



ROBERTA CARLINI

Market power and opinion power. Assessing the risks for media pluralism and editorial independence deriving from ownership's concentration

In premise, we explain why media ownership concentration still matters in the digital age, summarising the relevant literature and the evolution of the European policy debate leading to Article 22 EMFA (assessment of media market concentrations, the so-called “Media plurality test”). We will then expose the rationale for a holistic perspective, which goes beyond the competition law to take into account the broader impact of media ownership concentration on the formation of public opinion, diversity of offer and editorial independence (supply side), as well as the plurality of exposure (demand side). Then we describe the keywords and key indicators of the “Media plurality test”, using the conceptual tools and result of the Media Pluralism Monitor research project to critically analyse its scope and criteria; to investigate potential issues; and to discuss the relationship between ownership's concentrations and editorial independence. Finally, we highlight the main challenges ahead.

Ownership – Concentration – Pluralism – Editorial independence – Market power – Media plurality test – EMFA

Potere di mercato e controllo dell'opinione pubblica. La valutazione dei rischi per il pluralismo e l'indipendenza editoriale derivanti dalla concentrazione proprietaria

In premessa, spieghiamo perché la concentrazione della proprietà dei media conta ancora, anche nell'era digitale, riassumendo la letteratura scientifica e l'evoluzione del dibattito politico in Europa che ha portato all'articolo 22 dell'EMFA (valutazione delle concentrazioni del mercato dei media, il cosiddetto “Media plurality test”). Di seguito argomentiamo le ragioni di un approccio olistico, che vada oltre la normativa a tutela della concorrenza per valutare il più ampio impatto della concentrazione della proprietà dei media sulla formazione dell'opinione pubblica, sulla diversità dell'offerta informativa e sulla indipendenza editoriale (lato offerta), nonché sulla diversità nell'esposizione e accesso ai media (lato domanda). Poi si introducono le parole-chiave e gli indicatori del “Media plurality test”, utilizzando gli strumenti concettuali e i risultati del progetto di ricerca Media Pluralism Monitor per analizzarne criticamente la portata e i criteri, per indagare i potenziali problemi e per discutere la relazione tra le concentrazioni di proprietà e l'indipendenza editoriale. Infine, si evidenziano le principali sfide da affrontare.

Proprietà – Concentrazione – Pluralismo – Indipendenza editoriale – Potere di mercato – Media plurality test – EMFA

The Author is Part-time Assistant Professor at the Centre for Media Pluralism and Media Freedom, European University Institute

This paper is part of the monographic section *EMFA under the spotlight: towards a common regulatory framework to foster media pluralism?* – Part II edited by Elda Brogi

SUMMARY: 1. Why media ownership concentration matters. – 2. The policy debate in the EU leading to Art. 22 EMFA. – 3. The Media plurality test: keywords and key indicators. – 4. What Art. 22 (and EMFA) do not do. – 5. Scope and criteria of the Media plurality test. – 6. The main challenges ahead. – 7. Conclusions.

1. Why media ownership concentration matters

In the digital era, all the news is just one click away, one could say echoing Google's mantra¹. Regardless of how concentrated the media market may be, it is always possible to find a diverse sources of information, as long as the internet is open. On the supply side, lower production and distribution costs have reduced barriers to access, enabling also non-professionals and users to become news sources. On the demand side, news content can be accessed from anywhere in the world, limited only by language differences and technical barriers.

However, there are several reasons to argue that the digital revolution has not resolved or diminished the issue of market power within media systems, highlighting the ongoing need to address it. The specific rules and procedures designed to tackle this problem must be revised and adapted

to align with the digital environment and the new dominant players within it².

The reasons for arguing that concentration of ownership still matters in the digital era are empirical, theoretical and normative.

From an empirical perspective, indicators demonstrate that media market concentration has increased globally in the digital age³. On the production side, the internet's abundance of opportunities and diverse voices has not led to the emergence of new, robust media entities that effectively challenge the legacy media conglomerates in terms of content creation. On the distribution side, new players have emerged with significant and growing market power, acting as intermediaries between the audiences and the sale of their attention to advertisers. The role of online platforms has disrupted the traditional business model of commercial media, jeopardizing both their revenue streams from sales and advertising⁴. Consequently,

1. Point 4 of the [Google's approach to competition](#).

2. MOORE-TAMBINI 2018, MONTJOYE-SCHWEITZER-CRÉMER 2019; STIGLER COMMITTEE ON DIGITAL PLATFORMS 2019; STIGLER MEDIA SUBCOMMITTEE 2019; FURMAN-COYLE-FLETCHER et al. 2019; PRAT 2020; NIELSEN-GANTER 2022.

3. NOAM 2016; CMPF 2024, pp. 70-75.

4. ANDERSON-JULIEN 2015; PARCU 2019; OECD 2021.

this trend has prompted traditional media to concentrate and consolidate further; the rationale for large-scale operations, previously justified by fixed costs and the technological characteristics, is increasingly framed as a necessary strategy to compete in the digital landscape and ensure the sustainability of the media industry⁵.

From a theoretical perspective, equating media market plurality with media pluralism is challenged by two main arguments. The first argument focuses on the limits of the liberal approach based on the “marketplace of ideas”, which posits that free individual choice in competitive markets is both necessary and sufficient conditions for achieving media pluralism. Critics of this approach argue that dispersal of ownership in the market and media pluralism do not always align – diversity of offer can be guaranteed even in a single-media system, and conversely competitive media outlets can offer a uniformed content; and that, more generally, this framework has proven as “inadequate for conceptualizing the complex nature of media pluralism as a broader public interest value”⁶. The second argument delves in the difference between market power and opinion power, arguing that the threat to pluralism does not stem solely from the ownership structure, but rather from how the owners manage the media, and the potential interference of their behaviour with the democratic process: in this perspective, “ownership really isn’t the problem, but is a proxy for other concerns”⁷. The consequence is a more holistic concept of media pluralism, which distinguishes the European debate from the US approach: “In the US, debates over pluralism tend to focus on ownership, with an occasional reference to broadcast policies such as the fairness doctrine (...). The European debate, however, tended to take a more Habermasian public sphere approach, and to focus on the role of the media in maintaining and limiting participation in the public sphere”. As a consequence, “concentration law and ownership limits emerged much later in Europe than the US, but have had limited effect in solving pluralism concerns”⁸.

It must be underlined that this holistic approach does not cancel the need to look at media ownership structure and address the risks related to media market concentration. In this approach, media ownership concentration still matters, even though it must be considered and evaluated together with other dimensions of pluralism. Adopting this perspective, the Media Pluralism Monitor, implemented by the Centre for Media Pluralism and Media Freedom since 2014, evaluates the concentration of media ownership as one of the 20 indicators to assess the risks for media pluralism in the EU and candidate countries; in 2020, following a reconceptualization of the tool to address the new characteristics and structure of the markets in the digital environment, another indicator of concentration has been added, measuring the market power of other actors that, even though are not media *strictu sensu*, have an essential function in intermediating distribution of and access to the media content: digital intermediaries such as search engines, social media, automatic aggregators and artificial intelligence models. Adding the indicator of concentration in the digital markets to the “traditional” indicators of media ownership concentration, the Media Pluralism Monitor aimed to include in its methodology the assessment of the risks for media pluralism deriving from the structural features of the digital markets, both for their winner-take-all dynamic and for their disruptive effects on the economic sustainability of the media⁹.

Finally, the normative approach adds arguments to address the issue of market power in the media sector. As seen above, it is possible that even in a very concentrated market, with a total lack of external pluralism, there is a vital and effective internal pluralism, with a rich offer of diverse content by the dominant media outlet. But, let alone the difficulties of measuring the diversity of content, there are no guarantees on the fact that this situation would not change, in case of a change of ownership, or a change of editorial line. As argued

5. CARLINI-PARCU 2024.

6. KARPPINEN 2013, p. 8.

7. PICARD-DAL ZOTTO 2016.

8. VALCKE-SÜKÖSD-PICARD 2016, pp. 3-4.

9. PARCU 2019.

by C.E. Baker in his seminal work, dispersal of media ownership should be considered as an end in itself, a “pure process” value, as a democratic safeguard¹⁰. The digital transformation did not solve the problem¹¹, adding new and different sources of concern, in terms of exposure to diversity and agenda control¹². These sources of concern seem to be confirmed by recent developments in the political and media environment after the US presidential elections in 2024, with the political alignment of the owners of the biggest tech companies, and the editorial choice in media that they control¹³.

2. The policy debate in the EU leading to Art. 22 EMFA

In the European Union, the first attempt to address excessive concentration of media ownership dates back to 1992, with the European Parliament Resolution on media concentration and diversity of opinions¹⁴, followed by the Green Paper of the European Commission¹⁵; but the European Commission’s initiative with a proposal for a directive in 1996-7 fell through the opposition of political parties and industry stakeholders¹⁶. In 2007, another phase began, substantially based on “monitoring and soft governance” in the field of media pluralism¹⁷. This phase was characterized by a “three-step approach” and a “risk-based approach”; a relevant evolution occurred in 2020, with the European Democracy Action Plan and the State of the Rule of Law first report, envisaging media pluralism assessment as a part of the rule

of law mechanism¹⁸; but in both cases, no specific and binding provisions were related to the rules on media ownership concentration at the EU level. At the national level, the legal framework on media ownership concentration is diversified and fragmented. As highlighted by the mapping of the Study on media plurality and diversity online¹⁹, 14 Member States have special rules to evaluate media mergers, but with different methods and criteria (not always the protection of media pluralism is considered among the criteria). The study also highlights that “the problematic issue remains that the relevant rules rarely provide explanations of what is meant by media pluralism and the public/general interest considerations, which are used as bases for justifying interventions and that give additional power to one authority over another”²⁰. The fragmentation of national rules is also problematic for their potential use to pursue goals and protect interests other than media pluralism; and for the obstacles that a fragmented legal framework poses to the common media market.

The negative impact of the fragmentation of the Member States’ rules and procedures on media concentrations on the functioning of the internal market provides the rationale and the legal base for Article 22 EMFA, as explained in Recital 63: “In order to reduce obstacles which hinder media service providers’ ability to operate in the internal market, it is important that this Regulation set out a common framework for assessing media market concentrations across the Union.” Thus, the EU’s first attempt to pass “from rhetoric to

10. BAKER 2007, pp. 18-19. Using Baker’s approach, and comparing approaches and instruments in Europe and US, JUST 2009 advocates for “a return to the normative principle as primary guiding element of communication policy making. The emphasis should be put on a wide dispersal of independent media ownership as a guarantor of the proper functioning of the public sphere as the ultimate and of communication policy”.

11. BAKER 2007, pp. 97-123; DOYLE 2016.

12. SCHLOSBERG 2017.

13. BARON 2025; MYMBS NICE 2025; BURMAN 2025.

14. Available on [Publication Office website](#).

15. Dossier COM(92)480 vol. 1992/0218.

16. FANTA 2014.

17. KARPPINEN 2013, p. 144.

18. BROGI-DA COSTA LEITE BORGES-CARLINI et al. 2023, pp. 21-24.

19. EUROPEAN COMMISSION 2022.

20. *Ivi*, p. 219.

regulation” on media concentration²¹ is a sort of soft harmonization, as it needs national rules and procedures to introduce in the Member States’ legal frameworks the “Media plurality test”. As pointed out by Manganelli and Mariniello²², the starting assumption is that the competition law is not sufficient to guarantee media pluralism and that in the evaluation of concentrations that could impact media pluralism and editorial independence a separate assessment is needed, to take into consideration other potentially harmful effects of the merger, related to the formation of the public opinion, the democratic process and ultimately to the fundamental right to information stated by Article 11 of the Charter of Fundamental Rights of the European Union on Freedom of expression and information, and specified by Article 3 of the EMFA as “the right of recipients of media services to have access to a plurality of editorially independent media content”.

3. The Media plurality test: keywords and key indicators

The notion of media pluralism enshrined in Art. 3 and Art. 22 of the EMFA, although aimed at protecting the well-functioning of the internal market, goes beyond a mere economic perspective and embeds a holistic view of pluralism. In this perspective, it should not be sufficient to consider the concentration or dispersal of media ownership, on the supply side, but also the information habits and exposure to diversity should be investigated and evaluated, on the consumption side; on both sides, taking into consideration the digital environment of production, distribution and consumption of the news.

Moreover, Art. 22(1) asks to consider jointly the impact of concentrations on media pluralism and editorial independence. The intertwining between the two dimensions is further demonstrated by the fact that, together with its proposal for a European Media Freedom Act, the European Commission issued its Recommendation on internal safeguards for editorial independence and ownership transparency in the media sector²³.

Finally, any Media plurality test on a merger should consider what would be the impact on media pluralism and editorial independence in the absence of the merger itself: e.g., if the survival of the media would be at risk without the merger, for lack of economic sustainability. Also in this case, the criteria for an assessment in the perspective of media pluralism do not necessarily coincide with the criteria to evaluate the defensive mergers set by the competition law.

Before analysing the criteria set by Art. 22(2) to conduct the Media plurality test, is worth reading its keywords – media concentration, online environment, editorial independence and media economic sustainability – in the light of the results of the correspondent indicators of the Media Pluralism Monitor (MPM). The indicator of concentration of the media providers has always been the one at the highest level of risk in Europe since the beginning of the measurement and without exception across the European countries. Since 2020, an indicator of the concentration of online platforms has been added, showing a similar, if not higher, level of risk. In parallel, the results of the MPM signal an increase in the risk level for the indicator on Editorial independence from commercial and owners’ influence, whereas the indicator on economic sustainability of the media (“Media viability”) reflects the growing difficulties in the media financing, with some signals of resilience only in the last year (see Fig. 1).

In other words, the MPM results confirm the need to address the issue of media ownership concentration and to frame it into the digital environment of the media; and they highlight the deteriorating economic conditions of the media and the risks for editorial independence. All the dimensions of pluralism that Article 22 aims to evaluate and protect are at medium or high risk in the average of the European countries. The question is: is it possible to pursue all the objectives – tackling concentration, sustaining media and protecting editorial independence – with a single tool, the Media plurality test? To answer this question, it is worth first clarifying what Art.

21. KERŠEVAN 2024.

22. MANGANELLI-MARINIELLO 2024.

23. European Commission, [C\(2022\) 6536](#) Commission recommendations on internal safeguards for editorial independence and ownership transparency in the media sector, 16 September 2022.

Monitoring Risks to Media Pluralism in EU Member States

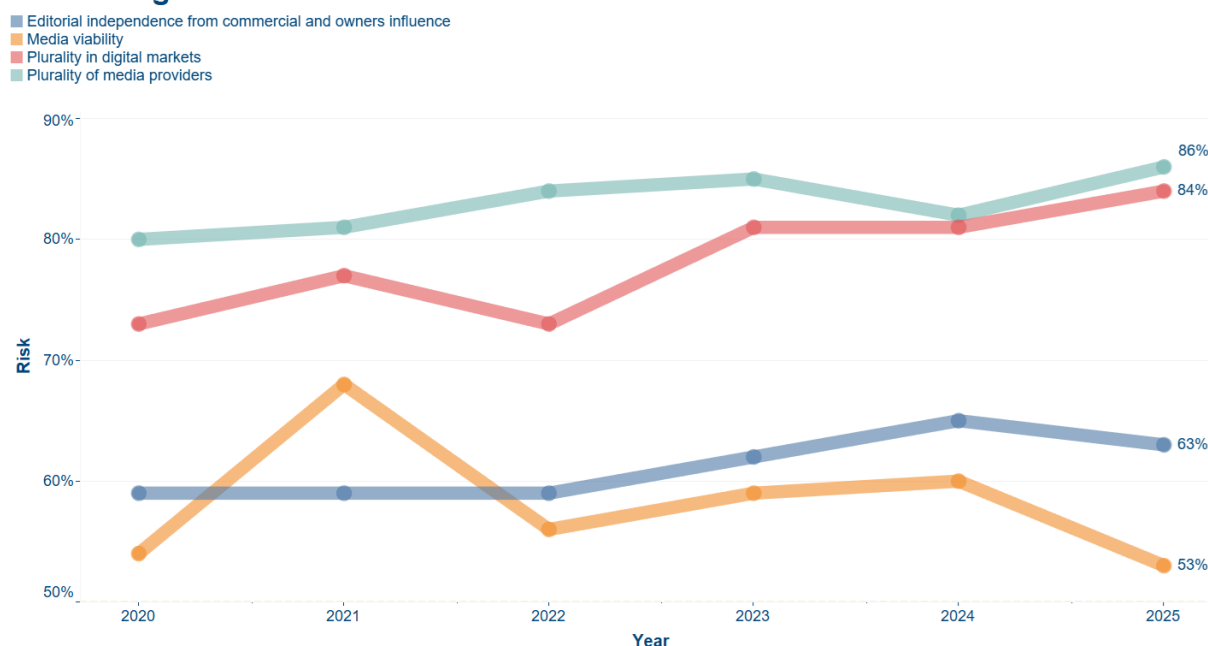


FIG. 1 — *Economic threats to media pluralism – The results of Media Pluralism Monitor.*
Source: *Media Pluralism Monitor*

22 does not do; then analysing its scope and the criteria set to assess the impact of a media market concentration on media pluralism and editorial independence.

4. What Art. 22 (and EMFA) do not do

Art. 22 does not address the situation in which a high concentration of media ownership is already established because it only intervenes in cases of mergers that might impact media pluralism and editorial independence. “Existing high levels of concentration that could significantly impact media pluralism and editorial independence, and even new concentrations arising from the market growth of a player, or closures or downsizing of other players, are not caught by the provision”²⁴; nor are they caught by other tools of the new EU regulation – except for the monitoring exercise introduced in the final provisions, which includes “the level of media concentration” (Art. 26(3) EMFA). Nonetheless, the level of concentration pre-existing the merger would be an element to evaluate it, and the monitoring exercise envisaged in Art. 26 can be a relevant help, particularly for

countries in which the information on the media market is not transparent or insufficient.

Moreover, neither Art. 22 nor other provisions in the EMFA directly address the issue of the economic crisis of the media and the eventual need for public support for a good that is at risk of under-financing by the market. In Section 6 of the Act the goal of “Transparent and fair allocation of economic resources” is named in the title, but only some pre-conditions for a fair allocation of resources are addressed, namely audience measurement (Art. 24) and transparent and non-discretionary rules for state advertising (Art. 25). Public support to the media, at national or at EU level, is out of the scope of the Act. The issue of economic sustainability of the media service providers only enters into play as one of the criteria to evaluate the impact of a concentration.

5. Scope and criteria of the Media plurality test

The “media market concentrations” that shall be submitted to the Media plurality test are defined in Art. 2(15) of EMFA: “a concentration as defined in

24. CARLINI-PARCU 2024.

Art. 3 of Regulation (EC) No 139/2004 involving at least one media service provider or one provider of an online platform providing access to media content”. Thus, a concentration, as defined under the EC merger regulation, falls under the scope of Art. 22 depending on the actors involved. This is obviously the case in which a media service provider is involved. Interestingly, this is also the case in which other actors are involved, which are outside the original perimeter of traditional media, defined as “online platforms providing access to media content”. The inclusion of the latter in the scope of Art. 22 was not contemplated in the Commission’s proposal and has been added during the legislative process. The phrasing can give room to some doubts of interpretation, also considering that the definition does not coincide with the phrasing of the Digital Services Acts and the same Art. 18 EMFA (regulating the obligations of very large online platforms concerning the content of media service providers): must the use of the platform to access media content be proved, or shall it be considered among the structural features of social media, search engines, automatic aggregators, and AI assistants? Nonetheless, it seems clear that the EU legislator with this provision asks to take into consideration the role of the digital intermediaries in the media environment, following a growing corpus of literature that reconceptualizes the definition of the media in the digital era²⁵. According to the definition of Art. 2(15), a merger involving a platform providing access to media, e.g., between two social media, or a social media and a news aggregator, or between a search engine and an AI company, might be cleared under Art. 22 under the European Union law, to assess its impact on media pluralism and editorial independence. Even though a merger may seem a remote hypothesis, and even though the platform dependency of the media is not directly exercised through ownership control, the provision marks a relevant step for-

ward to the inclusion of the digital intermediaries in the media regulatory framework.

The need to take into account the online environment, other than in the scope of application of Art. 22, is listed among the criteria of the Media plurality test in Art. 22(2). As noticed by Manganelli and Mariniello²⁶, these criteria outline general principles that the European Commission must specify in the upcoming guidelines, not only to detail their provisions but also to define their reciprocal relationship.

They are listed in five points, as follows:

- a) the expected impact of the media market concentration on media pluralism, including its effects on the formation of public opinion and on the diversity of media services and the media offering on the market, taking into account the online environment and the parties’ interests in, links to or activities in other media or non-media businesses;
- b) the safeguards for editorial independence, including the measures taken by media service providers with a view to guaranteeing the independence of editorial decisions;
- c) whether, in the absence of the media market concentration, the parties involved in the media market concentration would remain economically sustainable, and whether there are any possible alternatives to ensure their economic sustainability;
- d) where relevant, the findings of the Commission’s annual rule of law report concerning media pluralism and media freedom; and
- e) where applicable, the commitments that any of the parties involved in the media market concentration might offer to safeguard media pluralism and editorial independence.

Point a) is very dense and groups different factors, mixing elements on the supply and demand side. First, it clarifies that the assessment should consider the impact of the merger on the control of

25. The Study on media plurality and diversity online, commissioned by the European Commission, recaps the evolution of the definition of media in policy documents and in the scientific debate; alongside with the “Media actors”, and the “Other media actors and public watchdogs reporting on matters of public interest”, it defines “Other actors, intermediary and auxiliary services, in the media ecosystem” as “intermediary or auxiliary services which contribute to the functioning or accessing of a media, but do not or should not exercise editorial control, and therefore have limited or no editorial responsibility, may not be considered to be media” (EUROPEAN COMMISSION 2022, p. 17).

26. MANGANELLI–MARINIELLO 2022.

public opinion, and therefore it should go beyond the mere economic evaluation. Second, it asks to evaluate the impact of the merger on the diversity of media offerings and media services. Third, to evaluate both (impact on public opinion and on media diversity) it asks to consider the online environment: a vague definition that seems to call for an evaluation not only for the evaluation of the digital offer of the media but also of the consumption habits and the information diet of the interested audience. In the UK system, where a separate assessment for media mergers called “public interest test” is required, Ofcom bases its evaluation on a periodical survey of media consumption habits; and a debate on the reconceptualization and fine-tuning of the test in the digital environment of the news has been carried on²⁷. It is worth noting that not only in the European Union countries this kind of official survey is not frequent; but also that, if they shall base the implementation of Art. 22 of EMFA, it would be necessary for them to have the same methodology and scope, to have a harmonized Media plurality test across all the Member States. Finally, in point a) another element on the supply side is added, and it is the evaluation of the nature of the entities involved, in particular of their links or interests “in other media or non-media businesses.” The latter element seems to reflect a growing concern for the mixed interests in media ownership, which can be detrimental to the editorial independence of the media outlets from their owners’ interests when they are other than the success of the same media undertaking. According to the results of the Media Pluralism Monitor, “It is common that media owners have significant interests in other sectors, such as real estate, construction, banking, telecommunications, and gambling. Only four countries (Denmark, Finland, Sweden, and the Netherlands) reported that their market leaders were only investing in sectors that were connected to the media. Having interests in other sectors constitutes a risk for media pluralism, as media outlets might provide biased coverage of their owners’ other businesses; moreover, if those

businesses are dependent on public contracts or might be subject to strict regulation, the economic interests can easily be translated into political favours that can undermine the media’s watchdog function”²⁸.

Point b) clarifies the tight intertwining between the two cores of the Media plurality test: media pluralism and editorial independence. The Media plurality test may lead to a negative opinion even in cases in which pluralism is not menaced, but editorial independence is reduced. Here, editorial independence is understood as independence of editorial decisions, which is also a duty of media service providers stated by Art. 6 of the EMFA (which drafts a distinction between “established editorial line” and “editorial decisions”, protecting the latter from undue interference by the owners).

Point c) introduces the element of economic sustainability of the media. This provision is crucial because media mergers are increasingly justified by the need to avoid the closure of one or all the merging entities. Defensive mergers, contemplated in the competition law, can still be problematic for their impact on media plurality and diversity. The dilemma is presented in many cases and media systems, with different outcomes²⁹, and it is well visualized in the two opposite opinions recently published concerning the acquisition of RTL by DPG Media in The Netherlands.³⁰ Art. 22(2, c) addresses this dilemma, asking for the evaluation not only of the actual risk of closure of the media without the merger but also for the evaluation of possible alternatives.

Point d) suggests that the Media plurality test considers the state of media pluralism and media freedom in the country, as assessed by the Commission’s annual rule of law report. These findings include not only the media market situation, in terms of transparency and concentration, but also the other dimensions of media pluralism, such as the respect of fundamental rights and freedom of expression, the independence from political pressure, protection of minorities, and other

27. OFCOM 2021; OFCOM 2022.

28. BLEYER-SIMON-DA COSTA LEITE BORGES-BROGI et al. 2024, p. 100.

29. CARLINI-PARCU 2024.

30. See, on nrc.nl, pro-takeover: *De overname van RTL door DPG is een goed idee* and anti-takeover: *De overname van RTL door DPG is wél een probleem*.

elements of the legal framework and its effectiveness when it comes to media pluralism and media freedom.

Point e) delves into the remedies, asking to evaluate the parties' commitments. Even though the order in which the elements listed above should be interpreted is not specified, it seems reasonable that the national regulatory authority designed by the law to implement the Media plurality test can submit a positive opinion on a merger, even in the lack of one of the elements of point a, b and c, to the parties' commitment to safeguard media pluralism and editorial independence.

As argued in the position paper presented by the Centre for Media Pluralism and Media Freedom during the discussion on the proposal for the EMFA, there is "room for some innovative solutions, which could be specified in the guidelines and in the implementation of the Media Pluralism Test, considering together the principles set by Art. 21 [now 22] and the requirements introduced by Art. 6. In other words: when a merger can be justified by economic reason but still involves a risk for the reduction of the external pluralism, a strengthened set of guarantees in terms of editorial independence, content diversity and internal pluralism can be requested and enforced"³¹. If these guarantees are imposed as a condition for a positive opinion of the merger, they should be considered as structural remedies, not just behavioural ones: a generic commitment of the new media owner to respect independence of editorial decisions of the newsrooms would not be sufficient, whereas structural organizational and internal safeguards, audit and control would be needed.

6. The main challenges ahead

With Article 22, EMFA introduces a relevant and ambitious innovation in the media systems in the European Union. The new Media plurality test presents many challenges, the first obstacle being the fact that Art. 22 requires national rules and procedures to be issued, and the consequent risk of a fragmented and/or not consistent framework across the different countries to evaluate media concentrations in the internal market³².

The second big challenge of the new anti-concentration framework in the media system is the digital sphere. Although designed in the digital era of the media, with the explicit goal of adapting the old fragmented rules, introduced for analogic media, to the new information scenario, Art. 22 does not directly tackle "the elephant in the room", which is the market dominance of the online platforms and tech companies and the platforms' dependency of the media providers and media users³³. Though, there are some specific provisions, such as the inclusion of the online platforms in the definition of media market concentrations, and of the online environment among the criteria to conduct the Media plurality test; and a relevant provision on audience measurement (Art. 24), which addresses the big issue of opacity and secrecy in the digital audience measurement systems, whose implementation is a pre-condition of the very possibility to assess the impact of a merger on the "formation of public opinion". Together with the protection set by Art. 18 for the removal of media content on very large online platforms (the so-called "media privilege"), these media-specific rules might interplay with the EU horizontal digital regulation (DSA, DMA, Data Act, AI Act).

While the EMFA and Art. 22 alone cannot address all the challenges of the digital transformation of the media environment, the Media plurality test directly tackles some of the main economic threats to media pluralism and freedom; in particular, linking together the values of media pluralism and editorial independence. In this regard, the main challenge of the Media plurality test is avoiding a "light", or just formal, interpretation of its criteria, and effectively pursuing the respect of the principles set by the law. This means, for example, that the lack of economic sustainability of the media in the absence of the merger should not just be enunciated as a potential risk, but effectively demonstrated, and other possible alternatives should be explored. Moreover, the possibility of approval of the merger under the condition of safeguards of internal pluralism and editorial independence, if interpreted as calling for structural remedies (as argued

31. CMPF 2023.

32. See KERŠEVAN 2024 for the cases of Croatia and Slovenia, and SZNAJDER 2024 for Poland.

33. SEIPP–HELBERGER–DE VREESE–AUSLOOS 2024.

above), opens the path to an innovative role of the national authorities – and of the European Board for Media Services, in close cooperation – in exercising toward the private media super visioning competences and powers that were in the past, in some legal frameworks, limited to the public service media. It could be said that, in approving a merger that reduces external pluralism, the regulatory authority recognizes the merged entity as having public value and role which, in turn, comes with some responsibility.

Finally, there is another provision among the criteria of Art. 22 of the EMFA, that was less observed and commented on. It is the request for the rules of the Media plurality test to take into account “the parties’ interests in, links in other media or non-media businesses.” The rationale for this provision is the augmented potential risks for editorial independence and conflict of interests. Risks that transmigrated from the analogical to the digital environment of the media, as demonstrated by recent cases even in systems in which self-regulatory and professional safeguards proved effective in the past³⁴.

In his book on Media concentration and democracy, Edwin Baker considers the mixed media/non-media interests as a main threat, at the point that he includes among the policy proposals the following: “any for-profit commercial entity that purchases a media entity must, after the purchase, be primarily in the media business – that is, receive the majority of its revenue from its media business”³⁵. In the criteria of Art. 22(2, a), there is clearly a favour for pure media players in the assessment of a merger; in the guidelines that the Commission, assisted by the Board, will publish, as well as in the national laws to implement Art. 22, a simple rule like the one proposed by Baker could be stated. This would go in the direction of simplifying and clarifying the criteria; and also address a worrisome trend toward a new oligarchization of the media, even in countries which were historically immune from this phenomenon.

7. Conclusions

The main aim of Article 22 of EMFA is the harmonization of the fragmented legal framework

on media concentration in the single market. As argued above and in other contributions to this monographic section, the main challenges are in the compliance of the Member States’ laws, and in their effectiveness. To prevent a new fragmentation with many different versions of the Media pluralism test, it is of the utmost importance that the forthcoming guidelines (issued by the European Commission assisted by the Board) are straightforward and detailed. Moreover, it is important that in the guidelines, as well as in the Board’s opinions, a clear interpretation of the scope of Article 22 is shared, regarding: 1) the inclusion in the scope of the Media plurality test of the digital intermediaries that have a dominant and decisive role in the way in which the information is accessed, consumed, prioritized, and remunerated (or not remunerated); 2) the order in which the criteria set in Article 22(2) should be considered, and their interplay; 3) the nature of the commitments to safeguard media pluralism and editorial independence, in case they are accepted as a condition to allow the media market concentration.

Moreover, we argued the rationale for a specific treatment of media mergers involving non-media actors and proposed to introduce guidelines that strongly disincentivize mergers giving control of the media to entities that have their prevalent business in other sectors, to strengthen the safeguards of editorial independence in times of media economic vulnerability. Finally, it is worth noting that the above-mentioned limits in the scope of Art. 22 could be addressed by the Member States in their national regulations. In fact, Art. 21 confirms the Member States powers and competences to take measures to safeguard media pluralism or editorial independence, so long as they are justified, respect proportionality principles, and are “reasoned, transparent, objective and non-discriminatory”.

34. BARON 2025.

35. BAKER 2007, p. 178.

References

- S.P. ANDERSON, B. JULIEN (2015), *The Advertising-Financed Business Model in Two-Sided Media Markets*, Handbook of Media Economics, North Holland, vol. 1, 2015
- C.E. BAKER (2007), *Media concentration and democracy: why ownership matters*, Cambridge University Press, 2007
- M. BARON (2025), *Where Jeff Bezos went wrong with The Washington Post*, in “The Atlantic”, 3 March 2025
- K. BLEYER-SIMON, D. DA COSTA LEITE BORGES, E. BROGI et al. (2024), *Monitoring media pluralism in the digital era : application of the media pluralism monitor in the European member states and in candidate countries in 2023*, EUI, RSC, Research Project Report, Centre for Media Pluralism and Media Freedom (CMPF), Country Reports, 2024
- E. BROGI, D. DA COSTA LEITE BORGES, R. CARLINI et al. (2023), *The European Media Freedom Act: media freedom, freedom of expression and pluralism*, European Parliament, 2023
- T. BURMAN (2025), *Donald Trump’s Tech Bro Orbit—How Silicon Valley Merged With MAGA*, in “News-week”, 13 January 2025
- R. CARLINI, P.L. PARCU (2024), *How article 22 aims to tackle market power in the platformed media environment. A critical test for European media*, Blogpost in EMFA Observatory, 18 December 2024
- CMPF (2024), *Monitoring media pluralism in the digital era: application of the media pluralism monitor in the European member states and in candidate countries in 2023*, EUI, 2024
- CMPF (2023), *Feedback on the proposal for a regulation establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU*, EUI, 2023
- G. DOYLE (2016), *Why ownership pluralism still matters in a multi-platform world*, in P. Valcke, M. Sükösd, R.G. Picard (eds.), “Media Pluralism and Diversity: Concepts, Risks and Global Trends”, Palgrave Macmillan, 2016
- EUROPEAN COMMISSION - Directorate-General for Communications Networks, Content and Technology (2022), *Study on media plurality and diversity online – Final report*, Publications Office of the European Union, 2022
- A. FANTA (2024), *25 years ago, Europe failed to curb the power of media moguls. It still haunts us today*, The EU files, Follow the Money, 13 January 2024
- J. FURMAN, D. COYLE, A. FLETCHER et al. (2019), *Unlocking Digital Competition. Report of the Digital Competition Expert Panel*, 2019
- N. JUST (2009), *Measuring media concentration and diversity: new approaches and instruments in Europe and the US*, in “Media, Culture & Society”, vol. 31, 2009, n. 1
- K. KARPPINEN (2013), *Rethinking media pluralism*, 1st ed., Fordham University Press, 2013
- T. KERŠEVAN (2024), *From rhetoric to regulation: EMFA and media concentration in the digital age*, in “Rivista italiana di informatica e diritto”, 2024, n. 2
- A. MANGANELLI, L. MARINIELLO (2024), *La valutazione delle concentrazioni per la tutela del pluralismo informativo*, in “Rivista italiana di informatica e diritto”, 2024, n. 2
- Y. MONTJOYE, H. SCHWEITZER, J. CRÉMER (2019), *Competition policy for the digital era*, European Commission, Directorate-General for Competition, 2019
- M. MOORE, D. TAMBINI (eds.) (2018), *Digital dominance: the power of Google, Amazon, Facebook, and Apple*, Oxford University Press, 2018

- C. MYMBS NICE (2025), *What Elon Musk is doing to the government*, in “The New Yorker”, 26 February 2025
- R.K. NIELSEN, S.A. GANTER (2022), *The power of platforms: shaping media and society*, Oxford University Press, 2022
- E.M. NOAM (2016), *Who owns the world’s media?: media concentration and ownership around the world*, Oxford University Press, 2016
- OFCOM (2022), *Media plurality and online news. Discussion document*, 16 November 2022
- OFCOM (2021), *Statement: the future of media plurality in the UK*, 17 November 2021
- OECD (2021), *Competition issues concerning news media and digital platforms*, OECD Competition Committee Discussion Paper, 2021
- P.L. PARCU (2019), *New digital threats to media pluralism in the information age*, EUI RSCAS, 2019/19
- R.G. PICARD, C. DAL ZOTTO (2016), *The dimension of ownership and control of media*, in P. Valcke, M. Sükösd, R.G. Picard (eds.), “Media pluralism and diversity: concepts, risks and global trends”, Palgrave Macmillan, 2016
- A. PRAT (2020), *Measuring and Protecting Media Plurality in the Digital Age: A Political Economy Approach*, 10 August 2020
- J. SCHLOSBERG (2017), *Media ownership and agenda control: the hidden limits of the information age*, Routledge, 2017
- T.J. SEIPP, N. HELBERGER, C. DE VREESE, J. AUSLOOS (2024), *Between the cracks: Blind spots in regulating media concentration and platform dependence in the EU*, in “Internet Policy Review”, vol. 13, 2024, n. 4
- M. SZNAJDER (2024), *Biting More Than It Can Chew. On the The EMFA’s Media Pluralism Test*, Blogpost for Verfassungsblog, 16 July 2024
- STIGLER COMMITTEE ON DIGITAL PLATFORMS (2019), *Final Report*, The University of Chicago Booth School of Business, 20 January, 2025
- STIGLER MEDIA SUBCOMMITTEE (2019), *Protecting journalism in the age of digital platforms*, 16 September 2019
- P. VALCKE, M. SÜKÖSD, R.G. PICARD (eds.) (2016), *Media pluralism and diversity: concepts, risks and global trends*, Palgrave Macmillan, 2016