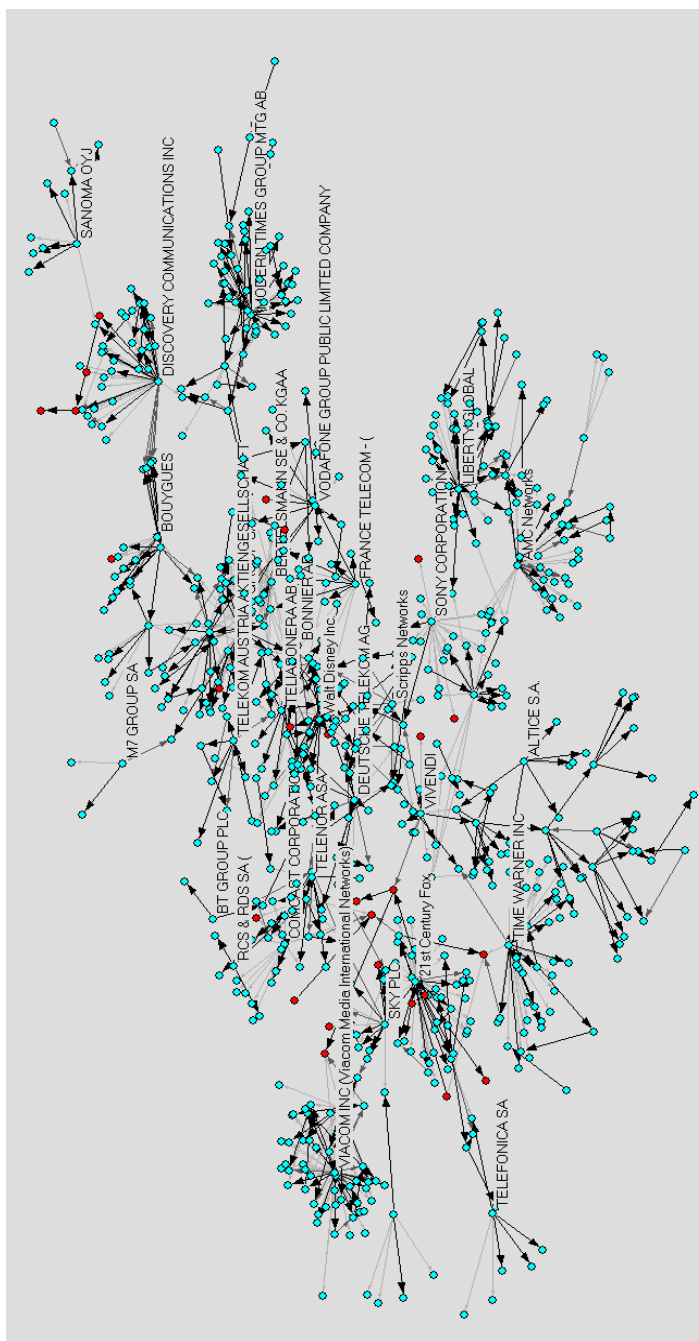




References:

MAVISE Database

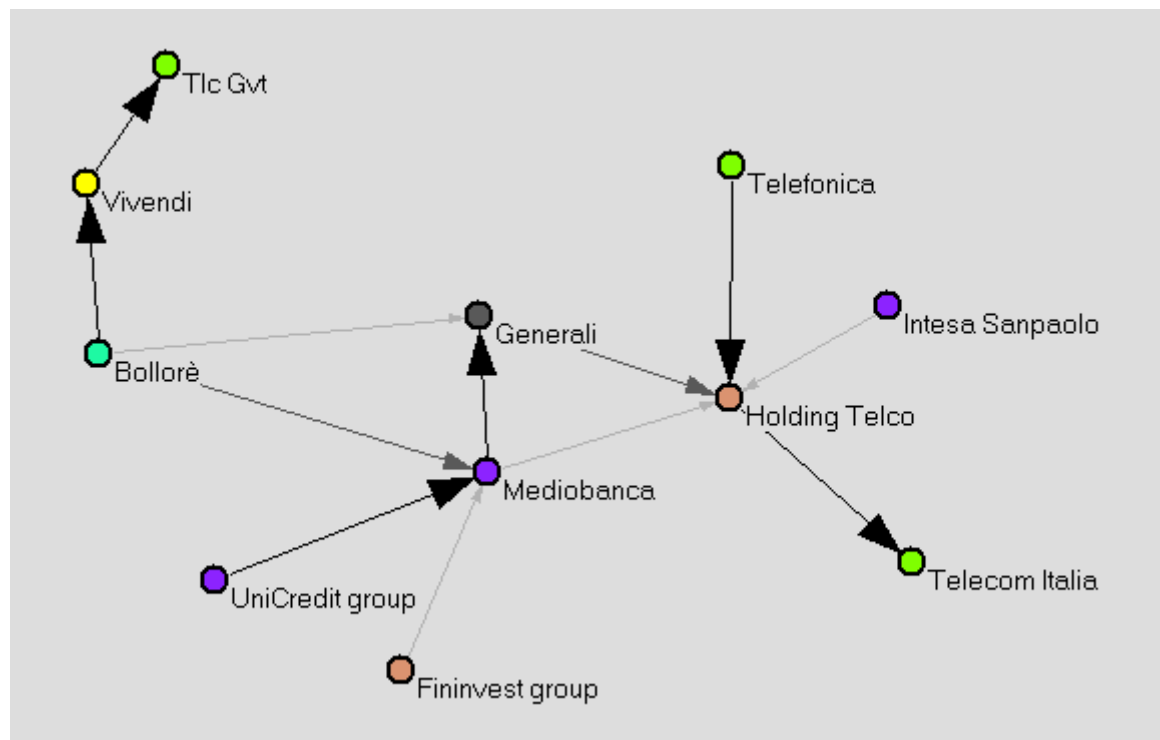
8.3. Appendix III, main network focus on the Italian companies



References:

MAVISE Database

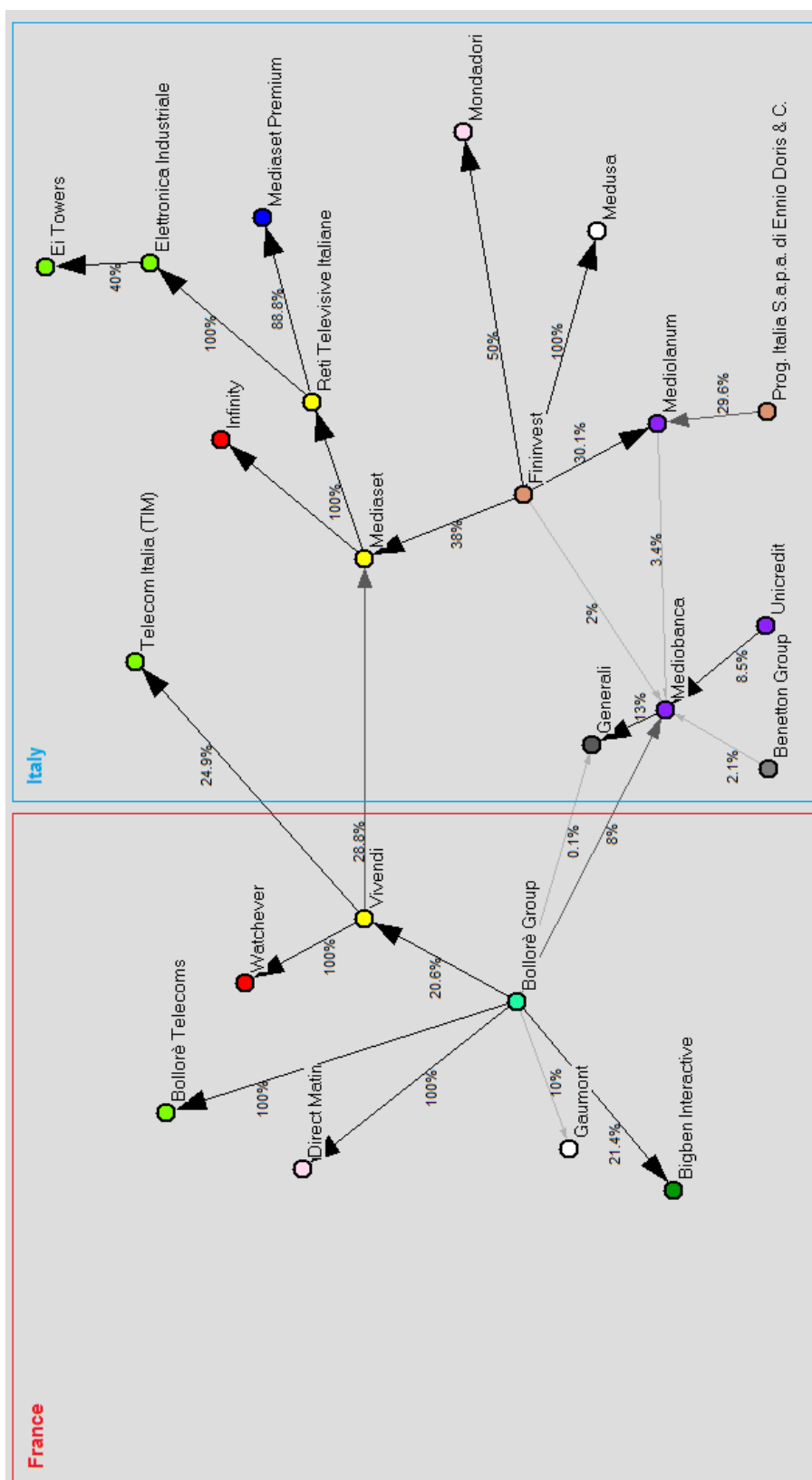
8.4. Appendix IV, network of the interconnections of the owner of Telecom Italia in 2014



References:

Vivendi 2013; Bolloré 2014; Mediobanca 2014; La Repubblica 2015; Scarano 2015

8.5. Appendix V, network of the interconnections between Bolloré Group and Fininvest in 2017





References:

Bolloré 2015; Vivendi 2015b; Generali 2016; Mediobanca 2016; Gaumont 2017; Bolloré Group, Media and Telecoms <http://www.bolloré.com/en-us/activities/communications/media-and-telecoms>, 21.03.17; Consob, *Azionisti rilevanti di Banca Mediolanum Spa* http://www.consob.it/main/documenti/assetti_proprietari/semestre1-2017/94200_Az.html?hkeywords=&docid=29&page=0&hits=233&nav=false&filedate=21/03/2017&sem=/documenti/assetti_proprietari/semestre1-2017/94200_Az.html&link=Pie-chart+Capitale+ordinario=/documenti/assetti/semestre1-2017/94200_TOrdDich.html%3b+Pie-chart+Capitale+votante=/documenti/assetti/semestre1-2017/94200_TVotDich.html, 21.03.17; *Fininvest, Company structure* http://www.fininvest.it/it/gruppo/struttura_e_societa, 21.03.17; *Mediaset, Company structure*, http://www.mediaset.it/corporate/chiamo/struttura_it.shtml 21.03.17

9. Abstract

The liberalization of the audiovisual and telecommunications markets, combined with technological development, leads to a convergence and concentration of companies in the now combined single market. In this master thesis, the following research question will be explored: how have the competition and ownership issues shaped the audiovisual market at the European level? To answer to this question I chose to use two methodologies: the policy analysis and the network analysis methods. The case study presented in this master thesis is related to the media company Vivendi and is one example that allows for the analysis of almost all the main network's dynamics in greater depth.

Die Liberalisierung im Audiovisuellen- und Telekommunikationsmarkt, zusammen mit der technologischen Entwicklung führt zu Konvergenz und zur Konzentration von Unternehmen auf dem Markt. In meiner Magisterarbeit werde ich auf diese Forschungsfrage antworten: Wie haben die Konkurrenz und das Eigentum den audiovisuellen Markt am europäischen Niveau gestaltet? Um diese Frage zu beantworten, habe ich beschlossen, zwei Methoden zu verwenden: die Policy-Analyse und die Netzwerkanalyse. Die Fallstudie, die in dieser Masterthese präsentiert ist, betrachtet Vivendi und ist ein Beispiel, um die Verbindungen und die Dynamik der größeren Netzwerke zu verstehen.

10. References

- 4-Traders,
<http://www.4-traders.com/ORANGE-SA-4649/company/>, 23.03.17
- AGCOM,
<https://www.agcom.it/sistema-integrato-delle-comunicazioni-sic> 25.03.17
- Arsenault A.,
2011, Chapter 4 "The Structure and Dynamics of Communications Business Networks in an Era of Convergence: Mapping the global networks of the information business", in Winseck D. and Yong Jin D. (eds), *The Political Economies of Media. The Transformation of the Global Media Industries*, pp. 101-120
- Arsenault A.H. and Castells M.,
2008, "The structure and Dynamics of Communications Business Networks in an Era of Convergence", *International Journal of Communication*, 2, pp. 707-748
- Agnew H.,
2016, "Bolloré and Berlusconi play cat and mouse over Mediaset", *Financial Times*, 14 December 2016
- Ansa,
- 2017, "Mediaset: Vivendi chiede i danni", *Ansa*, 21 March 2017
- Autorità per le garanzie nelle comunicazioni (AGCOM),
- 2012, *Relazione annuale 2012 sull'attività svolta e sui programmi di lavoro* (<https://www.agcom.it/documents/10179/16144/RELAZIONE+ANNUALE+2012.pdf/e4ab0ad8-fb88-44ec-96be-26888af508e3>)

- 2016, *Relazione annuale 2016 sull'attività svolta e sui programmi di lavoro* (http://www.astrid-online.it/static/upload/rela/relazione-annuale-2016_integrale.pdf)

-2017, "Agcom A Vivendi: 12 mesi per rimuovere posizione vietata", *press release*, 18 April 2017
- Bagdikian B.,
2007, *The New Media Monopoly: A Completely Revised and Updated Edition With Seven New Chapters*, 20th ed. Edition, Beacon Press
- Balestreri G.
2016, "Mediaset-Vivendi, il 21 marzo la prima udienza sul caso Premium", *La Repubblica*, 15 September 2016
- Balestreri G. and Ricciardi R.,
2016, Mediaset, dietrofront di Vivendi sull'acquisto di Premium, *La Repubblica*, 26 July 2016

Banks M.,
2004, "Barroso steps up pace to prepare for leadership", *European Voice*, 8
September 2004

Bangemann Group,
1994, "Report on Europe and the Global Information Society: Recommendations of
the High-level Group on the Information Society to the Corfu European Council, (the
Bangemann Report)", *Bulletin of the European Union*, Supplement No. 2/94.

Bennewitz S.,

- 2016a, "Mediaset chiede sequestro 3,5 per cento azioni Vivendi", *La Repubblica*, 12 October 2016
- 2016b, "Mediaset e Vivendi si riavvicinano: il Biscione rinuncia alla richiesta
urgente di sequestrare azioni francesi", *La Repubblica*, 18 november 2016
- 2016c, "Mediaset, Vivendi rastrella il 3% in Borsa e punta al 20%", *La
Repubblica*, 12 December 2016
- 2017, "Scontro Mediaset-Vivendi Cattaneo fa il "mediatore"", *La Repubblica*,
27 March 2017

Berben C. and Clements B.,
1995, "The European framework for competition in telecommunications: The benefits
for peripheral countries", *Telecommunications Policy*, Volume 19, Issue 4, pp. 273-
283

Blackman C.R.,
1998, "Convergence between telecommunications and other media. How should
regulation adapt?", *Telecommunications Policy*, Vol22, No. 3, pp. 163-170

Body of European Regulators for Electronic Communications (BEREC),
http://berec.europa.eu/eng/about_berec/what_is_berec/ 16.01.17

Bolloré,

- 2014, *Annual Report*
(<https://www.companyreporting.com/sites/default/files/annual-report-index/bollore-annual-report-2014.pdf>)
- 2015, *Registration document*
(http://www.bollore.com/DownloadHandler.ashx?url=/media/81040/1603120_bollore_dr_2015_gb_mel_21_06_16.pdf)
- *Media and Telecoms* <http://www.bollore.com/en-us/activities/communications/media-and-telecoms>, 21.03.17

Brandenburger R and Janssens T.

2006, "Herbert EU telecommunications: more or less regulation?", Practical Law a Thomson Reuters legal solution

Burri-Nenova M.,

2007, "The new audiovisual media services directive: Television *without* frontiers, television *without* cultural diversity", *Common Market Law Review*, Vol44, pp. 1689-1725

Capozzi F.,

- 2016a, "Mediaset, è già scontro con i soci francesi. Cologno: "Non rispettano i patti". Verso causa miliardaria", *Il Fatto Quotidiano*, 26 July 2016

- 2016b, Mediaset-Vivendi, i francesi al contrattacco su Premium: "Dal Biscione cifre artificialmente aumentate", *Il Fatto Quotidiano*, 25 August 2016

Carli S.,

2017, "Angelo Cardani, il professore prudente: con AgCom arbitro dei destini di Mediaset", *La Repubblica*, 23 January 2017

Commission of the European Communities (CEC),

- 1987, "Green Paper on the development of the common market for telecommunications services and equipment", COM(M(87) 290 final, Brussels June 1987

- 1988, "Directive 88/301/EEC (Telecommunications Terminal Directives)", *Official Journal of the European Communities L131/73* 27/05/ 1988

- 1992, "Green Paper Pluralism and media concentration in the internal market - an assessment of the need for Community action", COM(92)480 final, 23 December 1992

- 1994, "Follow-up to the Consultation Process Relation to the Green Paper on" Pluralism and media concentration in the internal market- an assessment of the need for community action", COM(94)354, Brussels October 1994

- 1995, "Green Paper on the Liberalisation of Telecommunications Infrastructure and Cable Television Networks, Part II" COM(94) 682 final, Brussels 25 January 1995

-1995b, "Communications, The consultation on the Green Paper on the liberalization of telecommunications infrastructure and cable television networks" COM(95) 158 final, Brussels 3 May 1995

- 1995c, "Report on application of directive 89/552/EEC", COM(95) 86 final, Brussels 31 May 1995

-1996, "Directive 96/19/EC (Full competition Directive)", *Official Journal of the European Communities L 074* , 22/03/1996 P. 0013 - 0024

- 1997, "Green Paper on the convergence of the telecommunications, media and information technology sectors, and the implications for regulation COM(97)623" Brussels, 3 December 1997
- 1999a, "Communication, Towards a new framework for Electronic Communications infrastructure and associated services", COM(1999) 539 final, Brussels 10 October 1999
- 1999b, "The convergence of the telecommunications, media and information technology sectors, and the implication for regulation: results of public consultation on the Green Paper COM(97)623", COM(1999) 108 final, Brussels 9 March 1999
- 2001, "Third report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the application of Directive 89/552/EEC "Television without Frontiers"", COM(2001) 9 final, Brussels, January 2001
- 2002, "Directive 2002/77/EC on competition in the markets for electronic communications networks and services", *Official Journal of the European Communities* L 249, 17.9.2002, p. 21–26
- 2003a, "Fourth report from the commission to the council, the European parliament, the European economic and social Committee and the committee of the regions on the application of Directive 89/552/EEC "Television without Frontiers"", COM(2002) 778 final, Brussels January 2003
- 2003b, "Green paper on services of general interest", COM(2003) 270 final, Brussels, May 2003
- 2006, "Communication on Market Reviews under the EU Regulatory Framework Consolidating the internal market for electronic communications", COM(2006) 28 final, Brussels 6 February 2006
- 2015, "A Digital Single Market Strategy for Europe Brussels", COM(2015) 192 final, Brussels 6 May 2015
- <http://ec.europa.eu/competition/antitrust/legislation/articles.html> 23.01.17

Consob, *Azionisti rilevanti di Banca Mediolanum Spa*

http://www.consob.it/main/documenti/assetti_proprietari/semestre1-2017/94200_Az.html?hkeywords=&docid=29&page=0&hits=233&nav=false&filedate=21/03/2017&sem=/documenti/assetti_proprietari/semestre1-2017/94200_Az.html&link=Pie-chart+Capitale+ordinario=/documenti/assetti/semestre1-2017/94200_TOrdDich.html%3b+Pie-chart+Capitale+votante=/documenti/assetti/semestre1-2017/94200_TVotDich.html, 21.03.17

Corradino S.,
2012, "Quei criminali di Biagi, Santoro e Luttazzi", *Il Fatto Quotidiano*, 18 April 1012

Corriere della Sera,
2017, Vivendi, Bolloré: «Mediaset? Non capiamo ma rispettiamo Agcom», 25 April 2017

Council of the European Communities,
1990, "Directive 90/387/EEC (on the establishment of the internal market for telecommunications services through the implementation of open network provision)", *Official Journal of the European Communities* L 192 , 24/07/1990 P. 0001 - 0009

Custodero A.,
2017, "Twitter vende l'hashtag di Sanremo: il logo di Tim fa discutere", *Repubblica*, 5 february 2017

D'Acquisto D.,
2017, "TIM a Sanremo 2017: la strategia e i risultati della sponsorship", *Ninja Marketing*, 14 March 2017

De Rosa F.,
2017, "Le scelte di Parigi e l'avanzata di Sky su Premium", *Corriere della Sera*, 24 February 2017

Deutsche Telekom,
2015, *The 2015 Financial Year. Answers for the digital Future.*
(<https://www.telekom.com/resource/blob/332842/4b1d173799a9a51e45f3fdd142ac26c2/dl-160225-q4-allinone-data.pdf>)

Devescovi F.,
2016, "Mediaset-Vivendi, tutti i rischi da valutare se il governo non interviene", *Il Fatto Quotidiano*, 18 December 2016

Douglas T
2013, "How Margaret Thatcher helped change media landscape", *BBC News*, 14 April 2013

Ei Towers,
2015, Gruppo EI TOWERS Bilancio 2015
([http://www.eitowers.it/bin/45.\\$split/C_107_bilanci_45_allegato_it.pdf](http://www.eitowers.it/bin/45.$split/C_107_bilanci_45_allegato_it.pdf))

Elli S.,
2017, "Scalata Vivendi a Mediaset, indagati per agiotaggio Bolloré e De Puyfontaine", *Il sole 24 Ore* 24 February 2017

Endo K.,
1999, *The presidency of the European Commission under Jacques Delors : the politics of shared leadership*, Oxford : MacMillan ; New York, NY : St. Martin's Pr

European Audiovisual Observatory,

<http://www.obs.coe.int/web/obs-portal/home> 8.04.2017

European Union,

- https://europa.eu/european-union/about-eu/history/1980-1989/1985_en
17.01.2017
- https://europa.eu/european-union/about-eu/history/1980-1989/1988_en
17.01.2017
- http://europa.eu/european-union/about-eu/history/1990-1999/1995_it
17.01.2017
- http://europa.eu/european-union/about-eu/history/1990-1999/1999_en
19.01.17
- https://europa.eu/european-union/about-eu/history/2000-2009/2004_en
17.01.2017
- https://europa.eu/european-union/about-eu/history/2000-2009/2009_en
17.01.2017
- https://europa.eu/european-union/about-eu/history/2010-today/2014_en
27.01.17

European Parliament (EP),

- 2001, "Resolution on the third report on the application of Directive 89/552/EEC 'Television without Frontiers'. COM 2001. Document A5-0286/2001) *Official Journal of the European Communities* C87 11.04.2002
- 2004, "Resolution on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights) 2003/2237(INI)", Document A5-0230/2004, 22 April 2004

European Parliament (EP) and Council,

- 2002a, "Directive 2002/19/EC (Access Directive)", *Official Journal of the European Communities* L 108, 24.4.2002, p. 7–20
- 2002b, "Directive 2002/20/EC (Authorisation Directive)", *Official Journal of the European Communities* L 108, 24.4.2002, p. 21–32

- 2002c, "Directive 2002/21/EC (Framework Directive)", *Official Journal of the European Communities* L 108 , 24/04/2002 P. 0033 – 0050
- 2002d, "Directive 2002/22/EC (Universal Service Directive)", *Official Journal of the European Communities* L 108 , 24/04/2002 P. 0051 – 0077
- 2002e, "Directive 2002/58/EC (Directive on privacy and electronic communications)", *Official Journal of the European Communities* L 201, 31.7.2002, p. 37–47
- 2002f, "Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision)", *Official Journal of the European Communities* L 108 , 24/04/2002 P. 0001 - 0006
- 2007, "Directive 2007/65/EC (Audiovisual Media Services Directive)", *Official Journal of the European Communities*, L 332 18.12.2007 p. 27-45
- 2016a, Proposal for a DIRECTIVE establishing the European Electronic Communications Code" COM(2016) 590 final/2, Brussels 12 October 2016
- 2016b, Proposal for a REGULATION establishing the Body of European Regulators for Electronic Communications" COM(2016) 591 final,0 Brussels 14 September 2016

European Voice,

- 1999a, "Action speaks louder than words", 20 January 1999
- 1999b, "Different Voices", 13 January 1999
- 1999c, "Bangemann delivers a timely lesson", 30 June 1999
- 1999d, "Martin won't dial up any secrets", 7 July 1999
- 1999e, "In Brief", European Voice, 27 October 1999
(URL: <http://www.politico.eu/article/in-brief-273/>)
- 2004, "President puts competitiveness at the forefront", 15December 2004

Ferrarella L. and Guastella G.,

2017 "Mediaset: Bolloré Investigated for Market Manipulation", *Corriere della Sera*, 24 February 2017

Filippetti S.,

2016, "Mediaset, parte l'azione legale contro Vivendi su Premium", *Il Sole 24 Ore*, 20 August 2016

Fininvest,

Company structure [http://www.fininvest.it/it/gruppo/struttura e societa](http://www.fininvest.it/it/gruppo/struttura_e_societa), 21.03.17

Fontana A.,

- 2016, "Mediaset chiede sequestro 3,5% di Vivendi per il caso Premium, udienza l'8 novembre", *Il Sole 24 Ore*, 12 October 2016

- 2017, "Vendite su Mediaset e Tim: Agcom pronta a imporre uno stop a Vivendi", *Il sole 24 Ore*, 18 April 2017

Fontana A and Licini G,

2016, "Vivendi a un soffio dalla soglia di Opa su Mediaset: sale al 28,8%", *Il Sole 24 Ore*, 22 December 2016

Fontanarosa A.,

2017, "L'AgCom: Vivendi viola la legge, un anno per scendere in Telecom oppure in Mediaset", *La Repubblica*, 18 April 2016

Gardini G.,

2014, *Le regole dell'informazione. Dal cartaceo al bit*, G. Giappichelli editore, Torino

Gassot Y.

2005, "Interview with Prof. Eli NOAM Professor of Economics and Finance, Director of Columbia Institute of Tele-Information (CITI), Graduate School of Business, Columbia University, New York", *COMMUNICATIONS & STRATEGIES*, no. 60, 4th quarter 2005, p. 149

Gaumont,

2017, Annual report, <http://quote.morningstar.com/stock-filing/Annual-Report/2015/12/31/t.aspx?t=XPAR:GAM&ft=&d=ef2590afde444ae708af787ee7a64c04>

Generali,

2016, *Relazione Annuale Integrata e Bilancio Consolidato 2016*, (<http://www.generali.com/doc/jcr:bd06a080-7c9a-4aca-bdbd-76708be7810a/lang:it/Relaz.%20annuale%20Integrata%20e%20Bil%20Consolidato%20Gruppo%20Generali%202016.pdf>)

Gerevini M.,

2016, "Le mosse in Borsa di Bolloré e il precedente della multa per l'«attacco» a Premafin", *Corriere della Sera*, 17 December 2016

Gerosa F.

2017, "Vivendi: nessun accordo in vista con Mediaset, domani prima udienza", *Milano Finanza*, 20 March 2017

Gilles F. Deirdre K,

2016, "MAVISE EXTRA, Media ownership: towards Pan-European groups?", *European Audiovisual Observatory*

Giovanetti F.N.,
2013, Corso di economia politica, Seconda Edizione, G. Giappichelli Editore, Torino

Grasso A.
2013, *Storie e culture della televisione italiana*, Oscar Mondadori

Gu. A.,
2017, "#Festival2017: il ballerino Just Some Motion dello spot Tim stasera dal vivo sul palco", *Sanremo news*, 11 February 2017

Harcourt A.,
2005, *The European Union and the Regulation of Media Markets*, Manchester University Press

Harding G.
- 1999a, Skeletons in the cupboard keep on tumbling out, *European Voice*, 3 Marc 1999

- 1999b, Unfolding drama of the Commission's demise, *European Voice*, 17 Marc 1999

Harrison J. and Woods L.,
2000, "European Citizenship: Can Audio-Visual Policy Make a Difference?", *Journal of Common Market Studies*, Vol. 38 No.3 pp.471-495

Hassan R.,
2004, *Media, Politics and the Network Society*, Series Editor: Stuart Allan

Hibberd M.,
2007, "Conflicts of interest and Media Pluralism in Italian Broadcasting", *West European Politics*, Vol.30, No. 4, 881-902, September 2007

Il Fatto Quotidiano,
- 2016, "Mediaset sotto assedio, Agcom: 'Possibile veto su operazioni che portino Vivendi a controllare sia Telecom sia Cologno'", 15 December 2016

- 2017, "Sanremo 2017, i dati Auditel: boom di ascolti per la prima serata di Conti – De Filippi. Lo share del 50,4% è il migliore degli ultimi 12 anni", 8 February 2017

Il Sole 24 Ore,
- 2003, "Ciampi non firma la legge Gasparri", 16 December 2003

- 2016, "Deutsche Telekom", 24 February 2016

Iosifidis P.,

- 1997, "Pluralism and Media Concentration Policy in the European Union", *Javnost-The Public*, 4:1, pp85-104
- 2005, "The Application of EC Competition Policy to the Media Industry", *International Journal on Media Management*, 7:3-4, 103-111

Iotti C.

2016, "Mediaset-Vivendi, in sostegno del governo scende in campo l'arbitro. Agcom: "Possibile nostro veto"", *Il Fatto Quotidiano*, 15 December 2016

Italian Parliament (IP),

2004, Norme di principio in materia di assetto del sistema radiotelevisivo e della RAI
 - Radiotelevisione italiana S.p.A., nonché delega al Governo per l'emanazione del testo unico della radiotelevisione, *Gazzetta Ufficiale*, 3 May 2004

Jones, T.,

- 1996, "Opinion split over media ownership", *European Voice*, 4 September 1996
- 1999, "Bangemann faces threat to pension", *European Voice* 7 July 1999

Johnstone C.,

1997, "Commission trio united over media ownership", *European Voice*, 26 February 1997

Kanter J,

2013, "European Chief Backs Plan to End Roaming Fees", *The New York Times*, 12 September 2013

Kertzer D. I.,

2015, "Interview with Romano Prodi", *Journal of Modern Italian Studies*, 20:4, 508-526

La Repubblica,

- 2015, "Telecom chiude il riassetto: Vivendi primo socio, Gvt passa a Telefonica", 29 May 2015
- 2016a, "Mediaset: accordo fatto con Vivendi, Premium passa ai francesi", 8 April 2016
- 2016b, "Guerra tra Mediaset e Vivendi: Fininvest chiede 570 milioni di danni", 23 August 2016
- 2017, "Mediaset-Vivendi, nuovo scontro a colpi di querele", 21 March 2017

Licini G.,

2015, "La francese Vivendi diventa primo azionista di Telecom Italia", *Il sole 24 Ore*, 24 July 2015

Livini E.,

- 2016, "La rete di Silvio Berlusconi per difendere le sue televisioni dall'attacco francese", *La Repubblica*, 15 December 2016
- 2017, "Mediaset-Vivendi, l'ultima battaglia di Silvio tra voci di intesa e resistenza a oltranza", *La Repubblica*, 16 January 2017

Mansell R.,

2011, "Policy bias and the European audiovisual media industry", in Jarren O. et. al. (eds.), *Media Structures and Media Performance*, Austrian Academy of Sciences (Österreichische Akademie der Wissenschaften), Vienna, Austria.

Massaro F.,

2017, "Mediaset, un nocciolo di soci italiani al fianco di Berlusconi contro Vivendi", *Corriere della Sera*, 1 January 2017

MAVISE Database,

- <http://mavise.obs.coe.int/about> 8. 04.2017
- Axn Italia S.R.L. <http://mavise.obs.coe.int/company?id=2175> 20.04.2017
- Chello Movieco CE Services GmbH
<http://mavise.obs.coe.int/company?id=2881> 20.04.2017
- Deutsche Telekom <http://mavise.obs.coe.int/company?id=2053> 28.04.2017
- France Telecom <http://mavise.obs.coe.int/company?id=2061> 28.04.2017
- Mgm Channel Poland Limited <http://mavise.obs.coe.int/company?id=6532>
20.04.2017
- Telefonica <http://mavise.obs.coe.int/company?id=3459> 20.04.2017
- TeliaSonera <http://mavise.obs.coe.int/company?id=5923> 28.04.2017

Maxwell F.,

2016, "Barroso hits back at Juncker over Goldman role", *Politico*, 13 September 2016

McChesney R.W. and Schiller D.,

2003, "The Political Economy of International Communications. Foundations for the Emerging Global Debate about Media Ownership and Regulation", *Technology, Business and Society*, Paper number 11

Mediaset,

Company structure, http://www.mediaset.it/corporate/chisiamo/struttura_it.shtml
21.03.17

Mediobanca,

- 2014, *Annual Accounts and Report as at 30 June 2014*,
https://www.mediobanca.com/static/upload/bil/bilancio-30.6.14_def-eng-per-sito.pdf
- 2016, *Annual Accounts and Report as at 30 June 2016*,
https://www.mediobanca.com/static/upload/bil/bilancio-2016_eng.pdf

Menduni E.,

1993, "L'autunno della televisione (tre anni dalla legge Mammi)", *Problemi dell'informazione*, 18:4, 429-447

Monti M.,

2001 "Does EC Competition Policy Help or Hinder the European Audio-visual and Telecoms Industries?" (speech given to the British Screen Advisory Council, London)
http://europa.eu/rapid/press-release_SPEECH-01-578_en.htm?locale=en

Murdock G.,

1982, "Large corporations and the Control of the Communications Industries", in Gurevitch M. et al (eds), *Culture, Society and the Media*, pp. 118-150

Nikolinakos N.T.,

2006, *EU Competition Law and Regulation in the Converging Telecommunications, media and IT Sectors*, Kluwer Law International

Olivieri A.,

2017, "Vivendi-Mediaset, via d'uscita con la sterilizzazione dei voti", *Il Sole 24 Ore*, 21 April 2017

Organisation for Economic Co-operation and Development (OECD),

2004, "The implication of Convergence for Regulation of Electronic Communication", OECD digital Economy Papers, No 83., OECD Publishing.

Papathanassopoulos S. and Negrine R.,

2011, *European Media. Structures, Policies and Identity*, Polity Press

Picard R.G.,

1996, "The rise and fall of communication empires", *The journal of media economics*, Vol.9(4), p.23

Piscopo F.,

2017, *Fabrizio Piscopo e i risultati di Sanremo 2017 per Rai Pubblicità*, 19 January 2017 (<https://www.youtube.com/watch?v=LfF42bceIE4> , 14.03.2017)

Preiskel R. and Higham N.,

1995, "Liberalization of telecommunications infrastructure and cable television networks: The European Commission's Green Paper", *Telecommunications Policy*, Vol. 19, Issue 5, pp.381-390

Randacio E.,

2016, "Mediaset-Vivendi, la procura di Milano ha aperto un'inchiesta per manipolazione del mercato" *La Repubblica*, 14 December 2016

Ricciardi R.,

2016, "Mediaset, Vivendi al 12% e Fininvest si rivolge alla procura", *La Repubblica*, 13 December 2016

RTL Group,

2001, "Bertelsmann takes majority shareholding in RTL Group", *press releases*, 5 February 2001

(http://www.rtlgroup.com/en/press_releases/2001/bertelsmann_takes_majority_shares_fm)

Santarpia V.,

2017, Agcom: Vivendi deve scendere in Mediaset o in Telecom, *Corriere della Sera*, 18 April 2017

Scarano F.,

2015, "Telecom Italia: si scioglie Telco, entra Vivendi con l'8,3%", *Finanza.com*, 29 May 2015

TeliaSonera,

2016, TeliaSonera's Annual and Sustainability Report 2015

(<https://globenewswire.com/news-release/2016/03/22/821923/0/en/TeliaSonera-s-Annual-and-Sustainability-Report-2015-is-now-available-at-www-teliasonera-com.html>)

The Economist,

- 2001, "Fit to run Italy?", 26 April 2016

- 2008, "Economies of scale and scope", 20 October 2008

TIM,

- 2016, "TIM sponsor del Festival di Sanremo 2016", TIM press releases, 08 February 2016 (<http://www.telecomitalia.com/tit/it/archivio/media/note-stampa/market/2016/TIM-sponsor-festival-san-remo-2016.html>)

- 2017, "TIM protagonista del 67° Festival di Sanremo", TIM press releases, 06 February 2017 (<http://www.telecomitalia.com/tit/it/archivio/media/note-stampa/market/2017/TIM-a-Sanremo-6-febbraio-2017.html>)

Traversa F.,

2017, "Ascolti: Festival di Sanremo 2017 a 11,3 milioni (50,37%), diMartedì a 572mila (2,52%), ecco come sono andati i film e i telefilm" Blog, <http://realityshow.blogosfere.it/post/738660/ascolti-martedi-7-febbraio-2017>, 14.03.2017)

Travis A,
2012, "Murdoch did meet Thatcher before Times takeover, memo reveals", *The Guardian*, 17 March 2012

Treccani,
<http://www.treccani.it/enciclopedia/offerte-pubbliche-di-acquisto/> 23.03.2017

Treaty on the Functioning of the European Union (TFEU), 2007

Trillas F.,
2002, "Mergers, acquisitions and control of telecommunications firms in Europe", *Telecommunications Policy*, Volume 26, Issues 5–6, June–July 2002, Pages 269–286

Ungerer H.,
- 1995, "EU Competition Law in the Telecommunications, Media and Information Technology Sectors" Fordham Corporate Law Institute 22nd Annual Conference on International Antitrust Law & Policy Fordham University School of Law, New York City 27/10/1995

- 2012 "Back to the roots: the 1987 telecom green paper 25 years after – has European telecom liberalization fulfilled its promise for Europe in the internet age?", *Info*, Vol.15(2), p.14-24

Verhulst S.G.,
2002, Chapter 25 "About Scarcities and Intermediaries: The Regulatory Paradigm Shift of Digital Content Reviewed", in Lievrouw L.A. & Livingstone S. (eds), *Handbook of New Media: Social Shaping and Consequences of ICTs*, pp 432-447

Vivendi,
- 2013, *Annual Report*
(https://www.vivendi.com/wp-content/uploads/2014/04/20140415_annual_report_doc_de_ref_2013_en.pdf)

- 2015a, "Vivendi holds 19.9% of Telecom Italia", *press release*, 6 October 2015
(http://www.vivendi.com/wp-content/uploads/2015/10/20151006_Vivendi_PR_Vivendi_holds_19_9_pc_of_Telecom_Italia.pdf)

- 2015b, *Annual Report*

(http://www.vivendi.com/wp-content/uploads/2016/03/20160331_Vivendi_Annual_Report_Fiscal_Year_2015.pdf)

- 2016, "Vivendi has crossed the 10% share threshold in Mediaset", press releases, 13 December 2016

(<http://www.vivendi.com/en/press/press-releases/vivendi-has-crossed-the-10-share-threshold-in-mediaset/>)

- 2017a, "Vivendi reserves the right to take any appropriate legal action after the AGCOM decision", *press release*, 18 April 2017

(<http://www.vivendi.com/en/press/press-releases/vivendi-reserves-the-right-to-take-any-appropriate-legal-action-after-the-agcom-decision/>)

- 2017b, "Vivendi reaffirms its desire to be a long term committed shareholder to add value to Telecom Italia", *press release*, 21 April 2017

(<http://www.vivendi.com/en/press/press-releases/vivendi-reaffirms-its-desire-to-be-a-long-term-committed-shareholder-to-add-value-to-telecom-italia/>)

Ward D. et al.,
2004, *A mapping study of media concentration and ownership in ten European countries*, Commissariaat voor de Media and David Ward 2004

Warf B.,
2007, "Oligopolization of Global Media and Telecommunications and its Implications for Democracy", *Ethics, Place & Environment*, Vol.10(1), p.89-105

Weimer D.L, Vining A.R.,
2011, *Policy analysis*, Routledge; 5 edition

Winseck D.,
2008, "The State of Media Ownership and Media Markets: Competition or Concentration and Why Should We Care?", *Sociology Compass* 2/1 (2008): 34–47