The Single Market Review

EUROPE

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Volume 8:

Audio-visual services and production

The Single Market Review

IMPACT ON SERVICES

AUDIO-VISUAL SERVICES AND PRODUCTION

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The Single Market Review

IMPACT ON SERVICES

AUDIO-VISUAL SERVICES AND PRODUCTION

The Single Market Review

SUBSERIES II: VOLUME 8

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This report is part of a series of 39 studies commissioned from independent consultants in the context of a major review of the Single Market. The 1996 Single Market Review responds to a 1992 Council of Ministers Resolution calling on the European Commission to present an overall analysis of the effectiveness of measures taken in creating the Single Market. This review, which assesses the progress made in implementing the Single Market Programme, was coordinated by the Directorate-General 'Internal Market and Financial Services' (DG XV) and the Directorate-General 'Economic and Financial Affairs' (DG II) of the European Commission.

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by

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It does not, however, express the Commission's official views. Whilst every reasonable effort has been made to provide accurate information in regard to the subject matter covered, the Consultants are not responsible for any remaining errors. All recommendations are made by the Consultants for the purpose of discussion. Neither the Commission nor the Consultants accept liability for the consequences of actions taken on the basis of the information contained herein.

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ACT	Association of Commercial TV
AFMA	American Film Marketing Association
ARD	Association of Public Broadcasting Organizations in Germany
BABEL	Broadcasting Across the Barriers of European Language
BRT	Belgische Radio and Televisie
BSB	British Satellite Broadcasting
BSD	Broadcasting Standards Directive
BSkyB	British Sky Broadcasting
BVA	British Video Association
CA	Conditional Access
CAGR	Compound Annual Growth Rate
CD	Compact Disc
CDi	Compact Disc interactive
CD-ROM	Compact Disc Read Only Memory
CICCE	Cinematographic and Audio-visual Committee of the European Communities and Extra-Community Europe
CLT	Compagnie Luxembourgeoise de Télévision
CMT	Country Music Television
CNC	Centre National de Cinématographie
CNN	Cable News Network
CNNI	Cable News Network International
CPE	Canal Plus España
CPS	Communication to the Public by Satellite
CPT	Cost Per Thousand
CSA	Conseil Supérieur de l'Audiovisuel
CSD	Cable and Satellite Directive
DBS	Direct Broadcast by Satellite
DGG	Deutsche Grammophon Gesellschaft
DKK	Danish Krona
DM	Deutschmark
DSS	Domestic Satellite Services
DT	Deutsche Telekom
DTH	Direct-to-home satellite
DVB	Digital Video Broadcasting Group
EAO	European Audio-visual Observatory
EBU	European Broadcasting Union
EC	European Community
ECHR	European Court of Human Rights
ECJ	European Court of Justice
ECU	European Currency Unit
EEA	European Economic Area
EEC	European Economic Community
EFDO	European Film Distribution Organization
EFTA	European Free Trade Association
ETSI	European Technical Standards Institute
EU	European Union
EUROAIM	European Association for an Audio-visual Independent Market
EVE	Espace Vidéo Européen
FFR	French Franc
FIAD	Fédération Internationale des Associations de Distributeurs de Films
FIAPF	Fédération Internationale des Associations de Producteurs de Films
FF2	France 2
FF3	France 3
FSS	Fixed Satellite Service
GBVI	Gaumont/Buena Vista International
GDP	Gross Domestic Product
GRECO	Groupement Européen ou la Circulation des Oeuvres
HD-MAC	High Definition - Multiplex Analogue Component
HDTV	High Definition Television
HMG	Holland Media Group
IRD	Integrated Receiver Decoder
ITN	Independent Television News

ITV	Independent Television
IVF	International Video Federation
LCI	La Chaîne Info
M&A	Mergers and Acquisitions
MAC	Multiplex Analogue Component
MAP TV	Memory-Archives-Programmes TV
MD	Managing Director
MEDIA	Measures to Encourage the Development of the European Audio-visual Industry
MGM	Metro Goldwyn Meyer
MPEG2	Motion Picture Experts Group
MTG	Modern Times Group
MTV	Music Television
NDSS	Non-Domestic Satellite Services
NLG	Netherlands Guilders
NRW	North-Rhine Westphalia
NSD	Nordic Satellite Distribution
PACT	Producers Alliance for Cinema and Television
PFE	PolyGram Filmed Entertainment
PPV	Pay Per View
PSO	Public Service Obligations
PTO	Public Telecommunications Operator
PTT	Post, Telegraph and Telecommunications
RAI	Radio Televisione Italiana
RLD	Rental and Lending Right Directive
RVS	Rank Video Services
SABAM	Société d'Auteurs Belge/Belgische Auteurs Maatschappij
SCD	Satellite Communications Directive
SCRIPT	The European Script Fund
SES	Société Européenne des Satellites
SFP	Société Française de Production et de Création
SKR	Swedish Krona
SMATV	Satellite Master Antenna Television
SME	Small and Medium-sized Enterprises
SMI	Single Market Integration
SMP	Single Market Programme
SMS	Subscriber Management System
TAM	Television Audience Measurement
TBI	Television Business International
TCC	The Children's Channel
TCD	Term of Copyright Directive
TOR	Treaty of Rome
TSD	Television Standards Directive
TV	Television
TWF	Television Without Frontiers
UA	United Artists
UAP	United Artists Programming
UFA	Universum Film
UIP	United International Pictures
UK	United Kingdom
US	United States
USA	United States of America
UTV	Ulster Television
VAT	Value Added Tax
VCR	Video Cassette Recorder

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1. Summary

1.1. Objective and scope

The objective of this study is to identify and measure any changes in the organization and performance of the audio-visual sector in the European Union (EU), which have resulted, directly and indirectly, from single market integration (SMI) between 1985 and 1995. The sector is defined as covering: cinematographic production and distribution; TV broadcasting, TV production (both in-house and independent) and distribution; video distribution; satellite transponder rental; and programme/video production sectors. Each of these sub-sectors is influenced by a unique set of factors, though all are highly interlinked.

This study seeks to identify and measure both direct and indirect effects of the single market programme (SMP). Throughout the study, the term EU covers only the 12 Member States which formed the European Community up to 1995 (i.e. excluding Austria, Sweden and Finland). The broad scope of the study covers the European Union's audio-visual services and production sector.

1.2. Impact of the single market programme (SMP) on broadcasting

1.2.1. Scale and scope effects

Television Without Frontiers (TWF) has facilitated the entry of a number of pan-European channels by easing licensing procedures, reducing costs and encouraging a belief that a significant pan-European advertising market would emerge. However, economic and regulatory barriers, sometimes raised by incumbents, have limited the extent to which pan-European channels have been able to achieve their desired penetration of European audiences.

In terms of trans-frontier broadcasting, TWF and the SMP have had a very limited impact on the expansion of terrestrial broadcasters. In fact, some terrestrial broadcasters found it more attractive to expand through actual entry, in some cases, in joint ventures with domestic operators, rather than through trans-frontier broadcasting.

Where multi-channel distribution is sufficiently developed to make cable or direct-to-home satellite services viable, TWF has enabled a small number of broadcasters to transmit services primarily targeted at one Member State from outside that Member State. This has allowed them to establish services in Member States with a more liberalized approach to regulation which might not have obtained a licence as domestic services in the Member State at which they are primarily targeted.

Broadcasters have not yet been able to exploit their existing trans-border audiences to increase their business. TWF and the SMP have made little difference to the exploitation of overspill which has been hampered by national government actions and by local commercial control over audience measurement systems.

There is evidence that TWF has indirectly encouraged some Member States to liberalize their domestic broadcasting markets. This effect has been significant in the Netherlands and Portugal and to a lesser extent in Germany, Greece, Spain, Belgium and Denmark. TWF was assessed to have had little impact in this respect in the UK, Italy, Ireland or France.

1.2.2. Competition effects

TWF and the SMP is considered to have led to an increase in competition between broadcasters, partly due to its indirect stimulation of the liberalization of some domestic markets. Concentration, measured in terms of national audience shares, has been reduced in some Member States (Portugal, Belgium, Netherlands, Germany and UK), but this seems to have been translated into lower advertising prices only in Portugal and Belgium.

Competition has led to some changes in the organization of broadcasters, increasing programming costs and closer targeting/marketing of their services. Total workforce levels have been reduced by some of the established public sector broadcasters, but private channels have, in general, been expanding their businesses and workforces.

1.3. SMP and television production

1.3.1. Production levels

Although little consistent data is available, the increase in total hours broadcast in the EU appears to have led to an increase in the level of European television production. The SMP can be considered to have stimulated this effect to the extent that it has encouraged the launch of new channels and also to the extent that it has increased competition between them, leading them to cater to viewers' preference for original, domestic programming.

It is possible that the full effect of the growth in transmission hours on production levels has not yet been felt. The structure of demand for programming is such that new broadcasters are more likely to import non-EU programmes in the early phases of their development and tend to originate more domestic programming as they move towards profitability.

1.3.2. Impact of European works quota

The results of our survey, combined with the available statistics on levels of qualifying works, suggest that, despite an upward trend in the volume of European works, the quota has had very little effect.

The European works quota has had no impact on the major broadcasters in each Member State; particularly the public service networks already transmitted the necessary level of programming in response to market demand and public service remit. While the quota might have been expected to have a detrimental impact on newly established or thematic channels which do not naturally show a majority proportion of qualifying European works, limited enforcement and unequal application of the quota rule between Member States have limited any potential effect of the rule for such channels.

Broadcasters would be expected to argue vociferously against quotas, but we have found that most confuse their real impact with the theoretical impact, and also confuse the effect of national quotas with the TWF quotas. A number of broadcasters whom we interviewed initially stated that quotas had had a significant impact on their business but were unable to identify specific examples. It became clear on further questioning of these broadcasters that it was domestic rules which were affecting decisions, not European quotas.

1.3.3. Impact of independent works quota

The SMP has had some effect on the independent programme production sector. While we are unable to attribute a significant effect to the quota, the effect of the liberalization of broadcasting, to the extent that this is a result of the SMP, can be said to have encouraged the independent sector.

1.4. SMP and film production

1.4.1. MEDIA Programme

There is evidence that the MEDIA Programme has encouraged professionals within the film production industry to look beyond their borders for partners and investors and has facilitated networking in the EU. However, our study indicates that the structural impact of the MEDIA Programme has been limited. The Programme is inherently constrained by the level of its budget and consequently its impact is marginal, particularly so far as the overall level of film production in the EU is concerned. Although co-productions have increased across the EU over the period in review, we believe that commercial developments have played a more significant role in this trend than the MEDIA Programme.

1.4.2. Effects of increase in television demand for film

Since 1985, the role of television broadcasters in supporting European film production has become more important. This can be regarded as having been facilitated by TWF to the extent that new satellite channels, notably those specializing in film, have been encouraged by it. However, it should be noted that the largest direct TV investment in EU films (by Canal Plus) is directly attributable to national licensing obligations rather than to EU regulations.

1.5. SMP and film distribution

1.5.1. Overall impact

The SMP measures have had little perceived impact on the European film distribution sector. Both the US and European distributors believe that although there are few legal or technical barriers to trade in this sector, significant market structure differences and cultural and linguistic barriers which exist have ensured that European film distribution strategy is formed at a national level. Although distributors' involvement in the pre-financing of films and the activities of EFDO may have encouraged the European film distribution industry, the principal barriers are difficult for the EU to remove and are largely outside the scope of the SMP.

1.5.2. MEDIA Programme

Some assistance is available to European distributors through EFDO funding. Although it has only had a short period so far, its activities encourage European distributors to seek alliances with distributors in other European countries to obtain funding from EFDO.

1.6. SMP and video distribution

1.6.1. Overall impact of SMP

The duplication and physical distribution of video tapes across Europe is still handled either by large, pan-European companies or individual entities at a national level. For the duplication sector, three companies appear to be pan-European and have set up duplication plants outside their national territories and handle large scale, high volume duplication of European and Hollywood product. The size of these operations indicates that these companies are benefiting from economies of scale, facilitated by the SMP, in the duplication and acquisition of video tapes, and the ease of moving their product around the EU has enabled them to establish operations in the most commercially advantageous markets.

1.6.2. MEDIA Programme

The success of EVE's funding of the distribution and publication of European video products is difficult to assess as little data is available on the European distributors' share of the European market and on the effect of Hollywood distribution companies and Hollywood products on the European market. Our study indicates that EVE's funding has had a limited but intangible effect on the European distribution market by encouraging distributors to communicate with each other and to gain an understanding of potential markets outside their own.

1.7. Copyright harmonization

The impact of copyright harmonization to date in the EU is minimal, although the industry is aware of the changes that are likely to occur and is beginning to take anticipatory action. Lack of implementation of the copyright directives in some Member States has weakened their impact to date.

Broadcasters appear not to regard the need for copyright harmonization as a major issue, although they are concerned that both Rental and Lending Rights and Term of Copyright Directives may lead to higher rights costs since they harmonize protection up to the minimum level already in force in some Member States. Many producers regard copyright harmonization as an important aim, but its initial impact on them may be considered to be negative since both Rental and Lending Rights and Term of Copyright Directives strengthen the rights position of creators and performers as 'suppliers' to producers.

The Cable and Satellite Directive is generally regarded as facilitating re-transmission of cable and satellite channels and therefore as having a potential positive impact.

1.8. Cross-border trade

The available evidence on the change in the share of intra-EU exports for the EU and the countries for which data is reliable (France, UK and Spain) suggests that there has been an increase in the share of intra-EU exports in the 1990–93 period over and above what would be expected on the basis of trends in relative prices (i.e. exchange rates) and relative incomes (i.e. GDP growth of EU and US). This supports the hypothesis that TWF, the SMP and the MEDIA Programme have facilitated and encouraged cross-border trade within the EU.

The data on imports is more volatile but it suggests that there has been an equally large (and in some cases very large) increase in non-EU imports compared with intra-EU imports resulting in a widening of the trade balance, especially with the US. This would support the hypothesis that non-EU product has not been disadvantaged from the liberalization of EU markets, relative to EU product, although these conclusions should be treated cautiously in view of the incomplete nature of the data.

1.9. Business strategies of operators

Most EU operators have developed strategies to gain or defend their market share in the national markets in which they have a competitive advantage. Our analysis on economies of scale suggest that this is a viable strategy, at least in the medium term. It is also clear that many companies within the EU have adopted a more international approach in their strategy or have utilized TWF to try to break through barriers to entry. This is consistent with the objectives of SMP. However, the evidence from our interviews and case studies also confirmed the hypothesis that SMP is not perceived as being of direct significance in shaping the commercial strategies of most operators.

2. Introduction

2.1. The purpose of the study

This study seeks to identify and measure:

(a) direct effects of the single market programme (SMP): any Community measures designed to eliminate obstacles to the free circulation of services and products (films, programmes and videos) which may have affected the organization or performance of the audio-visual industry; and

(b) indirect effects: the widening of geographical markets for audio-visual services and their inputs (programmes/films) as a consequence of the single market. This would enable broadcasters to supply services and programme/film producers to seek outlets in other EU markets. It would also enable EU broadcasters and producers to develop cross-border co-operative agreements.

2.2. Structure of this report

The report is structured as follows:

(a) Chapter 1: Summary
(b) Chapter 2: Introduction
(c) Chapter 3: Community measures which may impact on the audio-visual industry
(d) Chapter 4: Broadcasting
(e) Chapter 5: Programme demand structure in the EU
(f) Chapter 6: Television production
(g) Chapter 7: Film production
(h) Chapter 8: Film distribution
(i) Chapter 9: Video distribution
(j) Chapter 10: Cross-border trade
(k) Chapter 11: The harmonization of copyright in the EU
(l) Chapter 12: Business strategy
(m) Chapter 13: Remaining barriers

2.3. Methodology

The methodology adopted for this study was based on testing a set of hypotheses. The study entailed five phases which are listed below. A detailed summary of the methodology is provided in Appendix A.

(a) Desk research: which comprised data collection, the identification of structural changes and industry summaries of 1985 and 1994;

(b) Legislative review: in which our legal team conducted a detailed examination of Member State and EU legislation and assessed the impact of certain measures on the industry;

(c) Industry, 22 trade association and others and 12 regulator interviews which were conducted using a focused questionnaire which is included in Appendix B. A summary of the quantitative results of the survey is provided in Appendix C;

(d) Case studies: a total of 14 case studies were conducted, the results of which may be found in Appendix E; and

(e) Analysis and reporting.

Within this framework we met with the Commission team on several occasions to review progress and provided a progress report highlighting our initial findings and conclusions.

2.4. Definition of the sectors covered by the study

The broad scope of the study covers the European Union's audiovisual services and production sector. The sectors are:

(a) broadcasting (including satellite transponder rental);
(b) television production;
(c) cinematographic production;
(d) cinematographic distribution; and
(e) video distribution (both sell-through and rental).

Not included in this study, except insofar as they impact on the core sub-sectors, are: consumer or professional hardware; pre- or post-production facilities; cable network operators; video retailers; or the music industry.

2.5. The relevance of the sector with regard to the single market

The audio-visual market involves the production, distribution and sale of goods and the provision of services.[1] It is characterized by geographical segmentation, both as a result of national tastes and – in ownership terms – national laws, and an extremely high degree of differentiation between individual products even within categories. As a result, the effect of the single market on production and distribution of audio-visual materials may be expected to be strongest in relation to rules on the free movement of goods and of services.

Audio-visual products also constitute copyright works and laws relating to the existence and exploitation of copyright works directly impact on production and distribution. The sector is viewed and valued as both an economic and a cultural priority for the EU in the development of an integrated Europe. The preamble of the Treaty of Rome (TOR) states the intention of laying open 'the foundations of an ever closer union amongst the peoples of Europe'.

The 1984 Television Without Frontiers Green Paper argued that the dissemination of information across national borders could do much to help the peoples of Europe recognize the common destiny they share in many areas, and that improving the coverage of events in other Member States is essential if citizens of Europe are to play their full part in building the Community.[2]

At the same time the diversity of European culture represents both a valued asset of the EU to be nurtured, and a potential barrier to SMI in the enshrinement of national distinctions and the preservation of national markets.

[1] The *Sacchi* case (Case 155/73 [1974] ECR 409) stated that 'in the absence of an express provision to the contrary in the Treaty, a television signal must, by reason of its nature, be regarded as provision of services', and a similar principle is likely to apply to radio broadcast, and probably to data communication.

[2] European Parliament report on New Culture Education Information and Sport on Radio and Television Broadcasting in the European Community document No 1-101 3/81 of 23 February 1992.

Three areas of EU activity in the audio-visual sector can be identified over the last decade:

(a) creating a European Broadcasting Area;
(b) providing for a harmonized regime of fair rewards for creators and other owners of intellectual property in order to ensure a level playing-field in the context of the single market; and
(c) supporting the European audio-visual programme industry.

The following sections discuss each of these in turn.

2.5.1. Creating a European Broadcasting Area

The main thrust of EU legislation in this area has been to enable and encourage trans-frontier broadcasting and to establish favourable conditions for the free circulation of audio-visual services and products. This entails:

(a) dismantling of internal barriers to broadcasting and permitting cross-frontier transmission of programmes throughout the EU; and
(b) harmonizing television advertising restrictions to the extent necessary to ensure cross-border broadcasting. Television advertising was seen as an indispensable instrument of sales policy for Community companies, especially as an aid to the introduction of new products. National restrictions on television advertising, it has been argued, have the effect of artificially shifting business between Member States, distorting competition, and preventing the establishment of the single market.[3] An advertiser should be able in his country, as well as elsewhere, to choose whatever broadcast he regards as the most suitable vehicle for his particular advertisement.

2.5.2. Providing for a harmonized regime of fair rewards for creators and owners of intellectual property

Creating a level playing-field through the formation of a true European trans-frontier broadcasting market requires certainty of regulation, mutual recognition procedures and, where these are not possible, harmonization of intellectual property rights. This last element is subject to a second theme: the desire to reward effectively creators of audio-visual works through the intellectual property that they own. The rationale behind this is that, by rewarding creativity, creativity is encouraged, and the audio-visual sector, which depends upon creativity, is strengthened.

2.5.3. Supporting the European audio-visual programme industry

Concerns in relation to the production industry in Europe are somewhat different from those relating to broadcasting. Over the past 10 years, Europe has been supporting the film production industry against US dominance, through aid and through funding programmes such as the MEDIA Programme. Although this has some relation to the creation of the single market, it also has much to do with promotion of cultural diversity.

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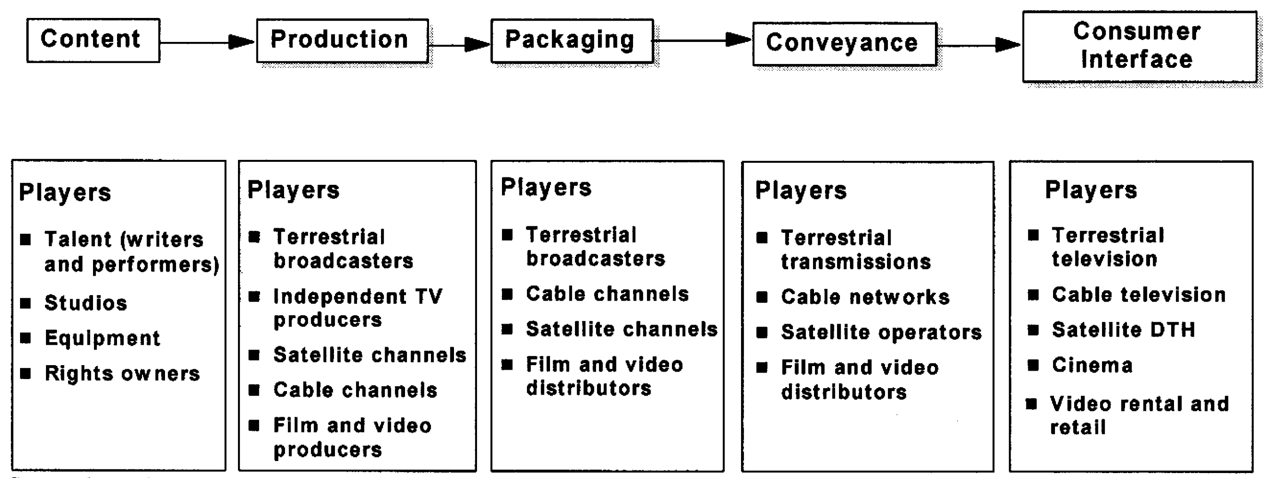
3 The advertising sector as such is outside the scope of this study, but remains a crucial factor in relation to the financing of broadcasts of audio-visual materials.

2.6. Overview of the audio-visual sector and its economic significance

2.6.1 The audio-visual value chain

We have analysed the audiovisual value chain as comprising four basic activities: content, production, packaging and distribution. Distribution in turn can be split into conveyance and the interface with the consumer which is typically via equipment in the home or at the cinema. This value chain is illustrated in Figure 2.1 below. For each element of the chain we also give examples of the typical 'players' involved.

Figure 2.1. The audio-visual value chain



Source: KPMG.

Functionally, the elements of the supply chain perform the following roles:

(a) content represents the raw material of the audio-visual industry, encompassing creative and performing talent, location, equipment, studios and the rights to programmes, to exploit literary and other works and to events such as sports;

(b) production represents the process of making completed audio-visual products. Broadcasters, film studios and independent producers are the key players in production activities in addition to the providers of content;

(c) packaging represents the combination of audio-visual products into a branded offering. In television this role is carried out by channels which buy and schedule programmes and films. In film and video this is part of the role of the distribution arms of studios and of independent distributors; and

(d) distribution is the means of accessing the final consumer. First, the audio-visual service is conveyed to the point of use or sale: by transmitting broadcast signals, over the air, via cable, on film to cinemas, or on tape to video retail outlets. The product is then viewed via a television set, VCR or cinema screen.

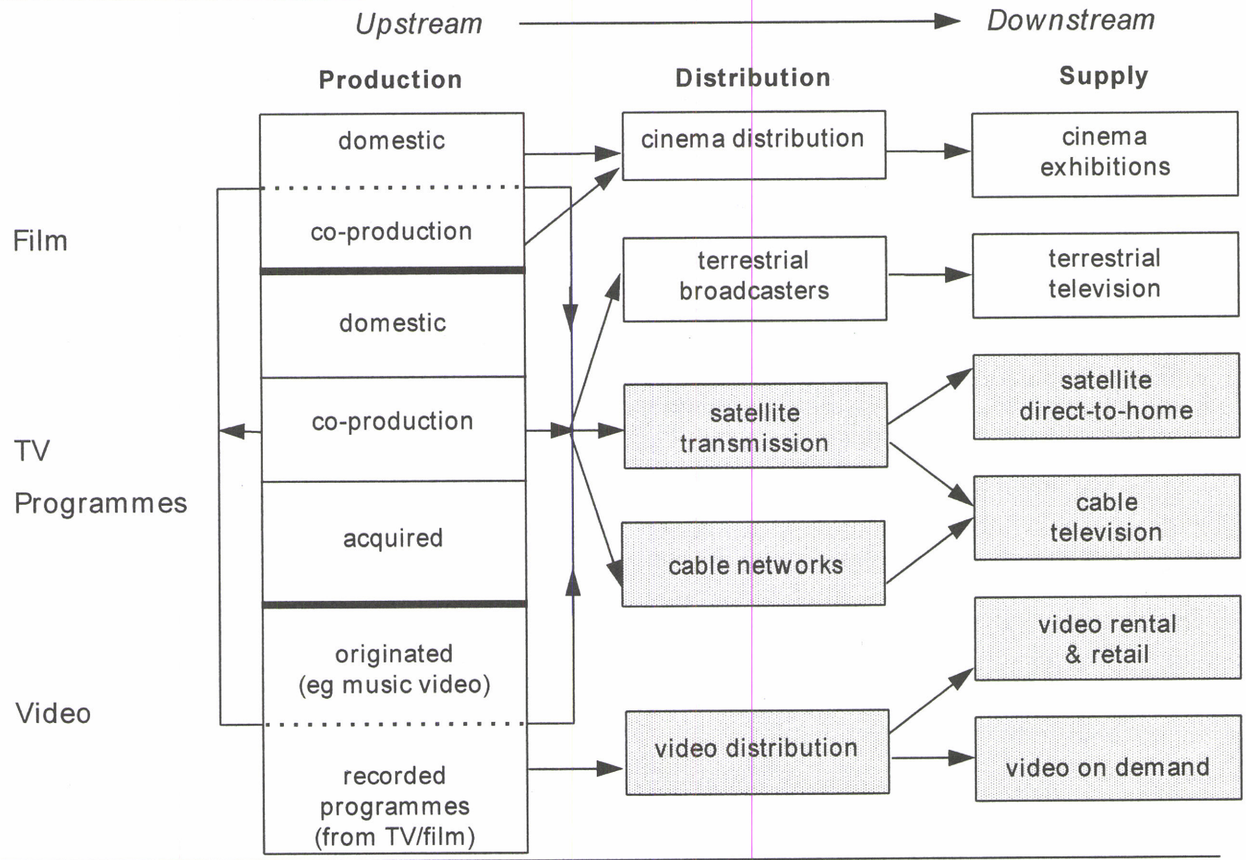
This study focuses primarily on the activities of production, packaging and distribution.

2.6.2. Development of the audio-visual value chain, 1985–95

Audio-visual products reach the consumer via three main distribution routes: broadcasting (via terrestrial transmission, satellite and cable), theatrical release (cinema); and video. In the past decade, the number of routes, and the interrelationship between them, has changed dramatically on a global basis as a result of new television delivery systems and the growth of video penetration. In addition to absolute growth in the size of the industry, the relative contribution of each of the distribution methods to total audio-visual revenues has also changed.

Figure 2.2. gives a more detailed analysis of the value chain in terms of the film, TV and video sub-sectors. The shaded areas represent activities which were not significant in generating revenues in 1985.

Figure 2.2. The audio-visual value chain: analysis by sub-sector



Source: KPMG.

We examine in detail below the impact of these activities on the sub-sectors of the European audio-visual industry.

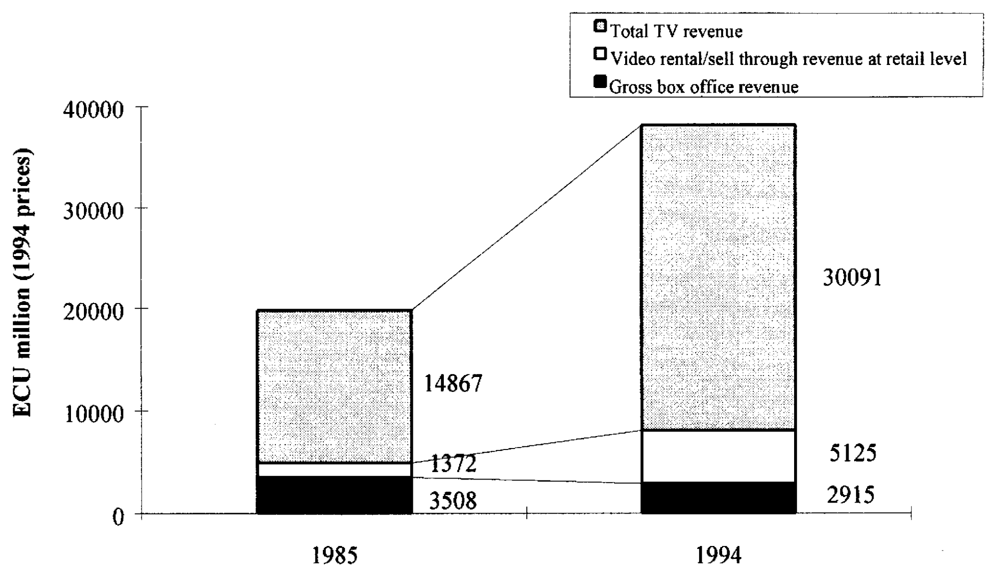
2.7. Size of the audio-visual sector

Based on figures for end-user (consumer or, in the case of television, advertiser) expenditure on each of the audio-visual sectors, we estimate that the total revenues of the European audio-visual sector were ECU 38 billion in 1994.[4] This represents an increase of 93% in real terms since 1985 when the sector's revenues were an estimated ECU 20 billion (at 1994 prices). The changes in the size of the components of the sector is shown in Figure 2.3 below. The main

4 This estimate applies to EUR-12.

reasons are the expansion of existing sources of revenue (such as television advertising); and the creation of new sources, such as video software and pay television.

Figure 2.3. Size of audio-visual sector: 1985 and 1994



Source: Various.

Each of the sectors is reviewed in more detail below.

2.7.1. Broadcasting

Recent developments in the broadcasting sector

The broadcasting sector in Europe has undergone fundamental changes in market structure and commercial practices in the past 10 years.

Historically, the sector was dominated by state-owned public service monopolies, funded by a combination of licence fees, subsidies and advertising. Public service broadcasters have primarily been vertically integrated in that they also produced most of their own programmes and had exclusive access to transmission networks. This was necessary since when they began, an independent production sector did not exist.

Similarly, the public service model, which generally includes obligations relating to universality of programming, investment in local production, local culture pluralism and diversity, and the limited number of frequencies available for distribution of terrestrial signals, implied a high level of regulatory involvement in the nature of the broadcasters' business.

We review below the effect of the two principal structural changes in the past 10 years:

(a) national re-regulation of broadcasting leading to the launch of commercial channels;
(b) the development of new television delivery systems and the emergence of pay television.

The 1980s: national re-regulation of television

During the 1980s, liberalization of television on a national level led to the launch of private commercial channels in all EU countries. In 1980, there were 28 national terrestrial channels with virtually complete coverage of their territory. By 1994, there were 48. This created competition for programmes, audiences and advertising for the first time in most markets.

In some countries (Greece, Germany, Portugal), the publicly owned broadcaster has suffered a loss of advertising revenues and/or of audience share. This has led to pressures for cost reduction and in certain cases for increased licence fee/subsidy support as state channels have been required to maintain their public service obligations.

The 1990s: new delivery systems and the emergence of pay television

By the early 1990s, subscription charges have become an important source of broadcaster revenue. Pay television is mainly distributed via cable and satellite systems, with exceptions in France and Spain. Unlike free-to-air television, a pay service creates a direct commercial relationship between the broadcaster and the viewer, although a channel's subscription revenue can be earned directly from viewers and from carriage payments by cable operators. The main programme genres which generate substantial revenues are movies and sport.

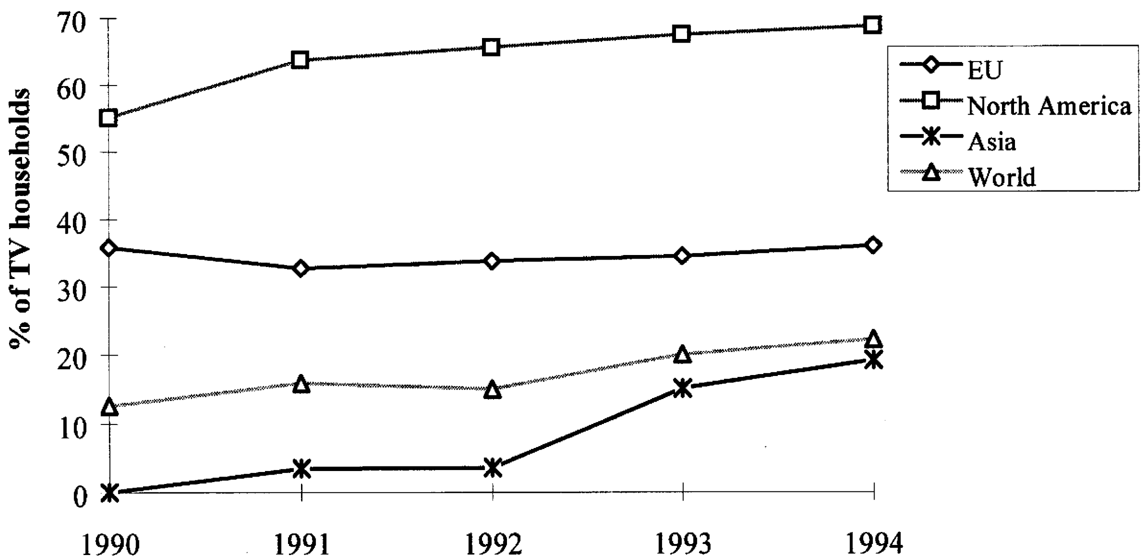
The development of these new revenues has been enabled by the growing penetration in the EU of a multi-channel distribution infrastructure: cable networks and direct-to-home satellite (DTH). Terrestrial television distribution is gradually being complemented throughout the world by satellite and cable technology which relieve the frequency limitations of terrestrial broadcasting. The early model was for low-powered satellites to distribute television signals to cable network headends for redistribution to customers. In recent years, television services have migrated to higher power satellites capable of being received directly at each home by relatively small individual satellite dishes.

Cable transmission of television signals began in the 1960s and cable networks have been constructed at different rates, both within Europe and in other regions. The average penetration rate for the EU Member States is higher than in any other region in the world, apart from North America; but while the Netherlands and Belgium have the highest rates in the world, countries such as Italy and Spain still have virtually no cable, and systems in major markets such as France and the UK are still under construction. Early development of cable systems was driven by a number of factors:

(a) cable networks have been used as a relay system for licence fees, and advertising-supported channels, due to a scarcity of terrestrial frequencies and to geographical factors. This was the case in Belgium and the Netherlands as well as in the USA;
(b) a constitutional desire for the maintenance of pluralism within a private broadcasting system (and insufficient terrestrial spectrum to allow this). This was an important driver in Germany; and
(c) regulatory encouragement of cable development to create a broad-band infrastructure for television, telephony and interactive services (e.g. in France and the UK).

Figure 2.4 shows a world comparison of cable penetration levels.

Figure 2.4. Cable penetration: world comparison



Source: Screen Digest.

The increasing power of satellites has had a dramatic effect on broadcasting both within Europe and, more recently, in other regions of the world. Receivable direct to home and by-passing cable networks, these broadcasts cross Member State boundaries and are difficult to regulate on a national basis. The potential of such services is considered an important driver of the liberalization of broadcasting both in Europe and in other regions.

By the early 1990s, household penetration of DTH was greater in Europe – particularly the UK and eastern Germany – than in other parts of the world, largely due to the success of channels transmitted from the Astra satellite system including BSkyB in the UK. Satellite dish penetration for selected EU Member States is shown in Figure 2.5.

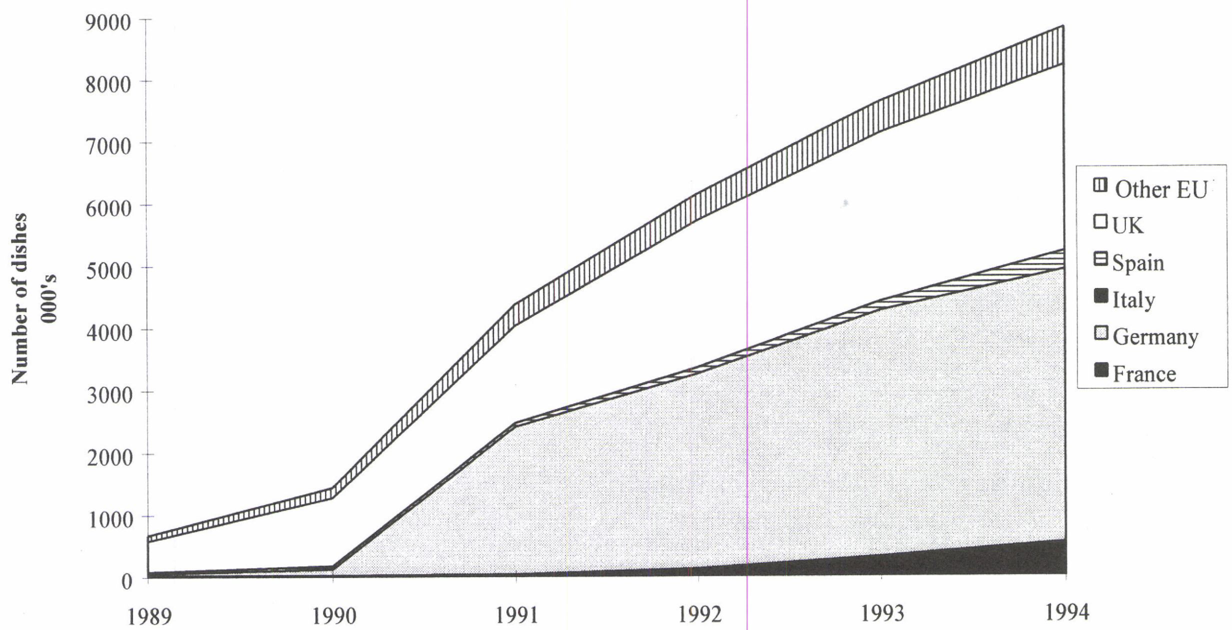
The number of satellite transponders in Europe which could be marketed to broadcasters has grown rapidly from just 10 in 1982 to an estimated 447 in 1994. These include systems such as Astra, Eutelsat, Intelsat and the national systems DFS Kopernikus (Germany), Telecom (France), and Hispasat (Spain).

These new distribution systems have led to a dramatic increase in the number of broadcast services available. Over 200 different channels in Europe and about 100 in Asia are now transmitted via satellite.[5] Some channels offer general entertainment similar to traditional channels and there is also an array of niche or specialized channels. In the mid-1980s, operators of successful US thematic cable networks (MTV, Discovery, CNN) began to export these channels to other world regions in the belief that some niches have universal appeal. News, music and sport channels which appeal to internationally minded business people and youth have been in the vanguard. Broadcasters in each region then began to launch their own thematic channels including channels such as Eurosport and Euronews in Europe, the STAR

5 *TBI Yearbook* (*NB*: European channels include those outside the EUR-12).

satellite network in Asia and networks such as MuchMusic and Multicinema in Latin America.

Figure 2.5. Satellite dish penetration for selected EU Member States: 1989–94



Source: Zenith Media.

Broadcaster types

There are now four principal types of broadcaster in Europe:

(a) state owned public service broadcasters: these are usually funded by a licence fee and in most cases by advertising and are usually subject to public service obligations (PSO) in terms of programme content and limitations on their commercial activities;

(b) national (or regional) terrestrial commercial channels: these are licensed by a national (or regional) regulator and often have to comply with some form of PSO. Most provide broad based programme services funded by advertising and sponsorship (and by subscription in the case of Canal Plus in France and Spain);

(c) national satellite channels: these use cable and DTH distribution to broadcast a combination of subscription and advertising supported channels. Licence obligations and restrictions are often less stringent than for terrestrial channels; and

(d) pan-European satellite channels: these are largely advertising supported. In the first half of the 1980s, they were aimed at a broad audience. Subsequently, niche channels have developed with targeted programming aimed at crossing national boundaries and seek to attract advertising from international advertisers. Most have been aimed at younger audiences or the business community.

We summarize in Table 2.1 the number of channels of each type in 1985 and 1995.

Table 2.1. Changes in the types of broadcaster between 1985 and 1995

Type of channel	Primary funding	Number in 1985	Number in 1995
State owned	licence fee, subsidy, advertising	25	25[1]
National terrestrial commercial	advertising		23[2]
National satellite	advertising, subscription	8	75
Pan-European satellite	advertising	3	19

Source: KPMG.

[1] These figures count only terrestrially delivered channels. They include regional broadcasters such as ARD as a single channel; similarly, the broadcasters which comprise NOS in Netherlands count as one channel.

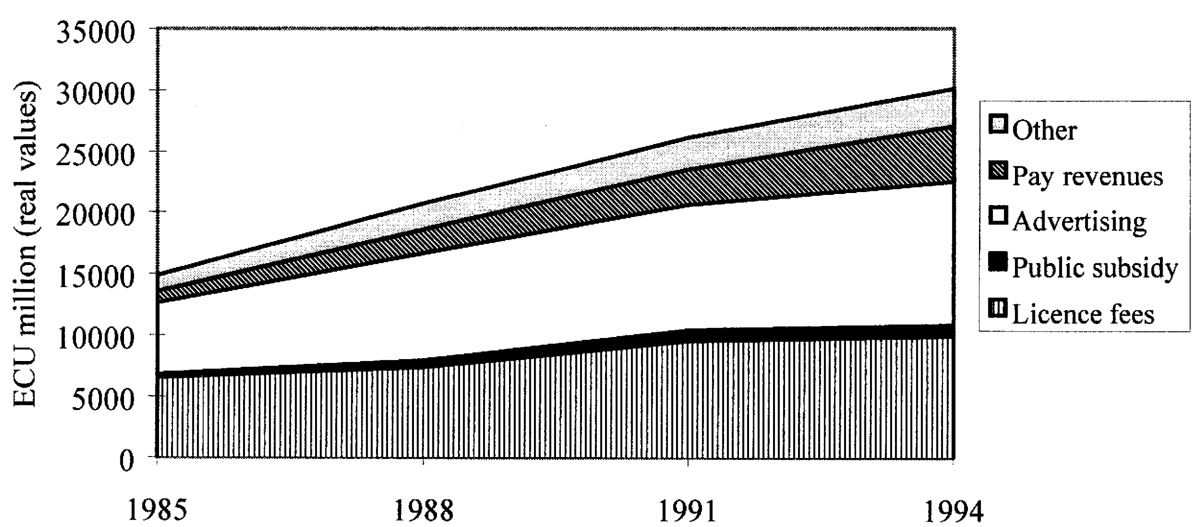
[2] Additionally, Fininvest's Italian channels were not true networks in 1985 as it was not legal for a private concern to own national networks. However, by buying local private stations and transmitting programming with a time delay, Fininvest was able to provide a quasi national service.

The 'economics of broadcasting' in Section 4.2 describes in detail the objectives of these channels, their expected behaviour and the emerging market structure.

Total television broadcasting revenue

We estimate that total EU television revenue, including licence fees, government subsidies, advertising and viewer subscriptions, increased by 102% in real terms between 1985 and 1994, rising from ECU 14.9 billion (1994 prices) to ECU 30.1 billion. This is shown, by source, in Figure 2.6.

Figure 2.6. EUR-12 broadcasters' sources of revenue: 1985–94



Sources: EBU; Zenith, Kagan.

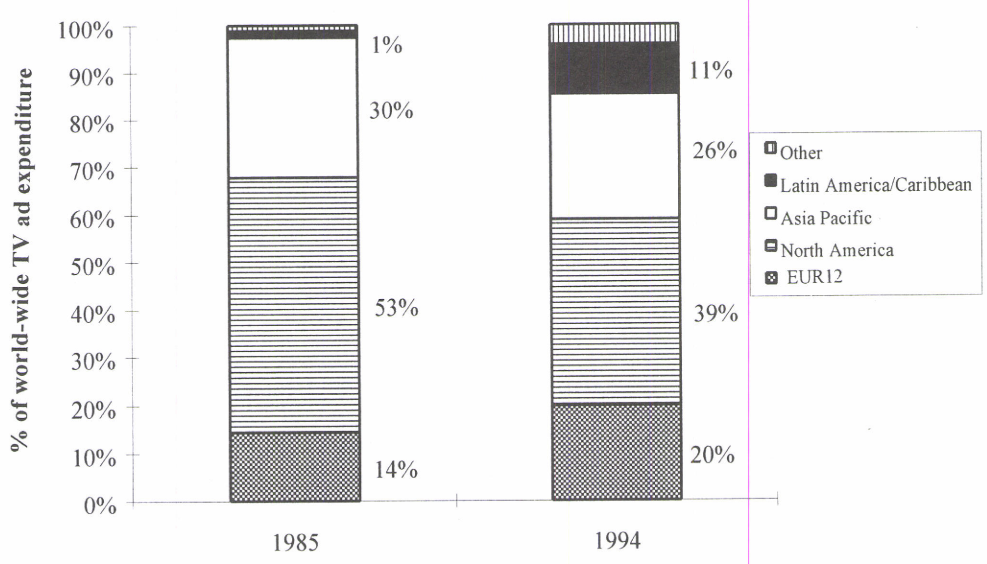
Public broadcasters' revenue

The overall public share of EU television income declined from 78% in 1985 to 51% in 1994 as new commercial channels reduced the public broadcasters' share of advertising revenue (from 64% to 25%) and subscription revenue grew. Total EU revenue from public subsidies and licence fee increased between 1985 and 1994, from ECU 6.8 billion (1994 prices) to ECU 10.8 billion.[6] Public subsidies (which are most significant in Belgium, Portugal and Spain) increased by 212% in real terms and income from licence fees by 52%. Governments have often agreed to increases in both forms of funding for public broadcasters so as to support them against competition from new private broadcasters: for example, by the introduction of a public subsidy in Spain and an increased licence fee in Germany.

Advertising expenditure

EU television advertising expenditure doubled in real terms from ECU 5.8 billion (1994 prices) in 1985 to ECU 11.7 billion in 1994. European television advertising increased its share of world-wide expenditure from 14% to 20% as shown in Figure 2.7.

Figure 2.7. European television advertising expenditure as a proportion of the world total



Source: Zenith Media.

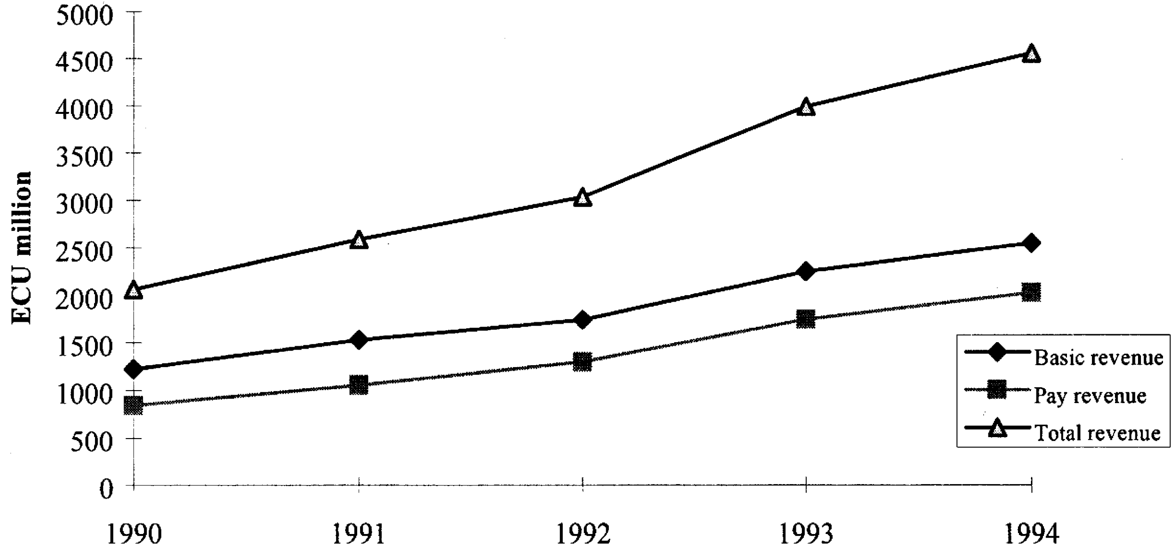
Subscription revenues

We have included two forms of pay revenue in Figure 2.6: the basic fee charged for a package of channels which are primarily supported by advertising (which has been usual in the Benelux since the 1970s), and the fees charged by premium pay services, such as movie or sports channels.

We estimate that total subscription revenue has increased by nearly 400% in real terms between 1985 and 1994, from ECU 0.9 billion (1994 prices) to ECU 4.5 billion. Two leading pay television providers in the EU, Canal Plus in France, Spain and Belgium and BSkyB in the UK, accounted for over ECU 2 billion of the total revenue (47%) in 1994. The trend in subscription television revenue is shown in Figure 2.8.

6 EBU, individual broadcasters.

Figure 2.8. Subscription television revenue in the EU



Source: Kagan.

2.7.2. Television production

In the early 1980s, television production was carried out mainly in-house by a limited number of established, mainly public service broadcasters. Vertical integration of broadcasting, with programme production and post-production, was the norm in Europe. With monopoly (or duopoly) control over the distribution of signals and sources of revenue, broadcasters were in a position also to control programme production. Related to this, a significant independent production sector had not developed. A significant proportion of programming was sourced from outside the EU (from US distributors), and there was little intra-European trade in programming.

The proliferation of broadcasters in the 1990s has had a direct impact on the television production sector. First, the vast increase in the total hours broadcast has led to an increase in hours of programming required. Second, competition for advertising revenue led to a focus on increasing efficiency by controlling costs.

To a limited extent, public broadcasters have begun to separate their demand for, and supply of, programming. They have reduced their fixed costs by commissioning a greater proportion of programming from independent producers while rationalizing their in-house production facilities so that they can compete effectively with new market entrants. At the same time, some new private competitors were set up with smaller scale, or sometimes, no in-house production facilities and bought in a significant proportion of programmes from independents. Broadcasters are now also required to commission a quota of programmes from independents and in some countries to invest in local independent production.

While most production is still carried out in-house, the result of these changes in broadcasting has been the growth of a significant independent production sector which, by 1992, was contributing around 20% of all relevant programming transmitted by European broadcasters.[7]

The economic rationale for such outsourcing is examined further in Chapter 4. Cost savings could be made because of two characteristics of production:

(a) the production facilities of some former monopoly broadcasters were not organized efficiently and had significant over-capacity; and
(b) the independent production sector was not well developed. In many cases, the new independents were former in-house producers of the established broadcasters who were now employed effectively as freelancers with little power to retain rights from programmes fully financed by the broadcasters.

The growth in broadcasting has also initiated a secondary market in which independent producers could generate higher value for programme rights. As they have begun to grow stronger, it is unclear whether there will be a return to more vertically integrated groups.

2.7.3. Film and video

Economic characteristics of the film and video industries

The European film industry must be viewed in the context of the international market for film and video which is dominated by the Hollywood studios. Hollywood is a specialist market place for film-making in which expertise and production facilities have built up over the past 70 years. It enjoys large incumbency benefits. However, even for the Hollywood studios, film-making is a highly risky business: despite the image of success, there have been well publicized failures. Hundreds of film projects are not produced and some of those produced are not released. Of those released, between a fifth and a tenth are successful.

As a result, the minimum efficient scale for continued and 'successful' film production is extremely large. The US majors have established vertically integrated operations which reduce the risks of high investment in film production through their control of the distribution and exhibition elements of the supply chain. A growing proportion of their revenue is generated by overseas sales. This has led to an increased marketing effort by US distributors abroad and the US studios have also used their distribution networks to take advantage of the new revenues arising from video distribution.

Another important difference between the Hollywood and European film industries is their respective orientation. Hollywood manufactures films for world-wide distribution. It is oriented towards developing film product which will have mass audience appeal. The commercial aspects of the business override the creative or cultural issues. European film-makers have traditionally taken a different approach, and the tradition of *film d'auteur*, where a film is seen as the artistic expression of a creative talent, is a strong one in Europe.

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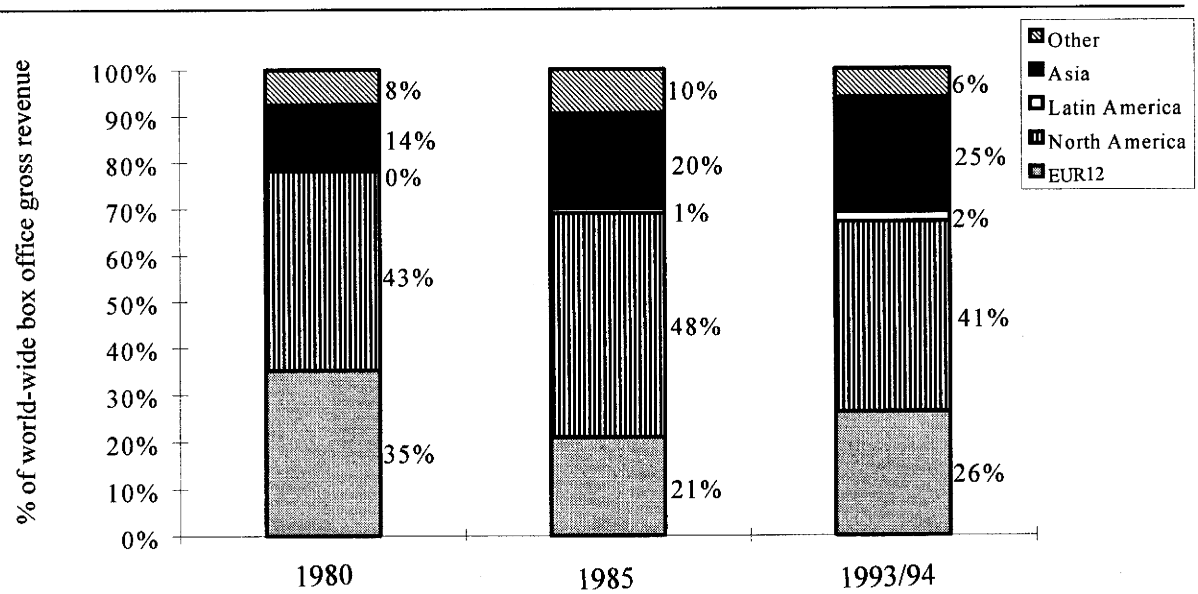
7 Memorandum from the Commission to Parliament and the Council on the application of Articles 4 and 5 of Directive 89/552/EEC Television without Frontiers.

EU cinema revenue

Gross box office revenue at EU cinemas has dropped in real terms by 17% from ECU 3.5 billion (1994 prices) in 1985 to ECU 2.9 billion in 1994. Figure 2.9 below shows the share of world box office revenues by region; the EU's share has dropped from 35% in 1980 to 26% in 1993/94 (although it reached its lowest point of 21% in 1985), while other regions, notably Asia, have seen a great increase in cinema attendance and revenues.[8]

Figure 2.9. Comparative size of European cinema revenue



Source: Screen Digest.

2.7.4. The European film production industry

The European film production industry is highly fragmented. European film has tended to be viewed, with some significant exceptions, as a cultural rather than a strictly commercial activity which is dependent on government subsidy – whether at a national or EU level. For example, in 1994, 59% of films produced in France were subsidized by the state; in Italy, the figure was 39%; in Germany 83%; in Spain 70%: and in the UK 40%. The development of the film production industry in the last 10 years is outlined below.

Increased investment in film production

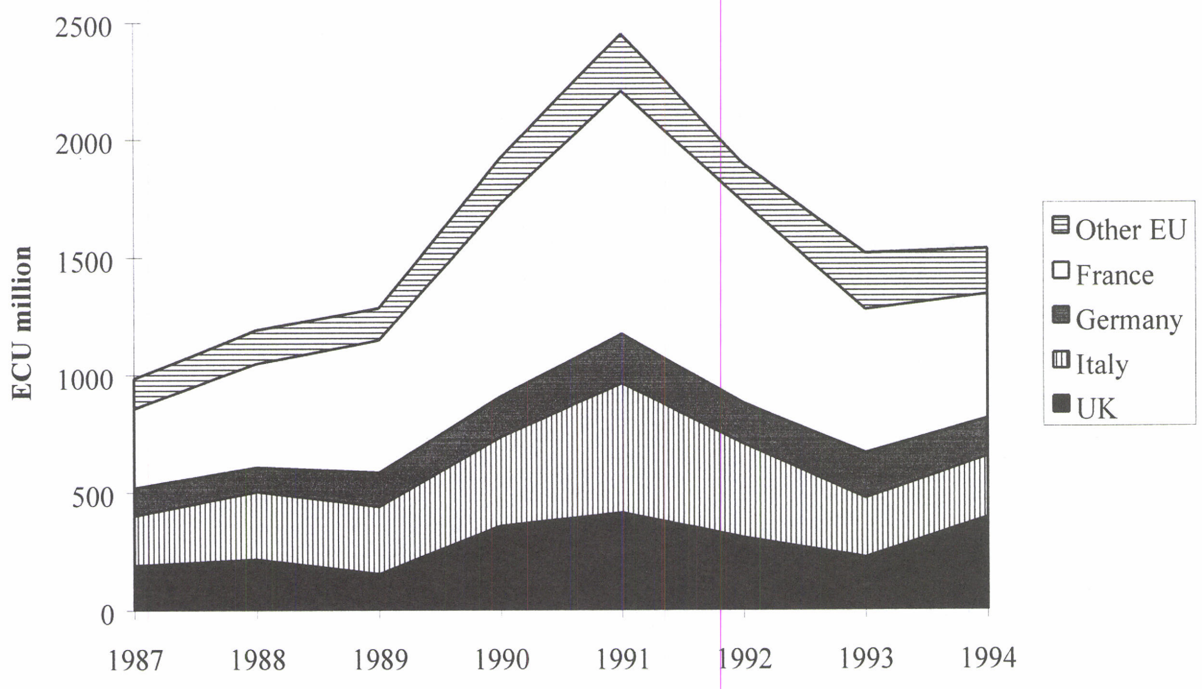
Total investment in EU film production has risen from ECU 984 million in 1987 (at 1994 prices) to ECU 1,534 million in 1994. This is shown graphically in Figure 2.10.

EU producers invest significantly less per film than the US (typically 30% of the US level). However, the level of total investment in the EU has grown faster than in the US over the

8 We have excluded investment in film production in our estimate of the size of the market and counted end-user revenues only.

period 1987 to 1994. Average investment in the EU per production rose in real terms from ECU 1.96 million in 1987 (at 1994 prices) to ECU 3.38 million in 1994.

Figure 2.10. Total investment in film production: 1987–94



Source: Screen Digest; Statistics of the film industry in Europe.

Declining number of films produced

Although monetary investment has risen, there has been a gradual decline in the number of films produced by EU film producers from 503 in 1987 to 454 in 1994.[9]

Growth in volume of co-productions

One of the most significant trends in the EU film market has been the steady increase in international co-productions. This growth was particularly marked between 1987 and 1991 with the number of co-produced films doubling. Between 1985 and 1994, a total of 1,258 co-produced films were made in the EU.

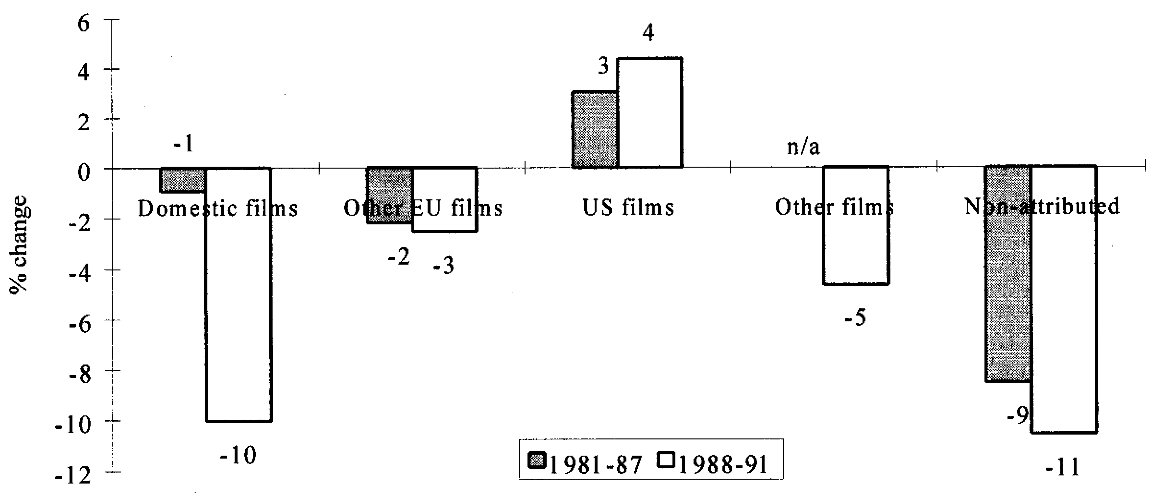
Increased US share of box office

Another important trend is the rising proportion of total revenue taken by the US in the EU. US films show an average annual increase of between 3% and 4% in box office revenue between 1987 and 1994. The share of revenue taken by domestic films over the period has dropped significantly. Box office revenue of domestic films dropped an average of 10% per annum between 1988 and 1991. Figure 2.11 indicates that only US films show an average

9 An exact evaluation of the volume of film production in Europe poses certain methodological problems due to the different accounting definition of co-productions.

annual increase in box office revenue between 1981 and 1987 and between 1988 and 1991. The share of revenue taken by domestic films over the period has dropped significantly with an average annual percentage decline in box office revenue of 10% between 1988 and 1991.

Figure 2.11. Average annual percentage change in box office revenue split for EU Member States by film origin: 1981–87, 1988–91



Source: EAO Yearbook/Screen Digest; State of the Film Industry.

2.7.5. Film distribution

Film distribution companies are the link between a film producer and a film exhibitor. European distributors have traditionally earned revenue from distributing a combination of US major, US independent and European films. However, as US film companies have increased their direct involvement in European distribution, European distributors have become involved at an earlier stage in the film-making process by pre-financing productions or buying distribution rights from sales agents.

Structure of the distribution market

For European distribution purposes, Hollywood studios are represented by a branch office in each of the major territories. Competing with these within each territory are independent sub-distributors which sub-license some or all rights to pictures from independent foreign distributors. Current industry practice is that films are distributed on a territory by territory basis. Co-ordinated releases across Europe are unusual.

American films outside North America delivered all time high revenue for Hollywood in 1995, a significant proportion of which came from Europe. Europe continues to be the US independents' largest market, generating approximately US$ 800 million in revenue.[10]

European film-makers consider themselves to be facing barriers due to block booking of exhibition slots by distributors. This is the practice of selling two or more films in a single

[10] *Variety*, 15–21 January 1996.

package in preference to selling them independently. This particularly affects the small distributor and independent producer because in a single transaction it can tie up a large proportion of exhibition space, limiting the slots available for the single independent film. As a result, there are now strong vertical links between art house distributors and art house cinemas.

Cinema exhibition: market structure

The exhibition industry in Europe has begun to split into two separate sectors: the first sector comprises the cinemas which are organized into circuits, groups or programming agreements which mainly show first run, mainstream films on an exclusive basis; the second comprises independent cinemas.[11]

The company with the largest number of screens in Europe in 1994 was UFA (Germany) with 500, followed by MGM/Virgin (UK now, but previously under Crédit Lyonnais's control) with 402 screens. Other large exhibitors include Pathé (France) with 400 screens and UCI (owned by Viacom and MCA) with 371. The UK is the only Member State where the US majors have so far developed a strong presence in exhibition.

The sector has undergone a regeneration in the past 10 years following almost four decades of decline, as US multiplex cinema chains, led by AMC in the UK in 1985 and followed by the Hollywood majors, entered the European market. By 1994, France had 209 multiplexes (1,285 screens), the UK had 69 multiplexes (609 screens), Germany nine (105 screens) and Italy three (21 screens).

By 1995, national cinema exhibition chains had developed into market leaders in some EU Member States. The most successful was Lusomundo in Portugal which earned 55% of all available box office revenues from cinema admissions in that year.

Another characteristic of the European exhibition industry is vertical integration with distributors, notably in Portugal and the UK, although the distribution and exhibition markets in Spain, Italy and Germany remain fragmented.

2.7.6. Video distribution

Size of the video industry

The video industry has developed from a very small base into the most important source of film revenues during the period under review, driven by increased household penetration of VCRs. In 1994, total consumer expenditure on video rental and sell-through in the EU was ECU 5.1 billion representing an increase of 274% since 1985 which was approximately ECU 1.4 billion (1994 prices).[12] Europe accounts for around 22% of the world video market. Figure 2.12 shows the relative size of the European video industry.

VCR penetration

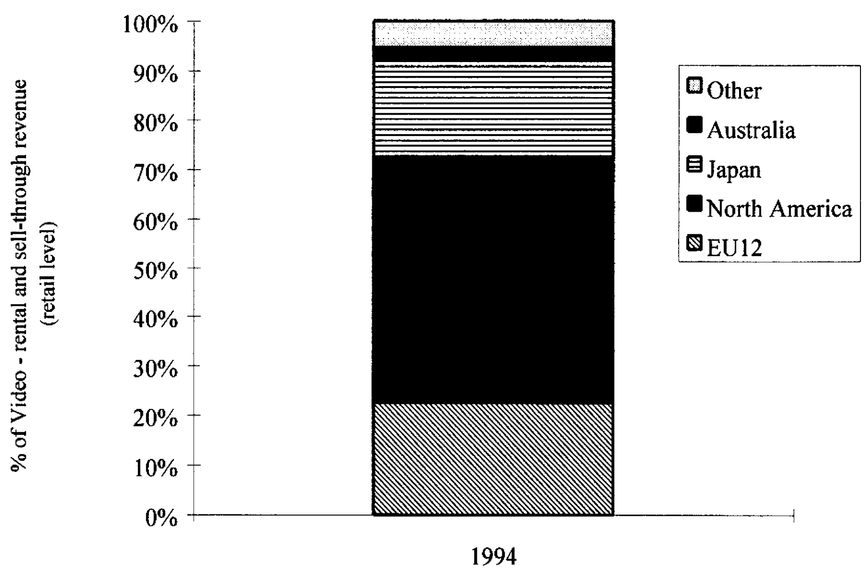
By 1994, there were over 90 million VCRs in the EU, representing a penetration of 61% of households. At present, only one Member State has a penetration of over 70% (UK: 79.2%)

11 The White Book of the European Exhibition Industry, June 1994.

12 KPMG figure based on estimated expenditure per VCR household in 1985.

and it appears that there is still room for further growth (especially compared to the US: 82% of US TV households have at least one VCR).[13] The EU remains a larger market in terms of video households than the US, which in turn has more than Asia and the Far East combined. Within the EU, by 1994 the proportion of video homes which had a second VCR was 11% as compared to 8.5% in 1992.[14] Figure 2.13 demonstrates the growth in VCR penetration from 1985 to 1994 in six Member States.

Figure 2.12. Comparative size of the European video industry: 1994



Source: The European Video Directory.

Development of the video market: from rental to sell-through

In its early years, the video software market was dominated by rental transactions but since 1990, rental revenues have begun to fall as TV broadcasters become more adept at promoting their own product and competition to video from other visual media, such as cable and satellite television, has grown. By 1995, rental revenues were around ECU 1.8 billion, a decrease of 20% on the 1990 level.

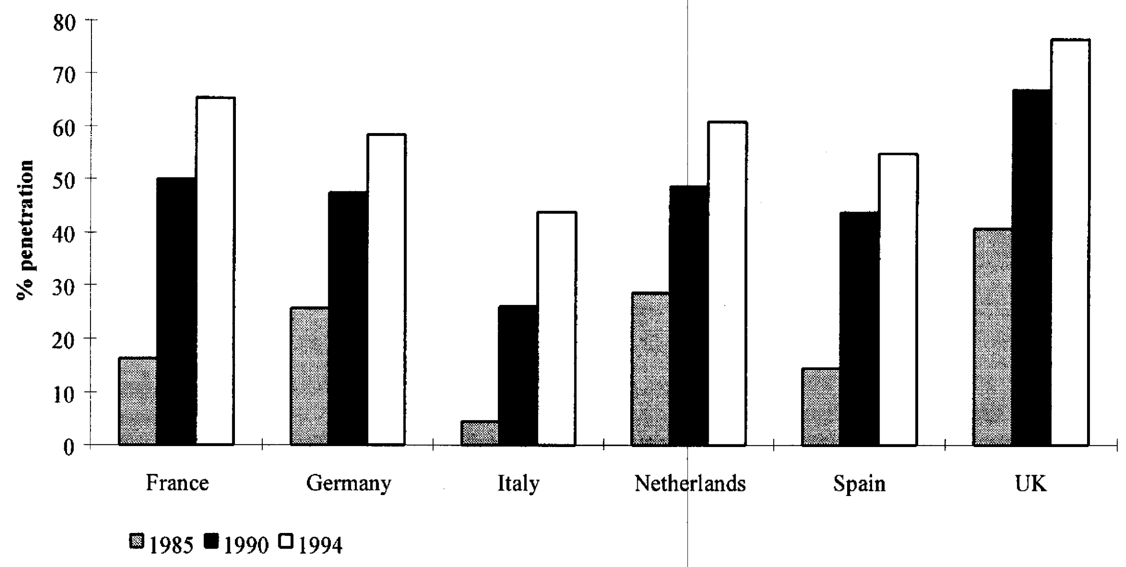
However, the growth in the sell-through sector has more than compensated for the decline in rental. By the end of 1995, sell-through revenues were approximately ECU 3.5 billion, an increase of 170% over 1990.[15] According to the International Video Federation (IVF), the single most significant factor in generating this growth has been the substantial promotional investment and success of Disney's animated products such as *The Lion King, Beauty and the Beast* and *Aladdin.* Figure 2.14 demonstrates the rapid growth in sell through revenues in the six largest video retail markets within the EU.

13 *European Video Review*, January 1996.

14 *Screen Digest*, August 1995.

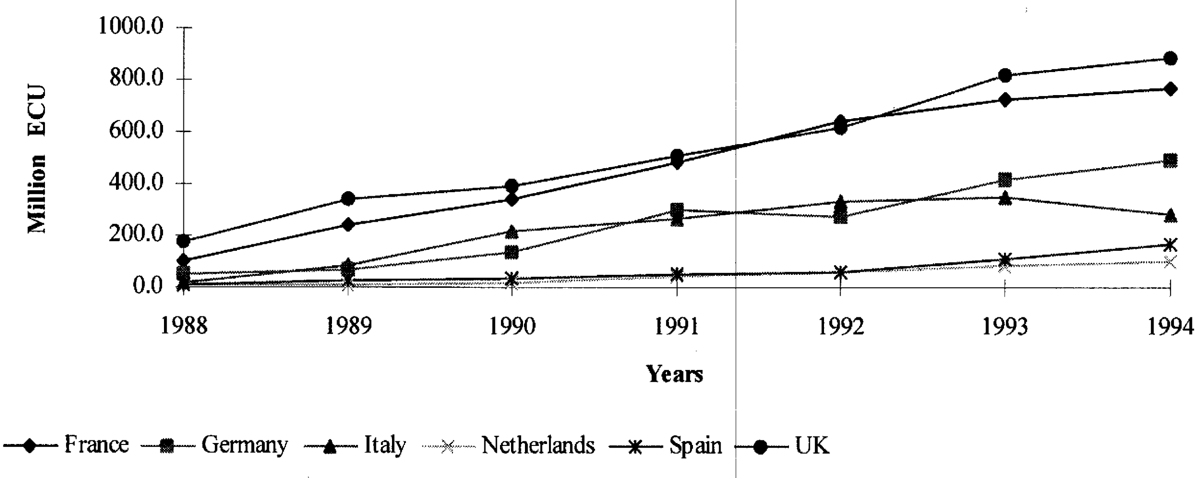
15 Sequentia, *European Video Observatory*, 1996, Volume II, No 6.

Figure 2.13. VCR penetration of selected EU Member States: 1985, 1990 and 1994



Source: Screen Digest.

Figure 2.14. Video software revenue in selected EU Member States: sell-through, 1994 exchange rates and prices, million ECU



Source: Screen Digest, Eurostat.

The move towards sell-through as the preferred form of video consumption is further demonstrated by the increase in the number of titles available. In 1993, for example, 6,181 titles were released for rental across the EU which fell to 5,105 by 1994. However, 10,850 sell-through titles were released in 1993 and this grew to 11,349 by 1994.

Average *per capita* expenditure on video rental in the EU was ECU 4.8 in 1994. The Irish remained the biggest spenders *per capita* (ECU 13.6) and Portugal the lowest (ECU 2.1).[16] Average *per capita* expenditure on video purchases in the EU was ECU 8.2 at this time. The UK spent the most *per capita* (ECU 15.4) and Portugal the least (ECU 2.3).[17]

European market structure

In 1993, there were over 1,050 video distributors in the EU.[18] Approximately 900 were independent distributors who were usually limited to carrying European productions and non-feature length films which they distributed in their home market. By 1995, PolyGram and BMG had emerged as the only two independent distributors operating at a pan-European level. This is due to most film-based videos being distributed by affiliates or divisions of the Hollywood studios and the fact that each country has widely different distribution channels. For example, kiosks are predominant in Italy, Spain, Greece and southern France, whereas the UK is dominated by large multiple retailers such as HMV, Virgin, Woolworths and Blockbuster.

Two models characterize the development of the video sector. The first is that experienced by the UK and Spain where consumers' access to filmed entertainment was restricted by declining theatrical outlets and limited broadcasting of films by public service television. Video rental in these markets fuelled the sector's growth. In other markets such as Belgium, the Netherlands and Denmark, where there was significant cable penetration, 'time shifting' was the initial impetus for VCR sales. In both models, when VCR penetration reached 50%, the rental market declined in importance and there was an explosion in the sell-through market.

Hollywood releases still dominate the market. It is claimed that up to 80% of the video distribution business is generated by just 20% of titles released.[19] European films usually find most success in their domestic market. In France *Les Visiteurs* sold over 2 million units, while the German comedy *Schtonk!* and Spanish Oscar winner *Belle Epoque* were both most successful in their national markets.

By 1995, broadcasters such as the BBC, TF1 and Canal Plus ranked alongside the US majors in terms of sell-through share in their own domestic markets and were beginning to export their video product across Europe.

16 *The European Video Directory 1995.*

17 *The European Video Directory 1995.*

18 *Blockbuster Entertainment Corporation and the World Home Video Industry in 1994*, INSEAD.

19 *Media Business File*, Autumn 1995.

3. Community measures which may impact on the audio-visual industry

3.1. Introduction

This chapter examines EU measures specifically aimed at progressing the objectives of SMI in the audio-visual industry as detailed in the previous chapter.

For each measure, a brief summary is followed by an explanation of the basis of the measure, a description of its intended effects and general comments. Details on implementation are provided in Appendix F. Where appropriate, a short review of relevant case-law has been included.

3.2. Television Without Frontiers Directive

Council Directive 89/552/EEC of 3 October 1989 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 298, 17.10.1989, p. 23).

The Directive follows from the 1984 Commission Green Paper 'Television Without Frontiers', which emphasizes that cross-frontier broadcasting of radio and television programmes is of major and steadily increasing importance in promoting SMI. The Directive is a first step on the road to establishing a legal framework for a single Community-wide broadcasting area. Television broadcasting is a service; the Treaty of Rome provides for free movement of services, and this right therefore embodies the principle of freedom of expression found in Article 10(i) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Directive requires Member States, among other things, to ensure:

(a) that all TV broadcasts transmitted by broadcasters under their jurisdiction (or linked, as defined, to the jurisdiction) comply with the relevant national laws;
(b) freedom of reception and unrestricted re-transmission in their territory of television broadcasts from other Member States, subject to certain rights of provisional suspension of re-transmissions based on programme content;
(c) that a majority proportion of transmission time (excluding time taken up by certain types of programmes) is reserved by broadcasters for European works, and that 10% of their transmission time (or programming budget, at Member States' discretion) is reserved for European works created by producers who are independent of broadcasters;
(d) that cinema works (unless agreed to by the rights holder) are not broadcast until two years after their first cinematic showing in any of the Member States (one year if the work was co-produced by the broadcaster);
(e) that advertising is regulated in terms of recognizability, frequency, transmission time, slots and content, with bans or restrictions on certain specified matter;
(f) that sponsorship meets certain requirements;
(g) that minors are protected in terms of content;
(h) that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality; and

(i) that rights of reply (or remedies) are provided for where 'legitimate interests' have been damaged by an incorrect assertion.

3.2.1. Basis of Directive[20]

Cross-frontier broadcasting by means of various technologies is one of the ways of pursuing the EU's objectives, and the Directive is intended to encourage and facilitate this activity. The Directive is based on the principle that all broadcasts should comply with the law applicable in the Member States in which they originate. To this end, it defines a regulatory framework which reconciles the requirements of free movement of goods and services with the need to maintain a number of law and order standards as well as a degree of cultural quality in the contents of programmes. The difficult issues for the European Court of Justice (ECJ) of reconciliation, and where to draw the line, are discussed in Section 3.2.4.

3.2.2. Intended effects

The Directive was intended to:

(a) remove obstacles to cross-border broadcasting;
(b) encourage activity in and development of European audio-visual production and distribution, particularly in countries with a low production capacity/restricted language area;
(c) create new opportunities for employees in the cultural field and encourage the creation of SMEs;
(d) encourage the creation of a level playing-field for the first television showing of films; and
(e) protect the interests of consumers through advertising regulation and of minors by content regulation.

3.2.3. Comment

Member States remain free to require that TV broadcasters under their jurisdiction lay down more detailed or stricter rules to protect the interests of consumers.

The question of production quotas is a vexed one. The reasoning behind the quotas and their effect is disputed, and the inclusion of the caveat in Article 4 that a majority of broadcasters' transmission time be reserved for European works 'where practicable' has mitigated against the level playing-field in Europe according to the Commission.

3.2.4. Case-law

There is a series of important cases which were decided both before and after Directive 89/552/EEC came into force, revealing how the ECJ views trans-frontier broadcasting and the distribution of TV and film works, and also how it has dealt with the difficult and controversial issue of when to let stand national laws which effectively constitute barriers to free trade in this field.

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[20] The TWF Directive was subsequently amended by Directive 97/36/EC (OJ L 202, 30.7.1997, p.60).

In *Sacchi* (Case 155/73 [1974] ECR 409) the ECJ held that transmission of television (or radio) signals across intra-Community borders should be regarded as the provision of services. This opened the floodgates to case-law and led ultimately to the TWF Directive.

Several of the most important cases between the time of *Sacchi* and Directive 89/552, although decided in the spirit of banishing discriminatory national measures, at the same time retained certain barriers to cross-border broadcasting. In *Procureur du Roi* v *Debauve* (Case 52/79 [1980] ECR 833) a total ban on the transmission of advertising by cable TV in Belgian law was upheld as lawful because it applied without distinction as regards origin, whether national or foreign, of those advertisements, the nationality of the person providing the service, or the place where he was established. Similarly, in *Coditel 1* (Case 62/79 *Coditel* v *Ciné Vog Films* [1980] ECR 881), where copyright exclusivity on a film was used as the basis of an action to prevent cable relay of the broadcasting of that film from another Member State, it was accepted that the blocking of trans-border transmissions could be justified by the general interest if the law or policy were applied even-handedly to domestic and foreign services. The blocking would not be accepted if it constituted a means of arbitrary discrimination or a disguised restriction on trade between Member States. The Cable and Satellite Directive now governs the copyright rules in this area of law (see below).

In *Cinéthèque* v *Fédération nationale des cinémas français* (Joined Cases 60 and 61/84 [1985] ECR 2605), the Court held that Article 30 of the Treaty does not apply to national legislation which regulates the distribution of cinematographic works by imposing an interval between one mode of distributing such works and another by prohibiting their simultaneous exploitation in cinemas and in video-cassette form for a limited period. It stated that this prohibition applies to all video-cassettes, whether manufactured in the national territory or imported, and that any barriers to intra-Community trade to which its implementation may give rise do not exceed what is necessary for ensuring that the exploitation in cinemas of cinematographic works of all origins retains priority over other means of distribution. A provision similar to the French provision was later enacted by the TWF Directive.

Two post 1989 cases which envisage certain 'frontiers' are *TV10* v *Commissariaat voor de Media* (Case C-23/93 [1994] ECR I-4795) and *Leclerc-Siplec* v *TF1 Publicité and M6 Publicité* (Case C-412/93 [1995] ECR I-179). The ECJ ruled in the former that, in certain circumstances, a Member State may impose restrictions on a cross-border broadcaster and may specifically deny the broadcaster the status of a foreign broadcasting body and therefore make that broadcaster subject to provisions applicable to domestic broadcasting bodies. The Member State must be careful to ensure that the broadcasting body which is to be restricted is entirely or principally directing its activity towards that Member State and has deliberately taken steps to avoid domestic legislation which would be applicable to it, were it established in that Member State. The Court confirmed that in such circumstances (except where the broadcast is exclusively intended for the receiving Member State), there is still a cross-border provision of services for the purposes of Community law. This case may have limited significance as the Directive had not been implemented in domestic law at this point.

A case directly based upon the provisions of the TWF Directive is *Leclerc-Siplec* v *TF1 Publicité and M6 Publicité*. The question put to the Court was whether Directive 89/552 (and certain other Articles of the Treaty) is to be interpreted as prohibiting Member States from banning televised advertising in respect of certain sectors of economic activity, in particular the distribution sector. The ECJ stated that the Directive is intended to provide a set of minimum rules to govern broadcasts emanating from and intended for reception in different Member States. Article 3(1) of the Directive permits Member States to provide a more detailed and stricter regulation of the areas covered by the Directive for TV broadcasters under their jurisdiction. The ECJ decided that the Directive's objective of ensuring that Member States guarantee the freedom to provide broadcasting services whilst complying with the minimum rules laid down in the Directive was not affected where Member States decide to impose a stricter rule upon the TV broadcasters in their jurisdiction. Article 3(1) of the Directive contains no restriction as to the interests which Member States may take into account. In this instance, although the Member State's restriction was specific to the distribution sector, it was applied uniformly and therefore was not in contravention of Article 30 and could not be perceived as being anti-competitive. However, it should be noted that the case did not consider Article 59.

There is also an important line of cases in which the ECJ ruled national measures in this sphere to be incompatible with European law. In *Bond van Adverteerders* v *Netherlands State* (Case 352/85 [1988] ECR 2085), the ECJ in a strong 'free market' case effectively overrode a provision in the Council of Europe Convention on Trans-frontier Television which prohibited advertisements which are specifically and frequently directed at a neighbouring state. The ECJ ruled that the distribution by operators of cable networks established in a Member State of television programmes supplied by satellite by broadcasters established in other Member States and containing advertisements intended especially for the public in the Member State where the programmes are received, comprises a number of services within the meaning of Articles 59 and 60 of the Treaty. The Dutch Government was ruled to have no right to discriminate against such services, despite the fact that this was presented as being justified on the grounds of public policy, namely the maintenance of the non-commercial and, hence, pluralistic nature of the national broadcasting system, and despite the fact that this destabilized funding for the Dutch public broadcasting system. Such discriminatory restrictions will only be accepted if they can be brought within the scope of an express derogation such as those provided under Articles 56 and 66. The ECJ further stated that economic aims cannot constitute grounds of public policy within the meaning of Article 56.

Another strong decision, this time passed subsequent to the Directive, is *Federación de Distribuidores Cinematográficos* v *Spanish State* (C-17/92 [1993] ECR I-2239), in which the ECJ ruled that legislation linking the granting of dubbing licences on films coming from another country to the distribution of Spanish films was discriminatory in its effect, in that it favoured the makers of Spanish films over makers established in other Member States who intended to distribute their films in Spain. The Court determined that the legislation did not fall within the scope of the express derogation contained in Article 56 of the Treaty, because cultural policy is not mentioned in that Article; and economic objectives, as they were here, are not a ground of public policy under this Article. The Spanish legislation is therefore contrary to the provisions of the Treaty on the freedom to provide services. The case confirms that licensing films for cinema or television is a matter of freedom to provide services, not goods.

3.3. Rental and Lending Right Directive

Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights relating to copyright in the field of intellectual property (OJ L 346, 27.11.1992, p. 61)

The first part of the Directive provides in favour of certain concerned parties, including the producer of the first fixation of a film, the exclusive right to authorize or prohibit rental and lending of their work (or in the case of a performer, his performance), and provides for a right to equitable remuneration in the case of authors and performers where they have assigned or transferred their rental right to a phonogram or film producer.

The second part provides for broadcasting organizations and the producer of the first fixation of a film, among others, the exclusive right to authorize or prohibit the direct or indirect reproduction, or the making available to the public, of fixations of broadcasts (or originals and copies of their films in the case of the producer). Broadcasting organizations are also granted rights to authorize or prohibit the re-broadcasting of their broadcasts by wireless means and their communication to the paying public and fixation of their broadcasts.

3.3.1. Basis of Directive

TOR Articles 57(2), 66 and 100(a). Existing differences in the legal protection provided by Member States for copyright works and for related rights from various trade and distortions of competition, impeding the achievement and proper functioning of the single market. Pursuant to TOR Article 7(a), the objective of introducing an area without internal frontiers necessitates elimination of these differences. The need was also identified to ensure adequate protection of copyright works and adequate income for authors and performers, as creative and artistic activities are largely activities of self-employed persons, the pursuit of which would be made easier by harmonized legal protection within the Community.

3.3.2. Comment

The clarity of harmonization is perhaps prejudiced by the extensive derogations and limitation provisions they may incorporate.

The practicalities of the right to equitable remuneration, particularly who this may be claimed from, and on what basis it is to be calculated, are not specified by the Directive.

The right to request remuneration for contracts pre-1 July 1994 may encounter difficulties as a result of transition to the new rules.

Patchy implementation so far will mean that its impact is limited, though it may be that contracts are being drafted in the light of the Directive already.

3.3.3. Case-law

In the *Cinéthèque* case (see above), the Court recognized that harmonized rental and lending rights and harmonized protection in the field of rights relating to copyright should not be exercised in a way which constitutes a disguised restriction on trade between Member States.

3.4. Term of Copyright Directive

Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights (OJ L 290, 24.11.1993, p.9).

The Directive establishes that copyright for an author of a literary or artistic work is to last for the life of the author plus 70 years. In the case of joint authorship the 70-year period will run from the death of the last surviving author and for anonymous works from when the work is lawfully made available to the public.

Special provision is made for cinematographic and audio-visual works. The principal director of a film work is considered to be its author or one of its authors, and it is open to Member States to designate other co-authors. The duration of copyright protection for cinematographic and audio-visual works is to last for 70 years from the death of the last survivor of the following persons, whether or not they are designated as co-authors:

(a) the principal director;
(b) the author of the screenplay;
(c) the author of the dialogue; and
(d) the composer of specially commissioned music.

Thus, even if there is national variation in the designation of co-authors of cinematographic or audio-visual works, the copyright life of those works will be harmonized by reference to the lives of a fixed list of individuals, who may not necessarily all be authors of the work.

The duration of the rights of performers is fixed at 50 years from the date of performance. However, if the lawful first publication or communication to the public of a fixation (recording) of the performance is made within that period the rights will expire 50 years from the date of first publication. In the same way, the rights of producers of sound recordings and the rights of film producers will expire 50 years from the date of first fixation, unless the fixation is published within that period, in which case the rights will expire 50 years from the date of first publication.

Works created by authors from countries outside the Community are to be granted the same term of protection by Member States as that of the third country, provided that this does not exceed the relevant term provided for in this Directive.

In all cases, the time periods are calculated from 1 January of the year following the event which triggered them.

3.4.1. Basis of Directive

Existing differences between national laws governing the terms of protection of copyright and related rights are liable to impede the free movement of goods and the freedom to provide services, and to distort competition in the European Community. However, harmonization cannot reduce the level of protection already offered, and a high level of protection is required as the rights in question are fundamental to intellectual creation.

3.4.2. Intended effects

Harmonizing and entrenching the rights of creators, ensuring the maintenance and development of creativity in the interest of authors, cultural industries, consumers and society as a whole, and creating a level playing-field.

3.4.3. Comment

This is too recent to have had a perceptible impact.

Member States need not apply the extension of a director as author to audio-visual or cinematographic works created before 1 July 1994.

3.5. Cable and Satellite Directive

Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable re-transmission (OJ L 248, 6.10.1993, p.15)

The Directive defines where a satellite broadcast (an 'act of communication to the public by satellite') takes place as being in the Member State where, under the control and responsibility of the broadcasting organization, the programme-carrying signals are introduced into 'an uninterrupted chain of communication leading to the satellite and down towards the earth'. This rule applies also to broadcasts from non-member states where there is an uplink in a Member State or the broadcast is commissioned by a broadcasting organization within a Member State.

Member States are to provide an exclusive right for authors to authorize satellite broadcasts of copyright works. This authorization must be acquired by agreement, subject to a limited exception regarding collective agreements between collecting societies and broadcasting organizations, which may be extended to cover rights holders of the same category in specified circumstances.

Member States are to ensure that, when programmes from other Member States are re-transmitted by cable in their territory, this is done by contractual agreement and copyright and related rights are observed and that rights holders exercise their rights only through a collecting society.

3.5.1. Basis of Directive

Cross-border satellite broadcasting and cable re-transmission of programmes from other Member States are still seen as obstructed by differences between national rules on copyright, exposing rights holders to the threat of exploitation without remuneration or the blocking of exploitation by individual rights holders. Legal uncertainty itself was felt to constitute a direct obstacle to the free circulation of programmes within the Community. Additionally, contractual acquisition of rights was judged to make a vigorous contribution to the creation of the European audio-visual area.

3.5.2. Case-law

Two European Court of Human Rights cases reveal some of the European thinking on cable and satellite broadcasting prior to the Directive. They concern freedom of expression and represent examples of how other sources of European law as opposed to the TOR and directives thereunder can influence the increasing spread of such methods of broadcasting across Europe. One is permissive, the other limiting.

In *Autronic AG* v *Switzerland* (22 May 1990, Reference: ECHR, Series A, [1990], No.178), Autronic AG complained that the granting of permission to receive uncoded television broadcasts for general use from a telecommunications satellite had been made subject to the consent of the broadcasting state, thereby infringing its right to receive information, as guaranteed by Article 10 of the European Convention on Human Rights. The Court acknowledged that the legal basis for interference could be found in national and international law and that the prevention of disorder in telecommunications and of disclosure of confidential information were legitimate aims. However, considering, *inter alia*, that several other telecommunications satellites broadcasting television programmes had come into service, and the Government's concession that there was no risk of obtaining secret information by means of dish aerials receiving broadcasts from telecommunications satellites, the Court held that the interference was unlawful.

In *Groppera Radio AG and others* v *Switzerland* (28 March 1990, Reference: (No. 14/1988/158/214) ECHR, Series A, [1990] No.173), Switzerland introduced legislation which prohibited licensed cable operators from broadcasting programmes from stations which did not comply with the international telecommunications law. This effectively prohibited cable re-transmissions in Switzerland of programmes produced in and broadcast from Italy. The Court determined that Article 10 did apply in this case, but that although the ban did constitute an interference by a public authority with the exercise of the freedom of expression, it nevertheless pursued the dual aims of prevention of disorder in telecommunications and protection of the rights of others by ensuring a fair allocation of frequencies internationally and nationally. Such aims were legitimate and fully compatible with Article 10 of the Convention.

3.6. Financial support systems: the MEDIA Programme 1 (the MEDIA Programme)

Council Decision 90/685/EEC of 21 December 1990 concerning the implementation of an action programme to promote the development of the European audio-visual industry (MEDIA) (1991-95) (OJ L 380, 31.12.1990, p.37).

The fundamental aims of the programme are to help create a favourable environment within which Community undertakings could act as a driving force alongside those from other European Member States; to stimulate and increase the competitive supply capacity of European audio-visual product, with special regard for the role and requirements of small and medium-sized undertakings, the legitimate interests of all professionals who play a part in the original creation of such products and the position of countries in Europe with smaller audio-visual production capacities and/or with a limited geographical and linguistic area; to step up intra-European exchanges of films and audio-visual programmes and to make maximum use of the various means of distribution which either exist or are still to be set up in Europe, with a view to securing a better return on investment, wider dissemination and greater public impact; to increase European production and distribution companies' share of world markets; to promote access to and use of the new communications technologies, particularly European ones, in the production and distribution of audio-visual material; to encourage an overall approach to the audio-visual industry which allows for the interdependence of its various sectors; to ensure that action taken at European level complements that taken at national level; to contribute, in particular, by improving the economic and commercial management abilities of professionals in the audio-visual industry in the Community; and, in conjunction with existing institutions in the Member States, to create conditions which will enable undertakings in that sector to take full advantage of the single market dimension.

3.6.1. Method of achieving aims

Multiple initiatives offering funding and support in the three main areas of training, development of production projects and distribution of European works. Currently, there are 19 media projects in existence.

3.6.2. Duration

1991–95; it was proposed that MEDIA II commence on 1 January 1996.

3.6.3. Expenditure

ECU 230 million approximately.

3.6.4. Comment

In accordance with the Council Decision establishing it, the MEDIA Programme 1991–95 was put through an evaluation exercise by the Commission in 1993 on the basis of an audit performed by a consulting firm.

The evaluation was conducted after only two years of implementation of the programme, which was too early for a final assessment of its impact on the industry, but some points emerged clearly:

(a) given the duration of business cycles in the audio-visual industry, the programme's across-the-board economic approach to all stages of the broadcasting business was unlikely to have a measurable impact in less than five to ten years;
(b) the establishment of new industry structures through cross-border co-operation and groupings was seen as one of the most promising aspects;
(c) the programme was working effectively as a catalyst, since it accounted for only 24% of the aggregate financial value of activities flowing from projects;
(d) in certain areas, the resources available fell short of the critical mass needed for an effective market impact and the budget was too small to provoke the desired structural changes; and
(e) given the limited budget available for the programme, the horizontal approach of covering each of the phases from creation to exploitation meant that resources have to be dispersed.

3.7. Financial support: the Action plan for the introduction of advanced television

The 'Action plan for the introduction of advanced television' was launched in 1993 with a budget of ECU 228 million, and a four-year life span, and aimed to contribute to market penetration of 16:9 receiver equipment, by launching a critical mass of TV services in the 16:9 format[21] to enable the emergence of a viable market, together with sufficient and increasing volume of programming. Financial support mechanisms are targeted at two aspects of the introduction of new services. First, the plan covers part of the additional costs involved in broadcasting in the new format; second, it covers part of the additional costs involved in adjusting new and existing programmes technically for 16:9 broadcasting.

3.7.1. Expected effects

It is expected to have had a significant impact:

(a) by encouraging the use of technical media for stock productions that are compatible with HDTV in terms of both format and image definition, it will help to extend the shelf-life of European catalogues;
(b) through its proximity to a new market, it offers an excellent observation point for ascertaining the technical developments that the programme industry will have to absorb in order to meet demand for the new services; and
(c) it promotes the use of the European HDTV standard for a wide range of TV and cinema productions.

3.8. Non-specific and horizontal SMI measures

This section examines EU measures aimed at SMI which are not specifically targeted at the audiovisual sector, but which may have had an impact on the sector. In each case, a description is followed by an hypothesis as to its impact on the audio-visual industry, which is, in many cases, that the measures may be expected to have had little perceptible impact. The major exceptions to this are the areas of intellectual property, competition law, media concentration and state aid.

3.9. The removal of physical barriers and the control of goods

3.9.1. Background

Articles 30 to 36 TOR prohibit quantitative restrictions on imports and exports and all measures having equivalent effect. These are defined, in accordance with decisions of the Court of Justice and the Commission's practice, as comprising all forms of action by the state not covered by other specific provisions of the EC Treaty, capable of hindering intra-Community trade, directly or indirectly, actually or potentially, for example where conditions are imposed:

(a) only on imported products; and
(b) which, while formally applicable both to domestic and imported products, in effect make it more difficult or burdensome to import or market imported products.

[21] The traditional TV screen is defined by reference to the 4:3 width:height ratio. Advanced television services (including high-definition television) offer substantial improvements in image and sound quality as well as a new format – 16:9 – which is closer to the cinema screen format.

3.9.2. Expected effects

Audio-visual works are produced and distributed in the form of goods as well as being exhibited and broadcast. In particular, this applies to video cassettes, video disks and physical film stock, and will apply increasingly to multimedia products such as CD-ROMs, CDI etc. SMI measures related to the removal of physical barriers and the control of goods are expected to have had an impact upon the audio-visual market, facilitating trans-frontier distribution of such goods.

3.10. Access to cheaper service inputs, e.g. as a result of the liberalization of telecommunications or the introduction of new technologies

Telecommunication liberalization has been a priority of the Community since 1987, and the goal is now full liberalization of both services and infrastructure by 1998 with possible extensions for countries with less well developed networks.[22] However, entertainment services remain explicitly outside the scope of the Services Directive. The Commission is keen to stimulate the introduction and wide deployment of new technologies; witness the Bangemann report (COM(95) 224), which discussed the use of new technology in the forthcoming 'Information Society'.

3.10.1. Expected effects

Developments in high definition, digital and interactive television and satellite news gathering, and the move towards the Information Society using interactive broadband wired or wireless networks, powerful servers and vast databases may have had a major impact on the audio-visual sector which can only increase in the future.

Areas of impact would include:

(a) new/cheaper means of distribution of audio-visual products; and
(b) new/cheaper production facilities and techniques.

New technology and the introduction of ISDN will enable, and to an extent may already have enabled, the creation of 'virtual studios' facilitating trans-frontier remote co-operative production of audio-visual works. New computer-aided techniques for dubbing and sub-titling works or adapting them to different standards may also reduce the cost of putting audio-visual products into a form suitable for exploitation in other Member States.

3.11. Intellectual property and industrial property

3.11.1. Background

Various harmonization measures have been introduced in the area of intellectual and industrial property relating to copyright and neighbouring rights, trade marks, patents, software and the legal protection of databases.

[22] See Commission Directive 96/19/EC (the 'Full Competition Directive')(OJ L 74, 22.3.1996, p.13) amending Commission Directive 90/388/EEC (the 'Services Directive')(OJ L 192, 24.7.1990, p.10).

3.11.2. Expected effects

The inter-relation between the audio-visual sector and intellectual property is a very close and crucial one. Audio-visual products depend for their value on copyright and may be marketed under trade marks. A number of specific copyright and neighbouring rights measures are commented on in Section 3.10.3.

Directives 89/104/EEC and 92/10/EEC[23] on the approximation of the trade mark laws of Member States are unlikely to have had an extensive impact on the sector as yet.

3.11.3. Case-law

In Community law the proprietor's exclusive right in intellectual property is deemed to be exhausted by putting products into circulation anywhere within the common market. The rationale for this is found in the limitation of the exception in Article 36 under the specific subject-matter of property. There is a well-established line of cases on the principle of exhaustion of intellectual property rights.

Trade marks

Centrafarm v *Winthrop* (Case 16/74 [1974] ECR 1183)

Dealt with the infringement of the trade mark NEGRAM under which an imported drug was sold. European Court concluded that the specific subject-matter of a trade mark was:

'the guarantee that the owner of the trade mark has the exclusive right to use that trade mark, for the purpose of putting products protected by the trade mark into circulation for the first time, and is therefore intended to protect him against competitors wishing to take advantage of the status and reputation of the trade mark by selling products illegally bearing that trade mark.'

A trade mark is valuable for the reservation to the owner of the goodwill associated with the mark, through his exclusive right to put marked products into circulation. Where goods have been marketed by a trade mark owner with his consent in another Member State, the exercise of a right under a Member State's legislation to prohibit the sale in that state 'of a product which has been marketed under the trade mark in another Member State by the trade mark owner or with his consent is incompatible with the rules of the EEC Treaty concerning the free movement of goods within the common market'.

Copyright

Deutsche Grammophon v *Metro* (Case 78/70 [1971] ECR 487)

It was held that 'it would be in conflict with the provisions prescribing the free movement of products within the common market for a manufacturer of sound recordings to exercise the exclusive right to distribute the protected articles, conferred upon him by the legislation of a Member State, in such a way as to prohibit the sale in that state of products placed on the

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[23] 89/104/EEC: First Council Directive of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ L 40, 11.2.1989, p.1), as amended by Directive 92/10/EEC (OJ L 6, 11.1.1992, p.35).

market by him or with his consent in another Member State solely because such distribution did not occur within the territory of the first Member State'.

Musik-Vetrieb Membran v *GEMA* (Joined Cases 55 and 57/80 [1981] ECR 147)

GEMA, the Copyright Management Society, claimed that the importation of records and cassettes into Germany from other Member States where they had been manufactured and marketed with the consent of the copyright owners was in breach of the owner's rights in Germany. The Court rejected GEMA's arguments that moral rights are a moral as opposed to an economic issue, and that lower royalties in the UK, which encouraged exportation to Germany, were the product not of competition but of statutory intervention. It ruled, finding against GEMA, that the exploitation of a copyright in a given market was a matter for the free choice of the owner, who must abide by the consequences of his decisions.

Warner Brothers and others v *Christiansen* (Case 158/86 [1988] ECR 2605)

Distinguished GEMA. The defendant purchased a video cassette copy of the film *Never Say Never Again* with a view to hiring it out from his video shop in Denmark, and then imported it into Denmark for that purpose. Under Danish law, hiring of a video cassette was subject to the consent of the author or producer.

The Court rejected the argument that if the author chose to market a video cassette in a country where national rules afforded no right to limit hiring out, he must accept the consequences of his choice and the exhaustion of his rights to limit hiring out of the video cassette in any other Member State, on the ground that it would render worthless the right to authorize hiring.

EMI Electrola v Patricia (Case 341/87 [1989] ECR 79)

Distinguished GEMA where defendants in Germany sold sound recordings originating in Denmark, arguing that the recordings had been lawfully marketed in Denmark on the grounds that the period during which the exclusive rights were protected under Danish copyright law had expired.

3.11.4. Licensing

BBC v *Commission* (Case T-70/89 [1991] ECR II-535)

The Magill case involving an Irish company which sought to break the monopoly which the BBC and RTE exercised over information about forthcoming programmes. Both broadcasters published their own magazine and licensed, without charge, newspapers to produce minimal information only up to two days ahead. There was a refusal to license the provision of weekly scheduling. Magill published its own TV and radio listing and was sued by both the BBC and RTE. In Dublin, the plaintiffs were successful in obtaining an injunction prohibiting Magill from continuing the practice.

The ECJ found for Magill, stating that the BBC and RTE were abusing a dominant position and that in such circumstances Article 36 TOR was overridden by the provisions of Article 85. The BBC and RTE were using their exclusivity, without justification, to prevent the arrival on the market of a competing magazine.

In many ways the case was decided on special facts, but it opens the door for compulsory licensing of intellectual property rights in the event of abuse of a dominant position and prevention of the creation of secondary markets.

3.11.5. Collecting societies

In *BRT* v *SABAM* (Case 127/73 [1974] ECR 51), the case rested on procedural matters, but there is reference to the observations of the Commission; the Commission's view is that the case is analogous to *Re GEMA*. In that case, the Court decided that the abuse of a dominant position within the common market can consist, in the case of an undertaking, in binding those who use its services in a manner which is not necessary for the realization of the objects of the undertaking. In the SABAM case, the Commission argued that the provision in the contracts of assignment whereby the contracting party undertakes to assign all copyrights in all his present or future works according to an obligation imposed by SABAM which was not absolutely necessary, is an abuse of a dominant position. On the facts of the case, the Court found that there was no necessity for a ruling on the preliminary questions.

Underlying *GEMA* v *Commission* (Case 45/71 [1971] ECR 791) is the view of the Court that there is no abuse of a dominant position where authors have, under the statutes of the co-operative management associations, the possibility of limiting the assignment of their rights to certain forms of exploitation or to certain categories. The band U2 are bringing an action against the Performing Right Society (a UK collecting society) on the basis of *Re GEMA* [1972], and GEMA and SABAM have been joined as third parties.

3.11.6. Expected effects

The expected effects are as follows:

(a) that resale in other Member States of audio-visual products first put on sale in a first Member State should be unfettered and has increased;
(b) that no additional fees are levied by national collection agencies on importation into a second Member State;
(c) that fees payable to national collecting societies have approximated;
(d) that a process has started for the harmonization (upwards) of copyright protection and the copyright term;
(e) that compulsory licensing of intellectual property rights in the event of abuse of a dominant position may develop; and
(f) that certain terms in collecting society statutes may be struck down as anti-competitive in future under Article 85(1).

3.12. Competition policy

3.12.1. Background

There has been a substantial involvement by the European Commission during the last decade in cases concerning competition in the audio-visual industry.

The Commission's Communication to the Council and Parliament on audio-visual policy of 1990 (COM(90) 78 final) sets out broad lines of competition policy for the sector, pointing out that:

(a) undertakings in the audio-visual sector are subject to Articles 85, 86 and 90 of the TOR in the same way as undertakings in any other branch of industry;
(b) agreements that infringe the competition rules must not be allowed to undermine Community efforts to achieve a unified market; and
(c) the difficult economic situation prevailing in the production sector, and the cultural role it plays, justify a favourable attitude on the part of the Commission to co-operation between undertakings; however, the Commission must ensure a balance between the measures taken in various Member States and the avoidance of discrimination against Community nationals.

The Commission's main concern in actions it has taken has been to prevent or reduce barriers to market entry. We set out below some examples of Decisions taken by the Commission in relation to the audio-visual sector, which demonstrate the importance of competition law for the sector.

The Commission makes a policy distinction between television and film production and distribution. They are examined separately below.

3.12.2. Television

Deregulation of broadcasting in most Member States, and the new technologies of satellite and cable television, and now digital terrestrial and satellite television, have led to a large number of new commercial broadcasters entering the market in competition with existing public broadcasting organizations, and the emergence of new transnational or pan-European channels with programming targeted at audiences in more than one Member State and already, to a degree, distributed in a variety of languages. This has led to strong competition among broadcasting stations for rights to major international and sporting events and other programmes with the mass market appeal required to ensure high viewing figures and also competition for advertising revenue.

The Commission's main interest area is the programme procurement market, characterized by steadily growing demand for a limited supply of programmes. The Commission's aim is to ensure that all broadcasting organizations have appropriate access to attractive programmes and it has endeavoured to prevent programme material from being withdrawn from the market as a result of long-term exclusive contracts.

Under Articles 85 and 86 of the TOR, agreements which affect trade between Member States and which restrict, distort or prevent competition are unlawful (unless exempted) and any abuse of a dominant position which affects trade between Member States is also unlawful. Effective application of competition policy is to be expected to curb harmful cartels and anti-competitive practices, promote open access to bottleneck facilities and facilitate pan-European marketing. The Coditel, ARD, EBU, and Auditel Decisions, in particular, clarify how competition policy impacts the television market.

Coditel v *Ciné Vog Films* (I and II)
(Case 62/79 [1980] ECR 881 and Case 262/81 [1982] ECR 3381)

Both cases arose from an action brought by a Belgian film distribution company, Ciné Vog Films, against, *inter alia*, a number of Belgian cable TV companies, collectively referred to as the Coditel companies ('Coditel'), for infringement of copyright. Coditel enabled their subscribers to receive a broadcast from Germany of a film for which Ciné Vog had exclusive distribution rights in Belgium. The Belgian Court of Appeal held that Article 85 was not applicable, and referred the matter to the European Court of Justice on the basis that Articles 59 and 60, on the freedom to provide services, might have been breached. The Court held that these Articles did not preclude an assignee of copyright in a film in a Member State from relying on his right to prohibit the exhibition of that film in that state, without his authority, by means of cable diffusion, if the film so exhibited is picked up and transmitted after being broadcast in another Member State by a third party with the consent of the original owner of the right.

Two years later, in 1982, the Court of Justice heard an appeal on this issue by Coditel, who claimed that the Court of Appeal erred in holding Article 85 to be inapplicable. The Court of Justice accepted Coditel's argument that Article 36, which provides an exception to the abolition of quantitative restrictions between Member States *inter alia* for the protection of industrial and commercial property (which includes copyright), should not apply where it is incompatible with Article 85. It did not, though, accept Coditel's argument that the criteria to bring the situation within Article 85 were met: it did not accept that the contract between the owner of the copyright and Ciné Vog should be regarded as the purpose, the means or the result of an agreement, decision or concerted practice prohibited by the Treaty.

The Court did decide, though, that, where appropriate, it is for the national court to ascertain whether, in a given case, the manner in which the exclusive right conferred by the contract is exercised is subject to a legal or economic situation the object or effect of which is to prevent or restrict the distribution of films or to distort competition in the film market.

ARD (89/1536)

The Association of Public Broadcasting Organizations in Germany (ARD) concluded agreements on television broadcasting rights for new feature films to be produced by MGM/UA between 1984 and 1988. The Commission objected to the agreements, considering that the number and duration of the exclusive rights acquired rendered access for third parties unreasonably difficult. ARD agreed to allow the licensing of films to other television stations during so-called 'windows', which designate periods relating to individual films during which the exclusivity granted to ARD is lifted, and during which ARD will not use the films. The windows vary in length between two and eight years. The ARD also agreed to allow licensing throughout contract territory to other television stations which show non-German language versions of the films, and which were previously prohibited under the agreements.

The Commission exempted the agreements under Article 85(3). This is the first Decision to clarify that exclusive agreements relating to television rights may be contrary to Article 85, whilst making clear that exemption will be granted where sufficient access facilities are made available to third parties.

On several other occasions the Commission has had to review agreements between television stations aimed, in practice, at giving the parties to the agreements exclusive rights and preventing others from re-transmitting or distributing the works. In each case the Commission has required the parties to amend their agreements to allow third parties non-discriminatory access to the markets concerned.

Screen Sport/EBU (91/130)

The Commission upheld a complaint by Screen Sport, the European transnational satellite television sports channel, against Eurosport. The complaint challenged a series of agreements between *inter alia* the Eurosport Consortium, an association of broadcasting organizations and members of the EBU, Sky Television and News International, which established Eurosport as a joint venture satellite television sports channel in competition with Screen Sport.

Since the Eurosport Consortium members and Sky were potential competitors in the market for transnational television sports channels, the Commission concluded that the agreements eliminated any incentive for Sky to offer substantive competition to Eurosport. Furthermore, privileged access on the part of Eurosport to sports programming, particularly live sport, placed it in an unfairly favourable position as against Screen Sport and other similar channels not enjoying similar access, denying them an equal chance of providing as comprehensive a range of sports coverage. Consequently, the request for exemption of the Eurosport agreements under Article 85(3) of the Treaty was refused.

In a later decision, after amendments to the EBU rules removing many restrictions, the Commission granted an exemption under Article 85(3) to the Eurosport system. Although the system limited competition, it allowed a number of improvements through rationalization and cost savings which benefit members from small countries, in particular by allowing them to show more and better quality sports programmes than would otherwise be the case.

Auditel (T-66/94)

On 24 November 1993, the Commission adopted a Decision that an agreement between Auditel shareholders to use only an Italian ratings index infringed Community competition rules. The Decision was adopted in response to the notification by Auditel of the system it has established in Italy for measuring and disseminating television audience ratings, which, though in practice seemed to be intended to prevent a ratings war between the main Italian television channels, but was nevertheless a restriction of competition, in that it deprived shareholders of any freedom to use other figures. Exemption was refused because the restriction was not indispensable and led to the elimination of competition. Auditel deleted the offending agreement shortly before the Decision was adopted.

MSG Media Service (Case IV/m.469)

Three German enterprises, including Deutsche Bundespost Telekom (as it then was) notified the Commission of a plan to set up a joint venture, MSG Media Service, to operate on the market of technical and administrative services for digital pay-TV operators. The Commission analysed the effects of a proposed merger on three product markets in Germany.

The enterprises offered the Commission undertakings relating to the use of a common interface, non-discrimination towards pay TV suppliers and an adequate supply of digital cable transmission capacity, subject to certain conditions. The Commission regarded these undertakings as inadequate as they were either conditional or mere declarations of intent. It took the view that the proposed merger was liable to create or strengthen lasting dominant positions and should therefore be considered incompatible with the common market.

3.12.3. Film

The situation in the film industry is more complex. In contrast to television, the feature film production and distribution market has suffered for a number of years from declining cinema audiences and box office receipts and from sharp increases in production costs, making necessary rationalization measures for the production and distribution process. Over the same period, a new and rapidly increasing market for production and distribution of video cassettes has emerged. The Commission's expressed concern is to ensure that third parties have equal access to markets on equitable terms, and at the same time to maintain a level playing-field. Most Member States face strong competition from non-EU producers and distributors. Competition policy in relation to distribution through cinemas can be illustrated by reference to the UIP Decision.

UIP

The Commission granted a five-year exemption to a series of agreements entered into between Paramount Pictures Corporation, MCA Inc. and MGA/UA Communications Co. regarding the creation of a joint venture, United International Pictures (UIP), which distributes feature films produced by its parent companies for exhibition in cinemas within the Community. The companies pooled their distribution activities in the Community to gain efficiencies by avoiding administrative duplication, and granted UIP exclusive rights to their respective productions.

The agreements notified were amended at the Commission's request, ensuring, for example, that parent companies remained independent from each other and from UIP, and that each could enter into co-production agreements with third parties in the Community. The exclusivity provisions were limited, by allowing UIP to have only the right of first refusal to the parent companies' films. The Decision indicates that the Commission takes a positive view of rationalization and cost saving measures in the distribution of feature films, given the structural peculiarities of the film industry. Joint ventures set up for the joint distribution of feature films may be exempted, if they do not unduly restrict the competitive room for manoeuvre for the undertakings concerned.

UIP's exemption expired in July 1993 and UIP has continued to trade as if the exemption was still in place. The Commission has not yet taken any action either to grant a further exemption or to investigate UIP's activities further.

Other cases in related areas such as intellectual property, for example the recent *Magill* case, may also have had an impact on the audio-visual sector.

3.12.4. State aid in film production and distribution

Every Member State in which films are made provides aid to the film industry, but the extent and structure of that aid vary considerably. Film-making is an economic and a cultural activity, facing strong competitive pressures from third country productions currently dominating the market. The Commission has stated that it has endeavoured to achieve a balanced approach in assessing aids granted by Member States, with a view to avoiding distortions in competition in the Community film industry while seeking to promote cross-frontier financial, cultural and economic co-operation to give national cultural works a broader financial basis for their production and distribution. This has produced tangible results particularly for co-productions between Member States.

However, principles of the EC Treaty, notably the rules on freedom of movement for persons and the freedom to provide services, must still be respected. A number of procedures have been taken by the Commission over the past 10 years against schemes of state aid, most frequently on the grounds that the schemes included conditions which excluded nationals of other Member States from participating in the audio-visual works the subject of the aid, thereby infringing Articles 48, 52 and 59 of the EC Treaty on the free movement of workers, freedom of establishment and freedom to provide services within the Community.

3.13. Cross-media ownership

3.13.1. Background

This is an important topic to be considered in connection with the audio-visual industry. The Commission has been considering the increasing trend towards cross-media ownership, in particular the formation of transnational multi-media groups and the resulting challenge, not only for competition, but as importantly for pluralism and variety of opinion in the political and cultural spheres.

The adoption of the Merger Control Regulation (No 4064/89, OJ L 395, 30.12.1989 p.1) enables the Commission to take action against large mergers which have an adverse effect on competition and allows Member States to continue to apply national provisions for the protection of pluralism and freedom of expression, where the Commission does not take action against mergers in the media section (OJ L 395, 30.12.1989).

The Commission's Green Paper on pluralism and media concentration in the internal market (COM(90) 480) took matters further and considered whether, taking account of the objectives of the single market, it was necessary to propose Community-level approximation of rules on media ownership laid down by Member States to ensure pluralism.

Cross-media ownership rules may affect:

(a) monomedia concentrations, for example, more than one newspaper title or radio or television broadcast station; and
(b) multimedia concentrations, for example, newspaper and television together, or television and radio together.

There is already general regulation under Community law by virtue of Articles 85 and 86, but separate, specific regulation is also seen as necessary under Article 52 to remove SMI barriers and to:

(a) maintain pluralism and diversity of opinion; and
(b) achieve transparency in ownership.

3.13.2. Expected effect

Most countries in Europe have rules on monomedia and multimedia concentrations and ownership, but presently these rules vary enormously. Liberalization is seen as necessary to permit external competition, and harmonization of the various national regimes to prevent distortions between the Member States, which can prejudice SMI. The Commission has committed itself to bring forward recommendations for a harmonized framework. In spring 1995, however, it decided that further consultation with governments and users was necessary. The Commission is presently receiving and reviewing further representations on this complex matter and is expected to issue a further communication later this year.

3.14. Impact of the SMP on the introduction of new television technologies

3.14.1. Introduction

This section aims to test the hypothesis that the formation of the single market has facilitated the harmonization of standards for the transmission of television broadcasts in the EU. Details of the relevant Directives are given in Table 3.1.

EU policy in this area has been driven by attempts to achieve pan-European standards for new television technologies. While standards in most areas of consumer electronics (sound carriers, etc.) have been harmonized, television transmission standards have remained divided at a national level. Member States used diverse versions of PAL and SECAM for transmission when these were introduced in the 1960s.

The EU has sought to ensure that new television transmission standards for HDTV, widescreen and digital television, are introduced at a pan-EU level, thus creating a large, unified market from which EU market players can benefit.

The area is complicated by the structural separation of broadcasters and manufacturers of the television sets which receive the transmissions. There is a 'chicken-and-egg' problem in introducing changes to the architecture of the integrated TV receiver in that manufacturers are reluctant to produce equipment capable of receiving broadcasts in a new format if there are no programmes being broadcast in that format. Similarly, broadcasters have little incentive to invest in equipment to broadcast using new standards if there are no receivers. The structural separation of transmission and reception as economic activities meant that there was no natural co-ordination for free-to-air broadcasting.

Similarly, while broadcasting is predominantly a national activity, manufacturers' operations have, since the introduction of colour television, evolved into regional or globally focused organizations. The economies of scale which could be gained by consumer electronics manufacturers by operating on a Europe-wide basis were not, therefore, an incentive for broadcasters.

Commission policy in the past 10 years has been to attempt to eliminate the co-ordination gap by promoting European standards; however, its strategy for doing so has changed significantly during the period.

Table 3.1. Single market measures relating to new television technologies

Measure	Main details	Intended effects	Comments
Council Directive 86/529/EEC of 3 November 1986 on the adoption of technical specifications of the MAC/ packet family of standards for direct satellite TV broadcast	Sought to ensure the use of the MAC standard for direct broadcasting by satellite and the corresponding standard for cable redistribution	Sought to enable the creation of a large, unified market, free of technical barriers to television products	Implemented only in France. Replaced by Directive 92/38/EEC
Council Decision of 27 April 1989 on High Definition Television	Adopted five objectives as a basis for a comprehensive strategy for the introduction of HDTV services in Europe and its promotion world-wide	Identified HDTV as an opportunity of strategic importance for the European consumer electronics, television and film industries	
Council Directive 92/38/EEC of 11 May 1992	Member States should take all appropriate measures to promote and support the introduction and development of HD-MAC for HDTV and D2-MAC for domestic satellite reception for not completely digital broadcasts	Aimed to introduce HDTV by the fastest possible route through standards harmonization using the MAC standard	To be repealed nine months after publication of Directive 95/47/EC
Council Resolution of 22 July 1993 on the development of technology and standards in the field of advanced television services	Proposed a revision of Directive 92/38/EEC to develop a flexible regulatory framework, and to adopt a framework agreement for the Advanced Television Action Plan	Sought to create a regulatory framework capable of responding to the needs of the market and to technological developments	First measure to split the harmonization and promotion elements of policy
Council Directive 95/47/EC of 24 October 1995 on the use of standards for the transmission of television signals	Fully digital services must use an unspecified transmission system to be developed by a recognized European standards body. Operators of conditional access must offer technical services to broadcasters and manufacturing licences to equipment manufacturers – on a fair, reasonable and non-discriminatory basis. Member States to establish dispute resolution procedures. 16:9 aspect ratio confirmed as reference format for widescreen. All televisions of screen size over 42 cms to carry an open interface socket	Aimed to create and promote a technically harmonized European marketplace for the take-up of widescreen and digital television services and to facilitate access to the marketplace	
Action plan for the introduction of advanced television	Offers financial support for the introduction of new 16:9 aspect ratio services: covers part of the costs involved in broadcasting in the new format; covers part of the costs of adjusting new and existing programmes for 16:9 broadcasting	Aimed to contribute to the market penetration of 16:9 receiver equipment, by launching a critical mass of TV services in the 16:9 format	ECU 228 million budget over four-year period

Source: KPMG.

3.14.2. The MAC transmission standard

Until the early 1990s, the Commission policy was aimed at providing incentives for consumer electronics companies to develop equipment capable of receiving satellite broadcasts using the MAC transmission standards which had been developed by public broadcasters under the aegis of the European Broadcasting Union (EBU).

In November 1986, the Commission published a Directive (86/529/EEC) which called for the adoption of the MAC family of standards for all high-powered direct broadcast by satellite (DBS) broadcasts following specification laid out by the EBU. DBS was being developed at Member State level; for example, the TDF project in France, BSB in the UK, TV Sat in Germany. Two further MAC specifications were mandated by a Directive (92/38/EEC) in May 1992: HD-MAC for high definition broadcasts, and D2-MAC, which was introduced at the request of those Member States who believed that the D-MAC was overspecified for its purpose and could not be produced at a price which would be acceptable to the market.

The proponents of the MAC standards argued that these were preferable to systems proposed in Japan and the US as they would have taken advantage of the introduction of satellite television to allow a smooth transition from existing systems, via widescreen television using D2-MAC, to HDTV using HD-MAC. Industrial and trade policy – in particular the promotion of European consumer electronics manufacturers' ability to compete in HDTV – was also an important factor in the EC policy.

However, the success of the MCA/HDTV strategy was prevented by a number of factors: the DBS satellite systems were overtaken on a commercial basis by the Astra system which offered lower cost direct-to-home (DTH) satellite broadcasts; a loophole in the 1986 Directive enabled fixed satellite service (FSS) satellites to broadcast using standards other than MAC. PAL equipment was available before MAC was ready and was significantly cheaper.

By 1993, it had become clear that digital television technology was developing at a faster pace than had been anticipated. It was at this point that broadcasters, which had resolutely opposed the imposition of a technical standard, began to influence the debate. For broadcasters, the ability to offer many more services meant direct revenue opportunities in a way which MAC and HDTV lacked. The need to control access to the services via set-top boxes also required a level of co-ordination which was not needed for free-to-air broadcasts.

3.14.3. A new strategy: technology neutral regulation plus separate promotional activities

The failure of the MAC strategy led to a reorientation of EU policy in two ways. First, the realization that broadcasters would need to lead the introduction of new technologies led to a shift in emphasis towards broadcasters rather than manufacturers. And second, whereas in the 1980s, the Commission had attempted to combine harmonization, promotion of new technology and regulation in a single measure, after 1992, the policy split into two main areas as follows:

(a) a European approach to digital TV based on professional users' requirements defined by broadcasters through the Digital Video Broadcasting Group; and
(b) a separate promotional initiative 'The action plan for the introduction of advanced television', aimed at catalysing a market for widescreen televisions.

The Digital Video Broadcasting Group (DVB)

Our interviews indicated that the main impact of the MAC standards directives on the audio-visual industry has been that opposition to the principle of a standard imposed by government led to the foundation of the DVB which was made up of around 150 market players (including broadcasters, equipment manufacturers, operators of satellites, cable and terrestrial networks and national regulators).

The DVB invited the Commission to join the group as an observer and it eventually became a consultative body to the Commission for the Directive on the use of television transmission standards (95/47/EC), adopted in July 1995, which aimed to set a light, technology neutral, regulatory environment for advanced television broadcasting.

An important issue has been the development of a regulatory framework for conditional access (CA) systems – the means by which broadcasters are able to control the reception of the broadcasts and therefore charge subscription fees. The key provisions in the 1995 Directive include:

(a) the requirement that the agreed Common European Scrambling Algorithm be included in all consumer equipment;
(b) the requirement that it is technically and economically feasible that control of CA can be transferred from broadcasters to cable operators;
(c) principles for licensing of proprietary CA technology to manufacturers; and
(d) principles relating to fairness in commercial relations between CA providers and broadcasters, and dispute resolution procedures.

The Common European Scrambling Algorithm's principal aim is to ensure that there is no technical reason why the consumer should need more than one IRD[24] to receive all digital services.

A number of smaller broadcasters have argued strongly against allowing proprietary CA systems to be embedded in consumer IRDs. Whoever controls a particular CA system can block other broadcasters' access to IRDs which incorporate that system. They consider that such systems tend naturally towards monopolies and prefer the approach defined by the DVB, the Common Interface.[25] However, most of those we have consulted believe that the Directive is an acceptable compromise, provided that Articles 85 and 86 of the Treaty of Rome are applied in the event that such dominant positions are abused.

The details of the standards are to be developed by the industry through the DVB and adopted by the European Technical Standards Institute (ETSI). The Commission's role is to encourage consensus, support the outcomes where they are not against the public interest, for example through mandates to ETSI, and to underpin by legislation the decisions taken by private industry, where such legislation is deemed necessary to achieve market clarity and promote market confidence.

Promotional activity: the Action Plan for the Introduction of Advanced Television Services

Widescreen broadcasting offers the consumer the opportunity to watch programmes in the 16:9 aspect ratio (a compromise between the various wide-screen formats used in the cinema, and globally agreed between manufacturers and broadcasters) rather than the traditional 4:3. The introduction of such technology (which, being a screen format, is compatible with both digital and analogue transmissions), suffers from a similar chicken-and-egg problem to that of HDTV broadcasts.

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24 Integrated Receiver Decoder. These contain the necessary electronics for decoding digital broadcasts so that they can be screened on conventional analogue TV sets, plus conditional access elements.

25 The Common Interface places all the elements relating to conditional access on to a detachable PCMCIA module. These modules can be exchanged, allowing any number of CA systems to be used.

The Action Plan for the Introduction of Advanced Television Services offers a contribution to the extra costs incurred by broadcasters and producers in introducing 16:9. By the end of 1995, a total of 35 European broadcasters had been involved in the Action Plan and approximately 20,000 hours of programming transmitted. Broadcasters' enthusiasm for the widescreen format varies across Europe. However, most agree that a market for widescreen television has been accelerated.

3.14.4. Conclusions

Almost all of our interviewees believed that the light regulatory touch of Directive 95/47/EC, promoting standards through the DVB, has had a positive effect on the development of digital television standards and that the promotional aspect of the Action Plan has created the beginning of a market for widescreen televisions. To a great extent, the failure of the MAC and related European HDTV initiatives galvanized all of the principal actors in the industry into taking a more active role in defining the regulatory framework for digital television at a European level. The digital transmission specifications developed by the DVB have already gained widespread support across Europe; and the cable and satellite systems have received global endorsement as International Telecommunication Union Recommendations.

Conditional access has become the more controversial element in the digital era. Two important issues for the future are: the extent to which conditional access systems will remain proprietary; and, whether EC law will be effective in preventing abuses of dominant positions by conditional access 'gateway' holders, once monopolies are established.

4. Broadcasting

4.1. Introduction

In this chapter we:

(a) discuss the economics of the broadcasting sector;
(b) review the impact of the single market on scale and scope effects in the sector; and
(c) assess the impact of the SMP on competition.

Table 4.1. below summarises the key indicators of the structural change in the period under review which are described in Chapter 2.

Table 4.1. Comparative data on EU broadcasting: 1985 and 1994

	1985	1994
Number of public channels	25	25
Number of terrestrial commercial channels	10	23
Number of national satellite channels	8	75
Number of pan-European channels	3	19
Number of television channels	44	140
Total television advertising expenditure (ECU, 1994 prices)	5.8 bn	11.7 bn
Pan-European channels advertising revenue (ECU, 1994 prices)	marginal	200 m
Total public funding (ECU, 1994 prices)	6.8 bn	10.8 bn
Total subscription/pay-TV revenue (ECU, 1994 prices)	0.9 bn	4.5 bn
Cable penetration	20%	36%
DTH penetration	0%	4%
Estimated average hours broadcast per channel per week	54	100

Source: KPMG/various.

4.2. The economics of the broadcasting sector

This sub-section discusses first the economic model that could be used to analyse the sector. We then examine whether there is any evidence of economies of scale/scope in the sector.

4.2.1. Economic models

In terms of source of revenue, there are three main types of companies competing in the broadcasting sector:

(a) commercial, advertising funded only, broadcasters;
(b) commercial, mainly subscription/PPV funded (and possibly advertising), broadcasters; and
(c) public service, government and (usually) advertising funded broadcasters.

The differing nature of the companies implies that they have different objectives, and therefore different economic models are appropriate to understand the behaviour of companies in each category and the market structures emerging. We present first the appropriate model for subscription funded broadcasters/channels, followed by the model for commercial, advertising funded broadcasters. We finally analyse the appropriate model for public service, government owned broadcasters.

The objective of commercial broadcasters (whether advertising funded or subscription/PPV or both) can be assumed to be maximization of revenue, subject to meeting any licence constraints. There is a key differentiating characteristic, however, between mainly advertising and mainly subscription funded channels/broadcasters:

(a) mainly advertising funded broadcasters (or channels) sell audiences (i.e. a relatively homogeneous good) to advertisers, where total supply (i.e. the total number of viewers watching at any point in time) is largely fixed; and
(b) subscription funded broadcasters (or channels) sell programmes directly to consumers, where total audiences are not necessarily fixed and can be influenced by broadcasters' pricing decisions.

Subscription funded channels

The appropriate economic model for (mainly) subscription funded channels is similar to other service sectors with differentiated products; the economic structure emerging would be oligopolistic because demand for a differentiated product is not perfectly elastic. The degree of concentration is positively related[26] to:

(a) the extent to which addition of new channels substitutes for existing offerings (because in such a case the returns to an extra competitor would include taking away market share from the existing competitors);
(b) the extent of economies of scope;
(c) the extent of 'first mover advantages', where the first mover offers a range of services sufficient to forestall further entry; and
(d) the extent of competition in distribution (horizontal integration) and the extent of vertical integration.

In practice, subscription channels are at an early stage of development in the EU. Furthermore, such channels compete also for advertising revenue (albeit not for the mass market). Because of the existence of economies of scale/scope, subscription services may be offered by broadcasters providing also purely advertising funded services.

As a result, the economic structure that has emerged differs significantly from country to country although the general tendency has been for a monopolistic structure (e.g. France, UK, Italy, Spain) with often a single provider of subscription channels (e.g. Nethold in Greece). The early stage of development of such markets in Europe and the barriers to entry for some of these types of channels (need for distribution access, buying of programme rights, etc.) imply that some monopoly profits may also be made in the short to medium term.[27]

Advertising funded broadcasters

Advertising funded broadcasters can compete at two separate but related levels:

[26] Sutton, J. (1991) 'Sunk costs and market structure', MIT Press, London.

[27] This is unlike the classic Chamberlin model where profits are zero since differentiation with free entry/low barriers implies that average revenue equals average cost – at an average cost above the minimum efficient scale.

(a) for audience, where competition is based on product differentiation through programme content and scheduling; and
(b) for revenue, where competition is price based.

In practice, because of the risk associated with making cost decisions prior to the realization of revenue, prices will also incorporate a risk premium.

In terms of overall market structure, the optimal number of players will depend on consumer taste (which will determine the extent of product differentiation) and economies of scale (which will determine the audience share required to achieve efficient operation). In practice, economies of scale do exist in broadcasting (see Section 4.2.2 below) but (terrestrial) channels with relatively small audience shares (5–10%) have survived profitably in a number of countries (e.g. M6 in France, C4 in the UK). Although this may partly reflect the monopolistic structure of these markets, it also suggests that the minimum viable scale is not necessarily very large, although economies of scale can also be achieved at higher levels of audience share.

The extent of concentration for such channels will therefore be higher (subject to any licensing/frequency allocation constraints):

(a) if consumer tastes for differentiated product are relatively narrow – this will also depend on habit and the history of development of schedules in each country;
(b) if economies of scale are significant; and
(c) if the (marginal) revenue loss of a ‘small’ or fragmented audience is large.[28]

As a result of competition by product differentiation and therefore the fact that each broadcaster has a certain degree of monopoly access to certain audiences, commercial broadcasters will be able to make some monopoly profits; the extent of such profits will depend, however, on the extent of barriers to entry that exist for terrestrial broadcasters and on regulation of advertising minutage. Where such barriers are low (e.g. Italy), one would expect that the Chamberlin equilibrium of monopolistic competition with free entry would be much more closely approximated.

Public service, government owned broadcasters

The objectives of broadcasters that sell advertising time but are also supported by the government can be assumed to be maximization of audience share subject to a cost constraint, imposed by the licence conditions. This implies, if the programme obligations are binding, that such broadcasters are not operating at the minimum cost possible for their audience share (i.e. they are off their minimum cost curves) and may also be operating away from the minimum efficient scale. In other respects (i.e. competition on product differentiation and price), such broadcasters would be behaving in a fashion similar to commercial broadcasters and what was said there applies here also.

In the case of broadcasters funded only by licence fee and/or subsidy (e.g. BBC, DR and ARTE), the objectives are likely to differ from broadcaster to broadcaster. As a general principle, such broadcasters would be expected to aim to maximize audience subject to their

28 The price of reaching a certain number of people is higher if they are part of a larger audience.

costs and, to some extent, programming being determined by government; clearly, a generalist channel (e.g. BBC) will have much more stringent obligations than a specialist channel, such as ARTE. The key question[29] is the extent to which their existence affects the market structure emerging in different countries and the ease of entry. As a general rule, one would expect the existence of such publicly funded channels, in countries where they have significant audience shares, to raise advertising prices above the levels they would be, if they were free to compete with commercial broadcasters; this, in turn, would imply that profit margins of commercial broadcasters in countries where such channels have significant audience shares should be relatively larger.

Conclusion

In summary, terrestrial broadcasting markets would be expected to have oligopolistic structures because of the product differentiation possibilities which exist in those markets and the economies of scale that can be achieved. Barriers to entry in these markets in the form of technical regulations, licence constraints or frequency unavailability could lead to a more concentrated market and monopoly profits being made. Subscription/PPV broadcasters also offer a differentiated product, but the level at which economies of scale can be achieved in this case can vary by type of channel, because there is a demand constraint, depending on the theme of the channel. In the absence of capacity constraints, competition in this market should reduce any monopoly profits being made. Note that we are talking about broadcaster profitability. This must be distinguished from distributor (i.e. cable network and satellite operators) profitability, which will depend on the competition they are facing.

4.2.2. Economies of scale and scope in the broadcasting industry

We have combined scale and scope effects for definitional reasons resulting from the nature of the broadcasting business. Traditionally, broadcasters have used their programming to attract audiences which they sell to advertisers. By moving into new geographical markets, they may be able to ‘produce’ more audiences within the EU without spending a proportionate amount on programming. In this sense, they can achieve economies of scale. However, it is arguable that non-domestic audiences represent a different product (most advertisers are organized on a national basis and define their target markets nationally). In this sense, cross-border broadcasters could achieve economies of scope.

Economies of scale/scope can arise in the broadcasting industry at two levels (where we define the unit of measurement as the audience share percentages):

(a) at relatively low levels of audience share, because of the significant set-up costs for new channels; and
(b) at higher levels of audience share, because of the significant buying power of broadcasters which should allow them to get better deals from independent producers and rights owners.

The available evidence on economies of scale is indirect, however, as there has been relatively little publicly available research into the cost structures of broadcasters. Table 4.2 summarizes the average cost per unit percentage audience share for channels for which information was available in Belgium, Denmark, France, Germany and Italy. The cost information is based on

[29] The issue of justification of the existence of such channels goes beyond the scope of this report.

the companies' annual reports and is reported in the fourth column of the table, in national currency. It is not meaningful to make comparisons between countries as companies may be using different accounting procedures and there are significant differences in regulation (and associated costs) between EU Member States. The numbers should therefore be taken as indicative of possible economies of scale/scope, rather than as an accurate estimate of the potential average cost savings possible because of an increase in audience share.

Note that the last column presents index numbers for the average cost so that the cost per percentage audience share of the channel with the largest audience share in each country is set at 100. For example, the numbers for Denmark mean that the cost of each percentage point audience share for DR (with an overall audience share of 32%) is 125% higher than the same cost for TV2 (with an audience share of 45%).

Table 4.2. Average cost in broadcasting; Belgium, Denmark, France and Germany

Country	Channel	Audience share 1994 (%)	Cost 1994 (local currency)	Average cost per % audience share index[1]
Belgium	VTM	43.3	5,700	100
	BRTN (1+2)	26.8	6,043[2]	171
Denmark	TV2	45.0	715	100
	DR	32.0	1,146	225
France	TFI	38.4	6,606	100
	F2	26.1	4,664	104
	FR3	15.9	5,043	184
	M6	11.1	1,393	73
Germany	ZDF	21.1	2,307	100
	ARD	12.4	9,198	678

Source: Company accounts, KPMG calculations.

1 The average cost per percentage audience share of the channel with the largest audience share set equal to 100.

2 Includes non-assigned and other BRTN expenditure allocated to the television activities of BRTN according to the TV and radio shares of expenditure.

The last column provides evidence that the average cost per unit percentage audience share is higher, the smaller the audience share. The figures for channels FR3 and ARD are in comparative (index) terms significantly higher than any other terrestrial channel, reflecting the fact that they are regional channels. In France, M6 has managed to keep its relative costs quite low, achieving its audience share at 73% of the average cost of TF1.

The analysis of this section provides some evidence that there are economies of scale in broadcasting. These may be significant, although the nature of the data is such that it is not possible to make precise estimates.

4.2.3. Economics of the broadcasting sector and the SMP

There are three key differentiating characteristics of the European broadcasting sector compared to other sectors of economic activity:

(a) state funded and commercially (i.e. advertising, sponsorship and subscription) funded operators compete for audience share and often for advertising revenue;
(b) there are significant non-economic barriers to cross-border expansion (cultural/linguistic); and
(c) there are national ownership rules based mainly on arguments about plurality of opinion and control of the media which may limit the ability of companies to act solely on economic/commercial grounds.

The expected impact of TWF (and the overall SMP), in economic terms, is to facilitate cross-border expansion and increase competition through the lowering of barriers to cross-border expansion. This is particularly relevant for subscription operators carried mainly on cable and satellite. As already mentioned, the profit margins for those operators can be significant and economies of scale are also important. Terrestrial expansion would require the ability to transmit a signal in another country/region; with the exception of overspill and/or cross-border mergers and acquisitions (M&As) of operators, such an expansion could face significant barriers in terms of availability and allocation of spectrum. The fact that TWF could enable transmission from any country within the EU to another country implies that it could have a positive effect on liberalization in national markets and competition between national broadcasters, through the threat of potential entry.

The economic modelling analysis has indicated that the competition between terrestrial broadcasters is imperfect due to product differentiation. This would only lead to super-normal profits, however, if there were significant barriers to entry, either technical or endogenous (i.e. created by incumbents). The extent to which different markets will be attractive for potential terrestrial entrants, following TWF and the SMP, will therefore depend on the extent to which:

(a) differences in taste are satisfied by incumbents;
(b) there are national technical regulatory barriers (i.e. the need for a national licence and spectrum or foreign ownership restrictions); and
(c) competition already exists (note that incumbents could be involved with predatory pricing at the time of potential entry).

Increased competitive pressures should lead to lower concentration of audience shares and lower advertising prices as competition for any given amount of advertising is now stronger. This should finally feed on to costs, as broadcasters try to reduce operational inefficiencies in order to maintain profit margins and take advantage of economies of scale (see above).

The existence of state funded operators may limit the extent to which such an effect takes place. Such operators may have little incentive to control costs more effectively or to seek and exploit economies of scale more aggressively as a result of increased competition, since the existence of state subsidies could in principle cover any shortfall of costs over revenue. The fact that overall state funding has increased over the period we are examining at approximately the same rate as television advertising revenue suggests that governments have not reduced or reversed their support for state broadcasters as they faced increased competition from commercial terrestrial channels and cable and satellite. Note, however, the trend identified earlier for costs of popular programmes to increase, which suggests that state funded broadcasters would have to increase their expenditure for such programmes or risk losing significant audience shares.

4.3. Impact of the single market on scale and scope in the sector

4.3.1. Introduction

We have already indicated that economies of scale/scope in the broadcasting sector can be significant. The hypothesis to be tested in this section is that TWF and the Satellite Communications Directive (through reducing the cost of satellite capacity) have:

(a) facilitated investment in pan-European channels and the cross-border transmission of channels;
(b) stimulated investment in satellite capacity;
(c) indirectly reduced the cost of establishing new channels; and
(d) allowed channel operators to exploit scale economies.

TWF should enable broadcasters to target any EU market which they find commercially attractive, provided that they obtain a licence from one Member State. In practice, broadcasters should therefore seek to be licensed in the most cost effective way and then try to expand in order to take advantage of any economies of scale, subject to any national technical and regulatory constraints. In this sub-section, we therefore specifically examine the extent to which the SMP has:

(a) led to an increase in trans-European broadcasting, through channels targeting Member States from a different Member State. In the long run, TWF could be expected also to have provided a harmonized European 'yardstick' towards which Member States have been drawn both in terms of broad liberalization of their domestic broadcasting regime and in progressive liberalization of detailed regulations;
(b) increased the number of pan-European satellite channels (and their carriage on cable networks in other countries);
(c) enabled broadcasters to exploit national signal overspill to raise revenue; and
(d) led to an extension of broadcasters' entry into other Member States.

A further hypothesis examined in this section, closely linked to point (a) above, is that TWF has stimulated liberalization within national markets of commercial television services – whether terrestrial or satellite – in response to the threat of new competition. This hypothesis is based on the timing of channel launch activity and the emergence of satellite channel operators owning or operating a package of cable and satellite delivered channels; and on the growth in terms of the number of hours of output and of revenue.

We would also expect to find a difference in the impact of the SMP by Member State depending on the degree of liberalization which had already occurred before 1985. In Italy, for example, television frequencies had been liberalized in the 1970s. In examining below the results of our survey of broadcasters, we attempt to isolate such factors.

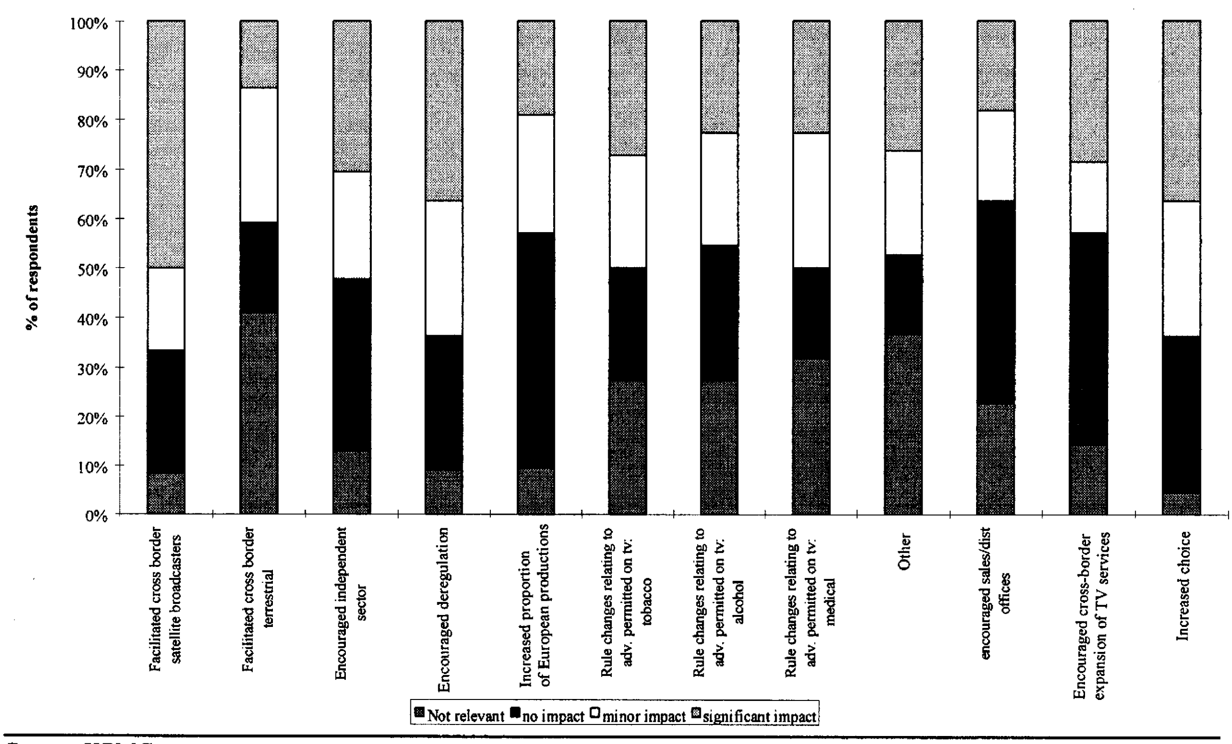
4.3.2. Summary of survey results

We start by presenting a brief summary of the survey results on the impact of TWF. These are discussed and analysed in further detail in the sections below. We have separated broadcasters from the overall sample of our survey in order to determine their views on the impact of TWF.

It should be noted that the questions and responses refer to the overall perceived impact of TWF, rather than the specific impact on the broadcaster being interviewed.[30]

As shown in Figure 4.1 below, the TWF Directive was seen by 67% of broadcasters to have facilitated the expansion of cross-border satellite broadcasters, and for international broadcasters, the figure is 83%. The impact of TWF on cross-border terrestrial broadcasting was assessed overall as much less significant, with less than 15% of broadcasters interviewed considering the TWF to have had a significant impact. In terms of the role of TWF in influencing national liberalization, more than 36% of all broadcaster respondents believed that TWF had a significant impact in encouraging national deregulation with a further 27% believing that TWF played some role.

Figure 4.1. Impact of TWF: broadcasters' responses



Source: KPMG survey.

4.3.3. Channels targeted nationally from other Member States

As already indicated, TWF should have enabled broadcasters to take advantage of licensing regulations in one Member State to broadcast a service targeted at a more restrictive Member State which may have been unlikely to license the service under its domestic regulatory framework.

The first example where this was a factor is the decision by the UK government to create a non-domestic satellite licence with less strict obligations than domestic licences. During the decision making process, Sky Television threatened to move its operation to Luxembourg, in which Société Européenne des Satellites is based. This would have removed it from the

30 We interviewed 30 broadcasters operating in Europe.

jurisdiction of UK authorities. The services on Astra were defined as non-domestic, because the satellites which reflected the Sky signal back to earth were owned and licensed by a Luxembourg company.

This UK licensing regime has been used by some 90 channels, including a number targeted at other Member States, such as TV3 which has broadcast its services into Sweden, with advertising aimed at children; and VT4 which has targeted its service at Flanders also with children's advertising and with programming that would face difficulties if licensed in Flanders.

The TV10 case (see Section 3.2.4) shows that services may not locate in another territory deliberately to avoid local regulations. However, TWF had not been implemented at the time of the ruling and there is clearly a fine line to be drawn between the legal definition and the business reality in such cases. For example, VT4's *raison d'être* is clearly to break the advertising monopoly of VTM in Flanders.

However, some Member States have sought to restrict the development of these types of channel as they are not subject to the same restrictions as locally licensed channels and therefore undermine their ability to regulate broadcasting. VT4 claims to have incurred legal costs of BEF 25 million in its first year of operation in order to stay on Belgian cable networks. The threat of high legal costs in the launch phase may be expected to have deterred a number of potential channel launches. Such restrictions are clearly against the spirit, if not the letter, of TWF.

A number of broadcasters interviewed also argue that barriers exist in the French market. The most clearly evident is the national programming quota system and the fact that channels which wish to be carried on French cable are required to sign a separate convention with the CSA.[31] This effectively restricts the ability of non-domestic-based channels to target France as a core market by raising the costs of doing so (see the MTV case study in Appendix E.5).

The practical difficulty of enforcing restrictions has encouraged some liberalization towards a common European level. For example in Flanders, VTM has been licensed to launch a second service, KA2, which, according to advertising agencies, is very similar to VT4 and which is allowed to sell children's advertising. Such examples are, however, limited and there is no substantial evidence of movement towards a common European yardstick.

4.3.4. Pan-European cable and satellite channels

TWF was intended to remove the supply-side barrier to pan-European broadcasting caused by the diverse licensing requirements of each Member State. This section assesses the extent to which it has successfully done so.

Pan-European channels launched

The channels included in Table 4.3 below are the primary pan-European operators.

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[31] For example, 60% of programmes in quota genres must be of European origin and 40% also of French origin (see Chapter 6).

Table 4.3. Pan-European broadcasters

Broadcaster	Year launched	Owner
CNN International	1987	Turner Broadcasting (US)
MTV Europe	1987	Viacom (US)
Superchannel	1987	NBC (US) (since 1994)
Eurosport	1989	ESPN (ABCD-US), Canal Plus (France), TF1 (France)
Discovery Channel	1989	Discovery (US)
Euronews	1993	Public broadcasters (Europe), Société Occidentale (France)
TNT/Cartoon Network	1993	Turner Broadcasting (US)
BBC World, BBC Prime	1995	BBC (UK), Pearson (UK), Cox (US)
European Business News	1995	Dow Jones (US), Flextech (UK/US)

Source: KPMG.

Note that five of these nine pan-European channels are US owned or controlled. Other cross-border satellite broadcasters exist although they are so far of little economic significance. These can be categorized as one of the following:

(a) ethnic channels, generally owned by non-EU companies, e.g. Indra Dhnush, Japan Satellite TV, Middle East Broadcasting, TV Asia, Chinese Channel, Asianet, Chinese News & Entertainment, Muslim TV Ahnadiyya; and
(b) European terrestrial channels which have launched unencrypted satellite-transmitted versions (including ARD, ZDF, RAI 1, 2 and 3, TVE and RTP).

Importance of the SMP in the launch of pan-European channels

While none of the pan-European channels we interviewed believed they would not have launched services in the absence of the SMP, most believed that the SMP has had some important effects on the nature of their launches.

Forty percent of all respondents to our survey believed that TWF had had a significant impact in facilitating the establishment of cross-border satellite broadcasts. Among broadcasters, the figure was higher, at 50%, with an additional 17% believing that TWF had a minor impact (see Figure 4.1 in Section 4.3.2).

As previously stated, we would expect to find a difference in the impact of the SMP by Member State depending on the degree of liberalization which had occurred before 1985. Therefore, once the UK and Italian respondents are removed the proportion of all respondents increases from 40% to 50%. Among pan-European broadcasters, 45% believed TWF had been significant, with a further 38% believing it had a minor impact. Thus, it would appear that TWF has had a significant impact on pan-European broadcasting in those Member States where liberalization occurred latest.

Some pan-European channels launched before TWF was adopted or before TWF was transposed into national law. At first sight, this suggests that pan-European broadcasting would have happened whether or not TWF had been implemented. This view was shared by several of our industry interviewees. For example, by 1989, MTV was being received in 10 of the 12 Member States for which it had successfully negotiated downlink licences in each state.

However, others argue that downlink licences were forthcoming only because it was clear that a directive in line with the principles of the 1984 Green Paper would be implemented, and that without TWF's harmonization, there would not have been the expectation of the development of a pan-European advertising market.

The level of the cost savings resulting from not having to apply for a licence in each Member State depends on the extent to which negotiation on, or alterations to, programme content is required in order to comply with local licensing requirements. According to our interviews, in the absence of major disputes, the sums involved are not considered high enough to have deterred entry. For example, MTV estimates that it incurred legal costs totalling ECU 132,000 to gain licences from each of the 15 German *Länder* for its German based VH-1 channel. Compliance with the Convention of the Conseil Supérieur de l'Audiovisuel (CSA) in France without entering into any disputes costs around ECU 6,000. Assuming a cost of between ECU 6,000 and ECU 10,000 per licence per country, this would imply a cost saving per satellite channel of between ECU 73,000 and ECU 146,000 in licensing costs.

Although TWF has not prevented some national authorities from seeking to maintain barriers to the development of pan-European channels, it is clear that TWF has succeeded in reducing the problems of complying with costly local licensing conditions. For example, a channel such as MTV broadcasting to Germany would otherwise have to place a break bumper before and after each advertising break with the word 'Werbung' to comply with German consumer protection requirements.

Role of the Satellite Communications Directive (SDC)

Although the SCD has not been implemented in most states, it appears already to have had an anticipatory effect. Fifty-eight percent of broadcaster respondents believed that it has had an impact on the sector. SES indicated that the number of channels using its uplink service in Luxembourg has fallen as broadcasters are now able to use domestic uplinks at lower cost than previously. The argument is that offering broadcasters a choice of uplink has reduced prices and will stimulate the growth of capacity. A study by KPMG[32] has identified significant economies of scale in satellite operation. The growth of capacity would therefore be expected to lead to the exploitation of such economies of scale and lower (average) costs for satellite operators.

4.3.5. Impact of the SMP on the liberalization of national broadcasting regulatory regimes

During the period under review, those Member States which had not already liberalized their national regimes have all introduced some form of liberalization. The hypothesis here is that the adoption of TWF and the expected opening up of European broadcasting markets led governments to liberalize in advance of new competition from abroad. Governments may have been expected to take anticipatory measures and as TWF has been gradually transposed into national law, a step change in launch activity in 1989 would not be expected.

Similarly, the development of new delivery technologies during the 1980s was a stimulus to both European harmonization and national liberalization. Indeed in our survey, 77% of broadcasters believed that new delivery systems and the multiplication of TV channels had

[32] The results of the study were published in *Telecommunications Policy*, 1994, 'Allocation of geostationary orbit and frequency resources for Europe.'

been very significant in the development of the European audiovisual industry. In this sense, any possible impact of TWF should be seen as affecting the timing and extent of government actions.

Since the adoption of TWF, it would be expected that those governments which had not liberalized towards the minimum harmonized level would come under pressure to do so.

In our survey we asked all respondents whether in their view TWF encouraged national liberalization. Again, this referred to the EU generally, and not just their own country. Table 4.4 presents the results of our survey showing separately the results for all respondents and for broadcasters and regulators.

Table 4.4. Did TWF encourage national liberalization?

	Significant	Minor	Total
Overall (%)	33	33	66
Broadcasters (%)	36	27	63
Broadcasters (without UK/Italy) (%)	39	28	67
Regulators (%)	25	50	75

Source: KPMG.

Thirty-three percent of all respondents believed that TWF had a significant impact in encouraging the deregulation of national broadcasting, while a further 33% believed it had played a minor role. Among broadcasters, the figures were 36% and 27% respectively. Once the UK and Italian respondents are removed, the figures were 39% and 28% respectively. Interestingly, note that regulators are less inclined to attribute a significant role to TWF in their decisions. Only 25% of regulators compared to 39% of broadcasters (without the UK and Italy) regard TWF as having had a significant impact. These included regulators in Denmark, Germany and Greece.

Our interviews with regulators suggest that the impact of TWF on liberalization of local broadcasting and the launch of commercial television channels has varied considerably from one Member State to another. Broadly, it is considered to have had little or no effect in the UK, Italy, Ireland or France; limited impact in Germany, Spain, Belgium, Denmark; and significant impact in the Netherlands[33] and Portugal. The next section on competition, provides additional evidence on the extent of increased competition in these markets.

Table 4.5 shows the timing of launches of the principal new channels in the countries where TWF was considered to have some impact.

The timing of channel launches does not prove a causal relationship, but rather provides some additional evidence to support the interview responses.

[33] The Commissariaat voor de Media in the Netherlands stated that the single market had led to a complete overhaul of the Dutch regulatory framework.

Table 4.5. New terrestrial channel launches: 1987 – 94 (selected EU countries)

	1987	1988	1989 TWF	1990	1991	1992	1993	1994	1994 Audience share (%)
Portugal					TV1				14.7
						SIC			28.6
Netherlands			***RTL4***						27.3
								RTL5	5.5
Germany			***Pro7***						9.4
					Premiere				-
						Kabel-Eins			2.0
						RTL2			3.8
							Vox		2.0
Spain`			***Antena 3***						25.7
				Tele-Cinco					19.0
				C+ Esp					1.9
Denmark		TV2							41.3
			TV3						9.8
Belgium-French	RTL-TVi								20.0
			C+ Belg						2.4
Belgium-Flemish			***VTM***						36.4

Source: European Audio-visual Observatory.

4.3.6. Exploitation of overspill in neighbouring territories

In this section, we examine the extent to which established broadcasters have been able to exploit more effectively the revenue potential of existing signal overspill.

This type of trans-border broadcasting has changed very little during the period covered by the study. Terrestrial overspill is a geography and language related phenomenon which describes the audience achieved by broadcasters due to the fact that it is not possible to limit radio waves to national borders. There are four main areas of common language overspill between Member States: between France and Belgium; between the Netherlands and Belgium; between Ireland and the UK; and, since Austria joined the EU, between Germany and Austria.

The hypothesis is that where a common language is spoken and a signal can be received, a neighbouring broadcaster should be able to attract audiences with little change to its programming output. This would represent a new market (or a redefinition of the core market) and enable revenues to be earned with few additional costs.

France-Belgium

The most important example here is the case of TF1's attempts to sell advertising in Belgium. The details of the case are in the case study on TF1 (see Appendix E.11). Although under TWF, TF1 was entitled to sell advertising targeted at the Walloon market (which was technically achieved by substituting French advertising with Belgian advertising at the cable headend), the Walloon Government ruled it illegal based on constitutional grounds. It was ruled that by substituting Belgian advertising for the French commercials in the middle of TF1's normal broadcasts, TF1 was encroaching on the right of Belgians not to be forced to watch something which they preferred not to watch.

Netherlands-Belgium

A key issue here is rights. Although there is considerable overlap in viewing between the two countries, broadcasters generally buy rights, particularly for films, only for their domestic territories. This limits their ability to claim audiences in other territories for commercial purposes.

Ireland-UK

Many advertising accounts for the whole of Ireland are handled by agencies in Dublin. Many of these are known to buy all of their national television advertising from (Northern Ireland based) Ulster Television which can be received either terrestrially or on cable by most households in the Irish Republic. However, because UTV has not had full access to the Irish Television Audience Measurement (TAM) data, particularly the commercial logs, it has been unable to include Ireland audiences in its sales negotiations. This is evidenced by the fact that UTV's costs-per-thousand are among the lowest of the UK ITV contractors even when only the Northern Ireland audience is taken into account.

Germany-Austria

RTL is planning to offer local windows to Austrian advertisers, but has not done so yet. It is currently earning an estimated ECU 10 million a year from similar opt-outs for the German-speaking Swiss market.

4.3.7. Cross-border entry of terrestrial broadcasters

The practical implications of TWF already presented imply that entry in any EC market should not necessitate actual establishment of the entrant in the target market. Where such entry has occurred, it would therefore provide evidence that TWF did not have the intended effect. However, the profitability of any entrant will depend on the market structure, and, in particular, on the intensity of competition that would emerge under actual establishment in the target market compared with obtaining a licence from another Member State. If the intensity of competition which would arise when transmitting across borders was so strong that it outweighed the benefits of doing so, then potential entrants would find actual establishment more profitable than trans-frontier transmission.

In practice, there have been few cases of cross-border entry. A notable exception is CLT, the Luxembourg based broadcaster which entered Germany first in 1984 (launch of RTL), then Belgium (RTL-TVi) in 1987, and then the Dutch market in 1989 (with RTL Veronique and later RTL4). The company also had a stake in M6 when it launched in 1987 in France and has recently launched more channels in Germany, Belgium and France (some of which are cable/satellite).

The Belgian and Dutch markets have already been identified as markets that were concentrated (see Section 4.4 on competition) with relatively low technical barriers and therefore commercially attractive for entry, particularly for a broadcaster such as CLT with a small local market. Predatory behaviour by incumbents is difficult to establish but RTL became profitable in Germany in 1990 which suggests that competition, at least in the first few years, was quite intense. Advertising prices have also fallen in Belgium (see Section 4.4.3). In all of these markets, public service obligations meant that established broadcasters did not satisfy completely the demand for product differentiation. CLT was therefore able to enter these markets successfully by offering a diversified programme schedule focusing on light entertainment. In terms of the direct role of TWF, CLT's entry into Germany occurred long before the actual adoption of TWF. In the case of Belgium, the profitability which the channel could achieve through local establishment in 1987 in a fairly concentrated TV advertising market is likely to have exceeded what could be expected to be achieved with more intense competition, through trans-frontier broadcasting, when TWF was adopted. The reasoning is quite similar in the Netherlands.

In the UK and France, there has been no terrestrial entry by non-domestic players. Frequency limitations and regulatory control have been a strong deterrent, as have the strength of endogenous broadcasters which had a relative advantage in terms of knowledge of tastes/culture, compared to non-domestic potential entrants.

4.4. Competition effects

4.4.1. Introduction

Since 1985, the market structure and commercial practices in the industry have changed dramatically.

Our survey confirmed the fact that competition and cross-border presence have increased substantially over the period. Ninety-six percent of broadcaster respondents believed that they face more competitors; 71% believed there was a greater threat of new entrants and 77% believed that other distribution channels had become more important.

In addition to stimulating the development of new revenues, new competition, facilitated by the single market, would also be expected to exert a downward pressure on advertising airtime prices.

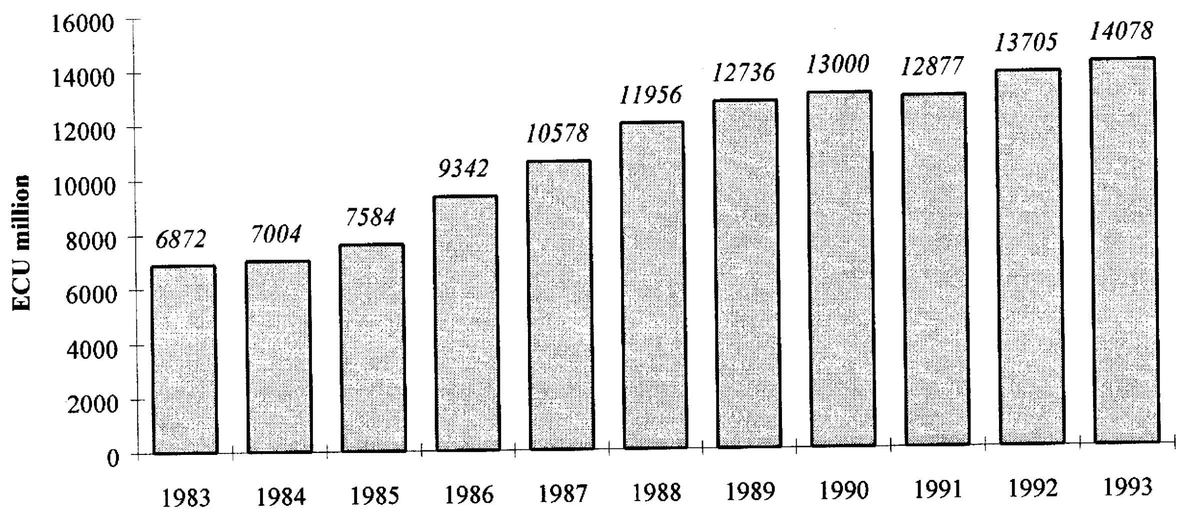
To test this, we have examined:

(a) the growth of TV advertising revenue in Member States' markets;
(b) the impact of competition on the level of concentration in the industry;
(c) the effect of changes in competition and concentration on airtime prices for advertisers;
(d) the impact of competition on the organization of broadcasters;
(e) the impact of competition on programming;
(f) the direct impact of TWF and the SMP on broadcaster costs; and
(g) the survey results on the impact of TWF and the SMP on competition.

4.4.2. The growth of TV advertising revenue in Member States' markets

Increase in competition would be expected to lead to lower prices and a more than compensating expansion of demand. This would result in a higher increase in total advertising expenditure than would result solely from normal economic growth. Total television advertising expenditure in the 12 EU Member States increased steadily in real terms during the period as indicated in Figure 4.2.

Figure 4.2. Total television advertising expenditure in the EUR-12 (1993 prices, GDP adjusted)



Source: Zenith/KPMG.

Figures for advertising expenditure in Figure 4.2 are at constant 1993 prices and have been adjusted for movements in GDP.[34]

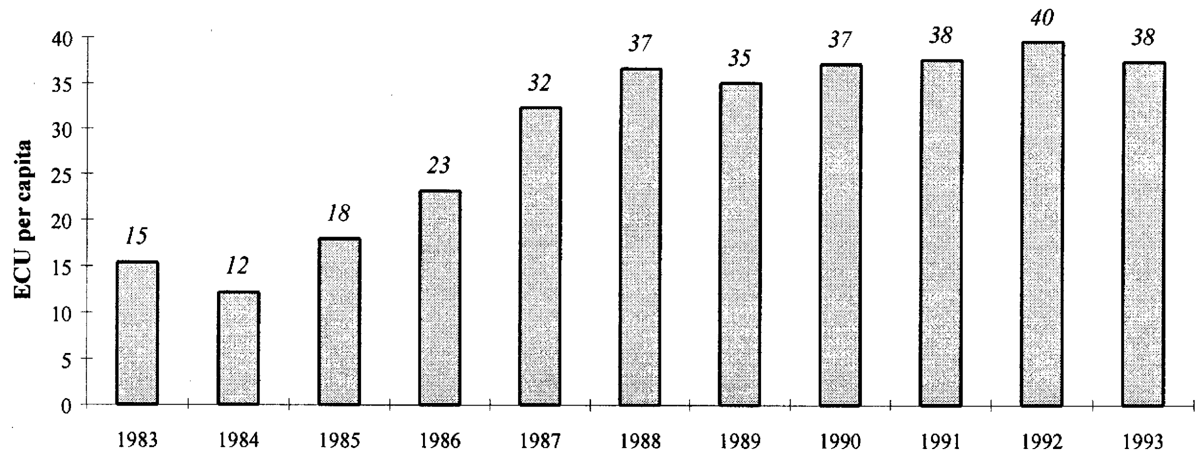
The smooth increase masks different stages of growth in individual Member States, most of which experienced sharp increases in advertising expenditure soon after the launch of national commercial channels. This indicates that liberalization of broadcasting in each Member State has led to increased advertising revenue. We give some examples of the effects of new channels in individual Member States in Figures 4.3 to 4.5.

In Figure 4.3, the period during which new channels (Canal Plus, La Cinq and M6) were launched and TF1 was privatized was the period in which television advertising tripled (1984–88). Since 1988, expenditure has levelled off.

By contrast, in Greece, growth in advertising expenditure on TV grew rapidly much later, again concurrent with the launch of private television channels (Figure 4.4).

[34] GDP is adjusted by assuming an elasticity of TV ad revenue to changes in GDP of 1.2. This is a rough guide which approximates well for mature TV markets such as the UK and Netherlands, but may be less accurate for developing markets, and it will have been affected by local regulations on advertising minutage.

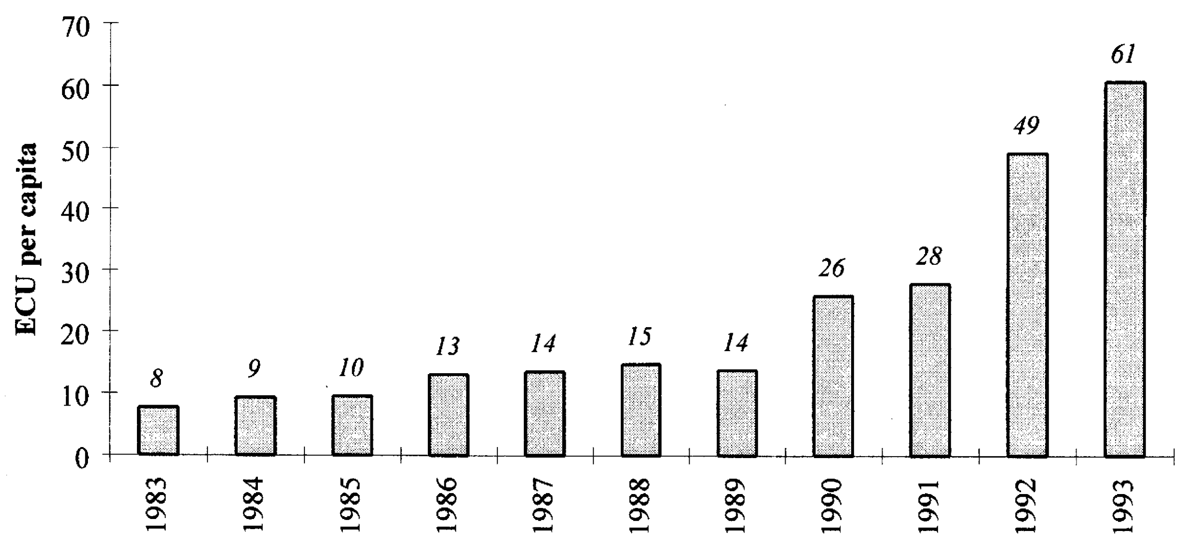
Figure 4.3. France: advertising expenditure per capita (GDP adjusted, 1993 prices)



Source: Zenith Media, KPMG analysis.

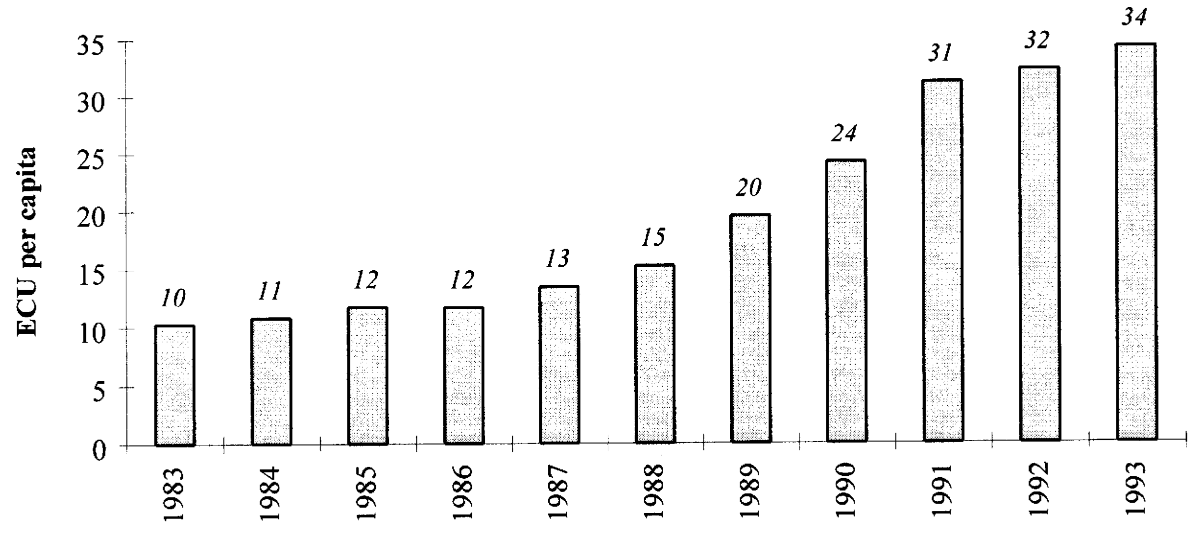
Where distribution is limited, as in Germany, the growth in expenditure resulting from new channels develops much more slowly as distribution of the new channels becomes more widespread. When RTL Plus and SAT 1 launched, the German cable networks, their primary distribution channel, reached 25% of German households. This has grown steadily during the late 1980s, as has TV advertising expenditure.

Figure 4.4. Greece: advertising expenditure per capita (GDP adjusted, 1993 prices)



Source: Zenith Media; KPMG analysis.

Figure 4.5. Germany: advertising expenditure per capita (GDP adjusted, 1993 prices)



Source: Zenith Media; KPMG analysis.

4.4.3. Impact of competition on the level of concentration in the industry

The reduction in barriers to entry, especially for cable and satellite channels and the encouragement of national liberalization in some Member States resulting from TWF should lead to increased competition for audience shares and an overall reduction in concentration in the national TV broadcasting markets. We present in this section the available evidence on the changes in the concentration of audience share that occurred in the EC over the last five to eight years as measured by:

(a) the audience share of the top two channels in each country; and
(b) the Herfindahl concentration ratio or Herfindahl index, which takes into account overall concentration in the market (the Herfindahl index is smaller, the more even the distribution of the audience share across all the channels operating in a country).

In the case of the Herfindahl index, we have excluded the audience share of channels that are available through cable and satellite only. This is due to lack of data for the time period and countries covered. This will not affect the main results of this section which aims to identify the extent to which there has been increased competition (and reduced concentration) between mainly advertising funded channels. Table 4.6 presents the change in the audience share of the top two channels for all EC countries and Table 4.7 presents the Herfindahl indices.

Before we present the results, it should be stressed that the evidence relates to audience shares of individual channels. To the extent that a company (or the state) owns more than a single channel, the level of the Herfindahl index will be uninformative about the real extent of concentration and competition. For that reason, we only examine the trends in the concentration measures without making any comparisons of levels.[35]

[35] This is particularly true in Italy where the state controls RAI (1, 2 and 3) with a total audience share in 1994 of 46% and Mediaset/Fininvest controls, through RTI, Rete 4, Canale 5 and Italia 1, with a total audience share of 43%.

Table 4.6. Audience share of top two TV channels (%)

	Belgium	Denmark	France	Germany	Greece	Ireland	Italy	Netherlands	Portugal	Spain	UK
1986				40.9				90.0			81.0
1987				42.0				90.0		93.9	80.0
1988				40.3				82.0		93.5	79.0
1989	62.8	73.2	64.0	41.7	47.6	75.0	39.8	73.0	100.0	94.0	81.0
1990	72.7	72.0	64.0	40.6	62.6	82.0	41.5	82.8	100.0	74.0	80.0
1991	72.9	84.0	63.4	38.6	64.9	76.0	40.5	81.0	93.0	57.0	76.0
1992	72.0	75.0	66.4	37.3	63.9	74.0	37.2	76.0	92.0	45.7	75.0
1993	71.7	75.4	63.5	36.9	66.7	74.0	36.6	80.0	51.0	39.4	73.0
1994	64.6	77.0	64.5	33.6	55.5	74.0	36.8	74.0	44.0	38.0	71.0

Source: KPMG.

Table 4.7. Herfindahl indices

	Belgium	Denmark	France	Germany	Greece	Ireland	Italy	Netherlands	Portugal	Spain	UK
1986				0.38				0.82			0.35
1987				0.36				0.82		0.68	0.34
1988				0.31				0.70		0.63	0.33
1989	0.20	0.32	0.24	0.25	0.22	0.63	0.16	0.43	0.57	0.70	0.34
1990	0.19	0.31	0.24	0.24	0.22	0.50	0.16	0.41	0.59	0.40	0.35
1991	0.19	0.37	0.24	0.19	0.24	0.46	0.16	0.43	0.62	0.27	0.31
1992	0.18	0.31	0.27	0.17	0.24	0.43	0.15	0.42	0.59	0.22	0.30
1993	0.18	0.32	0.25	0.15	0.25	0.43	0.16	0.40	0.28	0.22	0.29
1994	0.19	0.32	0.26	0.17	0.16	0.44	0.16	0.34	0.34	0.22	0.28

Source: KPMG.

Table 4.8. TWF impact and competition

Country	TWF impact on national liberalization[1]	Decrease in concentration[2]
Netherlands	significant	significant
Portugal	significant	significant
Germany	limited	significant
Spain	limited	significant
Belgium	limited	marginal
Denmark	limited	no change
Greece	limited	marginal
Ireland	marginal	marginal
UK	marginal	marginal
Italy	marginal	no change
France	marginal	no change

[1] *Source:* KPMG survey.
[2] *Source:* Concentration indices.

As can be seen from the tables, the results are mixed. Very significant drops in concentration have occurred in Spain and Portugal followed by the Netherlands and Germany. In Ireland, the Herfindahl index suggests a reduction in concentration, but the top two market share has not changed. This suggests a more equal distribution of the remaining audience share amongst the other channels.

There has been very little change in concentration in Italy, France, Denmark and Greece. Italy was already deregulated, however, prior to TWF and the absolute level of concentration is quite low anyway. In the case of Greece, there has been significant deregulation with two major private channels setting up over the period, and a number of smaller ones; the figures, however, reflect a significant shift of audience share from the state channels to the two new private channels. In the case of France, despite the appearance of new channels and subscription television, there has been no noticeable change in the concentration of audience share for TF1, France 2 and the other channels.

The results in terms of competition are broadly consistent with our assessment of the impact of TWF on the liberalization of national markets. Table 4.8 summarizes the TWF impact (see Section 4.2.6) and competition results.

As can be seen from the table, countries where TWF was assessed to have the most significant impact have also witnessed significant drops in concentration.

The key issue with respect to increased competition and reduced concentration is whether it has translated into relatively lower real prices for advertising. The next section presents the results of regression analysis which examined whether real prices for advertising have been reduced as a result of the changes in the extent of competition in the broadcasting sector.

Real cost of advertising

Regression analysis has been used to test whether the change in competition and concentration has had a statistically significant impact on the price of advertising. We examined 'cost per thousand' (CPT) which is the cost associated with reaching 1,000 people for the main TV channels within individual EC countries. Historic information on the level of CPT by channel is available from Zenith Media. In order to assess the impact at the national level, we constructed a national CPT variable. This is the arithmetic average of the CPT by channel for all channels for which we had information in each EC country.

The impact of the SMP on CPT has been examined for Belgium, Denmark, France, Greece, Ireland, Netherlands, Portugal and the UK. Data for the remaining EC countries examined within this study – Germany, Italy, Luxembourg and Spain – was either not available or insufficient to obtain reasonable regression results. The main drivers of CPT can be assumed to be:

(a) advertising expenditure: when the demand for advertising airtime increases and in turn, advertising expenditure grows, we would expect an associated increase in the average price for advertising, (i.e. a rise in the average CPT, all other things being equal); and
(b) Herfindahl index: the Herfindahl index captures the concentration of TV channels in the market. An increase in the level of concentration leads to an increase in the level of the index. Thus, a higher degree of competition within the market leads to a lower level of concentration and should lead to lower advertising prices. This implies that we have a

positive correlation between the Herfindahl index and CPT. However, there maybe no impact on cost (i.e. no relationship with the Herfindahl index), or even a negative relationship where the index may be reflecting a purely 'statistical' relationship with no causal link. The reason for that is that, in general, CPT has increased over the period and the Herfindahl index has decreased in most of the countries under examination.

The regression results[36] presented in Table 4.9 provide estimates of the coefficients of the explanatory variables and the R-squared statistic (providing a measure of the extent to which advertising expenditure and the Herfindahl index explain CPT). Due to the unavailability of data, the estimation period is not consistent across the countries and the last column of the table reports the sample size for each regression. It should be noted at the outset that the very small sample size and the possible lack of 'independence' between CPT and advertising expenditure imply that these regression results must be treated very cautiously and taken overall as indicative of the likely impact.[37]

Although the R-squared statistics suggest a relatively good fit with the exception of the UK, the very small number of observations implies that there may be significant bias in the coefficient estimates. We will therefore examine the qualitative impact, rather than attempt to provide any quantitative estimate. It is evident from the above results that advertising expenditure has a positive impact on CPT for each country (whilst keeping the Herfindahl index variable constant), although it is not statistically significant for Ireland, the UK and the Netherlands and is only marginally significant for Greece. The relationship between the Herfindahl index and CPT is summarized in Table 4.10. Note that the majority of the coefficients are statistically insignificant or marginally significant, and the results should therefore be interpreted as indicative only.

Table 4.11 summarizes the results reported earlier by providing information on the change in competition and concentration in the broadcasting sector as well as the estimated impact on advertising prices. Belgium and Portugal have witnessed lower advertising rates, as a result of decreased concentration and increased competition. This is particularly true in Portugal, where there has been a very significant reduction in concentration over the 1989 to 1994 period.

Concentration has also fallen significantly in Germany, the Netherlands and Spain. Note, however, that in Germany, the level of competition was already quite high.

In the case of the Netherlands, we were not able to establish any significant link between the degree of concentration and advertising prices. This is not surprising in view of the very low number of observations we had. The data for the CPT in Spain is unfortunately rather erratic, and we were not able therefore to establish any relationship at all.

36 Natural logarithms of the explanatory variables were used, and the data were also converted into real terms.

37 A much more extensive analysis, with more data on more variables would be required in order to provide rigorous econometric results; unfortunately such data are not available at the moment.

Table 4.9. Regression results for cost per thousand: dependent variable is cost per thousand

Country	Variable co-efficients (t-statistics in parenthesis)[1]			
	Advertising expenditure	Herfindahl index	R-squared	Sample size
Belgium	21.09 (3.61)	20.96 (1.15)	0.92	1989-93
Denmark	8.36 (3.40)	-9.02 (-0.88)	0.72	1989-93
France	35.06 (2.96)	-22.67 (-1.56)	0.66	1986-93
Greece	17.23 (1.51)	-65.29 (-0.82)	0.36	1989- 93
Ireland	1.17 (0.16)	-7.90 (-1.55)	0.42	1986-93
Netherlands	6.85 (1.07)	-1.14 (-0.20)	0.74	1989-93
Portugal	6.12 (7.20)	1.23 (2.18)	0.94	1989-93
UK	4.90 (0.38)	-17.9 (-1.60)	0.07	1989-93

Source: KPMG.

[1] The t-statistic is a statistical test for the hypothesis that a coefficient has a particular value. If the t-statistic exceeds one in magnitude it is at least two-thirds likely that the true value of the coefficient is not zero, and if the t-statistic exceeds two in magnitude it is at least 95% likely that the coefficient is not zero.

Table 4.10. Impact of concentration on CPT

Country	Relationship between Herfindahl index and channel cost (+ve, -ve, no relationship)
Belgium	+ve
Denmark	no relationship
France	-ve (marginal)
Greece	no relationship
Ireland	-ve (marginal)
Netherlands	no relationship
Portugal	+ve
UK	-ve (marginal)

Source: KPMG.

In the other countries, there has been no significant change in concentration, with the exception of Ireland, where, as already noted, the change in concentration did not affect the two largest channels. In the case of the UK, the regression equation is not well determined and we cannot therefore make any assessment of the link between CPT and concentration based on it.

Table 4.11. Concentration and cost of advertising

Country	Has concentration changed over the 1986–93 period	Has change in concentration impacted on real advertising prices[1]
Belgium	Small reduction	Significant decrease in real prices
Denmark	No change	No change
France	No change	Marginally significant increase in real prices
Germany	Large reduction	No relationship established
Greece	Small increase	No change
Ireland	Average reduction	Marginally significant increase in real prices
Italy	No change	No relationship established
Netherlands	Large reduction	No relationship established
Portugal	Large reduction	Significant decrease in real prices
Spain	Large reduction	No relationship established
UK	Large reduction	Marginally significant increase in real prices

Source: Data on Herfindahl index regression.

[1] Please note that the use of the term 'significant' in the table refers to statistical significance i.e. whether the regression results suggest the existence of a link or not.

As a conclusion, TWF seems to have had a restraining impact on real advertising prices in Belgium and Portugal, as a result of the increased competition and reduced concentration that occurred in these countries. There is little evidence to suggest that advertising prices in other countries are lower than they would otherwise have been as a result of increased competition. It should be noted, however, that:

(a) the data for a number of these countries is limited and erratic; and

(b) in a number of these countries, notably France, Denmark and Greece, there has been no change in concentration in the period under review. This is also true in Italy but the Italian market was one of the first to deregulate in Europe, resulting in a comparably low level of concentration from the beginning of the period under review.

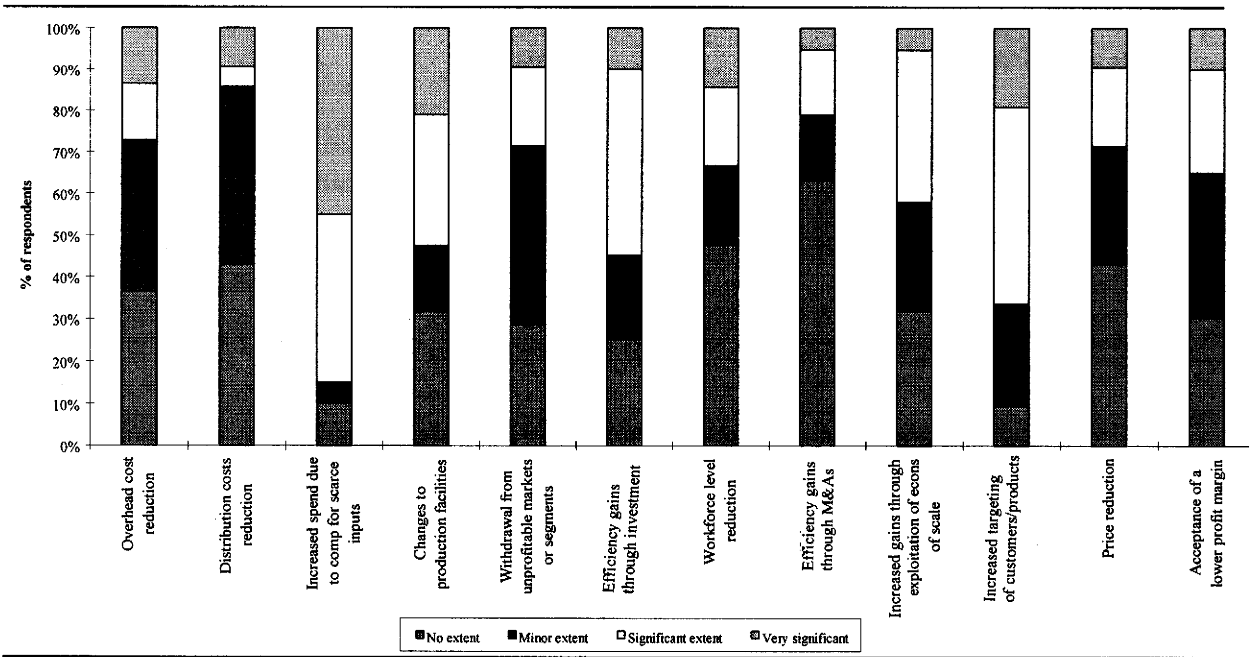
4.4.4. Impact of competition on broadcaster organization

We asked broadcasters to what extent competition had led them to reorganize their activities. The responses are reported in Figure 4.6.

As might be expected, workforce reduction was mainly experienced by established public broadcasters facing competition for audiences and advertising revenues from new channels. Private broadcasters argue that during their start-up phase their shareholder requirements have ensured that efficiencies are achieved regardless of the level of competition.

Many of the public broadcasters have separated their roles in the demand for and supply of programming and contracted out a certain amount of the production (see Chapters 5 and 6). However, it is not clear whether this really is cheaper. According to the EBU, public service broadcasters have increased the number of hours broadcast by 55% while cutting staffing levels by 12% and maintaining the proportion of in-house productions between 1988 and 1992. However, as shown in Chapter 2, public funding between 1985 and 1995 has more than doubled.

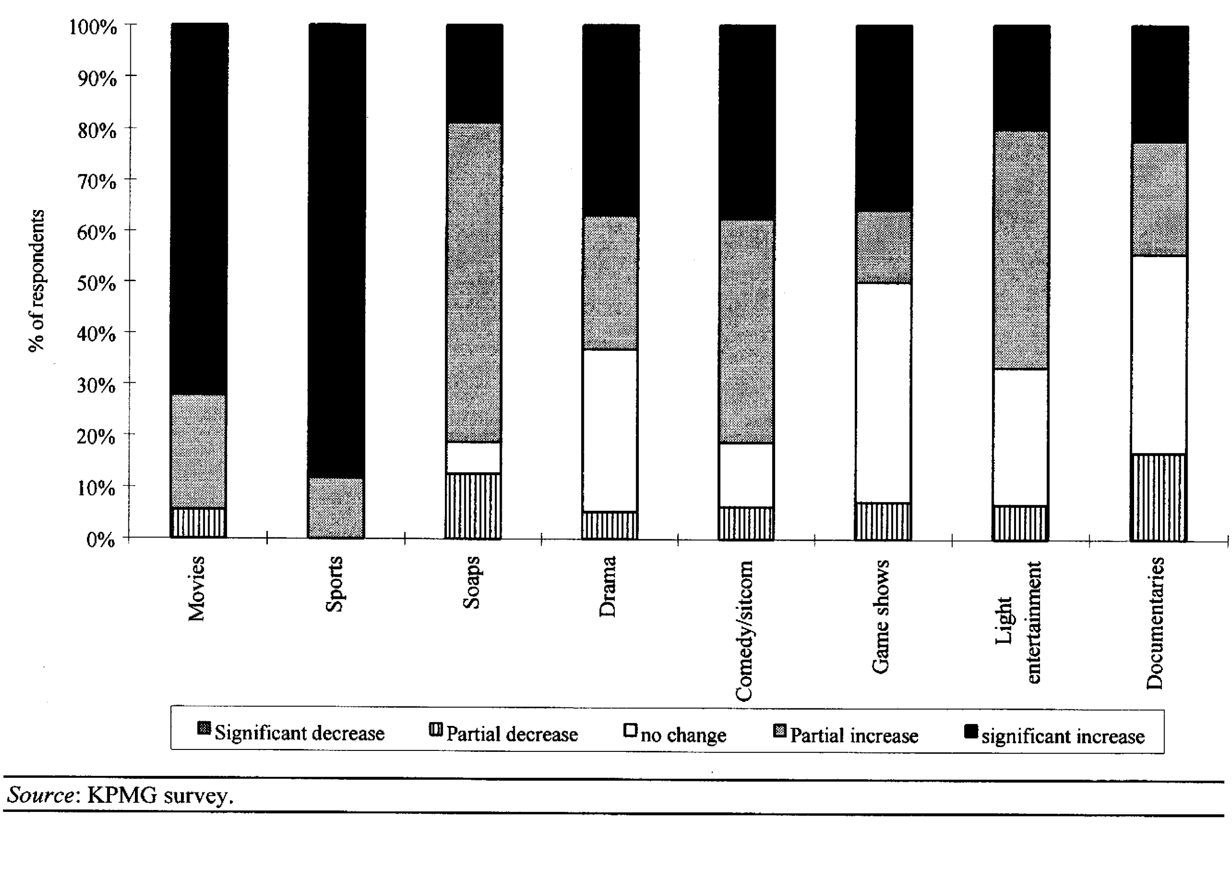
Figure 4.6. Effect of competition on broadcasters' activities



Source: KPMG survey.

Impact of competition on programming

Figure 4.7. Impact of TWF and the SMP on cost of programming by genre



Source: KPMG survey.

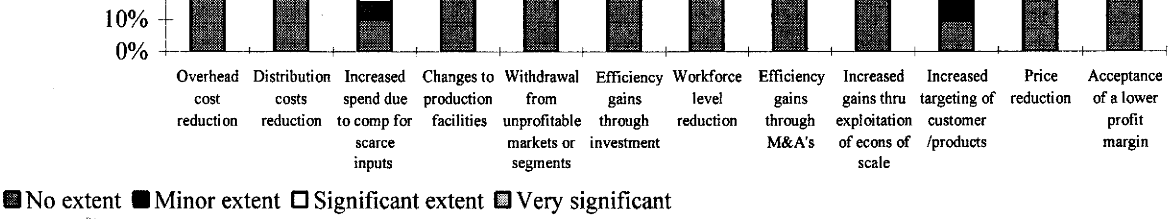
It is principally in genres where competition is with pay television broadcasters that programme prices have risen dramatically. Subscription based services have generated new sources of revenue and are now using these revenues to acquire rights to programming such as sports and film of which there is a limited supply. This has led to very large increases in rights costs, especially in sports. However, many new channels have limited budgets and have tended to buy secondary rights to programmes which have already been shown on terrestrial channels.

Programme prices are not made public, nor has there been any significant attempt by the industry to collect such data systematically. In our survey, a majority of respondents – more than 50% for each genre – believed that the cost of programming had increased in all genres. As might be expected, it is in movies and sports that the most significant increases have been registered. Figure 4.7 shows the responses.

4.4.5. Direct impact of TWF and the SMP on broadcasters' costs other than programming

In terms of our survey, 52% of the broadcaster respondents believed that TWF and the SMP had had no impact on other costs; 33% believed it had increased costs overall; 10% believed it had reduced costs. In general, respondents found it difficult to isolate the impact of TWF and the SMP from other factors affecting costs. Figure 4.8 shows the results of the survey.

Figure 4.8. Effect of TWF and the SMP on other costs



Source: KPMG.

Copyright and legal costs are the biggest additional cost for broadcasters which, they believe, stems directly from the TWF and the SMP. However, it should be pointed out that most respondents believed it was not possible to know to what extent any costs would have been different in the absence of TWF and the SMP. The impact of the Copyright Directives is examined in more detail in Chapter 11.

Respondents stated that additional legal costs attributable to TWF and the SMP generally related to attempting to enforce European rules and to lobbying activity.

4.4.6. TWF and competition: the survey results

Our survey enquired about the extent to which TWF and the SMP led to new competitors entering respondents' markets. Table 4.12 below summarizes the responses received, for the sample as a whole and for broadcasters only.

Table 4.12. SMP and competitor entry

	Has the SMP led to new competitors?			
	Yes	Partly	No	No opinion
All respondents (%)	23	32	40	5
Broadcasters (%)	17	33	46	4

Source: KPMG.

The majority of respondents felt that the SMP had resulted in new entry, with no significant difference between the whole sample and broadcasters only. Note, however, that around two-thirds of those respondents who said that the SMP led to entry considered the SMP to be only partly responsible for such entry.

4.5. Remaining barriers to trade

4.5.1. Introduction

As already indicated, there has been limited expansion of terrestrial broadcasters across EU borders, especially through transmission from another Member State. Also, pan-European channels have been less successful than expected. They are estimated to attract approximately 1%[38] audience share across Europe and just ECU 200 million in advertising revenue out of a total market of ECU 12 billion. A key issue is the extent to which economic, taste/cultural and regulatory barriers have limited the extent of growth both of pan-European and cross-border broadcasting.

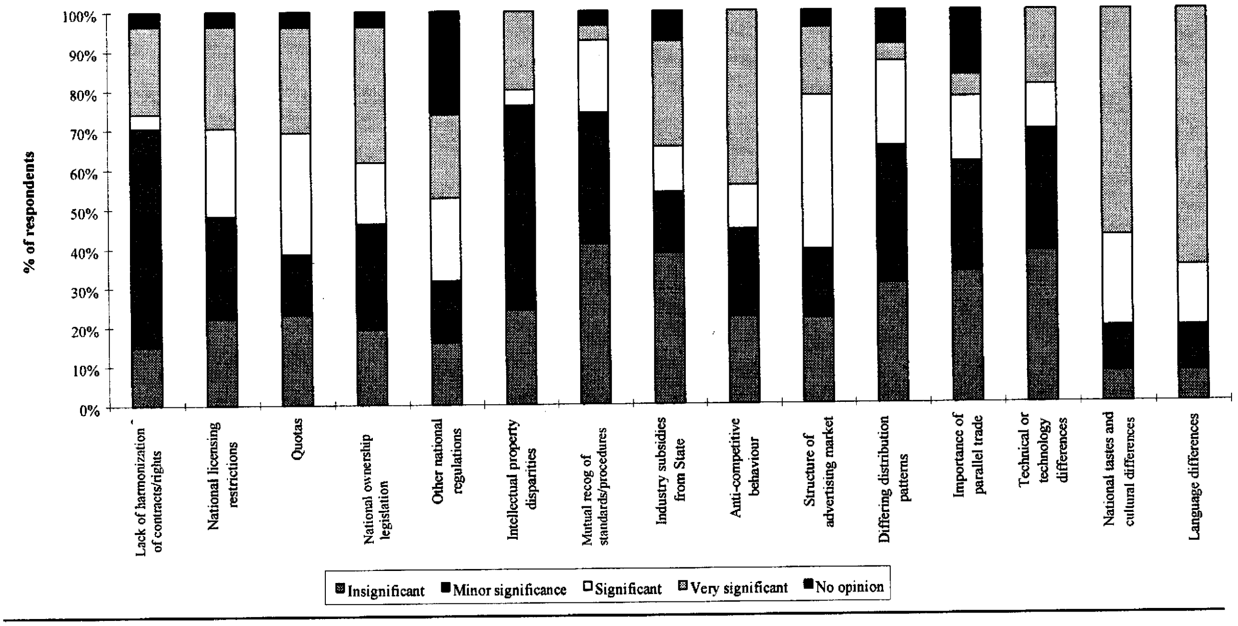
4.5.2. Survey results

The survey results from the broadcasting sector indicated high barriers to trade in a number of areas. We show in Figure 4.9 below the results for all broadcasters. The figures are fairly consistent when non-international broadcasters are removed, and indeed when the whole sample of the survey is measured. In almost every case, around 50% of respondents believed that each of the barriers to trade identified represents a very significant barrier to trade. Among broadcasters, the most significant economic barriers were the structure of the advertising market (56%) and quotas (58%). It should be stressed that, with the exception of the US companies we interviewed, the most restrictive quotas were seen to be the nationally imposed

[38] Estimate from Young & Rubicam in Europe.

ones, and there was very little difference between the response of broadcasters and that of producers on the subject of quotas (see also Chapter 5).

Figure 4.9. Barriers to the single market



Source: KPMG survey.

4.5.3. National tastes and language barriers

Eighty percent of survey respondents among broadcasters believed that national tastes, cultural differences and language differences were a significant or very significant barrier to trade within the EU. Pan-European channels have capitalized on the lack of national thematic channels. As multi-channel television penetration grows, local competitors are beginning to emerge which will further reduce the opportunity for pan-European channels.

Taste and decency regimes dictate different creative copy for different territories. For example, although the UK is relatively liberal in terms of advertising categories permitted, it is more strict in terms of the commercials' content. Last year, for example, MTVwas forbidden from carrying an advertisement for Diesel jeans which was carried by a number of channels across Europe.

4.5.4. Advertising market

A further barrier, linked to the structure of the advertising market, is that there is no consistent definition of audience ratings. Marginal differences in definitions of audience sub-groups and of the hours which constitute peak-time, for example, make agency buying performance for pan-European campaigns extremely difficult to compare to national campaigns. Pan-European channels are often excluded from national audience measurement[39] systems owned by national broadcasters, or inhibited from joining because of the cost of being equal partners. Airtime sales staff cite the lack of consistency in audience measurement as the most important

39 These points refer to detailed audience measurement (i.e. by demographic group, etc.) rather than top level.

impediment to selling advertising airtime on a pan-European basis as it means there is no single 'currency' against which buyers' performance can be measured.

With a few significant exceptions, advertisers' European marketing and distribution strategies are not centralized, but are organized on a country-by-country basis. Very few advertisers have budgets specifically aimed at pan-European advertising; internal competition between national marketing operations of major advertisers makes it very difficult to divert national marketing budgets towards pan-European channels. The revenues of such channels tend to come largely from a small number of international advertisers whose products are typically aimed either at businessmen or at youth markets.

4.5.5. Regulatory barriers and anti-competitive behaviour

Terrestrial broadcasters, irrespective of their place of establishment and of licence, still need to obtain the rights to use a frequency from a national government. In many countries, the availability of spectrum is limited, which creates a practical restriction on the opportunity for cross-border expansion of terrestrial broadcasters. Furthermore, even when spectrum is available, national governments, in many cases, would require such broadcasters to obtain a national licence in order to raise advertising revenue in their market.

Many of our interviewees argued that local lobbying using arguments ranging from cultural specificity and diversity at a national level to simple nationalism, has also enabled broadcasters and governments to pursue anti-competitive behaviour. The collective purchasing of sports rights through the EBU is one example often cited as a potential barrier; the advertising sales monopoly held by VTM in Flanders is another. In terms of the survey, 55% of broadcaster respondents believed that anti-competitive behaviour was a significant or very significant barrier to trade.

Some Member States still require a further agreement with a broadcaster for channels to be carried on cable networks even if they are licensed in another Member State. This is the case in Wallonia and in France, where a separate 'convention' is required. Broadcasters argue that as a result of TWF, they should not need to sign separate agreements. This has not led to a large number of disputes as channels have usually agreed to sign. The Children's Channel lost an attempt to challenge the process in the Belgian courts in 1989; however, the major example of a dispute in this area is the refusal by the Walloon regulatory authority to licence TNT/Cartoon Network, arguing that, despite being licensed in the UK, the channel did not meet the TWF quota requirements.

The French 'convention' system has not led to any major disputes, as new channels have agreed to enter into conventions to obtain carriage. However, MTV indicated that the condition under which it cannot sell advertising aimed specifically at the French market may become a restriction, should it wish to sell such advertising when its French market grows.

In terms of carriage on cable, the most significant regulatory barrier not related to licensing is a preference for local operators when allocating capacity on cable networks. The German must-carry rules are being amended in the face of a threat of legal action by the Commission (see MTV case study in Appendix E.5), but broadcasters believe that unofficial means are being found to favour local channels.

Many respondents stated that the real test of the effectiveness of TWF is still to come. In the mid-1990s, the single biggest problem identified by many of our interviewees is that the capacity of European cable systems is not great enough to accommodate the growing supply of channels. This has led to a number of expensive disputes between individual channels seeking to enforce TWF and national licensing bodies.

The distribution issue is expected to be a source of some conflict until digital technology creates extra capacity on European cable networks. Carriage decisions tend to be made by political bodies, and local ownership has been seen to be an advantage in many cases. However, it is too early to tell to what extent local governments are unfairly discriminating. In the Netherlands, for example, MTV is fighting to avoid being replaced on cable networks by Music Factory, a Dutch owned competitor. However, Music Factory is offering to pay carriage fees as required by Dutch regulations, whereas MTV is at present refusing.

In this sense, the TWF Directive is facing a new test. It is not yet clear to what extent national regulators are willing: (a) to choose impartially between domestic and non-domestic services in crowded cable systems and (b) to allow national rules on consumer protection to be ignored by trans-frontier broadcasters – whether in programme content or advertising type.

4.6. Conclusions

TWF and the single market have so far facilitated the expansion of some pan-European satellite channels by easing the licensing procedures, reducing costs and encouraging a belief that a significant pan-European advertising market would emerge. However, economic and regulatory barriers, sometimes raised by incumbents, have limited the extent to which such channels have been able to achieve their desired penetration of European audiences.

In terms of overspill, TWF and the SMP has made little difference to the exploitation of overspill which has been hampered by national government actions, the structure of the advertising market and local commercial control over audience measurement systems.

Arguably, the more significant effect of TWF is the indirect impact it had in encouraging some Member States towards liberalization of domestic markets and greater competition in some of these markets. The difficulty of establishing such a causal link after 10 years notwithstanding, this effect has been identified as significant in the Netherlands and Portugal, and of some importance in Germany, Greece, Spain, and Denmark. Little or no impact was identified in the UK, Italy, Ireland or France.

Concentration has been reduced in a number of Member States (Portugal, Belgium, Netherlands, Germany and UK), but this seems to have been translated into lower advertising costs in Portugal and Belgium only.

Competition has led to some changes in the organization of broadcasters, increasing programming costs, and closer targeting/marketing of their services. Overall workforce level reduction has been a phenomenon in the established public sector broadcasters, but private channels have, in general, been expanding their businesses and workforces.

5. Programme demand structure in the EU

5.1. Introduction

The demand for programmes in the EU is determined by a complex set of factors, including cultural specificity, language, regulation, levels of competition and available distribution mechanisms, particularly for satellite delivered channels.

This section assesses the extent to which the demand for EU programmes has been affected by the SMP, and whether TWF or other EU policies have been able to assist the European production sector to adjust to the changes in the broadcasting industry structure as described in Chapter 4. The hypothesis is that the European audio-visual programme market is effectively a series of national markets, but that there are opportunities to exploit niche opportunities profitably, particularly through co-production. We have examined:

(a) the extent to which commercial broadcasters, EU or non-EU, need to show a European product in order to attract sufficient audiences to be viable;
(b) whether EU productions are viable in the country of origin;
(c) which product categories most effectively break the origin language barrier to allow significant cross-border audiences; and
(d) to what extent co-productions help generate cross-border audiences.

5.2. Importance of European product to broadcasters' viability

This section assesses the importance to broadcasters' viability of showing a European product as new competitors, facilitated by the SMP (as shown in Chapter 4), have entered the market and broken the monopolies which existed in many states. We have also asked broadcasters to what extent the SMP could affect the demand for European product.

The emergence of new channels was expected to lead to two different types of competition which require different programming to be effective. On the one hand, new terrestrial free-to-air commercial channels could quickly establish market share in many markets, leading to a fragmentation of existing audiences through head on competition for market leadership in offering mass audience to advertisers. On the other hand, a segmentation of audiences could take place as new broadcasters, buoyed by subscription revenues, moved away from broad programming remits to target niche audiences.

So far, the two models have developed in parallel. In national terrestrial markets, established public broadcasters and new commercial channels have tended to maintain the broad appeal approach, often required by public service obligations or licence commitments to do so and thus have offered similar programming to each other.

At the same time, channels aimed at the pan-European (and, in some Member States, national) cable and satellite market have adopted the more targeted approach of special interest channels, offering only some of the genres carried by the terrestrial channels. As cable and satellite penetration grows and such channels can compete more effectively for mass audiences, national terrestrial channels may be forced to become more targeted in their approach. They may be expected to come under increasing competitive pressure to specialize in order to protect their advertising revenues and access to programming rights. Similarly, the broad public service remit of the state channels may be expected to come under pressure as niche channels provide more diverse programming.

For these reasons, the importance of providing a 'European' product needs to be addressed separately for general entertainment (usually nationally targeted) and for thematic (either national or pan-European) channels.

5.2.1. Nationally targeted channels

Both private and public terrestrial channels have a strong incentive to seek to maximize audience share. According to many interviewees, this has led to greater competition for popular genres such as light entertainment, drama and sports.

For these channels, it is unquestionably true that European programming is more popular than non-European programming. An analysis of the top ten programmes in 1994/95 in France, Italy, Spain, the UK and the Netherlands shows that all except the occasional US film (and the Italian/German/US co-production *Scarlett*) were European. Similarly, an analysis of weekly prime-time programming showed, for a week in June 1994 for the same countries, that only major US films could push domestic programming out of the top ten. This result is fairly consistent over time and was confirmed in our case studies and interviews.

However, it is also true that this European (non-sports) programming is essentially domestic to the state concerned. Indeed, all the evidence suggests that domestic programming tends to be the first choice, with US programming second (or Latin American in the case of Spain and Portugal), and non-domestic EU programming, third.

A study by the CSA in France showed that European non-domestic fiction accounted for 9% of prime-time television in France,[40] 3% in Germany and zero in the UK.

A channel should also be perceived as domestic. In Flanders, for example, a US film shown with subtitles on a Dutch channel usually attracts a lower rating than the same film shown on a Flemish-Belgian channel, even if the Dutch channel shows the film first.

A number of recent surveys (each summarized in Appendix G) of the origin of European television programming have drawn the same broad conclusions:

(a) nearly all European broadcasters acquire a significant proportion of programming from the US; it is by far the largest source of foreign, acquired programming, particularly for fiction; but
(b) well established broadcasters acquire less programming from the US and transmit more domestic produced or commissioned programming, largely in an attempt to differentiate themselves from competitors and gain ratings. Therefore, as recently deregulated European broadcasting markets mature, the quantity of programming acquired from the US should plateau or even fall.

All surveys of programme ratings and audiences show that domestic programming is the most popular and that it dominates prime time in every EU Member State. This trend has increased

[40] National legislation requires French broadcasters to transmit 60% European programming, of which 40% must be French-language at prime time. This may account for the high proportion shown by French broadcasters.

during the period under review: the German television producers' association, Bundesverband Deutscher Fernsehproduzenten, states in its 1994 yearbook: 'In contrast to the cinema where American films oppressively control the market, German productions are dominant on television. Never before in our television's history have German series so clearly determined the quality and acceptance of the various channels.'[41]

A received wisdom is that US programming has an unfair advantage in competing with European productions as the size of the domestic market allows US producers to recoup most of their production investment in their first sale. Revenue from overseas sales, it is argued, is regarded as marginal and US programme distributors therefore undercut European programming prices.

Our research does not support this view: although US programme acquisition costs less than producing domestic programming, it is more expensive to acquire than programming from other sources. For example, figures from Channel 4 in the UK indicate an average cost per hour of ECU 99,000 for domestic programmes, ECU 25,000 for US programmes and ECU 13,000 for other programmes.

US and other non-domestic product tends to be screened – with the exception of movies – outside peak time. The high share of US non-movie product versus other non-domestic product for such time slots is due to its ability to generate higher audiences per dollar spent by the broadcaster. The price-to-audience ratio – limited by the overall constraints of the budget – is the key factor taken into account by broadcasters in making acquisitions.

Many of our interviewees confirmed that the popularity of non-domestic EU programming has not changed in the past 10 years. The separate issue of the impact of quotas on supply is examined in the section on television production (Chapter 6). However, it should be noted that in two Member States (France and Portugal) domestic language criteria have also played a role in driving domestic production. TF1 and Gaumont argued that national quotas have distorted the marketplace (see case studies); an example is Gaumont's second *Highlander* series which did not qualify as a French production. This reduced the amount of financing available from national broadcasters, with the result that Gaumont had to cede most non-French rights to its US partner on the project in order to finance the production.

5.2.2. Targeted channels

Niche channels, made possible by the emergence of multi-channel television distribution systems, targeted at specific groups of viewers, have begun to change the structure of programme demand.

Because cable and satellite penetration in the 1980s was too low to make advertising-supported channels targeted at niches viable on a national basis, some of these channels developed pan-European strategies. Their target niche audience determines to a great extent the required programming mix. Even for these channels, where a European product is possible, it is generally more likely to be successful. Our case study on MTV, for example, shows that it did not attempt simply to copy its US format. Its presentation style is European and although its music programming is global, it plays a large amount of European music in addition to US music.

[41] Günter Rohrbach, Chairman, Bundesverband Deutscher Fernsehproduzenten, Jahrbuch 1994.

Many specialist channels operating on a 24-hour basis require access to large libraries of specialist content to fill their airtime. The US has been the main source of such library material, due to its more mature development stage. It has also been more complex to clear rights to some EU product for re-transmission via satellite due to national agreements with talent unions and collecting societies.

The example of Superchannel (see case study in Appendix E.6), although it is an entertainment channel, illustrates a number of issues relating to programme demand for satellite channels seeking lower cost programming. Since it was launched, it has encountered problems due to: too high a verbal content; failure to obtain clearance for pan-European broadcast rights to EU produced output; and having too little money to compete for valuable rights with national broadcasters.

As multi-channel penetration has grown, the pan-European channels are facing competition from national broadcasters, many of which are considering whether to launch national satellite channels or to exploit the economies of broadcasting a single pan-European signal. Digital transmission will reduce the costs of separate national versions.

National satellite channels are in the early stages of development. Most respondents considered it too early to tell whether they will be able profitably to make significant amounts of domestic programming. At present, the libraries of valuable domestic or EU product do not yet exist for many types of channel. Where they do, they consist of almost exclusively domestic product.

None of our interviewees considered that TWF has significantly influenced programme demand among cable and satellite channels except insofar as it led to the creation of a limited pool of pan-European broadcasters.

5.3. Viability of EU productions in the country of origin

There is little data available on the viability of individual productions in the sense of whether revenue flowing from broadcast covers production costs, as broadcasters build schedules including programming from diverse sources which deliver audiences to advertisers across day-parts. Revenues on a per programme basis are rarely measured. Where they are, it is primarily for event programming.

However, as a proxy we have assessed the extent to which broadcasters are able fully to fund programming by domestic broadcast.

In monopoly markets where broadcasters concentrated all their efforts on peak-time, broadcasters were able fully to fund programming targeted solely at the domestic market. As competition has developed and broadcasters have extended the number of hours broadcast, reducing the average audience to individual programmes, broadcasters have found it increasingly difficult to fund programmes in full.

Most programming destined for peak-time continues to be made with the domestic market in mind. However, broadcaster respondents increasingly consider the international potential of their ideas at an early stage in programme development plans and collaborate with non-domestic broadcasters to finance their productions. This has led to increased co-production activity as discussed below.

This trend has also stimulated the development of production companies which provide top-up finance to fill the gap left by domestic broadcasters, in exchange for certain rights to exploit the programme beyond its initial broadcast.

In most markets, domestic secondary exploitation opportunities are not yet significant, although for some types of programming, video sell-through rights are becoming valuable sources of additional revenue. Digital television may bring additional domestic and non-domestic revenue for EU productions, but these will be initially low for non-premium programmes.

5.4. Which product categories can effectively break the origin language barrier to carry large cross-border audiences?

As shown above, with one or two exceptions, the largest audiences are usually won by domestic programmes and US films. Most commentaries on the sector argue that the only pan-European programme market is in US programming, but this is generally in non-peak times.

There is little systematic research on which genres travel best across EU borders. Much depends on the dubbing and subtitling of programmes, and notable successes and failures can be found in all genres.

However, our interviewees and secondary sources suggest that the categories which succeed best in breaking the origin language barrier are:

(a) drama with a low level of verbal content;
(b) animation: this is easy to dub and has a strong visual impact;
(c) natural history programmes on subjects of general interest;
(d) movies: these are perceived as broadcasting 'events' and, in the case of Hollywood films, are produced with an international appeal;
(e) sport: costs to insert different commentary tracks are low; and
(f) music: international product.

5.5. How do co-productions generate cross-border audiences?

There has been an increase in the number of cross-border TV co-productions.

This is a tangible indicator that the pan-European programme market has grown. European broadcasters and producers are among the most active co-producers in the world: the UK has been involved with the most international co-productions (15.7% of the total), then France (15.6%), Germany (10.2%), Italy (6.3%), Spain (3.9%); this compares with non-EU states: the USA (13.5%), Canada (6.9%), Australia (3.5%) and Japan (3.3%).[42]

We discuss further in Chapter 6 the extent to which this growth has been facilitated by the SMP in general, and in particular by the MEDIA Programme. The most significant reason for the increase appears to have been the need to find sources of finance outside the domestic market due to the effect of increased competition.

[42] Co-Production International Database, TBI.

The financial motivation for increased co-production activity is reflected in the timing of its growth during the last 10 years. Analysis of the Co-Production International Database, which records titles going back to 1978, shows that only 4.9% of co-productions monitored were produced before 1989; 27.3% were produced in 1993 and 29.4% in 1994.

It is important not to confuse the increase in the cultural interchange represented by co-production activity with the emergence of a European programme market. Co-productions are a sign of commitment to production by European groups but, as one commentator pointed out in 1992: 'Co-productions are a response to the imbalance between supply and demand and to rising costs (in the sense that these are shared among several partners).'[43] The same study makes two further points:

(a) most European producers seek co-production deals with US companies for a number of reasons, whether to use co-productions as a means of getting access to US markets for their own productions (Reteitalia) or to acquire distribution rights for domestic territories (Générale des Eaux) or to keep down costs of acquiring US product (Canal Plus); and

(b) the domestic market is central to co-production strategies. Both our case study and the report indicate that Bertelsmann's strategy is:
    (i) 'to develop the domestic market;
    (ii) to produce software and get involved in international co-productions (above all with the USA); and
    (iii) to build up a good catalogue by acquiring the rights to sporting and cultural events, films and TV dramas.'

    'A European market has never existed, it does not exist today and probably will not exist in the foreseeable future.' The report argues that success in the US market makes a company stronger in its domestic market.

Nevertheless, co-productions are likely to be effective as a means to expand cultural interchange.

There are some cases where a co-produced title has undoubtedly gained a much higher total audience reach across a number of countries than it would have in just one Member State. For example, the EBU children's animated co-production, *The Animals of Farthing Wood* was made with 14 European partners and was bought by 19 EBU member broadcasters. It was estimated that the total reach of the series was 3.2 million children with children's ratings as high as 30% in Norway, and 28% in Denmark and averaging 7% across all broadcasters.[44]

The evidence on whether co-productions can break linguistic barriers suggests that where there is a market with the same language, it is preferred for co-production purposes: the UK and France are more likely to co-produce with countries with the same language than any other. There is, however, evidence of a co-production 'axis' between France, Germany and Italy.

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43 *The New Television in Europe*, Alessandro Silj, John Libbey & Co, 1992, p. 36.

44 EBU/Peter Meneer Research – Audiences to The Animals Of Farthing Wood.

Table 5.1. Co-production patterns in selected EU Member States

Country	Most frequent co-production partner	Second most frequent co-production partner	Own language partners
UK	USA (45%)	France (22%)	All anglophone (64%)
France	UK (25.7%)	Germany (25.1%)	All francophone countries (34.2%)
Germany	France (39.4%)	Italy (29%)	German speaking countries (22.2%)
Italy	France (52.8%)	Germany (47.9%)	n.a.
Spain	France (48%)	Germany (32.7%)	n.a.

Source: PACT Magazine/Co-Production International Database.

5.6. Conclusions

Our analysis of published audience data and interviews with industry executives suggest that in a competitive environment, audience maximizing strategies require broadcasters to show domestic product where they can afford to so. 'Event' product, such as sport and premium movies, is the main exception to this.

The structure of programme demand is such that non-domestic EU productions tend to be less attractive than either domestic or US programming in their price-audience ratio. This appears to be true for both broadly and narrowly targeted channels.

As commercial television markets have developed, the requirement to keep costs low has led to an increased demand for product to fill non-peak schedules. This demand is primarily satisfied with US product, partly due to the availability of large libraries which can provide programming at marginal cost and partly because it offers a better price-audience ratio than non-domestic EU productions. As new channels mature, they tend to originate more domestically produced programming for prime time. Non-domestic trade continues to be largely in programmes destined for off-peak slots.

Many of the interviewees said that, to the extent that the SMP attempted to shift the structure of programme demand towards an EU product, its main effect would be to encourage production of domestic programming. However, most also argued that, while the Media Programme had facilitated a number of co-productions aimed at cross-border audiences, the SMP has not had an impact on the structure of programme demand. This remains largely determined by the competitive structure of the domestic market, the nature of the channel in question and the cultural and linguistic tastes of the target audiences.

None of the executives whom we interviewed believed that the cultural and linguistic differences between national markets could be or had been reduced by the SMP. Indeed, it is only in those genres where the cultural differences are minimized (e.g. low verbal content, easy to dub or internationally 'branded' television events such as sports or movies) that significant cross-border audiences can be generated.

6. Television production

6.1. Introduction

6.1.1. Structure

In this chapter, we examine three hypotheses:

(a) the SMP has led to increased levels of production due to opportunities created by TWF which increased demand for programming in general and, specifically through quotas, favoured the European production industry;
(b) the SMP has facilitated the growth of an independent production sector, through the introduction of an independent works quota in TWF; and
(c) the MEDIA Programme has led to changes in the structure of the European television production sector.

It should be noted that data on many of the key indicators of television production in Europe are not available. This is due to the nature of the television production sector: although broadcasters are among the key players, they have varied reporting requirements; the independent sector is composed of a large number of small enterprises, not all of which are continuously active in production. We have used data produced by national producers' associations, together with research carried out by pan-European broadcasting organizations.

6.1.2. Quantifying the television production sector in Europe

As an indicator of scale in the television production market as a whole, it was estimated that the value of fictional programming was ECU 1,810 million for 4,000 hours of production in 1993.[45] Similar figures are not available for other genres of programming. It also appears that production is concentrated in the larger markets; it is estimated that the UK, France and Germany account for at least 75% of all fictional programming hours produced in Europe.[46]

Eurostat has estimated that between 1985 and 1990, the available supply of European programming increased by 60%,[47] although details of how this has been calculated were not available.

6.2. Increased European production levels

6.2.1. Introduction

In this sub-section, we aim to test the hypothesis that the television production sector has benefited from increased demand as a result of:

(a) single market opportunities created by the TWF Directive, particularly the increase in number of television channels; and
(b) the impact of the broadcast content quotas contained in the Directive.

[45] Institut National de l'Audiovisuel, 1993. *Note*: Similar figures are not available for other genres.

[46] Institut National de l'Audiovisuel, 1993.

[47] Eurostat, *Panorama of EU industry* 1994.

6.2.2. The effect of increased numbers of channels and hours broadcast

In Chapter 4 we concluded that TWF has facilitated entry of new cable and satellite broadcasters and has also contributed to the stimulus for national liberalization. In this section, we test whether the resulting growth in number of hours broadcast led to an increase in demand for the production of European programming. We analyse the trend in European content for national terrestrial and thematic satellite channels separately below.

National terrestrial channels

The increase in number of hours transmitted by the main national channels would not all be expected to feed directly through to new EU production as part of the extra airtime is filled by repeats and by programmes bought in from outside the EU. Two indicators suggest that the demand for, and production of, European content has kept pace with the growth in transmission hours of the major broadcasters:

(a) figures compiled by the EBU show that the proportion of new programming (own productions, commissions), repeats and purchased programming shown by public broadcasters remained constant between 1988 and 1992; and
(b) figures compiled by the ACT from eight major European commercial broadcasters show that their investment in production grew by 97% in real terms between 1989 and 1993.

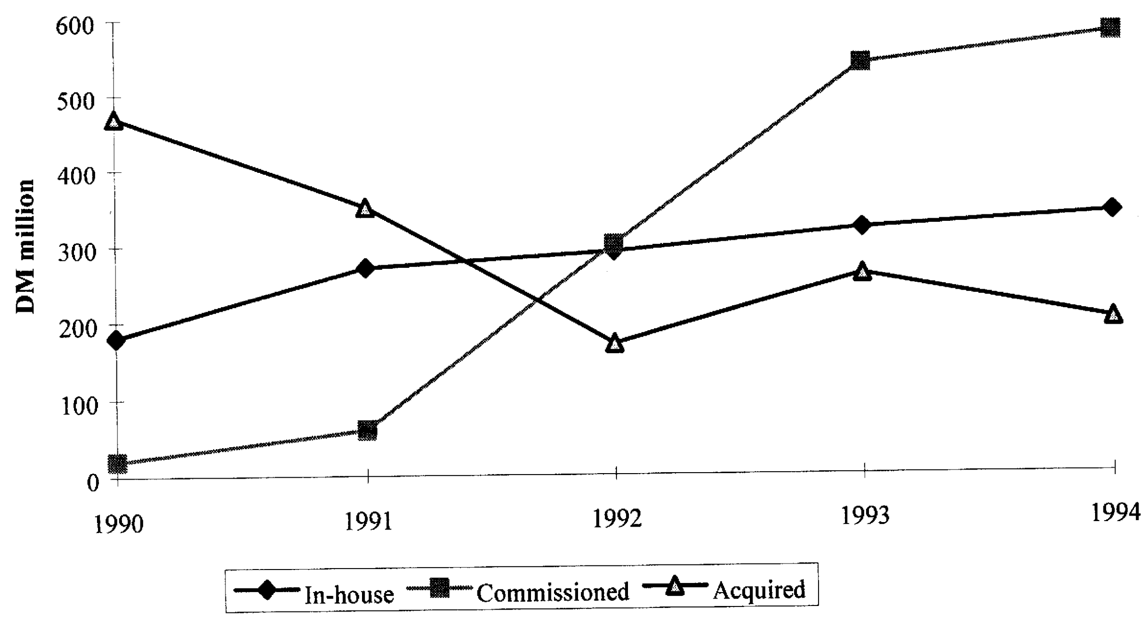
It is possible that the full effect of the growth in transmission hours on production levels has not yet been felt. As explained in Chapter 5, the structure of demand for programming is such that new channels are more likely to import non-EU programmes in the early phases of their development and tend to produce more domestic programming as they move towards profitability.

The typical programme sourcing pattern for a new broadcaster is shown by Figure 6.1 below. German commercial broadcaster RTL's investment in original production has increased as a proportion of the total as it has matured, while the proportion of acquired programming has dropped. The proportion of European content broadcast by RTL rose from 45% in 1991 to around 60% in 1995.

RTL has stated that it needed to invest in a significant proportion of original programming in order to compete with the established public broadcasters who had maintained large audience shares in the face of new competition in the 1980s by broadcasting largely domestic programming. This confirms the need for a successful product differentiation strategy to achieve sustainable entry. Other interviews have reinforced the view that to compete successfully for a significantly large audience share, broadcasters must show primarily domestic programming, particularly at prime time. The exit of the French fifth channel (La Cinq), which opted for a repeat/import programming policy also confirms this point.

One of Europe's major television producers, ENDEMOL, has attributed its expansion across Europe to the launch of new commercial channels, for many of which it now produces. The major German producer, UFA, attributes its own expansion and the growth of the German television production industry overall to the launch of new commercial broadcast services in Germany in the mid-1980s.

Figure 6.1. Programme sourcing pattern for RTL



Source: RTL.

Thematic satellite channels

As shown in Chapter 4, there are now over 90 satellite channels broadcasting in the EU, most of which have been launched since 1989. The proportion of European programming transmitted by thematic and satellite channels in 1992 was 47%; only three such channels reported figures for 1991, so it is not possible to show a conclusive trend.

The level of European programming shown by these channels is significantly lower than that shown by major national channels as many thematic satellite channels tend to be heavily dependent on imported programming. In some cases, this reflects the nature of a channel established to show material of a particular genre (such as blockbuster movies which are usually US productions) or programming aimed at a particular, non-European, ethnic group. We have no evidence to show that such channels will find it necessary to increase their level of European programming in order to remain economically viable.

6.2.3. The role of the European programme content quota

The content quotas contained in the TWF directive are a central means by which the EU has attempted to promote the production and distribution of European audiovisual works, to promote markets of sufficient size for European television productions to recover necessary investments and to open up national markets. Article 4 of the Directive set the following quota for the content of broadcasters' transmissions: 'Member States shall ensure where practicable and by appropriate means, that broadcasters reserve for European works ... a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services. This proportion should be achieved progressively, on the basis of suitable criteria.'[48]

The issue of European content quotas is an important one within the context of the SMP. It is also a complex and controversial issue. This study limits itself to an assessment of whether quotas have had an economic impact on the European audio-visual industry, and if so, what that impact might be.

From an economic efficiency point of view, quotas, if binding, must be sub-optimal for the broadcaster.[49] In the absence of any regulation, broadcasters would be expected to acquire programming to fit slots in schedules which would deliver the best audience for the price paid. The benefits from binding quotas are that they should maintain a level of European production which has an economic value in the sense of sustaining a European production industry in the face of competition from the much larger American markets, and a cultural value.

A number of arguments have been made about the likely impact of quotas, ranging from the view that, since quota-constrained programming is sub-optimal (more costly for a given audience share or delivering lower audience share than would be possible for the same cost without the quotas), it limits entry of new players. Since new broadcasters are likely to be led by competitive pressures to gradually increase their output of domestic programming (see Chapter 5), these new potential buyers of European production will not develop; at the other extreme, in the absence of quotas it is argued that competition would lead broadcasters to purchase the lowest cost programming, which would cause damage to the European audio-visual production industry.

The argument about the desirability or otherwise of quotas hinges on whether they are binding; and if so, on whether the size of the net welfare loss is lower or greater than the value of the benefits from increasing European production – whether these are defined culturally or in terms of promoting the European television production industry. The latter is a matter for political resolution and is outside the scope of this study.

Rather, we have sought to identify first, whether or not the European content quotas have been binding in the sense that they have led to broadcasters making decisions that would not have been made in the absence of quotas, and then to assess the nature of the impact.

This has entailed:

(a) surveying broadcasters' opinions on whether they believe that quotas have had an impact on their decision making process, and producers on whether it has impacted on their ability to sell programmes profitably;
(b) analysing available data on the levels of compliance with the quotas;
(c) assessing evidence of, and limitations on, the European quotas being enforced either by the Commission or by Member States; and
(d) assessing the relative impact of domestic programme obligations placed on broadcasters.

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48 TWF Directive – 89/552/EEC.

49 For a detailed analytical framework for programme quotas, see London Economics: *The Economic Impact of Television Quotas in the European Union*, 1994.

Even this limited approach has been difficult to put into practice. For example, when we first interviewed them, a number of broadcasters believed that quotas have had a significant impact on their business; however, when we asked for examples of decisions which had been influenced by the European content quotas, none could identify any. In France and Portugal, broadcasters believed that quotas have had a significant impact, but on further questioning, it became clear that domestic rules were affecting decisions, not European quotas.

Broadcasters would be expected to argue vociferously against quotas, but we have found that most confuse their real impact with the theoretical impact. Our analysis below attempts to separate the practice from the theory.

Perceived impact of the quota

Respondents in our survey are split almost equally on the question of whether TWF led to an increase in the proportion of European productions broadcast. (It should be noted that this question does not refer specifically to the impact of the quota, but to the whole Directive.)

(a) 48% of broadcasters believe that it had no impact, while 43% believe that it had some impact (24% minor and 19% significant); and
(b) a larger proportion of television producers (60%) believe that it had no impact and only 20% believe that it had any effect (all categorized this impact as minor).

As indicated above, even the minority of broadcasters who believe that TWF had a significant impact on levels of European programming were unable to attribute any effect on their own organization when questioned on the impact of the European works quota. This applied both to broadcasters who attained the required proportion of European works and those who did not. Our survey has not provided any significant indication that the European works quota has had any impact on television broadcasters.[50]

Television producers interviewed also could not attribute any specific impact of the quota on their sector. Most cited alternative reasons as being important, such as broadcasters' need to cater for consumer preference for domestic productions.

Levels of compliance

Statistical evidence of the level of qualifying European works broadcast in each Member State was only available for two years, 1991 and 1992, at the time of preparing this report and statistics were only available for one year for most broadcasters.[51] Although the figures offer limited scope for analysis, there is a general upward trend. We have broken the figures down in a number of ways:

(a) public broadcasters showed an average of 69.1% of qualifying European works in 1991, rising to 73% in 1992, a 5.6% increase. The only public broadcasters to fall short of the quota were Canal 1 in Portugal and TVE in Spain; both of these had attained the quota in 1992. We would expect these broadcasters to show a high level of European works, as many are committed to reserving a large proportion of their schedule for domestic

50 For confidentiality reasons, the identity of the broadcasters cannot be reported. Further information could be made available on request, subject to Commission approval.

51 COM(94) 57 final.

programming as part of their public service remit. We would therefore not expect the quota to have an impact on these broadcasters;

(b) private broadcasters showed an average of 46.1% European works in 1991, rising to 48.6% in 1992, a 5.4% increase. These levels are much lower than those for public broadcasters. The broadcasters included in these figures include national terrestrial channels and thematic satellite channels;

(c) major public and private broadcasters (defined as those with a national audience share of over 10%). The mean level of European works shown by these broadcasters was well above the quota: 59.1% in 1991 and 64.3% in 1992, with a mean increase of 8.7%. Of those channels that were below the quota in 1991, all had made significant increases in their level of European works by 1992. We would expect these channels to show a high proportion of domestic works in order to cater to a large national audience. A report by the ACT[52] claimed that its members were making 'rapid and sustained' increases in production investments in response to market demands, rather than quotas; and

(d) the European producers association, CEPI, has suggested that the quota may have had an effect on those broadcasters with an audience share lower than 10% who might have decided to increase their imports of non-EU programming in order to cut costs, were it not for the quota. Of those channels with an audience share of less than 10% in 1991, the mean proportion of European works was 49.9% in 1991, slightly increasing to 50.2% in 1992. In 1992, 35 of 73 such broadcasters were below the quota. This indicates a much higher level of non-compliance with the quota amongst these broadcasters. Many of the broadcasters are thematic channels and some, such as news channel CNNI, transmit genres of programming not covered by the quota. Some general entertainment channels, such as Antena 3 in Spain or Pro 7 in Germany, were recently launched and so had not built up a large audience share, or a level of original programming.

Enforcement of the quota

Clearly, the extent to which Member States enforce the quota will determine its potential impact. All broadcasters and producers interviewed identified lack of enforcement as a reason for considering the quotas to have had a minimal impact on their business, even though the TWF quota applies in theory in every Member State.

Member States have taken different regulatory approaches to the quota. For example, the UK has taken the 'where practicable' and 'progressively' clauses of the Directive to mean that 'the Directive does not impose a blanket requirement to transmit a majority proportion of European works'.[53] It has therefore made compliance a licence requirement only for domestic licensees and not for non-domestic satellite licensees. In Germany, the regional media regulators were not original signatories to the Directive and so do not enforce its measures. In contrast, Wallonia (in Belgium) and France require all broadcasters to show a majority of European works in order to gain a broadcast licence. This led to TNT/Cartoon Network, which was licensed in the UK, being denied authorization for cable carriage in these Member States. Beyond the initial measurement of compliance with the quota at Member State level, no mechanism (such as a penalty for non-compliance) was put in place to encourage or commit broadcasters to comply with the quota in the future.

[52] ACT – The Commercial Broadcasters' Contribution to the European Production Industry, 1994.

[53] Letter from the United Kingdom Permanent Representation to the European Communities to the European Commission, July 1994.

The evidence presented in the previous section suggests also that, with the exception of thematic cable and satellite channels, even in cases where the qualifying European works proportion fell short of the quota, the difference seems to be too small to justify any major action being taken.

Factors influencing the impact of the quota

We have identified two other factors which will influence the impact of the European works quota:

(a) variation in definition of European works; and
(b) existence of national content quotas and other content requirements.

Definition of European works

Article 6 of the TWF Directive offers three possible definitions of 'European works' which has allowed Member States to vary in their approach to the monitoring of compliance with the quota regulations.[54] Evidence of this is given in the Commission's monitoring report in which certain channels licensed in more than one Member State are reported as showing different proportions of European works:

(a) RTL is reported as showing 46.2% European works in Luxembourg and 49% in Germany; and
(b) RTL-TVi is reported as showing 41.3% European works in Luxembourg and 52.4% in Belgium.

Variation is particularly likely in the case of co-productions between European and non-European partners. For example, *Baywatch*, whose production partners include All American Fremantle (USA), Silvio Berlusconi Communications (Italy), KirchGruppe (Germany) and Antena 3 (Spain) is classed as 50% European in the UK, but in other Member States is counted as 100% European.

Existence of national content quotas

Some Member States place obligations on many public and private broadcasters in addition to the TWF European content quota. An indicative list of the principal quotas and programming obligations at Member States level is summarized in Table 6.1.

National programming obligations therefore have a direct and an indirect effect on the level of European programming shown by broadcasters which will influence the effect of TWF:

(a) by imposing specific requirements on broadcasters over and above the TWF European works quota; and

[54] Article 6 (89/552/EEC): 'European works means the following ... they are made by one or more producers established in one or more of those States; or production of the works is supervised and actually controlled by one or more producers established in one or more of those States; or the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.'

(b) indirectly, by maintaining a standard of quality and diversity for major established channels which new entrants in broadcasting will be encouraged to follow, if they wish to compete effectively. This was indicated by RTL.

Table 6.1. Major quotas and programming obligations at EU Member State level[1]

Country	All broadcasters	Public broadcaster	Private broadcaster
Belgium (Flanders)		BRTN must promote the culture of the Flemish community	
Belgium (Wallonia)		RTBF must invest in production, co-production and acquisition of French-speaking productions	RTL-TVi: minimum investment in in-house production, in co-productions, in acquisitions and commissions
France	60% European content during prime time of which 40% must be French film investment and French language obligations		Specific programme investment and French language obligations
Italy		RAI must encourage the development of production	Private local channels must transmit at least 25% own works
Netherlands		50% of transmissions must be own productions; 40% original Dutch or Fresian language productions	
Portugal	40% Portuguese language of which 30% is domestic		
Spain	>50% European content must be Spanish language		
UK		BBC must support and develop British culture and entertainment	

Source: Channel licences, KPMG.
1 This table provides summarized information and is not an exhaustive list

France is the only Member State to have penalized a broadcaster for failing to attain a quota: TF1 was issued a fine which was then amended into a commitment to invest an extra FF 45 million in European works. TF1 had attained the proportion required by TWF, but failed to meet the extra French requirements. TF1 has stated that the higher French quota, combined with the lack of enforcement of the TWF quota in other Member States, means that French broadcasters are at a competitive disadvantage in Europe. They have less flexibility in programming decisions and find it more difficult to participate in international co-productions since they have to devote a substantial proportion of their budget to French language productions.[55]

National quotas also appear to act as a barrier to intra-EU trade, which is contrary to the goals of TWF which aims to promote trade between Member States. In our survey, quotas are seen as a very significant barrier to trade by 49% of respondents and a further 29% of respondents thought they had some significance.

55 See TF1 case study, Appendix E.11.

Increase in intra-EU trade in programming

Another aim of the quota was to encourage the movement of programmes between Member States and promote the creation of a secondary market for programming. Our survey revealed no consensus over whether this had occurred:

(a) of our respondents 37% believed that TWF had had some impact on the encouragement of sales and distribution offices, while 39% believed that it had had no impact. A further 24% believed that it was not relevant to this issue; and
(b) television producers were equally split over whether it had become more, less or equally difficult to sell television programming to other Member States since the formation of the single market, although all thought that it was easier to sell programme rights to other EU States.

Statistics collated by the Commission on the proportion of European works do not differentiate between domestic and non-domestic European works and so allow no analysis of intra-EU trade in programming. The European producers' association, CEPI, has proposed that, in order to encourage cross-border trade in programming, a multiplying coefficient should be applied to non-domestic European programmes shown by broadcasters. For example, should a German broadcaster transmit a 60-minute French programme, this might count as, say, 90 minutes towards the quota. The aim of such a system would be to encourage intra-European trade in programming and thereby to facilitate the SMP. The present quota arrangement does not do this.

There is presently insufficient evidence to conclude that TWF has led to an increase in circulation of European works. It is likely that the greater popularity of domestic programming would have limited the extent to which this happened.

6.3. Growth of an independent production sector

6.3.1. Introduction

This section examines the hypothesis that the SMP has facilitated the development of an independent television programme production sector. There have been two main developments, related to the SMP, which may have encouraged this. They are that:

(a) TWF set a minimum quota for the amount and value of programmes commissioned from independent producers and broadcasters; and
(b) the growth of the sector was in response to the liberalization of national broadcasting markets which was in turn encouraged by TWF.

While data on the independent sector across the EU is not comprehensive, there are some indicators of scale and growth in the largest countries, suggesting a compound annual growth rate in the 1990s of between 10% and 20% in volume and value (all figures below are in nominal terms):

(a) in the UK, the sector had a turnover of ECU 933 million in 1995, compared to ECU 457 million in 1991, a 104% increase. However, the number of production companies who were members of the trade association fell from 730 in 1992 to 642 in 1995 reflecting an increase in concentration (see below);[56]

(b) in Germany, the sector had a turnover of ECU 1,316 million in 1994, compared to ECU 488 million in 1990, a 170% increase. The number of companies who were members of the trade association rose from 101 in 1990 to 123 in 1995;[57] and

(c) in France, the total programme investment of a 47-company sample rose to ECU 554 million in 1994, from ECU 427 million in 1992, a 30% increase.[58] There are estimated to be over 400 production companies in France.[59]

The industry is characterized by a large number of very small (measured by employment and turnover) companies and a few larger enterprises which dominate the supply of independently produced programming to major broadcasters: in the UK, 20 companies out of a total of over 600 supplied 70% of independent programming to the BBC and ITV in 1992.[60] Due to this concentration of production amongst larger companies, some consolidation appears to have occurred in the more mature independent sectors.

An indicator of activity levels is the change between 1987 and 1995 in the number of companies attending the major television programme market, MIP TV. This suggests a considerable increase in the total number of production companies in Europe: in 1987, 343 EU producers attended the market, while in 1995 the number had risen to 455. However, the greatest increase in numbers was that of production companies seeking international production finance (110 companies in 1987 and 233 in 1995, a 112% increase); there was little growth in the number of more established production companies seeking to distribute titles from their catalogue (233 in 1987 and 249 in 1995, a 7% increase).

6.3.2. The impact of the independent production quota

The independent production quota introduced in the TWF Directive states: 'Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services, or alternatively, at the discretion of the Member States, at least 10% of their programming budget, for European works created by producers who are independent of broadcasters.'[61]

Statistics compiled by the Commission on the proportion of qualifying independent works shown in 1991 and 1992, show that of the 97 broadcasters who submitted figures for 1992, the mean proportion of independent programming was 21%, well in excess of the required quota. Nearly two thirds of the broadcasters had attained the required proportion of programming and one third had not. Differences in market structure (traditional broadcaster practices of producing in-house, commissioning or acquiring programming and the subsequent existence,

[56] PACT, Monopolies and Mergers Commission.

[57] Bundesverband Deutscher Fernsehproduzenten.

[58] Ecran Total survey of French production – Comptes et Bilans des Producteurs de Télévision.

[59] Le Business Guide de l'Audiovisuel 1994.

[60] Monopolies and Mergers Commission.

[61] TWF Directive 89/552/EEC.

or not, of an independent production sector) led to great differences at a national level – from a minimum average of 6.1% in Spain to a maximum of 44.9% in Denmark.

In addition, in countries such as the UK which have set a higher quota (UK: 25%), the European quota will naturally have had no impact.

The results of our survey do not point to a significant impact of the TWF Directive on encouraging the independent sector:

(a) responses varied as to whether TWF had encouraged the independent sector: 32% believed that there was a significant impact; however, 62% believed that it had had no or only a minor impact. A further 7% believed that it was not relevant; and
(b) no television producers believed that it had had a significant impact, while 40% believed the impact was minor and 60% that there was no impact.

A number of interviewees also pointed out that as the TWF Directive does not define what constitutes an independent producer, this has led to each Member State establishing different definitions.

6.3.3. Impact of liberalization of European broadcasting

The liberalization of broadcasting and the launch of new, commercial channels have played a key role in the development of the independent production sector, as new broadcasters often have no in-house production facilities and therefore commission programming from independents. In addition, the response of established broadcasters to an increase in competition has been to cut back the fixed costs associated with in-house production facilities and to rely more on independent producers for programming.

This is supported by the Dutch producers' body, the OTP, which claims that the growth of the independent sector is linked directly with the deregulation of Dutch broadcasting. 'Commercial television in the Netherlands started relatively late in comparison to other European countries. However, the start of the commercial channel RTL4 in 1989 meant an important impulse for independent production.'[62]

6.4. The MEDIA Programme

A number of the MEDIA Programme's schemes are aimed directly at television producers: BABEL, CARTOON, DOCUMENTARY, EUROAIM, EURO MEDIA GUARANTEES, GRECO, MAP TV and SCRIPT. This section seeks to identify the impact of such schemes on the organization and performance of the television production sector.

Our survey showed the following results:

(a) the majority of producers we surveyed had benefited from the MEDIA Programme: 40% received direct support and 40% indirect support. These proportions are significantly higher than those for all respondents (30% and 28% respectively), suggesting that the MEDIA Programme has been of particular relevance for television producers;

[62] OTP – Dutch Independent Producers at MIP Asia.

(b) the main impacts of the Programme were seen by producers to be: to create informal cross-border networks, to support small countries, to support small and medium-sized enterprises (40% of television producers noted an impact for each of these), also to increase intra-EU exchanges (20% of television producers); and

(c) no television producer believed that the Programme had led to an increased market share of European production.

Point (c) above is supported by the Interim Evaluation of the MEDIA Programme, carried out in 1993, which calculated that in one year, the MEDIA Programme would support 270 hours of completed television production, representing just 1.5% of total television production in the EU. The report concluded that: 'to increase European television productions and the presence of European productions on television ... MEDIA's activities and budget concerning television productions seems too low to reach a critical mass'.[63]

The MEDIA schemes play a greater role in cross-border than in domestic productions: data on European co-productions suggests that 54 out of a total of 414 European television co-productions (13%) had MEDIA Programme funding.[64]

Smaller independent companies have also benefited more compared to larger ones. For example, small producers, who attended the MIP TV and MIPCOM programme markets in 1988 and 1989 under the EUROAIM umbrella, were estimated to have sold 1,450 hours of programming worth ECU 9.6 million.[65] The Interim Evaluation stated also that independent producers have only been able to attend major international markets with the assistance of EUROAIM, as the costs would otherwise be prohibitive.[66] Similarly, in 1995 the SCRIPT fund assigned ECU 1 million for the encouragement of broadcasters to commission fiction programming from independent producers.

6.5. Conclusions

An increase in total hours broadcast in the EU appears to have led to an increase in the level of European television production. The SMP can be considered to have stimulated this effect to the extent that it has encouraged the launch of new channels and also to the extent that it has increased competition between broadcasters, leading them to cater to viewers' preference for original, domestic programming.

The results of our survey, combined with the available statistics on levels of qualifying works, suggest that, despite an apparent upward trend in the level of European works, the TWF quota has had very little effect.

The European works quota has had no impact on the major broadcasters in each Member State, particularly the public service networks, as these already transmitted the necessary level of programming in response to market demand and public service remit. While the quota might have been expected to have a detrimental impact on newly established or thematic channels which do not naturally show a majority proportion of qualifying European works,

63 Roland Berger & Partner, *Interim Evaluation of the MEDIA Programme*, 1993.

64 Co-Productions International database.

65 Denton Hall/Ernst & Young report on the MEDIA Programme.

66 Roland Berger & Partner, *Interim Evaluation of the MEDIA* Programme, 1993.

limited enforcement and unequal application of the quota rule between Member States has limited any potential effect of the rule for such channels.

The SMP has had some effect on the independent programme production sector. While we are unable to attribute a significant effect to the quota, the effect of the liberalization of broadcasting, to the extent that this is a result of the SMP, can be said to have encouraged the independent sector.

Our study concurs with the Interim Evaluation report on the MEDIA Programme in suggesting that it has had no measurable impact in terms of a changed market structure for television production. However, there is evidence that it has achieved some effects, especially for smaller companies in encouraging and facilitating cross-border trade initiatives.

7. Film production

7.1. Introduction

This chapter examines the impact of the SMP on the film production sector in the EU. The main measures taken by the European Commission to strengthen the sector are the MEDIA Programme and the TWF Directive. This chapter reviews the impact of these measures focusing in particular on the MEDIA Programme.

Key performance indicators for the sector in 1985 and 1994 are summarized in the table below:

Table 7.1. Comparative data on European film production: 1985 and 1994

Total EU figures[1]	1985	1994
Number of productions[2]	496	454
Number of co-productions	86	151
Total investment in film production[3]	984 (1987 data)	1,534
Box office revenue	1,469	2,915 (1993/94 data)

Source: KPMG, various.
[1] Data in ECU million.
[2] These figures include co-productions.
[3] Data provided in this table are in real terms.

The hypotheses we have sought to test in this chapter are that:

(a) the MEDIA Programme has directly helped to fund EU productions, although this would not necessarily be expected to lead to significant structural changes in the sector; and
(b) the increase in television channels has raised demand for films by broadcasters and there has been an increase in co-operation between broadcasters and film producers within the EU.

We have also conducted a brief review of national subsidies and their relation to the goals and objectives of the single market programme.

7.2. Impact of the MEDIA Programme

7.2.1. Overview

The primary aim of the MEDIA Programme is to improve the environment of the European industry by strengthening all links in the audiovisual chain, from the training of media professionals to the promotion of productions in the single market.[67] The MEDIA Programme was established in response to the fragmentation of the market and the dispersion of national industries. The programme aims to promote the effects of scale in the single market by encouraging collaboration between national media industries and improving their position in the European market.

[67] Details of the overall objectives of the MEDIA Programme are provided in Section 3.6.

MEDIA's total budget for 1991 to 1995 was ECU 200 million. Clearly, this budget was not wholly devoted to film production. Nonetheless, it is noted that on an annualized basis, MEDIA's contribution of ECU 40 million in 1994 represents approximately 3% of total EU film production investment.

The hypothesis which we sought to test was that while the MEDIA Programme may not have had a significant structural impact on the film production industry, it has directly helped to fund a number of EU productions and encouraged informal cross-border networks of producers and distributors.

In testing this hypothesis we have considered data on:

(a) the volume of production in the EU over the past ten years; and
(b) the volume of co-productions in the EU over the past ten years.

We have referred to the 'Interim Evaluation of the MEDIA Programme,' by Roland Berger & Partner, in 1993, the European FilmFile and Screen Digest and have conducted interviews with EFDO, EUROAIM, SCRIPT and EVE, and film producers, distributors and broadcasters.

We have examined three potential measurable effects of the MEDIA Programme in the film production sector. These are increases in:

(a) production;
(b) co-productions within the EU; and
(c) competitiveness of the EU film production industry.

We have also studied the non-quantifiable effect of increased networking. While networking activities do not support productions directly, they may help professionals to create links across the EU and therefore to seek financial resources outside their own country.

7.2.2. Measurable effects

Increasing production

As indicated in the table above, the total number of films produced by EU film producers declined from 496 in 1985 to 454 in 1994, although average investment in the EU per production rose in real terms from ECU 1.96 million in 1987 to ECU 3.38 million in 1994. The rate of decline in numbers of films has also slowed from 2% per annum in the period before the first SMP measures (i.e. from 1981 to 1988) to an average of 1% per annum between 1989 and 1994. Evidence which we collected to assess the significance of the MEDIA Programme in slowing the decline and in increasing average budgets is summarized below.

Our interview programme revealed that of those 14 film production companies (not including broadcaster producers)[68] who have benefited directly or indirectly from the MEDIA Programme, only 11% believed that the programme had increased the market share of European production. Certain individuals questioned on this issue as part of our survey did not

[68] Unless otherwise specified, 'film production companies' include broadcaster producers and trade associations representing film production.

concur with this overall view, however. SCRIPT, for example, reported in July 1991 that almost none of the projects to which the Fund had given loans between 1989 and 1991 would have started without its funding. SCRIPT estimates that 10% of these script writers would not otherwise have produced any projects.[69] Furthermore, the Roland Berger report suggests that on average the MEDIA Programme contributes towards the development of some 70 European films per annum, i.e. some 15% of the total produced.

The European FilmFile argues that MEDIA has been particularly important for countries such as Greece with a small domestic market,[70] since it allows them to forge links with other countries, particularly Germany and the UK. Indeed, between 1989 and 1993, total film production in Greece increased from 8 films in 1989 to 18 in 1993, and in Spain from 7 in 1989 to 16 in 1993. Nonetheless, only 24% of film production company respondents to our survey stated that the MEDIA Programme had been effective in supporting the sector in small countries.

Qualitative information from our interview programme also indicated mixed results. One view aired regularly in our interviews was that the MEDIA Programme encourages the production of European art films which have no commercial basis and that this has had a negative impact on the structure of the marketplace. UIP argues that the most effective way to increase European production is to ensure that films distributed across the EU are well marketed and that the rights in each market are exploited in the most commercial manner. It believes that such a strategy has not been adopted by the European Film Distribution Organization (EFDO). The Roland Berger report concurs with this view. Canal Plus España also stated that to be commercially viable a film has to have the potential of being sold in international markets inside and outside the EU.

Increasing co-productions within the EU

MEDIA supports co-productions by making collaboration a condition for certain types of assistance. The total volume of co-productions in the EU has increased from 131 films in 1980 to 151 in 1994, although in 1993 a peak of 176 was reached. France consistently co-produces more than any other EU country with 54 films in 1994, representing 36% of the EU total. The increased volume of co-production is shown graphically in Figure 7.1.

Of the 29 film production companies interviewed in our survey who have increased their involvement in the EU audiovisual industry over the past 10 years, 87% said they had done so through co-productions.

Broadcasters are also increasingly becoming involved in co-productions. Of the broadcasters who responded to our survey, 68% said that they had become more involved in the audio-visual industry in other EU countries over the past ten years through co-productions. The Italian broadcaster RAI maintains that the MEDIA Programme has had an impact on co-productions across borders and has encouraged independent producers to produce or co-produce films and television programmes. RAI therefore benefits indirectly from the increased volume of better quality programmes.

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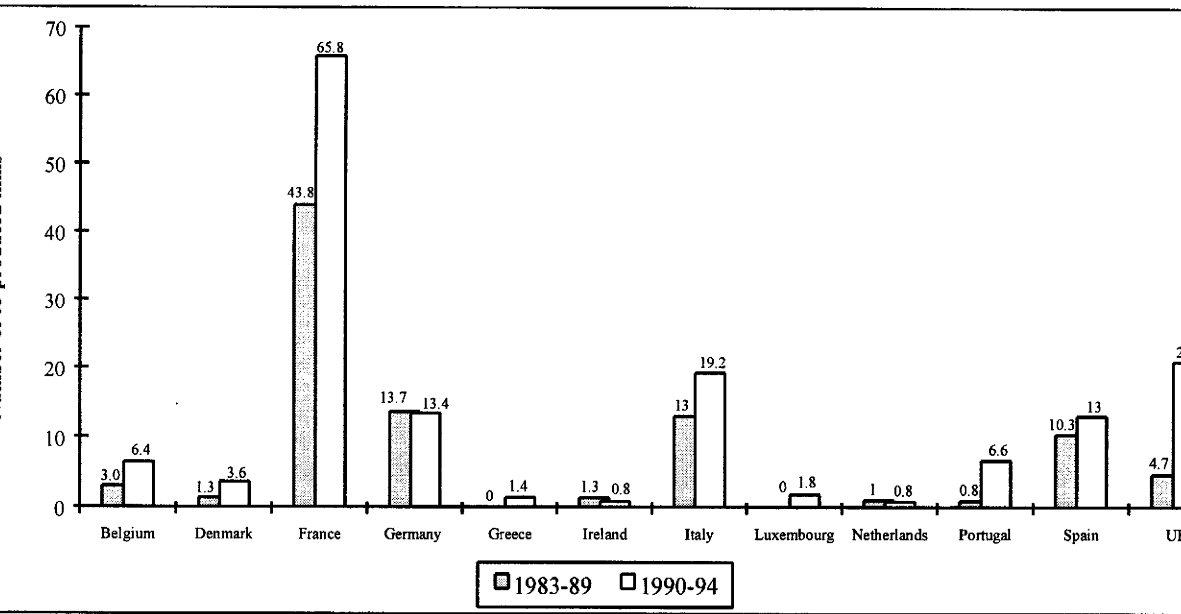
69 Interview with David Kavannagh, Director, SCRIPT.

70 European FilmFile, 1994.

Figure 7.1. Annual average number of co-produced films by EU Member State



Source: Screen Digest, EAO.

The commercial motivations for broadcasters and independent producers to co-produce across the EU include factors such as sharing risk, keeping costs low, accessing local rights and taking advantage of local experience. Our survey and case studies suggested that co-productions have increased due to these commercial factors and that the impact of the MEDIA Programme on this has been minimal. While the negative views of trade associations such as FIAD and FIAPF may reflect a bias, they were also shared by a number of industry interviewees. Both FIAD and FIAPF mentioned Eurimages as the only support programme which has had a real impact through its promotion of co-productions.

7.2.3. Co-production regression analysis

We used regression analysis to examine whether the SMP has had a significant impact on the level of film co-productions between countries, using data for the EU as a whole, and individually for Germany, France, the UK and Spain. We were not able to dissociate MEDIA from the SMP generally.

As the data available[71] presents EU film co-productions inclusive of partnerships with non-EU countries it was not possible to quantify the impact of the SMP and MEDIA Programme solely on intra-EU co-productions. However, the results of the analysis of the SMP effect will be valid if the share of EU co-productions in total co-productions has not changed significantly over the estimation period (1985–94).

The aim of the analysis is to establish whether the level of co-productions as a share of total productions has increased significantly since 1989, 1990 or 1991. We therefore regressed the level of co-productions on the level of productions, and a MEDIA/SMP step dummy, which took the value of unity, from 1989, 1990 or 1991, depending on the country. The coefficients and associated t-statistics for the 'best' specifications are provided in Table 7.2.

[71] Obtained from Screen Digest and the Co-Productions International Database.

Table 7.2. Regression results for the level of co-productions

Dependent variable: Level of co-productions	Variable coefficients (t-statistics in parenthesis)		
Country	**Film production**	**SMP impact (dummy)**	**R2**
France		(=1 from 1990)	
	0.38	16.72	0.47
	(1.32)	(2.41)	
Germany		(=1 for 1990 & 1991)	
	0.45	1.69	0.48
	(3.18)	(0.73)	
UK		(=1 from 1991)	
	0.39	13.06	0.87
	(3.00)	(4.28)	
Spain		(=1 from 1990)	
	0.09	5.35	0.18
	(0.75)	(1.95)	
EU		(=1 from 1990)	
	0.21	55.18	0.82
	(1.44)	(6.44)	

Source: KPMG.

The results reported in the above table can be explained by taking the EU equation as an example. The positive coefficient for film production suggests that an increase in productions leads to an increase in total co-productions also. The positive (and statistically significant) coefficient of the dummy variable indicates that the share of co-productions in total productions has increased since 1990. The dummy coefficient is statistically significant also for France and the UK and marginally significant for Spain (the coefficient is insignificant for Germany). This suggests that there has been a statistically significant increase in the share of co-productions. This is consistent with a positive impact from the SMP generally, but the nature of the data cannot establish either a causal link or provide precise quantitative estimates.

Increasing competitiveness of the EU film production market

The Roland Berger study reported in 1993 that there had been no significant changes in the marketplace as a result of the MEDIA Programme, and that significant changes would only be observable 5 to 10 years after the implementation date. Of the film production companies interviewed in our survey who said that the MEDIA Programme had had an indirect or direct effect, 41% said that the programme had successfully supported small and medium-sized enterprises (SMEs), and 24% said that the programme had increased intra-EU exchanges.

Our interviews and case studies concurred with the view that the structural impact of the MEDIA Programme in terms of increasing competitiveness has been limited.

7.2.4. Non-measurable effect: networking

Developing networks of professionals across the EU is a key goal of the MEDIA Programme. EUROAIM encourages networking through two platforms for European production: the Donostia Screenings and the Rendez-Vous. Since its establishment in 1989, Donostia has seen 1,800 productions presented to 250 buyers with 250 sales per market on average. At the Rendez-Vous since 1992, 280 fiction projects have been presented to 160 different financiers.

EUROAIM has also provided exhibition space at international markets such as MIP-COM and MIP-TV.

Our survey results and desk research show some inconsistencies in terms of the perceived impact of the MEDIA Programme on networking across the EU. EFDO argues that before the creation of the MEDIA Programme, there was little co-operation between European companies and that the programme has had the effect of encouraging the exchange of ideas and of knowledge and developing partnerships across the EU. Similarly, the Media Business School argues that the principal achievement of the MEDIA Programme has been to circulate information and ideas within the European industry and to improve the development and distribution of smaller films. The Roland Berger study reported that the networking tool cited in the MEDIA guidelines has been well applied and industry professionals regard MEDIA as having been successful in encouraging networks.

In contrast to these views of EFDO and the Media Business School, our survey reveals that only 29% of film production companies questioned considered that the MEDIA Programme had had an impact on the creation of informal cross-border networks.

7.3. Increased demand from the expanded broadcasting industry

The two hypotheses which we examine in this chapter are that broadcasters are increasingly becoming involved in productions at an earlier stage and that the increase in television channels has raised the demand for broadcasting rights to films and increased their importance to broadcasters. It should be noted that quantitative data on hours of film broadcast and on rights payments by major broadcasters is not published. Therefore, this chapter relies upon qualitative information from case studies and our interview programme. In testing these hypotheses we have considered where possible:

(a) the increase in hours of film broadcast;
(b) the increasing prices of rights; and
(c) the involvement of broadcasters in film production.

7.3.1. More hours of film broadcast

There is evidence that television is showing more films. Even general interest channels, such as RAI 2 and Channel 4, devote approximately one-quarter of their broadcast hours to feature films.[72] The number of films broadcast on national television increased by 8% from 1985 to 1989 and had more than doubled by 1992 in the UK, Italy, France, Spain and Germany.

Clearly, some of the new pay channels, notably Canal Plus, Filmnet and BSkyB's movie channels, are intended to be devoted wholly or mainly to films. Table 7.3 below shows an analysis, carried out for the Media Business School, of films as a percentage of broadcast hours by channel.

[72] Ibid.

Table 7.3. Films as a percentage of broadcast hours by channel: 1992

Channel	%	
BSkyB movie channels	100	Wholly dependent
Telepiù	82	
Premiere	65	Heavily dependent
Canal +	44	
Pro 7	30-40	
Odeon TV	32	
RTL	12-27	Heavy users
Sat 1	26	
Channel 4	24	
RAI 2	22	
BBC 2	20	
Rete 4	18	Medium users
RAI 1	17	
RAI 3	16	
Italia 1	14	
ZDF	12-20	
ARD 1	12-20	
BBC 1	12	
Canale 5	8	Light users
ITV	8	
FR3	6	
M6	6	
F2	4	
TF1	4	
Arte/La Sept	2	

Source: London Economics, Bridge Media. In Media Business School, Budgets and Markets, 1994.

7.3.2. Greater demand for broadcasting rights

Increasing demand for film rights from broadcasters, led by specialist pay film channel operators who have been prepared to pay significant sums, has enabled rights owners to increase their prices. Table 7.4 gives an analysis of pay TV rights payments by country in 1994. The total for the EU was ECU 476 million.

Table 7.4. Estimated spending on film rights by movie pay TV channels

	Total distributor revenues from pay TV 1994 (million ECU)
Belgium	9.5
Denmark	1.8
Finland	1.3
France	125.7
Germany	45.8
Italy	22.4
Netherlands	20.1
Spain	34.9
Sweden	30.4
UK	183.8
Total	475.7

Source: Screen Digest, November 1995.

Year on year comparisons of rights payments made by pay TV operators are complicated by the fact that rights to pay TV movies are bought in packages that span several years. Nonetheless, it is clear that spending on movies by pay TV channels has become a significant revenue source for film. In 1995, it is estimated to account for over 30% of total film revenues in Western Europe.

7.3.3. Investment by broadcasters in film production

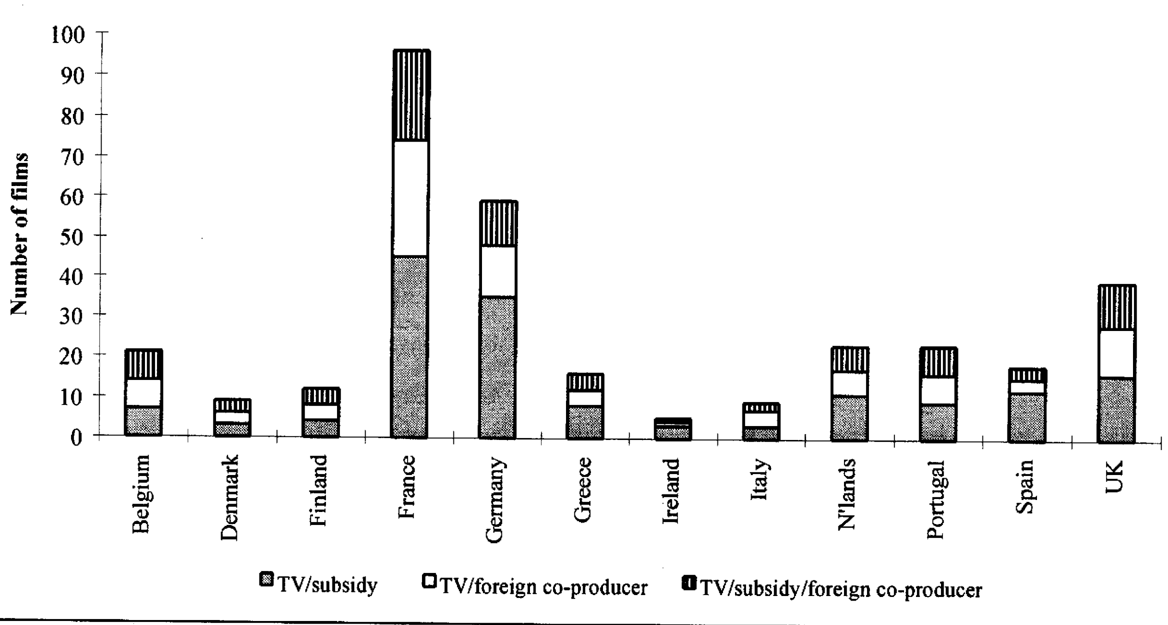
Faced with increasing competition for viewers due to the proliferation of channels, broadcasters have re-directed their expenditure towards acquisition/production of key programming. SCRIPT has recognized this by extending its incentive funding scheme to cover television broadcasters. In January 1995, the fund awarded a total of ECU 1 million to 10 European broadcasters to encourage them to commission independent fiction.

Television currently represents an indispensable source of finance for local features and co-productions. Figure 7.2 shows the number of films produced in 1994 with television finance across the EU.[73]

In absolute terms, France produced most films with TV finance – 96 in total – although this represented only 25% of all films. Greek films benefited most from TV finance in proportional terms with 51% of the 32 films produced receiving TV finance. At the other extreme, of the films produced in Italy in 1994, only 3% benefited from TV finance.

Although comparable data is not available prior to 1992, the fact that the number of specialist film channels which are significant investors has increased since 1985, suggests that the proportion of TV finance has risen as well.

Figure 7.2. Number of films produced with TV finance: EU countries 1994



Source: European FilmFile.

[73] The earliest data available on television financing of film production is February 1992 (European FilmFile). It is our view that there is insufficient data available with which to draw general conclusions on the period under review.

The investment by broadcasters in film production is in part due to the regulatory regime in some countries. Most notable is France where Canal Plus is obliged to allocate 20% of the previous year's turnover in the acquisition of film rights, half of which must be in the French language.[74] Furthermore, 5.5% of Canal Plus' previous year turnover must be paid out to the Centre National de Cinématographie (CNC) to support its activities in support of French film production. In 1994, Canal Plus spent more than all other French television stations combined on investment in feature film production and distribution (FFR 491.5 million). Similarly in 1993, Canal Plus Belgium invested some US$ 69 million in Belgian independent production.

7.4. National subsidies

7.4.1. Overview

There are a series of financial incentives available to film producers, directors and writers within the EU ranging from tax incentives, government and broadcaster subsidies and European support systems. This chapter examines national subsidies in relation to the goals of the SMP and briefly reviews the role of national subsidies and their relationship to European subsidies.

7.4.2. The role of national subsidies

The three main reasons for government intervention in the film production industry in Europe are:

(a) the existence of a high level of risk (film production is a very high risk business and a critical mass of productions is needed to ensure break-even of the industry);
(b) strong competition, mainly from the US, implies that the limited commercial viability of certain types of film could mean that they would not get produced in a free market; and
(c) cultural objectives.

Table 7.5. TV and subsidy investment by country: 1994[1]

	In production[2]	Subsidized	%
France	91	54	59
Italy	56	22	39
Germany	60	50	83
Spain	27	19	70
UK	55	22	40

Source: European FilmFile. Taken from 'Budgets and Markets, a Study of the Budgeting of European films,' Media Business School, 1994.

[1] The earliest available data on TV and subsidy investment by country is February 1992 (European FilmFile). Two years of comparative data does not provide us with adequate information from which to draw more detailed conclusions on the impact of national subsidies in the period under review.

[2] These figures do not include co-production.

[74] 'Aid for Cinematographic and Audiovisual Production in Europe'.

National subsidies remain an important form of finance to the film production industry, although the extent and structure of that aid varies considerably across the EU. EFDO argues that national schemes have been effective in supporting high quality, diverse national product. The Irish broadcaster RTE maintains that national tax incentives are essential for the survival of its national film industry due to its high risk.

In 1994, 65% of all 333 European film projects in development or production received a subsidy (and 51% received television finance). We set out in Table 7.5 an analysis of the level of subsidy in the five largest EU markets in 1994. This indicates that Germany had the highest proportion of subsidized films, with 83% receiving a subsidy.

7.4.3. The impact of national subsidies and relationship to the SMP

As outlined earlier in this chapter, the MEDIA Programme's monetary contribution relative to total production investment is small. While the MEDIA Programme does not aim to compete with national funds, links have been reported. For example, Screen Finance reported in 1988 that in EFDO's first round of aid some distributors were awarded less than they had asked for, because they were already getting some form of support from their national governments.[75]

Of our interviewees 48% stated that national subsidies were a very significant barrier to trade in the EU versus 15% who said that they were of minor significance. Twenty-five percent of interviewees maintained that national subsidies were also very significant in influencing the development of the European audio-visual industry.

By contrast, of all the companies interviewed in our survey who said that national subsidies had helped integration, 59% said that the schemes had been effective in the funding of programmes and 67% said that they had encouraged co-productions. However, of those who said that national subsidies had hindered integration, 57% said that the reason was that other EU programmes are made more expensive as a consequence.

The largest national aid scheme for film and TV in the EU is operated by France's CNC. In 1989, following action by the European Commission, the French Government stipulated that the CNC should support nationals from other Member States in the same way as French nationals. Despite this, some broadcasters such as TF1 still consider that national funding schemes such as CNC hinder EU integration, in particular because they tend to be less easily accessible by European co-producers.

The effect of national schemes is disputed. For example, the non-domestic EBU recognizes that the French film industry, for example, would not have survived as well as it has without national support, but also recognizes that national subsidies adhere to national cultural objectives which work against pan-Europeanism. Conversely, RTE maintains that as national schemes promote better quality products, this in turn has a positive effect on the European marketplace.

EUROAIM argues that, in smaller countries, subsidies provide producers with a base to look for partners in other countries. In the larger countries (France and Germany in particular), the subsidy reduces the pressure on producers to seek additional funding from other European sources.

[75] Screen Finance, 30 November 1988, p. 7.

Ciby 2000 stressed that the subsidy rules across the EU should be harmonized, but not liberalized to the extent that they give US companies a chance to obtain subsidies for their own productions and to compete unfairly with local producers.

7.5. Conclusions

There has not been any significant structural change or growth in scale of EU film production during the last 10 years. Growth in the use of films by broadcasters, especially by specialist film channels, has been reflected in a high level of TV financing of EU film production which has been encouraged in some markets by national regulations. However, much of the new revenue generated from pay TV and video has gone to US product and the EU film production sector remains fragmented and based on national markets with few profitable operators.

7.5.1. MEDIA Programme

There is evidence that the MEDIA Programme has encouraged professionals within the film production industry to look beyond their borders for partners and investors and has facilitated networking in the EU. However, our study indicates that the structural impact of the MEDIA Programme has been limited. The programme is inherently constrained by the level of its budget and consequently its impact is marginal, particularly so far as the overall level of film production in the EU is concerned.

Both film producers and broadcasters involved in film production have generally increased their involvement in EU co-productions which have grown as a proportion of total production. However, our study indicates that while the MEDIA Programme has provided some practical support to producers, it has had little impact on the level of co-productions in the EU which has risen due to market pressures.

7.5.2. Effects of increase in television demand for film

Since 1985, the role of television broadcasters in supporting European film production has become more important. This can be regarded as having been facilitated by TWF to the extent that new satellite channels, notably those specializing in film, have been encouraged by it. However, it should be noted that the largest direct TV investment in EU films (by Canal Plus) is directly attributable to national rather than to EU regulations.

7.5.3 Role of national subsidies

State subsidies play a role in funding films which otherwise may not be produced as well as fulfilling cultural objectives. It is possible that strong national film production industries would also strengthen the overall competitive position of the European film production industry. However, the differences in the level and form of national subsidies between Member States are considered to be a barrier to trade, especially when they are linked to requirements to make a product which is effectively only suitable for one national market. There was a consensus in our study, that the aim should be to harmonize subsidies across the EU to prevent distortions in the sector.

8. Film distribution

8.1. Introduction and industry overview

Film distribution companies have historically been the link between a film producer and a film exhibitor. They have facilitated the flow of predominantly European and Hollywood film product to the European exhibition sector. This is characterized at two extremes by either:

(a) high levels of competition amongst a large number of independently owned companies in a fragmented market (e.g. Germany and Spain); or
(b) a concentrated market which is dominated by a small number of film distribution and exhibition companies which are often vertically integrated (e.g. Portugal and the UK).

Distributors' revenue from exhibitors is usually based on a share of the box office revenue, the level of which may be guaranteed by the exhibitor, although this is not usually the case. The average share for the distributor is about 50%.

This chapter reviews the impact of measures taken by the European Commission, in particular the development of the MEDIA Programme, on the film distribution and exhibition sectors. Some of the more significant indicators between 1985, 1990 and 1994 are shown in Table 8.1.

Table 8.1. Comparative data of film distribution: 1985, 1990 and 1994

Total EU figures	1985	1990	1994
Attendees at European cinemas (millions)	667	562	641
Box office revenues (ECU billion)	1.46	2.5	2.9
Number of multiplexes (Italy, France, Germany and the UK)	*	261	290
Number of multiplex screens (Italy, France, Germany and the UK)	*	1,739	2,020

Source: KPMG/various
* Data not available.

8.1.1. Distributor involvement in pre-financing

This chapter considers the hypothesis that distributors have become more involved in pre-financing films as a response to:

(a) growing direct presence of US operators on a pan-European basis; and
(b) increase in co-production activities encouraged by the MEDIA Programme.

US majors' approach to the European film distribution sector

The Hollywood studios continue to dominate the flow of product into the European market and there is an increasing tendency for a limited number of large Hollywood films to dominate cross-border distribution in Europe. In some territories, the studios have exploited their ability to control the flow of their film product, so as to dictate the exhibition patterns of these productions. This is especially true of the activities of MCA/Universal and Paramount which use the distribution company which they own jointly with MGM Studios, United International Pictures Inc. (UIP), to distribute their product to exhibitors across Europe. In addition, the same two parties control an exhibitor, UCI, which has been active in the European exhibition market since the early 1980s and has been at the forefront of introducing multiplexes in Europe.

US distributors' competitive advantage stems from their vertical integration with the studios. Their product is usually released in the US before it is released in Europe. Its performance in the US acts as free market research on its potential performance in European territories. This is often not the case for European productions whose performance in their national market often gives no indication of likely box office success in other Member States. This was particularly highlighted by the French comedy *Les Visiteurs* which was the most successful film in French box office history, but performed poorly in every other Member State in which it was released.

The US distributors whom we interviewed treat Europe on a territory-by-territory basis like their European competitors. Their organizational structures take account of the geographical and cultural differences between Member States.

All the US distributors considered that the SMP has had little impact on their strategy and that the SMP has not encouraged the establishment of a European film distribution network.

European distributors' approach to the European film distribution sector

European film distributors expressed similar views on the SMP but are highly focused on their national markets since they do not have access to a supply of product readily saleable in other markets. Both Gaumont and Lusomundo stated that it has been important for them to concentrate on consolidating and expanding their home market rather than considering opportunities in other Member States. Gaumont stated that it is not a strategic option for it to export the vertically integrated organizational structure which it has developed in France, to other neighbouring Member States as its historic experience is not relevant to other EU markets. Its attempts to do so have so far failed.

European film distributors have made significant changes in the way they operate in order to compete against the Hollywood studios. Many distributors have entered into the pre-financing of films. This enables the producers to share the risks of film production and allows the distributor to secure a share of the distribution rights. Distributors have also entered into output deals with film production companies to gain a 'first look' at a product and, in some cases, have signed exclusive deals with the Hollywood studios to distribute their product in national markets.

Examples of the alliances which have been formed include:

(a) PolyGram, the most ambitious European owned company, with its own distribution operations in the UK and the Benelux has established a joint venture with Sogepaq in Spain and distribution outlets in Germany and Italy;[76]
(b) Castle Rock launched a theatrical distribution joint venture with Turner Pictures and local partners in the UK, France, Spain, Italy and Germany; and
(c) Gaumont has entered into a deal with Buena Vista to have exclusive access to all new Disney feature-length cartoons and feature films produced by Disney's production labels.

76 *Variety*, 30 October – 6 November 1995.

Remaining barriers to the establishment of a pan-European film distribution network

The responses to our interviews and case studies have identified a number of barriers to the establishment of a pan-European film distribution network. These are considered in the following paragraphs.

Linguistic and cultural differences

All the European respondents in the sector emphasized the importance of these. They believe that film distribution will always be territorially divided due to these differences and that EU regulation is unable to remove these barriers. Moreover, EFDO highlighted the fact that the relatively high costs associated with the distribution of European films, in the areas of subtitling, dubbing, print and advertising are an additional barrier to the efficient distribution of a European product.

By contrast, all the American film distributors took a slightly different view. They believe that the cultural and linguistic barriers between Member States are only relevant for European product as US distributors are able to distribute their films so long as their marketing takes account of each Member State's exhibition market. They highlighted the numerous pan-European box office successes during the period under review. This, together with the disappointing performance of European films outside their national markets, supports this view.

Lack of European film product

It was suggested that there is no European film product; either a film is pan-European and is usually financed, produced and distributed by a Hollywood studio or it is a national picture, appealing to national tastes. UIP in particular believes that these factors have hindered the development of pan-European distribution networks.

Film windows

FIAD stated that there are problems relating to the 'windows' provisions in Article 7 of the TWF Directive (which covers the period between theatrical exhibition and television broadcasting of a film) due to its differing application by Member States. Our interviewees believed that standardization of windows legislation between Member States would encourage pan-European film distribution, as it would enable distributors to maximize the return from the various windows of exploitation.

8.1.2. Impact of the MEDIA Programme

EFDO's aim is to assist the distribution of European theatrical films, especially across borders. Its distribution aid is granted directly to distributors for films with a production budget of less than ECU 5 million when at least three distributors from three different countries agree to exhibit the film together and, where possible, at the same time. EFDO will meet up to 50% of the distribution costs subject to a maximum of ECU 100,000 for each distribution territory for the respective film.[77]

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[77] The MEDIA Programme – European Commission.

EFDO's goal of strengthening the European film distribution markets can be divided into four distinct aims:

(a) disseminating European films into the cinemas of as many European countries as possible. Although EFDO aims to aid the distribution of films in at least three EU countries, the Roland Berger report claims that, on average, EFDO supported films are distributed in five or more countries.[78] In this area, it appears that EFDO has been more successful than originally planned;
(b) increasing the market share of European productions. The Roland Berger report states that in this area, EFDO has not been successful as European films are hampered by diverse national tastes and a lack of stars, and therefore they struggle to attract strong local audiences and US films still dominate. It is apparent from Figure 9.3 below that the European film box office share has continued to drop significantly since 1988;
(c) supporting 20% of European productions; and
(d) achieving long-term structured stability in the distribution of film. EFDO is able to concentrate on a clearly defined group of applicants who apply for support. According to the Roland Berger report, by 1993 there were a total of 850 film distribution companies in the EU, Switzerland and Austria. 198 (or 23%) of the existing distributors had been supported by EFDO by the end of that year. Of these 198 companies, only approximately 50 to 60 companies consistently released European film for cinema distribution.[78] By 1993, eight distribution companies within the EU had received distribution support from EFDO more than 10 times.

Developing a European distribution network

While EFDO maintains that the MEDIA Programme has had a significant impact on the European film distribution sector, it recognizes that these effects are extremely difficult to quantify. By December 1991 EFDO had awarded grants amounting in total to ECU 16.2 million to 85 distributors for 485 launches of 99 European films.

The Roland Berger report believes that EFDO spending has had little effect on increasing European films' share of the European box office due to EFDO spending its budget on many films which have little chance of becoming commercially successful due to the intrinsic nature of their subject. The report recommends that EFDO should concentrate 'distribution aid on truly "promising" films'.[78]

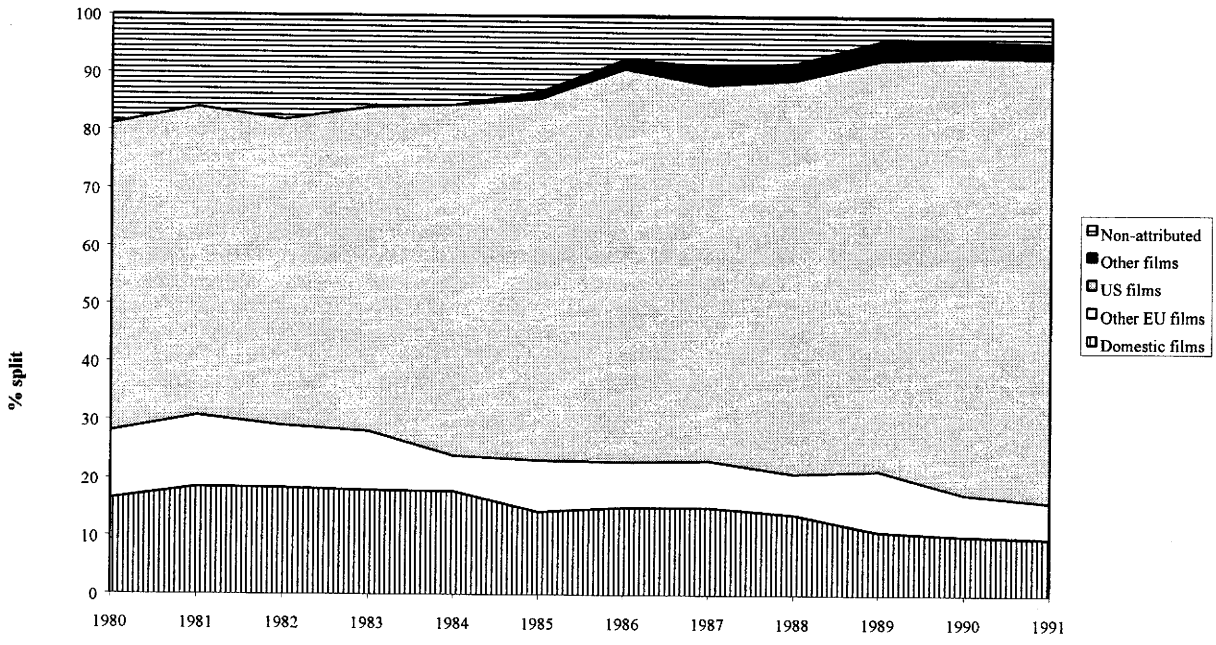
Figure 8.1 shows the split of box office revenues for European and US films between 1980 and 1991 and indicates that the MEDIA Programme has not reversed the downward trend of European films' success at their home and other Member States' box office. Over the period, the figure shows that US product has become increasingly important in the European film exhibition sector.

FIAPF argues that the European film distribution industry is hampered by the lack of EU owned distributors operating across borders. FIAPF maintained that the MEDIA Programme has not addressed this issue and has instead supported small national distributors, which has had no positive impact on the overall European industry. This view was reflected in our interviews with European and US companies. The American distributors, who were excluded

78 Interim Evaluation of the MEDIA Programme, Roland Berger & Partners 1993.

from EFDO funding in 1995, maintain that this was wrong and that the ownership of the distributor should not be a discriminating factor. They argue that as American distributors are excluded from this fund, fewer European films in total will be distributed.

Figure 8.1. Percentage split of box office revenues for European and US films



Source: EAO Yearbook; Screen Digest; State of the Film Industry.

8.2. Conclusions

The Hollywood studios have continued to increase their products' share of box office revenues across the EU both through their increasing control of European screens and effective use of their own distribution companies in Europe. As a result, European distributors have been forced to develop new ways of ensuring that they are able to gain access to films for distribution and to cinema screen time. EU distributors have begun to form alliances with film producers in Europe and the US, and by the use of pre-financing of films and output deals with one or more producers, to ensure that they can obtain film rights. European distributors have had some success in the area, especially by entering alliances with the US, non-Hollywood producers, or 'independents' such as Castle Rock and New Line.

Some assistance is available to European distributors through EFDO funding. Although it has only had a short period so far, its activities encourage European distributors to seek alliances with distributors in other European countries in order to obtain funding from EFDO. However, it has been unable to reverse the downward trend of European films' success at their home and other Member States' box office.

We believe, on the basis of our interview programme, that SMP measures have had very little perceived impact on the European film distribution sector. Both the US and European distributors believe that although there are few legal or technical barriers to trade in this sector, significant cultural and linguistic barriers exist which have ensured that European film distribution strategy is formed at a national level. These barriers are difficult for the EU to remove and are largely outside the scope of the SMP.

9. Video distribution

9.1. Introduction and industry overview

The video distribution sector in Europe has experienced significant growth from its infancy in the mid-1980s, as VCR penetration has grown in all EU Member States. The growth in the sector in the late 1980s was driven by a boom in video rental and was then followed by the rapid development of a sell-through market.

This chapter reviews the impact of measures taken by the European Commission, in particular the development of the MEDIA Programme, on the video distribution market. Some of the more significant developments which have occurred between 1985, 1990 and 1994 are shown in Table 9.1.

Table 9.1. Comparative data of video distribution: 1985, 1990 and 1994

Total EU figures	1985	1990	1994
VCR penetration (%)	22	47	61
Distribution revenues (ECU billion)	*	1.6	2.3
Rental revenues (ECU billion)	*	2.3	1.8
Number of rental transactions (million)	*	994	684
Sell-through revenues (ECU billion)	*	1.3	3
Number of units sold (million)	*	93	199

Source: KPMG/various
* Data not available.

9.2. Single market integration

9.2.1. Scale economies in the single market

This section considers the hypothesis that the SMP has helped video distributors to exploit the growth in VCR penetration, enabling scale economies in, for example, tape acquisition, duplication and distribution across Europe.

The duplication sector is dominated by a few large players, many of whom began in audio duplication and have the resources to cope with high production levels and to produce high quality copies. The largest duplicator in Europe, and the world, is Technicolor (Carlton). Other large duplicators are Rank Video Services (RVS), Videoprint (part of the Mayking audio-visual group), and PolyGram.

Technicolor, RVS and the other large duplicators, which supply duplication services across the EU, have benefited from the growth in the demand for the duplication of video cassettes from the audio-visual, direct mail and corporate sectors. These companies are able to locate their duplication plants in the most strategically advantageous territories. This is facilitated by horizontal SMP measures, including the relaxation of import duties. This enables these companies to exploit economies of scale.

In addition to the companies which operate across Member States, there are also large, national duplicators. In the Spanish and Italian markets, for example, the enormous kiosk sector, in which a video sold with a magazine is exempt from VAT, helps to keep local duplicators strong. It is a low cost, high volume industry.

9.2.2. Impact of the MEDIA Programme

This section reviews the impact of the MEDIA Programme on the video distribution sector. Espace Video Européen (EVE) was devised to establish and promote systems to encourage the publication and distribution of European audio-visual products for use in the home (e.g. video, laser discs, CD-ROM). It was created to help redress the uneven balance between European and non-European players in this market. Also, it aims directly to stimulate the development of the European home video industry.

The EVE loan scheme offers financial support to video publishers who are releasing European audio-visual productions on the home video market. Usually, loans are offered to support a video's promotional costs ranging from ECU 10,000 to ECU 100,000. The EVE company development scheme invests directly in the distribution infrastructure with a special focus on cross-border activity. EVE also hosts and organizes the Mediabase and Information Services Conference which intends to bring video distributors from across Europe together to share information and ideas and to help create the notion of a European video industry.

820,000 copies of videos of European films were published with the assistance of EVE during 1991 and 1992.[79] EVE has awarded 280 loans, with a value of ECU 3.1 million, during 1991 and 1992. The interim evaluation by Roland Berger states that by 1993, there had been no significant changes in the market as a result of the MEDIA Programme. However, it also states that an identifiable effect would not be observable until 5 to 10 years from the implementation date. Roland Berger concludes that the EVE programme has assisted the distribution of high quality contemporary films, documentaries and classics and that the aims of the programme have been fulfilled. However, it was unable to comment on the direct effect of EVE's initiatives on European video distributors as 'unfortunately no data concerning Europe's market share was available'. One tangible result of EVE's funding has been the publication of *The European Video Directory 1995* which was developed in conjunction with the International Video Federation (IVF). This is the first publication which brings together all the available information and data on the video industry.

Our interviews with the IVF and its members, such as the British Video Association (BVA) and Syndicat de l'Edition Video, indicated that EVE has played an important role by creating a sense of identity among European distributors for the European video industry. In addition, the BVA commented that EVE has recognized and promoted the view of the video industry as a stand-alone industry and is not just a sub-sector of the film exhibition and distribution industry.

EVE has achieved these intangible effects by organizing conferences, releasing publications and enabling the sharing of information and market data between independent distributors in different Member States. These initiatives have encouraged distributors to consider distribution opportunities beyond their national market, and to use the EVE loan scheme to assist in the promotion of these video products. EVE has also supported other, direct sales

[79] Interim Evaluation of the MEDIA Programme, Roland Berger & Partners 1993.

methods such as the creation of a German mail order catalogue by VCL and Atlas Film & Medien.

Our interview with IVF, and responses from its members, supported the view that EVE has been an important force in encouraging a European video market. However, they highlighted the absence of suitable European video product. This is due to the majority of European videos being produced in the local language, created to satisfy national tastes and distributed by national distributors. If a video is successful across Europe, it is normally a US blockbuster release which is distributed by the distribution arm of the Hollywood studio that made or commissioned the film.

9.2.3. Remaining barriers to the establishment of a pan-European video distribution network

A number of our interviewees commented on the inconsistencies between Member States in the required 'windows' of rental exploitation of video products before it is sold to the consumer or first shown on pay TV. Article 7 of the TWF Directive only refers to the relationship between cinematic exhibition and the broadcast of film on television. Our interviewees believe that window inconsistencies between Member States make it more difficult to co-ordinate a pan-European release of a film. In France, for example, there is an obligatory 12-month video window from theatrical release to video to protect the exhibition market in France.

9.3. Conclusions

The duplication and distribution of video tapes across Europe are still handled either by large pan-European companies or individual entities at a national level. For the duplication sector, three companies (RVS, Technicolor and Videoprint) appear to be pan-European and have set up duplication plants outside their national territories and handle large scale, high volume duplication of European and Hollywood product. The size of these operations indicates that these companies are benefiting from economies of scale in the duplication and acquisition of video tapes and the ease of moving their product around the EU has enabled them to establish operations in the most commercially advantageous markets.

In contrast, the video distribution sector is characterized by the dominance of the Hollywood studios' distribution arms, particularly for pan-European feature film video distribution. However, marketing and release dates continue to be determined on a territory by territory basis. At a Member State level, national distribution networks exist for television and other special interest video product (such as the BBC, TF1 and Canal Plus). However, European companies such as PolyGram, Sogepaq and BMG are extending their distribution activities into European markets outside their national markets.

The success of EVE's funding of the distribution and publication of European video product is difficult to assess. This is due to few data being available on the European distributors' share of the European market and on the effect of Hollywood distribution companies and Hollywood product on the European market. We believe that EVE's funding has had a significant but intangible effect on the European distribution market by encouraging distributors to communicate with each other and to gain an understanding of potential markets outside their own.

10. Cross-border trade

This chapter examines the impact of the SMP on cross-border trade flows in programme and film rights. We do not include cross-border trade in broadcasting services (i.e. trans-frontier advertising) because it is treated in the chapter on broadcasting.

The hypothesis we are testing is that TWF and other SMP measures have encouraged trade in programme and film rights between EU Member States. The basis of the hypothesis is that increased cross-border activity facilitated by the SMP and the Media Programme may have increased the relative share of exports to other EU Member States within the EU.

We first examine the basic data on trade flows. This is followed by an analysis of export trends, including a regression analysis of the impact of the SMP on the intra-EU export shares. We then examine the import trends, the balance of trade and finally present our conclusions.

10.1. Intra-EU trade flows

The level of intra-EU[80] trade is an indicator of the extent of cultural exchange in audio-visual products between Member States. A comparison over time of intra-EU trade with the level of total trade by Member States will give an indication of whether Member States are becoming more or less reliant on EU markets to buy or sell products.

Given the adoption of TWF in 1989, and the launch of the various strands of the MEDIA Programme between 1989 and 1990, we have reviewed the change in trends since 1989 compared to the period up to 1989.

There are no reliable statistics which cover all 12 Member States. Eurostat is in the process of trying to remedy the situation and has provided us with the figures it has collected; but it has warned that 'it is fairly difficult to know whether the flows have been evaluated correctly – the amounts reported appear rather small (certain flows would be recorded net)'. In its report on the film and television market, IDATE argued that useful statistics are available only for the UK, France and Spain; and that even where they do exist, they are difficult to compare.

The Eurostat figures include only nine out of the 12 Member States (there are no figures for Ireland, Italy and Portugal; Luxembourg is combined with Belgium). They show total imports and exports for each of the nine states, and imports from and exports to others in the EU. These statistics are quite volatile for some countries, reflecting partly the nature of the sector where a major deal can influence the year-on-year export changes.

Partly as a result of missing some states, the intra-EU trade balance is far from zero. Eurostat says the balance – the 'intra-Union asymmetry' – is a measure of the reliability of the data. Given the highly negative balance, which in 1994 was ECU 419 million, roughly a third of total exports, we have to assume that the figures are not very reliable.

We have therefore decided to avoid any comparison between Member States. However, the Eurostat figures do give some indication of trends; we look in more detail therefore at the

80 For consistency reasons we use the abbreviation EU throughout this chapter, which refers to the 12 Member States of the European Community before 1995.

figures for the UK, France and Spain. We applied also regression analysis to the aggregate figures in an attempt to measure the extent to which changes in the proportion of intra-EU exports can be attributed to the SMP.[81] For reasons already explained, the intra-EU export share has been quite volatile for some countries, and the results must therefore be considered as indicative rather than conclusive.

10.2. Intra-EU exports

10.2.1. European Community level

We have analysed compound annual growth rates over the period under study to see if there has been any change in trends since 1989. The overall figures for the level of exports by the EUR-12 are:

	to 1989	**to 1993**
CAGR[82] of intra-EU exports since 1983:	11.2%	12.7%
CAGR of total exports since 1983:	13.6%	8.8%

The growth rate of intra-EU exports has been clearly higher in the second period, with the growth rate of total exports falling quite significantly. This is a period of relative weakness of the US dollar which may have contributed to the reduction in the growth rate of overall exports. There is clearly, however, more trade within the EU in the second period, and our regression analysis provides an assessment of the relative significance of the other non-SMP related factors.

In real terms, the value of intra-EU exports has grown significantly. In 1983, they totalled ECU 385 million; they grew to ECU 728 million by 1989, and ECU 1,258 million by 1993.[83] The proportion of total exports accounted for by intra-EU trade has risen over the period from 35% to 49%.

10.2.2. Country trends

UK	**to 1989**	**to 1993**
CAGR of intra-EU exports since 1983:	21.8%	22.1%
CAGR of total exports since 1983:	6.2%	8.2%

Intra-EU export of UK programmes and film rights has increased steadily between 1983 and 1993, from ECU 48 million to ECU 354 million, with a temporary acceleration in 1991. This may be due to an increase in the success of British television programming across Europe.

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81 Regression analysis was also used to attempt to examine the change in intra-EU imports. The results in terms of establishing a causal link were poor and are therefore not reported here.

82 CAGR: compounded annual growth rate.

83 Eurostat (for Germany, France, UK, Spain, Netherlands, Belgium, Luxembourg, Italy and Denmark).

The percentage of intra-EU exports has increased from 11% in 1983 to 25% in 1989 and 36% by 1993. However, the UK's figures are still heavily affected by the performance of its exports to the US and the English-speaking Commonwealth countries such as Australia and New Zealand.

France	**to 1989**	**to 1993**
CAGR of intra-EU exports since 1983:	4.4%	0.3%
CAGR of total exports since 1983:	0.3%	-0.6%

The proportion of French exports to other EU countries has grown steadily from 46% in 1983 to 59% in 1989, peaking at 63% in 1991, but falling away to 51% in 1993. This decrease is partially due to the increase in the global success of French films. However, French intra-EU exports have been fairly volatile, rising from ECU 240 million in 1989 to ECU 410 million in 1991, but then falling to ECU 190 million by 1993.

Spain	**to 1989**	**to 1993**
CAGR of intra-EU exports since 1983:	20.1%	23.1%
CAGR of total exports since 1983:	31.8%	23.4%

The Spanish experience is different from that of the other countries reviewed. While intra-EU exports have grown fairly steadily from ECU 10 million in 1991 to ECU 40 million by 1993, the proportion of total exports that this represented has fluctuated significantly: 40% in 1984, 20% in 1989 and 50% in 1993.

Producers of Spanish language product have the ability to export film and television products to other Spanish language markets such as South America and Mexico and the variability of the intra-EU export share will depend significantly on trends in these markets (as well as in Europe). The Spanish production industry has enjoyed rapid growth throughout the period, although the growth has slowed since 1989.

10.2.3. Regression results and analysis

Intra-EU exports as a share of total (world-wide) EU exports of films and TV rights

Regression analysis was used to assess whether the SMP had an impact on intra-EU exports of films and TV rights as a share of total (world-wide) EU exports of films and TV rights for the EU as a whole, Spain, France and the UK, using data for the 1983 to 1993 period. Data for other countries were either not available or showed implausibly small variability over the period. In arriving at the best specification or equation for each regression, we modelled the share of intra-EU exports as a function of relative price, income growth and structural change. The variables tested were the following:

(a) Exchange rate variables (relative price) are expected to be related to the share of exports due to the potential competitive impact for the exports of a country with a weak/devalued currency. For example, a weak dollar would make US products more competitive in world markets, reducing total EU exports and leading to an increase in the share of intra-EU to total EU exports.

(b) Gross domestic product – GDP – (relative income growth) for the EU, the USA, Asia and Japan: positive EU GDP growth would be expected to lead to a rise in intra-EU exports, whereas the inverse relationship would be expected to hold for positive growth in non-EU GDP growth.

(c) Dummy variables were used to examine the impact of the SMP. Given that part of the aim of the SMP and the MEDIA Programme was to encourage and facilitate cross-border sales,[84] the expected effect of the SMP on the share of intra-EU exports is positive. The dummy variable is therefore expected to have a positive coefficient.

SMP and intra-EU exports

The share of intra-EU exports to total EU exports of films and TV rights for the EU, Spain, France and the UK was regressed against GDP for the EU, the USA, Japan and Asia, the ECU/$ and ECU/Yen exchange rates and a dummy variable, which isolates the effects of various periods (as indicated within the table) on export share. The coefficients and associated t-statistics for the 'best' specifications are provided below in Table 10.1. The results also include the R-sq statistic which provides a measure of the degree to which the explanatory variables account for the variation in the share of intra-EU exports.[85]

Table 10.1. Model specification and regression results

	Variable co-efficients (t-statistics in parenthesis)			
Variable	**EU**	**Spain**	**France**	**UK**
Constant	-18.42	380.46	60.81	-246.69
EU GDP	17.12 (0.83)		54.91 (0.62)	57.61 (2.52)
US GDP		-1.63 (-2.02)	-52.14 (-0.75)	
ECU/$	-21.06 (-3.04)	-49.48 (-1.32)	-20.16 (-1.59)	-6.42 (-0.76)
SMP impact (dummy)	(=1 from 1990) 2.76 (1.15)	(=1 from 1992) 19.80 (1.60)	(=1 from 1988) 4.06 (0.67)	(=1 from 1991) 8.93 (3.49)
R-sq	0.90	0.13	0.75	0.93

Source: KPMG.

With the exception of Spain, the results are quite satisfactory in terms of overall goodness of fit, but a number of the coefficients are not statistically significant. These were quite stable, however, across different specifications and we therefore chose to include them in the reported results. There may also be multi-collinearity problems, especially when using a relatively small sample size.

84 The quota rule of TWF would also be expected to have a similar impact; such an effect is unlikely to be significant in practice, however, in view of our conclusions on the limited impact of the quota rule.

85 Various specifications were tried. The reported results are the natural logarithm of EU GDP, US GDP and ECU/$.

EU GDP has a positive impact on the export share for each country and the EU as a whole. Japanese GDP was not found to have a consistent and stable impact on the export shares. US GDP is found to have an impact on the export share of France and Spain. The ECU/$ exchange rate is found to have a negative effect, as expected, but this is (statistically) significant only for the EU as a whole and for France. This suggests that a weak dollar reduces total EU exports and therefore increases the share of intra-EU exports.

The SMP variable was constructed using alternative time periods in order to capture differences in the timing of the implementation of SMP measures. Dummy variables took the value of 1 from 1987 to 1993, 1988 to 1993, ... 1992 to 1993. Each dummy variable was tested in turn within each specification. Inevitably, given the nature of the data and the type of variable used (i.e. a constant shift dummy) the results cannot establish direct causality, but they do provide additional evidence about whether the trade data are consistent with a positive SMP impact. The results indicate that the SMP had a positive impact on export share for the individual countries and the EU as a whole with a starting date varying from 1990 to 1992. Note that the coefficient in the French equation, although positive, is not statistically significant and the coefficient for the EU as a whole is only marginally significant.

In quantitative terms, the coefficient for the SMP impact in the EU regression suggests that the SMP had the effect of increasing the intra-EU to total export share by 2.8% (recall that the intra-EU export share increased from 35% to 49%). The relatively large confidence intervals associated with the estimated coefficients imply, however, that these figures should be treated as indicative of the direction and overall magnitude of the impact rather than an accurate estimate of the quantitative impact of the SMP.

10.3. Imports

The overall trends in imports are even more volatile than the trends in exports. We present below a brief summary of the main trends, extracting where possible any implications for the impact of the SMP.

10.3.1. EU imports

EU imports	**to 1989**	**to 1993**
CAGR of intra-EU imports since 1983:	8.4%	8.9%
CAGR of total imports since 1983:	16.3%	12.6%

In real terms, the value of intra-EU imports has also grown significantly. In 1983, they totalled ECU 713 million; they grew to ECU 1,158 million by 1989, and ECU 1,677 million by 1993.[86] However, total imports also grew over the period, though the growth has slowed since 1989 at a significantly faster rate. As a result, the proportion of total imports accounted for by intra-EU trade has fallen over the period from 51% in 1983 to 36% by 1993.

[86] Eurostat (for Germany, France, UK, Spain, Netherlands, Belgium, Luxembourg, Italy and Denmark).

10.3.2. Country trends

UK	to 1989	to 1993
CAGR of intra-EU imports since 1983:	0.4%	6.7%
CAGR of total imports since 1983:	12.5%	10.3%

UK intra-EU imports of film and television product remained fairly constant between 1983 (ECU 83 million) and 1989 (ECU 85 million) but increased significantly in 1990 to ECU 167 million and remained approximately at this level for the remainder of the period under review.

The UK's percentage of imports from the EU decreased from 29% in 1983 to 16% in 1989 and then increased again to 21% by 1993. The UK's total figures are heavily affected by the extent of its imports from the US and Australia. The share of imports coming from North America increased from 58.7% in 1984 to 65.3% by 1992.[87]

France	to 1989	to 1993
CAGR of intra-EU imports since 1983 (a):	5.5%	-2.4%
CAGR of total imports since 1983 (b):	3.4%	1.3%
CAGR of proportion of (a) accounted for by (b):	4.9%	-3.6%

The proportion of French imports from other EU countries has grown steadily from 48% in 1983 to 64% in 1989 but fell away to 33% in 1993. However, French intra-EU imports have been highly volatile in recent years, in line with French intra-EU exports.

The data suggest that the SMP and the MEDIA Programme have not increased the proportion of film and television product imported into France from other EU Member States. The value of these imports increased from ECU 517 million in 1983 to a peak of ECU 810 million in 1991, falling again, however, to ECU 588 million by 1993.

Spain	to 1989	to 1993
CAGR of intra-EU imports since 1983:	25.4%	19.4%
CAGR of total imports since 1983:	27.6%	25%

Total Spanish imports have grown fairly steadily during the period (though accelerating after 1988) from ECU 46 million in 1983 to ECU 189 million in 1989 and then climbing to ECU 429 million by 1993. The EU proportion of total imports has fluctuated with a negative long-term trend: 63% in 1983, 60% in 1989 and 40% in 1993.

In the period between 1988 and 1993, EU film and television product has grown in popularity in Spain. This increased the value of Spanish intra-EU imports from ECU 71 million in 1988 to ECU 171 million by 1993. However, a larger share of the overall increase in imports has come from territories outside the EU.

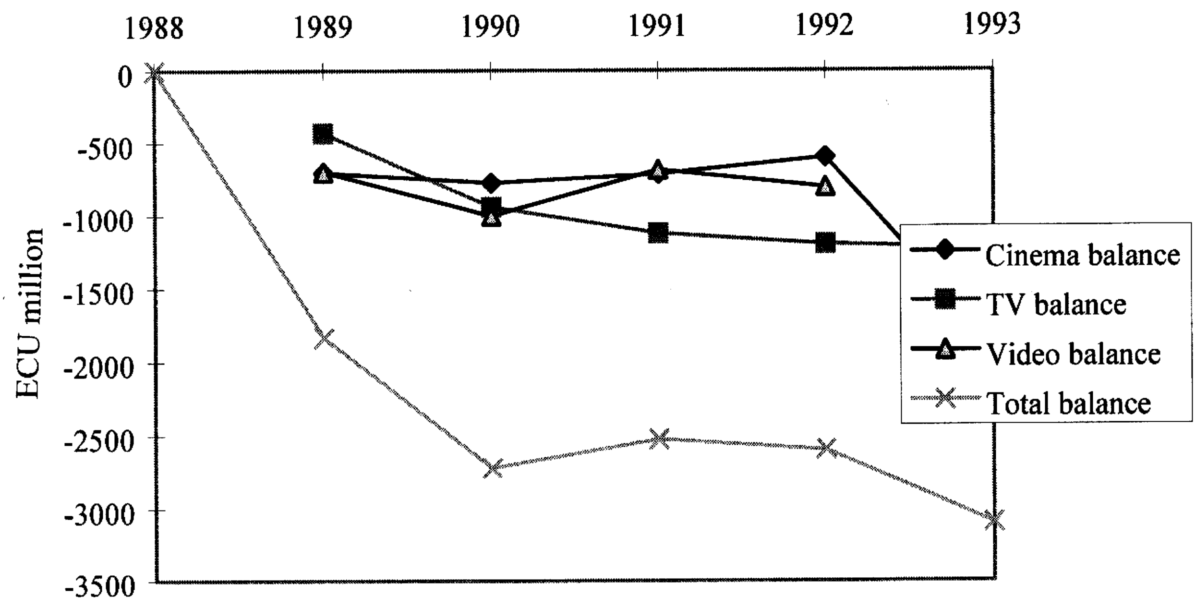
87 IDATE, 'Film and Television Market'.

10.4. Audio-visual balance of trade

The increase in overall volume of European television production and in intra-EU trade has been insufficient to prevent an increasingly negative balance of trade, particularly with the US, which is the EU's major supplier of programming. Eurostat estimates that the trade balance moved from a surplus of ECU 15 million in 1983 to a deficit of ECU 1,830 million in 1993.

Figure 10.1 analyses the trade balance with the US, the major EU trading partner, for cinema, TV, video and in total. The TV balance of trade has steadily moved in favour of the US, reflecting the factors previously discussed, whereas cinema trade has been more volatile.

Figure 10.1. EU balance of trade with US



Source: IDATE.

10.5. Conclusions

The available evidence on the change in the share of intra-EU exports for the EU and the countries for which data are reliable (France, UK and Spain) suggests that there has been an increase in the share of intra-EU exports in the 1990–93 period over and above what would be expected on the basis of trends in relative prices (i.e. exchange rates) and relative incomes (i.e. GDP growth of the EU and the US). This supports the hypothesis that TWF, the SMP and the MEDIA Programme have facilitated and encouraged cross-border trade within the EU.

The data on imports are more volatile, but they suggest that there has been an equally big (and, in some cases, larger) increase in non-EU imports resulting in a widening of the trade balance, especially with the US. This would support the hypothesis that non-EU product has not been disadvantaged from the liberalization of EU markets, relative to EU product.

11. The harmonization of copyright in the EU

11.1. Introduction

Three directives in the field of copyright have been adopted by the Council. They are: the Term of Copyright Directive (TCD – 93/98/EEC); the Rental and Lending Directive (RLD – 92/100/EEC); and the Cable and Satellite Directive (CSD – 93/83/EEC). The legal provisions and intended effects of these Directives are described in Chapter 3. In this chapter, we examine the results of our survey and case studies as they relate to copyright harmonization in the EU. It should be noted that it is too early to quantify the impact of copyright harmonization in the EU as the legislation is either very recent or has not yet been implemented in many Member States. However, our survey and case studies obtained views on the 'likely' or 'anticipated' impact of the Directives and on any barriers to SMI which are considered to remain.

The commercial effect of each Directive would be expected to differ between the sub-sectors within the audio-visual sector and between different operators, depending principally on whether they are acting as rights owners or users.

As the TCD and RLD harmonize copyright protection at the highest level already offered by Member States, it would be expected that rights owners and those, such as performers, for whom the Directive extends or grants rights, would view them positively. Conversely, those acquiring or exploiting copyright (such as broadcasters and producers) may view the Directives as having a potential negative impact to the extent that they increase their cost of acquiring the relevant rights. In the context of this study, which focuses on the production and distribution elements of the audio-visual value chain rather than the creation element, we have assessed separately the impact of the directives on broadcasters and on television and film producers.

11.2. Impact on broadcasters

The responses of broadcasters on the expected impact of copyright harmonization and the individual directives indicate that broadcasters have mixed views both on the degree of impact and on whether it is positive or negative. Lack of harmonization of rights was only considered as a significant barrier to trade by 26% of broadcasters indicating that harmonization is not a major issue for them.

89% of broadcasters believe that the TCD will have a negative impact on them, since it extends the protection offered to creators and will lead to higher costs of acquiring rights. For example, Yorkshire Television stated that the anticipated implementation of the TCD has led to conflict over producers' rights and to increased legal expenses. NOS stated that the Directive increases the risk of claims against them and TV1 claimed that the longer term of copyright makes programmes more expensive and therefore more difficult to broadcast. Similarly, the RLD is considered by 57% of broadcasters to have a negative impact.

Although the CSD has created a new tier of copyright payments, it has also created greater clarity regarding cable re-transmission. Thus, a small majority of broadcasters viewed it as positive. For example, Nethold, which has channels in a number of countries, considered that the Directive facilitates the move away from clearance by territory which will help the development of European satellite and cable channels.

11.3. Impact on film and television production

Film and television producers are directly involved in negotiating the acquisition of rights with performers and writers and therefore would be expected to focus on how the directives affect their relative position compared to their 'suppliers'. Of both categories, 50% identified the lack of harmonization as a very significant barrier to trade. This reflects the existence of different practices and agreements governing the role of collecting societies and trade unions and the structure and costs of rights payments to these bodies in each Member State.

Although harmonization is considered as desirable in principle by many producers, the specific measures enacted to date are not viewed so positively. Both the RLD and the TCD are considered as potentially negative by a majority of producers, as they add to the costs of acquiring rights from performers and creators. For example, Polygram believes that the right to 'equitable remuneration' in the RLD presents a danger for producers and could reduce film investment in the EU compared to the US where there is no 'equitable remuneration'. CEPI were similarly concerned that TV producers would lose revenue share in favour of performers.

The extension of copyright terms under TCD is also an area of concern. However, some producers will benefit, since many film and television productions use material falling into the category for which the copyright term has been extended. A specific concern is how Member States will deal with the retrospective effects and whether copyright owners may be able to make retrospective claims against the producers.

Conversely, CSD is viewed positively by 75% of producers for reasons similar to those cited by broadcasters.

11.4. Conclusion

The impact to date of copyright harmonization in the EU is minimal, although the industry is aware of the changes that are likely to occur and is beginning to take anticipatory action. Incomplete implementation of the copyright directives has weakened their impact so far. Our survey shows that copyright measures have had only a minor impact on television producers, although there is some variance of opinion between companies.

Broadcasters appear not to regard the need for copyright harmonization as a major issue although they are concerned that both RLD and TCD may lead to higher rights costs since they harmonize protection 'upwards'. Many producers regard copyright harmonization as an important aim, but its initial impact on them may be considered to be negative since both RLD and TCD strengthen the rights position of creators and performers as 'suppliers' to producers.

The CSD is generally regarded as facilitating re-transmission of cable and satellite channels and therefore as having a potentially positive impact.

12. Business strategy

12.1. Introduction

This chapter examines the effects of the SMP on the business strategy of operators in the audiovisual sector. We assess the significance of the SMP in shaping the strategies pursued by operators, briefly summarize the types of strategy pursued by operators in our case studies and describe the approaches adopted by operators to face the new challenges of digitization and multi-channel/interactive possibilities.

12.2. Significance of SMI

12.2.1. Basis of analysis

Porter's analysis identifies five principal forces driving competition in an industry, namely the threat of new entrants and of substitute products, rivalry among existing firms and the bargaining power of suppliers and of buyers. We have considered separately for the sub-sectors the degree of importance of the SMP in determining their strategy.

Having regard to the environment in which broadcasters operated in 1985 and in which they now operate, it is clear that regulatory issues, of which the SMP measures constitute only one element, are fundamental to the competitive structure of the industry. Within the Porter model, the regulatory environment is held to determine, at least partially, the barriers to entry into the market. However, in the broadcasting sector, it may also be expected to have an indirect effect on the rivalry between existing competitors (e.g. through licensing conditions) and on the relative power of suppliers (e.g. by changing the basis of the market for rights) and buyers (e.g. through advertising restrictions). For operators in other sub-sectors, audio-visual specific regulatory policy is less likely to have an influence on competitive forces apart from barriers to entry.

As the SMP is one element within a range of regulatory changes, we have tried to consider the extent to which its measures are specifically taken into account by operators rather than the general opportunities created by stimulating national regulatory changes.

12.2.2. Interview and case study evidence

Our interview programme addressed this area by asking respondents to comment on the direct impact of the SMP on their strategy and also by asking about the effects of increased competition.

All the companies in our case studies regarded single market integration as having limited significance in shaping their strategies.

In the broadcasting sector, the expansion of the market and the threat to existing broadcasters from new terrestrial and satellite channels have been accompanied by significant M&A and joint venture activity both within national markets and across borders. However, in our case studies, the only broadcaster to attribute strategic significance to the SMP was MTV for whom it facilitated their strategy of operating a single pan-European channel. This is consistent with the survey findings in which the most significant impact of TWF was considered to be the facilitation of cross-border satellite broadcasts. Broadcasters operating in one national market, such as Canal Plus España, or those who have established a network of national channels, such as Nethold, generally attributed little significance to the SMP in their strategic planning.

Actions by the EU competition authorities were cited by ENDEMOL and TV 1000 as having a negative effect on the implementation of strategy.

TV producers in the case studies, such as ENDEMOL, regarded the EU quotas as having some influence in encouraging them to consider expansion of operations across borders both in terms of direct sales and of establishment in other EU markets either by organic or acquisition activity.

Both producers and distributors attributed some indirect impact on their strategy to the SMP to the extent that it has facilitated the increase in demand for programmes and the development of new markets. Copyright harmonization was also considered to have had a minor impact.

12.2.3. Conclusion

The responses to the questions regarding the impact of the SMP and the case studies confirm that most EU operators have developed strategies to gain or defend their market share in the national markets in which they have a competitive advantage. Our analysis on economies of scale suggest that this is a viable strategy, at least in the medium term. It is also clear that many companies within the EU have adopted a more international approach in their strategy or have utilized TWF to try to break through barriers to entry. This is consistent with the objectives of the SMP. However, the evidence from our interviews and case studies also confirmed the hypothesis that the SMP is not perceived as being of direct significance in shaping commercial strategies of most operators.

12.3. Case study summary

In the EU market in 1985, many TV broadcasters were in a monopoly position, so that they did not need to compete. As previously discussed, the degree of change within the audio-visual sector over the last ten years has led to a variety of competitive strategies being adopted both to take advantage of new opportunities and to defend against new competition.

The lack of homogeneity of products and services in the audio-visual sector has led to a model in which competitive strategy is normally based on product differentiation or focus on niche areas rather than on cost leadership.

These trends are demonstrated in our case studies and detailed reports on these are set out in Appendix E. We have also referred to relevant examples of operators' strategies and opinions arising from the case studies in the previous chapters on the impact of the SMP. The table below is intended to provide a brief summary of the principal strategies adopted by the operators and of their perception of the impact of the SMP on their business. It also, where applicable, notes the principal barriers to trade which they highlighted.

Table 12.1. Summary of case study findings

Company	Main activity	Principal strategies	Perceived effects of SMP
MTV Europe	Pan-European satellite music channel	Targeted at youth audience; initially pan-European, now developing national versions	TWF helped to obtain national licences and to obtain carriage; capacity limits allow national regulators to favour local channels
Nethold Benelux	European network of national satellite premium channels (mainly film)	Obtained national licences where possible; moving rapidly to digital; developed own CA system; buys rights on pan-European basis	TWF: positive impact; DVB helpful; film windows unevenly enforced; EU merger rules create uncertainty
PolyGram Filmed Entertainment	Film producer & distributor	Developing integrated pan-European business; targeting international markets - produces in EU	SMP: little impact so far; copyright harmonization good in principle but TCD/RLD may reduce incentives for producers
RAI	State owned broadcaster	Fighting competition from private channels; co-producing TV & film; transmits free satellite channel for Italian speakers in Europe	TWF: little impact except European works quota; MEDIA has helped co-productions
Canal Plus España	Terrestrial pay broadcaster	Joint venture between Canal Plus France and Prisa Began with international films and developed supply of Spanish films by establishing production and distribution arms; joint venture with PolyGram for international distribution Set up satellite services	TWF: little impact on Canal Plus SCD: facilitates satellite uplink EU quotas: little effect
Ciby 2000	French film producer & distributor of upmarket English language films	Produces for international market; established own distribution arm	TWF: helpful but marginal direct effect
ENDEMOL	TV producer & distributor of entertainment & drama	Setting up network of production companies across EU; tried to establish broadcaster (HMG)	TWF: minor impact - benefit from growth in channels to sell to & move into other EU countries; EU competition rules restricted TV channel investment
Gaumont	Producer & distributor of French language films	Vertically integrated distribution, cinema exhibition & production; planning English language films to increase international sales	TWF: assisted growth in number of film channels; quotas help to attract inward investment; national quotas restrictive and harmful; barriers remain cultural
NBC Superchannel	Pan-European satellite channel	Channel aimed at business community with an entertainment oriented prime time	TWF: little impact
SES	Private satellite operator (Astra)	First medium power satellites dedicated to TV; EU market leader; digital capacity available from 1996	TWF: indirect benefit of assisting satellite channels to develop; SCD useful in reducing channels' uplink costs; DVB: important for digital development
TF1	Private TV broadcaster	Market leader in France; mass market audience; integrated production	TWF: little direct impact; difficult to enforce right to sell advertising on overspill signal; French quota rules more restrictive than EU; unequal quotas restrict ability to co-produce with non-French partners
TV 1000	Satellite pay channel	Uplink from London; targeted at Scandinavia	TWF: little impact; does not meet EU quota; received Action Plan funds; EU stopped NSD alliance
UFA Fernsehproduktion	Film & TV producer & distributor	Largest German TV producer; focused on national market ; developing international product	TWF/SMP: no direct impact; German liberalization seen as most significant influence; language is main barrier to international trade
UIP	Pan-European film distributor	Owned by US studios; operates network of national companies	SMP: little impact; TWF Article 7: windows should be standardized; MEDIA useful but should use commercial criteria; EFDO could play major role and should apply to non-EU owned companies

Source: KPMG case studies.

12.3.1. Single market integration and the challenges of digitization

This section assesses whether structural changes resulting from single market integration have led businesses involved in the audio-visual sector to face the new challenges of digitization and multi-channel/interactive possibilities in a more aggressive manner on a global scale.

This study has shown that technological developments have played an influential role in stimulating change in the audio-visual sector in the past ten years. The introduction of satellite television technology produced a step change in the economics of the industry. The development of digital technology has the potential to produce a further step change.

In the longer term, the effects of digitization of pictures, text and sound on the sector will include the following:

(a) digital compression will enable much more information to be conveyed within a given bandwidth, which will hugely increase the number of channels which can be carried;
(b) costs of transmission will fall, reducing barriers to entry for broadcasters;
(c) interactive services will make content available to consumers in packages or catalogues from which they will be able to select (e.g. as in video on demand services) and download individual items;
(d) there will be many alternative delivery systems for content ranging from terrestrial transmission through satellite and cable to Internet and other telecommunication-based networks; and
(e) the relationship between programme providers and viewers will change with a higher proportion of viewing time spent on services for which the viewer will pay directly and with the viewer's role becoming less passive.

In the shorter term, European and US companies have booked capacity on digital-capable satellites, and a number of bouquets of digital channels are planned for launch in 1996. However, the costs of developing the technology and the subscriber management systems needed to capture new revenues from such services are high; and this raises a number of issues relating to the relationship of risk and reward and the minimum efficient scale in the industry. Indeed, it may be that there is room for only one or two operators in each market.

It is outside the scope of this study to consider how this may affect the future competitive forces and market structure of the sector. We examine briefly below how audio-visual businesses in the EU have begun to address these issues. We examine three key issues:

(a) the implications of the DVB group's activities;
(b) the impact of the potential convergence of telecommunications and audio-visual activities;
(c) the competitive tensions between the need for scale to invest in new technology, the natural desire to grow in national markets and the danger of stifling competition at the national level through such growth.

The impact of the DVB

The work of the DVB and the impact of the Television Standards Directive have been examined in detail in Chapter 3 (see Section 3.14). Here we look at the extent to which such collaboration has impacted on the structure of the EU audio-visual sector and its implications for the structure of EU operators.

The European standard for digital broadcasting based on MPEG2 technology, combined with the reduction of capacity constraints implied by digitization, should in theory lower the barriers to operators entering EU markets other than their home base. This is because, once the development costs have been accounted for, the marginal cost of new services may be relatively small.

However, it is too early to know whether competition will occur in this way, or whether the players in the digital consortia now beginning to take shape will – like the public service broadcasters before them – avoid competing head on. Strategic alliances to reduce risk may be the model for the first digital services. For example, in early 1996, a cross-border alliance, Digital TV Holding, was announced between BSkyB (UK), Bertelsmann (Germany), Canal Plus (France) and Havas (France). If this proceeds, it will launch services in a number of EU countries, including Germany and Italy and will procure jointly: programming rights; subscription management systems; and set-top boxes.

In the longer term, these companies may seek to compete with each other within each of the Member States. In the shorter term, such an alliance would be aimed at reinforcing their members' strength in each of their domestic markets through the sharing of development costs and at increasing their bargaining power in acquiring programming and broadcast rights.

It is too early to know whether strategic alliances such as this will succeed and be able to compete more or less effectively on a global scale as the nature of the relationship between the main partners is still emerging.

The impact of the potential convergence of telecommunications and audio-visual activities

One important consequence of digital technology is that the technical differences between distributing audio-visual product and communications services are greatly reduced. The need for a return path for interactive services gives telecommunications companies a strong incentive to become more involved in the audio-visual sector. This study does not examine the impact of telecommunications liberalization on the sector; nor does it attempt to forecast the extent to which telecommunications companies will become important players in the provision of audio-visual services.

During the period under study, single market integration in the audio-visual sector has not yet had an impact on the relationship between audio-visual and telecommunications activities, except to the extent that telecommunications operators were involved in the DVB group. Indeed, the proposed MSG grouping, announced in 1995, which brought together broadcasters and telecommunications operators to co-operate to provide a single subscription management service for Germany was ruled anti-competitive by the EU Merger Task Force.

Competitive tensions

The MSG case illustrates an important tension identified by a number of our interviewees. The natural development model for digital services is at a national level. This is because consumers will be buying not the digital technology, which could be a single system across Europe, but the content of the services. There is no evidence to suggest that consumer preferences for digital product will be any different in their national and linguistic requirements from analogue services.

The size of investment required to launch a digital service and the competitive dynamics related to establishing an installed base and critical mass tend towards monopoly at a local level. It may also be expected to lead to vertical integration between broadcasters and producers in order to secure transmission rights. There is a clear tension between the desire to create EU audio-visual enterprises which are capable of competing on a global scale and the desire to maintain competition within a series of national markets. This tension between EU and national market definitions will be a key issue for regulators seeking to balance these twin objectives.

12.4. Conclusions

The development of digital technology is creating the potential for new opportunities for audio-visual enterprises. There is little evidence to suggest that single market integration has led to changes in structure of the industry which will enable EU audio-visual service providers to compete any more or less effectively on a global scale.

Although the collaboration through the DVB has created a single EU standard with wide industry support:

(a) there is little evidence so far to suggest that consumers will not continue to prefer domestic programmes on digital services as they do on analogue;
(b) the scale of investment required to launch digital services tends towards monopoly at a national level.

Regulators will need to consider how to resolve the tension between the aim of maintaining competition at Member State level and the desire to encourage the growth of global scale EU audio-visual enterprises.

13. Remaining barriers

13.1. Introduction

This chapter briefly describes remaining legal or administrative barriers to achieving a single market which have been identified in the study.

It is recognized that single market measures aimed at the audio-visual industry have been subject to two, often conflicting, pressures. On the one hand, the specific SMP measures relating to the audio-visual sector (such as harmonization of cross-border broadcasting and copyright) aim to eliminate barriers to trade within the EU based on economic objectives which apply to all sectors. On the other hand, the promotion of cultural issues has also played an important role in single market measures, for example, by encouraging 'European' content production through quotas or direct subsidy. Such measures can potentially also have economic 'side effects' which could limit the success of the measures taken to reduce barriers to trade.

It should be noted that many of the sector-specific SMP measures have only recently been transposed into Member States' domestic legislation and some still have not been. The summary below takes this into account. It addresses:

(a) non-homogeneity of audio-visual products, services and markets;
(b) non-implementation/differing implementation of directives;
(c) differences in regulatory framework between Member States;
(d) market structure;
(e) preferential treatment of domestic operators;
(f) copyright/intellectual property barriers; and
(g) other areas.

13.2. Non-homogeneity of audio-visual products, services and markets

It is evident from the analysis of the sector set out earlier in this report that the SMP's potential impact on the audio-visual industry was restricted by the heterogeneous nature of audiovisual products and the pattern of demand for 'European' product and services. National taste, cultural differences and linguistic differences were cited in our interviews as the most significant barriers to trade. Clearly, these are not in themselves legal or administrative barriers although cultural policy whose main objective is the promotion of local and national culture may give rise to measures within Member States whose effect is to sustain or create such barriers.

Our survey did not suggest that the EU could or should seek to reduce cultural and linguistic diversity. Although the *auteur* tradition in audio-visual production seems to have encouraged the production of material which is culturally specific, this diversity need not be regarded as an insurmountable barrier. This is demonstrated by the success of US product in crossing European as well as other international borders and by the increase in cross-border film and TV co-productions within the EU.

13.3. Non-implementation/differing implementation of directives

Some of the legislation applicable to the audiovisual industry has not yet been implemented, notably in the field of copyright harmonization. This was also noted by the parallel DRI survey of European trade associations.[88] It is anticipated that implementation will be completed in due course.

National governments may apply the provisions of a Directive in different ways. Some directives, notably TWF, are designed to provide a minimum level of regulation for certain areas such as regulations on sponsorship, protection of minors and quotas. Member States may choose to apply stricter standards and have done so in a number of cases. For example, the French and Portuguese Governments have made mandatory the two-year window between first cinema release and television showing whilst a number of other Member States have not.

13.4. Differences in regulatory framework between Member States

We consider that a potential barrier of real significance to the differences in the application of TWF is the fact that broadcasting remains an activity for which each State has its own regulatory framework. TWF was not intended to harmonize all aspects of national regulations. Issues which it does not address but which particularly affect the ability of broadcasters to operate easily in more than one State include cross-ownership rules for national broadcasting regimes and the right of establishment of broadcasters in Member States. Key regulations with the greatest impact on the shape of the audio-visual industry are those governing:

(a) granting of licences for the provision of audio-visual services and ownership regulations seeking to ensure pluralism in the media;
(b) the development of infrastructure for satellite, cable broadcasting and telecommunications; and
(c) competition policy (including state aids).

National media ownership rules designed to protect pluralism and diversity have limited the ability of large national companies to expand into other media areas in the same or another Member State, whether by acquisition, start-up or joint venture.

Furthermore, there have been instances where entry of potential competitors has been discouraged, either through additional regulatory requirements or by having to make lengthy and costly legal challenges. This particularly deters smaller players.

13.5. Market structure

13.5.1. Broadcasting

There are a number of EU Member States where broadcasting is still a concentrated industry, despite the liberalization that has occurred. This includes the important markets of France and Italy and to a lesser extent, the UK and Belgium. Furthermore, the structure of the advertising market has been identified as a potential barrier to entry, especially issues related to the inconsistency of measurement systems.

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[88] DRI, 'Survey of the Trade Associations' Perception of the Effects of the Single Market', Draft final report for the European Commission, November 1995.

Broadcast distribution

The audio-visual industry is characterized by pockets of natural monopoly at a national or local level. Cable distribution systems are a typical example of this resulting from the relatively high cost of establishing the distribution infrastructure and creating an installed base. This in turn implies high entry barriers for potential new entrants in distribution.

Where such monopolies exist, the ease of access to networks for broadcasters will depend on the terms and conditions set by the network owner.

Public sector broadcasting

It is not possible or easy to establish the exact cost implications of specific public service obligations of state supported broadcasters. The existence of such funding, however, can maintain relatively high entry barriers by creating a benchmark in quality which needs to be passed by new entrants in whichever genre they choose to compete. For example, alleged unfair competitive practices by state broadcasters have been the subject of complaints to the Commission by French, Spanish and Portuguese private broadcasters.

13.5.2. Film distribution

(a) Certain US film producers have grouped together to distribute their audiovisual products in Europe and there are other dominant horizontal and vertical groupings in Portugal, Italy, Greece, the United Kingdom and the Netherlands.
(b) There is a relationship between size and endogenous (i.e. created by operators in a market) fixed costs in film distribution. This takes the form of high marketing expenditure to promote films which are proving successful (thus, the US companies have an advantage as their films tend to have been released in the US before they reach Europe, thereby providing free market research); or of practices such as block-booking or minimum exhibition periods, which reduce the availability of screens for mainstream EU product.

13.6. Preferential treatment for domestic operators

There are still a number of ways in which national governments try, and often succeed, to discriminate in favour of domestic companies:

(a) preferential treatment for local channels in allocating cable capacity;
(b) increased public funding of public service broadcasters which do not have an incentive to invest in cross-border trade, and which use the funds to maintain a position of strength in the local market;
(c) national production subsidy systems which are not co-ordinated at the EU level, and which complicate co-production arrangements; and
(d) quota arrangements which go beyond what is specified in TWF.

13.7. Copyright/intellectual property barriers

Although three copyright directives have been adopted, their limited implementation so far restricts effective harmonization. Remaining barriers include:

(a) traditional contractual arrangements, under which only national rights are granted to an individual broadcaster preventing EU-wide exploitation of audio-visual material;

(b) nationally negotiated agreements with labour and talent unions which require further licences or clearances if an audio-visual product is to be exploited outside its Member State of origin; this may render re-transmission or re-broadcast uneconomic; it may also be difficult to obtain releases in respect of older material;

(c) the acquisition and administration of rights is affected by differences between national collecting society organizations and poor coordination between them. For example, the lack of an EU collection infrastructure has hampered effective operation of the Cable and Satellite Directive. From a competition law perspective, a balance is needed between achieving benefits from collective EU licensing arrangements, and preventing possible abuse by collecting societies of their monopoly.

13.8. Other areas

Other issues which have been raised include:

(a) the lack of harmonization of indirect taxation, particularly for video distribution, creates an uneven playing field;

(b) the absence of a harmonized European co-production treaty leads to complex and expensive contractual arrangements for such productions.

APPENDIX A

Methodology

A.1. Overview

The methodology adopted for this study was based on testing a set of hypotheses and comprised five principal elements as follows:

(a) desk research;
(b) legislative review;
(c) industry and regulator interviews;
(d) case studies; and
(e) analysis and reporting.

Our expert advisers were consulted for each element.

A.2. The methodology in detail

A.2.1. Desk research and legislative review

The first phase of the study identified the hypotheses to be tested. This involved gathering data and reviewing relevant literature (a list of the key sources of secondary data is included in Appendix J).

In this phase we also identified the key EU legislative changes affecting the audio-visual sector since 1985 and assessed how these changes have impacted on it. The review of the legislation was led by Denton Hall, our expert legal advisers to the study. The output of these elements was incorporated in the storyboard which was discussed and refined with the Commission.

A.2.2. Industry and regulator interviews

The next phase of the study sought to test and validate the hypotheses through interviews with industry, trade associations and regulators. Face-to-face interviews with trade associations, regulators and a wide range of companies of various sizes, spread across audio-visual sub-sectors and across all Member States, were intended to give a broad spectrum of information to validate or reject our initial conclusions. A focused interview questionnaire was used for the face-to-face and telephone interviews. A copy of the questionnaire is included in Appendix B. Results from the interview programme have been incorporated into the final report where appropriate. A synopsis of the questionnaire results for all respondents is provided in Appendix C. The analysis of types of respondent by sector and by Member State is given in Figures A.1 and A.2.

The outcome of this phase of the study was the Progress Report. The purpose of the report was to update the Commission on progress to date and to provide some initial conclusions based on gathered data and to outline the basic structure of the Final Report.

The Progress Report was discussed with the Commission and amendments made as required.

Figure A.1. Sectoral split

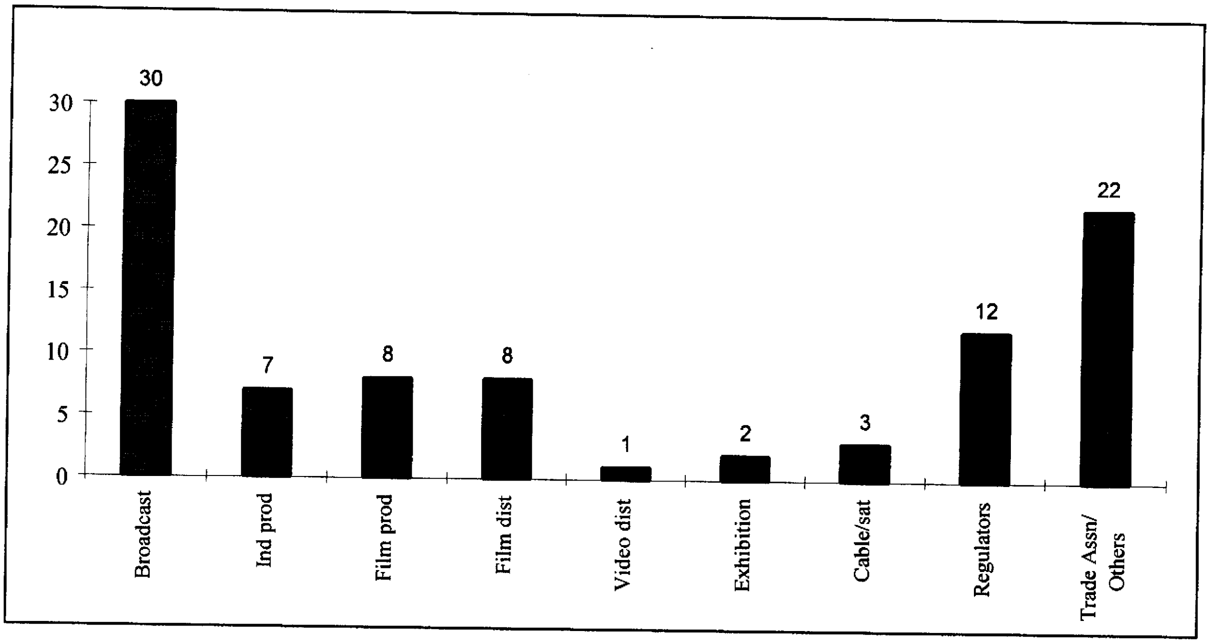
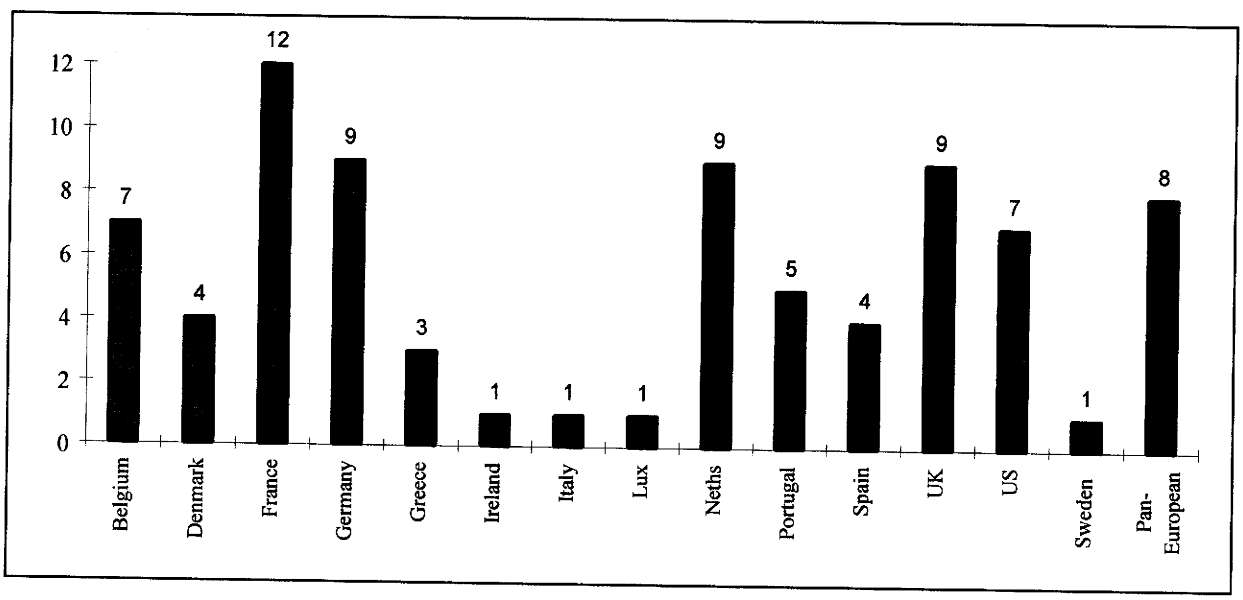


Figure A.2. Geographical split



A.2.3. Case studies

We conducted 14 case studies which entailed detailed face-to-face meetings with senior management of the participating companies using our structured questionnaire as the starting point. The participants were selected from the categories of business set out in the Commission's Invitation to Tender which were as follows:

(a) four companies operating cross-border television services;
(b) two major cinema distribution groups;
(c) four key film/programme producers;
(d) a satellite transponder rental company;
(e) a public sector broadcaster; and

(f) a cable service provider.

A full list of the case studies conducted is as follows:

(a) Canal Plus España
(b) Ciby 2000
(c) ENDEMOL
(d) Gaumont
(e) MTV Europe
(f) NBC Super Channel
(g) NetHold Benelux
(h) PolyGram International
(i) RAI
(j) SES
(k) TF1
(l) TV 1000
(m) UFA Fernsehproduktion
(n) UIP.

The reports on the case studies are set out in Appendix E. The structure of the case studies is generally as summarized below although varying according to the issues raised by the relevant company:

(a) history of the company;
(b) European strategy;
(c) impact of the SMP; and
(d) future issues.

Results from the case studies which have been of particular significance to our analysis have been integrated into the main text of the report where appropriate and have, in particular, informed the business strategies section.

A.2.4. Analysis and reporting

The final phase of the study sought to develop and report conclusions. The outcome of phase 5 was the Revised Interim Report submitted to the Commission on 1 May 1996 which was followed by the Final Report submitted on 17 June 1996. The Appendices form a part of the Report and should be read in conjunction with the main text.

A.3. Quantitative analysis

The audio-visual sector poses a number of difficult methodological challenges, particularly in terms of published data. The systematic collection of data across audio-visual sub-sector and across Member States is only now beginning to be developed by Eurostat. In many Member States, even basic trade statistics are still not available. Where data is available, differences in definitions make comparisons hazardous (indeed, methodological differences in measuring even basic statistics such as television audiences have been referred to in the main text of the Report as a barrier to the sale of pan-European airtime).

In this context, we have treated all data with caution. In general, trends across time within Member States have been analysed, but comparisons of absolute figures between Member States have not been made unless the data has been considered sufficiently reliable.

Quantitative analysis has been carried out by comparing the trends in the industry prior to SMP measures taking effect to the trends afterwards. Where feasible, we have used regression analysis to separate the impact of the SMP from other determinants of change in the industry.

A.4. Qualitative analysis

The low reliability of statistical data has made it important for us to validate such data and other desk research by direct reference to professionals in the industry, through interviews and case studies. Initial piloting of the study revealed a widespread lack of awareness of the single market measures and it was concluded that questionnaires should be completed in face-to-face or telephone interviews in order to obtain meaningful responses.

APPENDIX B

Questionnaire

EFFECTIVENESS AND IMPACT OF SINGLE MARKET INTEGRATION

SURVEY OF AUDIO-VISUAL SECTOR

1. INTERVIEWEE

Your name:____

Title:____

Contact telephone number:________________Contact fax:________________

Which area of the business are you employed in?____________________

2. INTERVIEWEE'S ORGANIZATION

Organization name____

Address ____

____

____

____

____

2.1 What is the approximate annual turnover of your company? ***(Industry only)***
under 1m ECU ☐ 1-5m ECU ☐ 5-20m ECU ☐ over 20m ECU ☐

2.2 How many people do you employ? ***(Industry only)***
less than 50 ☐ 50-199 ☐ 200-499 ☐ 500-1,000 ☐ over 1,000 ☐

2.3 How many members do you have? ***(Trade Associations only)***
less than 50 ☐ 50-100 ☐ 101-250 ☐ over 250 ☐

2.4 What percentage of companies in the sector do you represent? ***(Trade Associations only)***
0-20% ☐ 20-50% ☐ over 50% ☐

2.5 What percentage of turnover in the sector do you represent? ***(Trade Associations only)***
0-20% ☐ 20-50% ☐ over 50% ☐

2.6 In which of the following sectors is your organization an active market player? *(tick all those that apply)* ***(All)***

Television:
production ☐
programme distribution ☐
terrestrial broadcasting ☐
satellite broadcasting
(primarily cable retransmitted) ☐
satellite broadcasting (primarily DTH) ☐
cable networks ☐

Film:
production ☐
distribution ☐
exhibition ☐
Video:
production ☐
distribution ☐
retail ☐

3. THE SINGLE MARKET PROGRAMME (CONTD)

3.2 Television Without Frontiers Directive (TWF)

Please indicate the extent to which the TWF objectives had the following impacts on your sector. *(interviewer: check in StoryBoard when TWF was transposed into National Legislation)* ***(All)***

Effects	**Not relevant**	**No impact**	**Minor impact**	**Significant impact**
A. Facilitated establishment of cross-border satellite broadcasters	☐ 1	☐ 2	☐ 3	☐ 4
B. Facilitated cross-border broadcasts by terrestrial broadcasters by encouraging freedom of reception	☐ 1	☐ 2	☐ 3	☐ 4
C. Encouraged the development of the independent TV production sector by increased demand	☐ 1	☐ 2	☐ 3	☐ 4
D. Encouraged the deregulation of commercial broadcasting	☐ 1	☐ 2	☐ 3	☐ 4
E. Increased the proportion of European productions broadcast by channels transmitted in/from your country	☐ 1	☐ 2	☐ 3	☐ 4
F. Changed the rules relating to types of advertising permitted on television:				
Tobacco	☐ 1	☐ 2	☐ 3	☐ 4
Alcohol	☐ 1	☐ 2	☐ 3	☐ 4
Medical	☐ 1	☐ 2	☐ 3	☐ 4
Other	☐ 1	☐ 2	☐ 3	☐ 4
G. Encouraged the set up of sales/distribution offices	☐ 1	☐ 2	☐ 3	☐ 4
H. Encouraged the cross-border expansion of advertising and pay TV services	☐ 1	☐ 2	☐ 3	☐ 4
I. Increased the range of choice available for consumers	☐ 1	☐ 2	☐ 3	☐ 4

For any effects which you indicate have had a significant impact on your business, please give details:

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4. BARRIERS TO EUROPEAN TRADE

4.1 Have you become more involved in the audio-visual industry in other EU countries than you were in 1985? ***(Industry only)***

Yes ☐ No ☐

If *yes*, in what form of activity? ***(Industry only)***

(a) Retransmission of your services	Yes ☐ No ☐
(b) Establishment of new channels	Yes ☐ No ☐
(c) Establishment of a new company	Yes ☐ No ☐
(d) Investment in existing channels	Yes ☐ No ☐
(e) Joint venture new channels	Yes ☐ No ☐
(f) Production joint ventures	Yes ☐ No ☐
(g) Co-financing of productions	Yes ☐ No ☐
(h) Co-productions	Yes ☐ No ☐
(i) Other – specify	

Please place additional comments below

4. BARRIERS TO EUROPEAN TRADE (CONTD)

4.2 What barriers or obstacles to trade within the EU remain and how important are they? ***(All)***

	Insignificant	Minor significance	Significant	Very significant	No Opinion
A. Lack of harmonization of contracts/rights	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
B. National licensing restrictions	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
C. Quotas	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
D. National ownership legislation	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
E. Other national regulations *(please specify)*	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
F. Intellectual property disparities	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
G. Mutual recognition of standards and procedures	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
H. Industry subsidies from the state	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
I. Anti-competitive behaviour	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
J. Structure of the advertising market	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
K. Differing distribution patterns	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
L. Importance of parallel trade	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
M. Technical or technology differences	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
N. National tastes and cultural differences	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
O. Language differences	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
P. Other *(please specify)*	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5

Additional comments for question 4.2:

4. BARRIERS TO EUROPEAN TRADE (CONTD)

4.3 If you produce or own rights to programmes: Have you since 1985 found it more or less difficult to sell the following to other EU countries ? ***(Industry only)***

Nature of property sold	**More difficult**	**No change**	**Less difficult**
Completed programmes	☐ 1	☐ 2	☐ 3
Co-production rights	☐ 1	☐ 2	☐ 3
Programme rights (e.g. formats)	☐ 1	☐ 2	☐ 3

If **more** difficult (tick all those that apply):

Competition from US companies ☐
Growth in indigenous production ☐
Competition from other EU companies ☐
Quotas ☐
Other – please specify ☐

If **less** difficult (tick all those that apply):

Product more appropriate for wider market ☐
Lower legal/administrative barriers ☐
Better distribution networks ☐
More channels ☐
Other – please specify ☐

4.4 ***(Optional)*** Do you have any data such as sales figures and/or examples of particular titles? ***(Industry and Trade Associations only)***

4.5 ***(Optional)*** Are programmes/films from other EU countries more or less popular than before in your country? ***(All)*** Why? Do you have any useful data?

4.6 Are you aware of European audio-visual regulation having differing effects in different countries? ***(All)***

4. BARRIERS TO EUROPEAN TRADE (CONTD)

4.7 Are you aware of European audio-visual measures having differing effects between products/service/genre? ***(All)***

____

4.8 Which of the following developments have been most influential in the development of the European audio-visual industry? ***(Industry and Trade Associations only)***

	Insignificant	Some significance	significant	Very significant	No opinion
A. New delivery systems – satellite and cable	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
B. Multiplication of TV channels	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
C. Growth in VCR penetration.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
D. Home viewing of films	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
E. Development of production technology	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
F. Development of audio-visual marketing strategies	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
G. Development of substitute leisure activities	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
H. Development of digital technologies	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
I. Market trends (i.e. developments in the pattern and trends in demand)	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
J. Technology	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
K. EC National Government actions, such as state subsidies	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
L. Non-EC National Government actions	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
M. Trade barriers outside EC	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
N. Quotas or similar	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
O. Other *(please specify below)*	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5

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4. BARRIERS TO EUROPEAN TRADE (CONTD)

4.9 *(Optional)* For those developments identified as significant, please specify what changes have occurred as a result in your sector/business ? ***(Industry and Trade Associations only)***

Prompts (examples)
Audience fragmentation; Change in the structure of cash flows; Critical mass becomes more expensive to achieve; Growing US dominance in international film and programme markets.

4.10 What measures could the Commission introduce to help remove the barriers to trade that remain? ***(All)***

5. FINANCIAL SUPPORT SYSTEMS

5.1 Have you benefited from the Media Programme? ***(Industry)***

Directly (receiving funds) ☐ Indirectly (acquiring funded product) ☐

5.2 What impact has the Media Programme had on your business? *(tick all those that apply)* ***(Industry)***

- Increase market share of European production ☐
- Create informal cross-border networks ☐
- Support countries with small production capacities ☐
- Support small- and medium-sized enterprises ☐
- Increase intra-European exchange of films and programmes ☐
- Other – please specify ☐

5.3 Have you benefited from the Action Plan for the Introduction of Advanced Television ? ***(Industry)***

Directly (receiving funds) ☐ Indirectly (acquiring funded product) ☐

5.4 What impact has the Action Plan for the introduction of Advanced Television had on your business? *(tick all those that apply)* ***(Industry)***

- Investment in technology for 16:9 aspect equipment ☐
- Investment in non-film 16:9 production ☐
- Other – please specify ☐

5. FINANCIAL SUPPORT SYSTEMS (CONTD)

5.5 What is the impact of national funding and tax incentives on the integration of the EU audio-visual market? ***(Industry)***

Helped ☐ Hindered ☐

5.6 If helped, how? ***(Industry)***

Funding of EU programmes which would not otherwise have been made	☐
Encouraging co-production activities	☐
Other – please specify	☐

5.7 If hindered, how? ***(Industry)***

Discouraging the commissioning or purchase of programmes produced in other EU countries	☐
Making programmes for other EU countries more expensive than equivalent programmes produced in your country	☐
Other – please specify	☐

6. SALES AND MARKETING
(If the respondent is involved in production and broadcasting, please answer separately for each activity)

6.1 What sales method(s) have you used to increase your distribution of programmes/films/videos across the EU? ***(Industry only)***

Distribution method	
A. Satellite channels	Yes ☐ No ☐
B. Programme/film distribution networks	Yes ☐ No ☐
C. Broadcaster agreements (such as EBU)	Yes ☐ No ☐
D. Production alliances (co-productions)	Yes ☐ No ☐
E. Other *(please specify)*	Yes ☐ No ☐

6.2 How well has each mechanism performed so far, what difficulties have you encountered? ***(Industry only)***

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6. SALES AND MARKETING (CONTD)

6.3 Has your sector become more or less orientated to exports since 1985? ***(Industry and Trade Associations only)***

More ☐ Less ☐ No change ☐

6.4 Please give reasons for any change? ***(Industry and Trade Associations only)***

6.5 Have the Single Market measures helped the export performance of the sector in the rest of the world? ***(All)***

yes ☐ no ☐

If yes, please give reasons.

6.6 To what extent are export opportunities considered at the development stage of a programme?

Significant ☐ 1 Minor ☐ 2 Not considered ☐ 3 No opinion ☐ 4

6.7 To what extent has this approach changed during the last ten years?

Significant change ☐ 1 Minor change ☐ 2 No change ☐ 3 No opinion ☐ 4

6. SALES AND MARKETING (CONTD)

6.8 (Optional) Which pan-European film distribution networks or organizations are you involved with or are aware of? What are they? Names? Contacts? ***(Industry and Trade Associations only)***

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6.9 (Optional) How do they work? ***(Industry and Trade Associations only)***

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7. CHANGES IN COMPETITION AND MARKET CONCENTRATION

7.1 Has the single market programme resulted in new competitors entering your market? ***(All)***

Yes ☐ 1 Partly ☐ 2 Not at all ☐ 3 No opinion ☐ 4

7.2 Where have new market entrants mostly come from? *(please tick the main sources of competition)* ***(All)***

Within EC ☐
Former Eastern Bloc, inc. CIS ☐
Other Europe ☐
North America ☐
Japan ☐
Middle East ☐
South America ☐
Australia/New Zealand ☐
Others ☐

7.3 Has intra-EC competition been influenced by the single market programme? ***(All)***

Significantly ☐ 1 Partly ☐ 2 Not at all ☐ 3 No opinion ☐ 4

7.4 In what ways is the market more/less competitive? ***(All)***

	Increased	**Same**	**Decreased**
A. Number of competitors	☐ 1	☐ 2	☐ 3
B. Threat of entry by new players	☐ 1	☐ 2	☐ 3
C. Cost of acquiring product	☐ 1	☐ 2	☐ 3
D. Price charged for product	☐ 1	☐ 2	☐ 3
E. Importance of other distribution channels	☐ 1	☐ 2	☐ 3

7. CHANGES IN COMPETITION AND MARKET CONCENTRATION (CONTD)

7.5 Has increased competition led you to make any of the following changes in your business? (Trade associations should answer for their sector) ***(Industry and Trade Associations only)***

	No extent	Minor extent	Significant extent	Very significant extent
A. Overhead cost reduction	☐ 1	☐ 2	☐ 3	☐ 4
B. Distribution costs reduction	☐ 1	☐ 2	☐ 3	☐ 4
C. Increased spending due to competition for scarce inputs	☐ 1	☐ 2	☐ 3	☐ 4
D. Changes to production facilities	☐ 1	☐ 2	☐ 3	☐ 4
E. Withdrawal from unprofitable markets/segments	☐ 1	☐ 2	☐ 3	☐ 4
F. Efficiency gains through investment	☐ 1	☐ 2	☐ 3	☐ 4
G. Workforce level reduction	☐ 1	☐ 2	☐ 3	☐ 4
H. Efficiency gains through M&As	☐ 1	☐ 2	☐ 3	☐ 4
I. Efficiency gains through exploitation of economies of scale	☐ 1	☐ 2	☐ 3	☐ 4
J. Increased targeting of customer/products	☐ 1	☐ 2	☐ 3	☐ 4
K. Price reduction	☐ 1	☐ 2	☐ 3	☐ 4
L. Acceptance of a lower profit margin	☐ 1	☐ 2	☐ 3	☐ 4
M. Other *(please specify)*	☐ 1	☐ 2	☐ 3	☐ 4

Additional comments to 7.5:

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7.6 If costs have increased/fallen as a result of increased competition, what has been the overall annual increase/reduction over the last five years? ***(Industry and Trade Associations only)***

Increase ☐

0-2% ☐ 2-5% ☐ 5-10% ☐ over 10% ☐

Decrease ☐

0-2% ☐ 2-5% ☐ 5-10% ☐ over 10% ☐

No impact ☐

8. PROGRAMMING PRICES

8.1 What has happened to prices as a result of increased competition? (Please exclude the impact of inflation and changes in supply and demand) ***(All)***

Genre	Significant decrease	Partial decrease	No change	Partial increase	Significant increase
Movies	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
Sports	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
Soaps	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
Drama	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
Comedy/Sitcom	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
Game shows	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
Light entertainment	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
Documentaries	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5

9. THE DIRECT IMPACT OF SINGLE MARKET LEGISLATION ON YOUR COST BASE

9.1 Has the single market legislation had a direct impact on your costs? ***(Industry only)***

Reduced costs ☐ 1   No change ☐ 2   Increased costs ☐ 3   No opinion ☐ 4

9.2 Within which areas of your company has the single market legislation affected ***DIRECTLY*** your cost base?

For each category below please state by what approximate percentage it has reduced or increased them. ***(Industry only)***

	Impact on costs		
	No change	**Reduced costs**	**Increased costs**
Post-production facilities	☐ 1	☐ 2	☐ 3
Tape film duplication	☐ 1	☐ 2	☐ 3
Labour talent	☐ 1	☐ 2	☐ 3
Production facilities	☐ 1	☐ 2	☐ 3
Equipment	☐ 1	☐ 2	☐ 3
Copyright: payment and search costs	☐ 1	☐ 2	☐ 3
Other legal	☐ 1	☐ 2	☐ 3
Marketing (e.g. effect of multiple languages)	☐ 1	☐ 2	☐ 3
Capital and finance	☐ 1	☐ 2	☐ 3
Other (specify)	☐ 1	☐ 2	☐ 3

9.3 Which of the above cost areas in which there has been a change represent the most significant cost elements for your company? ***(Industry only)***

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10. SOURCING

10.1 Have any changes occurred in your patterns of sourcing from EC countries during the last 10 years? *(All)*

	Share from EC increased	Share from EC stayed the same	Share from EC decreased	No opinion
Programmes/films	☐ 1	☐ 2	☐ 3	☐ 4
Labour	☐ 1	☐ 2	☐ 3	☐ 4
Production	☐ 1	☐ 2	☐ 3	☐ 4
Equipment	☐ 1	☐ 2	☐ 3	☐ 4
Pre-production services	☐ 1	☐ 2	☐ 3	☐ 4
Post-production services	☐ 1	☐ 2	☐ 3	☐ 4
Transport	☐ 1	☐ 2	☐ 3	☐ 4
Administration	☐ 1	☐ 2	☐ 3	☐ 4
Capital and finance	☐ 1	☐ 2	☐ 3	☐ 4

10.2 In your opinion, has the single market facilitated sourcing from the EC? *(All)*

It has helped : Significantly ☐ 1 Somewhat ☐2 Had a marginal effect ☐3 Had no effect ☐4 No opinion ☐

10.3 Are there any differences that exist by country? *(All)*

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10.4 Are there any differences that exist between audio-visual sectors? *(All)*

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10.5 Are there any differences that exist between products/genres? *(All)*

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11. CORPORATE STRATEGY

11.1 Has the single market resulted in any of the following actions in your company? *(please tick all those that apply)* ***(Industry and Trade Associations only)***

Closure of sales office to merge into groups	Yes ☐	No ☐	No opinion ☐
Control of selling operations across country borders by single sales offices	Yes ☐	No ☐	No opinion ☐
Pan-European pricing and marketing agreements with major customers	Yes ☐	No ☐	No opinion ☐
Movement of production facilities to other lower cost locations	Yes ☐	No ☐	No opinion ☐
Swaps or joint ventures with companies outside the EC	Yes ☐	No ☐	No opinion ☐

11.2 Looking forward, to what extent have European Commission audio-visual measures helped you to develop strategies which allow you to compete in the digital/interactive future on a digital scale? ***(Industry and Trade Associations only)***

11.3 What has been your corporate response, if any, to the changed circumstances due to single market measures? ***(All)***

Prompts
Competition, innovations, strategic alliances

APPENDIX C

Questionnaire results

The results of our focused interview programme for all respondents are included in this Appendix. The results of specific questions arising from our focused broadcaster interviews, which we have included in our final report, can be found on pages 173 to 175.

Questionnaire report: all respondents

Companies

2.1 Approximate annual turnover		2.2 No of employees	
Under ECU 1m	2%	Less than 50	9%
ECU 1m - 5m	7%	50-199	22%
ECU 5m - 20m	14%	200-499	16%
Over ECU 20m	77%	500-1,000	18%
		Over 1,000	36%

Trade Associations

2.3 How many members?		2.4 What % of the industry?		2.5 What % of industry turnover?	
Less than 50	39%	0-20%	0%	0-20%	0%
50-100	28%	20-50%	13%	20-50%	6%
101-250	17%	Over 50%	88%	Over 50%	94%
Over 250	17%				

2.6 In which of the following sectors is your organization an active player?					
Television	Production	57%	Film	Production	39%
	Programme Distribution	52%		Distribution	34%
	Terrestrial Broadcast	43%		Exhibition	10%
	Sat Broad / Cable Retr	43%	Video	Production	32%
	Sat Broad / DTH	35%		Distribution	32%
	Cable Networks	32%		Retail	19%

2.7 In which of the following countries do you operate?	1985	1990	1995		1985	1990	1995
Belgium	21%	33%	44%	Italy	11%	21%	27%
Denmark	18%	30%	37%	Luxembourg	14%	21%	27%
Ireland	16%	23%	28%	Netherlands	23%	32%	42%
France	25%	32%	38%	Portugal	14%	18%	25%
Germany	20%	33%	40%	Spain	13%	29%	36%
Greece	9%	18%	25%	UK	21%	32%	38%

2.8 From which of the following countries do you or did you import goods and services?	1985	1990	1995		1985	1990	1995
Belgium	4%	27%	38%	Italy	19%	50%	58%
Denmark	8%	31%	35%	Luxembourg	12%	20%	24%
Ireland	12%	31%	35%	Netherlands	19%	38%	46%
France	35%	62%	65%	Portugal	4%	19%	23%
Germany	27%	54%	58%	Spain	12%	31%	28%
Greece	8%	19%	19%	UK	35%	58%	69%

2.9 To which of the following countries do you or did you export goods and services?	1985	1990	1995		1985	1990	1995
Belgium	28%	48%	60%	Italy	32%	44%	56%
Denmark	25%	50%	58%	Luxembourg	20%	36%	48%
Ireland	24%	40%	56%	Netherlands	23%	44%	56%
France	40%	52%	72%	Portugal	24%	40%	48%
Germany	28%	48%	52%	Spain	24%	48%	60%
Greece	24%	36%	44%	UK	33%	46%	63%

2.10 Do you operate from one central headquarters in Europe?			
Yes	90%	No	10%

Question 3.1 Impact of the single market programme

	Television without Frontiers	Satellite Communications Directive	Copyright Harmonization	Term of Copyright Directive	Cable and Satellite Directive	Rental and Lending Directive	Broadcast Standards	Removal of Physical Barriers	Indirect Tax (VAT, excise duties, etc.)	Company Law & Accountancy Legislation	Free Movement of Labour	Competition Policy	Cheaper Service Inputs	Corporate Taxation
Not heard of	2%	18%	7%	2%	7%	9%	7%	3%	11%	11%	7%	5%	6%	18%
No impact	23%	35%	33%	47%	39%	48%	40%	44%	48%	54%	48%	32%	53%	60%
Minor impact	28%	16%	41%	24%	26%	28%	20%	32%	23%	26%	31%	35%	21%	16%
Significant impact	48%	31%	19%	27%	28%	16%	33%	20%	18%	9%	14%	28%	21%	7%
Positive	67%	80%	67%	29%	67%	33%	75%	90%	53%	57%	100%	71%	0%	0%
Negative	33%	20%	33%	71%	33%	67%	25%	10%	47%	43%	0%	29%	0%	0%

Question 3.2 Impact of television without frontiers

	Facilitated cross-border satellite broadcasters	Facilitated cross-border terrestrial broadcasters	Encouraged independent sector	Encouraged deregulation	Increased proportion of European productions	Tobacco advertising	Alcohol advertising	Medical advertising	Other advertising	Encouraged sales/dist offices	Encouraged cross-border expansion of TV services	Increased choice
Not relevant	11%	30%	7%	10%	8%	30%	26%	31%	32%	24%	18%	10%
No impact	22%	19%	32%	25%	48%	33%	38%	31%	32%	39%	43%	25%
Minor impact	27%	33%	30%	33%	23%	15%	15%	21%	15%	16%	18%	25%
Significant impact	40%	19%	32%	33%	23%	23%	21%	18%	21%	21%	23%	40%

Question 4.1 Have you become more involved in audio-visual business in other countries?

	More involved in other EU countries?	If yes, how? Retransmission of your services	Establishment of new channels	Establishment of a new company	Investment in existing channels	Joint venture new channels	Production joint ventures	Co-financing of productions	Co-productions	Other
Yes	64%	42%	58%	58%	30%	36%	58%	64%	73%	9%
No	36%	30%	18%	21%	39%	30%	18%	9%	6%	4%

Question 4.2 Barriers to trade

	Lack of harmonization of contracts/rights	National licensing restrictions	Quotas	National ownership legislation	Other national regulations	Intellectual property disparities	Mutual recognition of standards/ procedures	Industry subsidies from State	Anti-competitive behaviour	Structure of advertising market	Differing distribution patterns	Importance of parallel trade	Technical or technological differences	National tastes and cultural differences	Language differences
Insignificant	29%	32%	33%	31%	29%	30%	43%	35%	24%	22%	30%	34%	31%	12%	15%
Minor significance	34%	19%	19%	20%	12%	39%	22%	16%	24%	12%	21%	28%	27%	9%	6%
Significant	10%	25%	27%	15%	15%	9%	17%	19%	17%	31%	25%	19%	21%	24%	25%
Very significant	23%	19%	16%	29%	20%	13%	9%	22%	24%	18%	7%	3%	19%	54%	52%
No opinion	5%	6%	4%	5%	24%	9%	9%	8%	10%	18%	16%	16%	2%	1%	2%

Question 4.3 How difficult is it to sell to other EU countries?

	Completed programmes	Co-production rights	Programme rights (e.g. formats)
More difficult	17%	18%	13%
No change	56%	47%	56%
Less difficult	28%	35%	31%

Of those more difficult:		Of those less difficult:	
Competition from US companies	33%	Product more appropriate	38%
Growth in indigenous production	33%	Lower administrative barriers	0%
Competition from other EU comp.	17%	Better distribution networks	25%
Quotas	0%	More channels	38%
Other	17%	Other	0%

Question 4.8 What has been most influential in the development of the European audio-visual industry?

	New delivery systems - satellite/cable	Multiplication of TV channels	Growth in VCR penetration	Home viewing of films	Development of production technology	Devel. of audio-visual marketing	Devel. of subs leisure activities	Development of digital technologies	Market trends	Technology	National Government actions/state subsidies	Non-EU National Government actions	Trade barriers outside EU	Quotas or similar	Other
Insignificant	7%	7%	15%	18%	7%	22%	16%	20%	24%	3%	20%	17%	38%	31%	0%
Some significance	5%	2%	29%	36%	29%	19%	39%	8%	16%	21%	23%	33%	24%	22%	0%
Significant	17%	17%	24%	15%	34%	30%	34%	15%	22%	26%	20%	11%	5%	22%	0%
Very significant	68%	71%	29%	26%	17%	19%	3%	55%	19%	38%	25%	17%	14%	8%	33%
No opinion	2%	2%	2%	5%	12%	11%	8%	3%	19%	13%	13%	22%	19%	17%	67%

Questions 5.1 & 5.2 Have you benefited from the Media programme?

		Impact of MEDIA programme on your business?	
Directly	30%	Increase market share of European production	23%
Indirectly	28%	Create informal cross-border networks	20%
No	43%	Support small countries	23%
		Support SMEs	34%
		Increase intra-EU exchanges	20%
		Other	0%

Questions 5.3 & 5.4 Have you benefited from the Action plan?

		Impact of Action plan on your business	
Directly	26%	Investment in 16:9 technology	29%
Indirectly	15%	Investment in 16:9 production	21%
No	59%	Other	12%

Questions 5.5 & 5.6 Impact of national schemes on integration

		If helped, how?		If hindered, how?	
Helped	41%	Funding of programmes	59%	Discouraging intra-EU purchases	0%
Hindered	14%	Encouraged co-production	67%	Making other EU programmes more expensive	57%
No opinion	46%	Other	18%	Other	14%

Question 6.1 What sales methods have you used to increase your distribution across the EU?	
Satellite channels	50%
Programme/film distribution networks	55%
Broadcaster agreements	45%
Production alliances	75%
Other	53%

Question 6.3 Has your sector become more or less oriented towards exports since 1985?		6.5 Have the single market measures helped the export performance of the sector in the rest of the world?		6.6 To what extent are export opps considered in programme development?		6.7 To what extent has this changed in the past 10 years?	
More	75%	Yes	20%	Significant	64%	Significantly	63%
Less	0%	No	80%	Minor	18%	Minor	17%
No change	25%			Not considered	14%	No change	17%

Question 7.1 Has SMP led to new competitors?	
Yes	23%
Partly	32%
Not at all	40%
No opinion	5%

Question 7.3 Has intra-EU competition been influenced by SMP?	
Significantly	13%
Partly	48%
Not at all	24%
No opinion	15%

Question 7.4 In what ways is the market more/less competitive?

	Number of competitors	Threat of entry by new players	Cost of acquiring product	Price charged for product	Importance of other distribution channels
Increased	95%	71%	88%	68%	77%
Same	5%	24%	10%	23%	23%
Decreased	0%	5%	2%	10%	0%

Question 7.5 Has competition led to you doing the following:

	Overhead cost reduction	Distribution costs reduction	Increased spending due to competition for scarce inputs	Changes to production facilities	Withdrawal from unprofitable markets or segments	Efficiency gains through investment	Workforce level reduction	Efficiency gains through M&As	Increased gains through exploitation of economies of scale	Increased targeting of customer/ products	Price reduction	Acceptance of a lower profit margin	Other
No extent	40%	48%	20%	33%	34%	36%	46%	49%	28%	12%	53%	32%	75%
Minor extent	27%	39%	15%	20%	32%	17%	23%	27%	31%	22%	28%	34%	0%
Significant extent	22%	2%	37%	30%	22%	38%	21%	22%	36%	51%	15%	27%	0%
Very significant	11%	11%	29%	18%	12%	10%	10%	3%	5%	15%	5%	7%	25%

Question 8.1 What has happened to prices as a result of increased competition?

	Movies	Sports	Soaps	Drama	Comedy/sitcom	Game shows	Light entertainment	Documentaries
Significant decrease	0%	0%	0%	3%	0%	0%	0%	4%
Partial decrease	13%	12%	17%	13%	15%	13%	13%	19%
No change	10%	0%	13%	23%	15%	30%	22%	30%
Partial increase	16%	8%	46%	26%	31%	17%	39%	22%
Significant increase	61%	80%	25%	35%	38%	39%	26%	26%

Question 9.1 Has the SMI had a direct impact on your costs?	
Reduced costs	5%
No change	59%
Increase costs	26%
No opinion	10%

Question 9.2 If it has impacted, state where:										
	Post-production facilities	Tape film duplication	Labour/talent	Production facilities	Equipment	Copyright	Other legal	Marketing	Capital and finance	Other
No change	61%	74%	52%	67%	54%	52%	54%	61%	59%	80%
Reduced costs	17%	17%	4%	21%	25%	8%	8%	4%	18%	0%
Increase costs	22%	9%	43%	13%	21%	40%	38%	35%	23%	20%

Question 10.1 Have any changes occurred in patterns of sourcing from EU countries in past 10 years?									
	Programmes/ films	Labour	Production	Equipment	Pre-prod services	Post-prod services	Transport	Administ'n	Capital and finance
EC share increase	45%	16%	31%	23%	34%	28%	15%	11%	33%
EC share same	26%	68%	48%	47%	41%	52%	54%	63%	47%
EC share decrease	13%	3%	7%	7%	0%	0%	0%	0%	3%
No opinion	16%	13%	14%	23%	24%	21%	31%	26%	17%

Question 10.2 Has the single market facilitated sourcing from the EU?	
Significantly	9%
Somewhat	31%
Marginal effect	46%
No effect	14%
No opinion	0%

Questionnaire report: broadcasters

Question 3.1 Impact of the single market programme

	Television without Frontiers	Satellite Communications Directive	Copyright Harmonization	Term of Copyright Directive	Cable and Satellite Directive	Rental and Lending Directive	Broadcast Standards	Removal of Physical Barriers	Indirect Tax (VAT, excise duties, etc.)	Company Law & Accountancy Legislation	Free Movement of Labour	Competition Policy	Cheaper Service Inputs	Corporate Taxation
Not heard of	4%	8%	0%	0%	0%	8%	0%	4%	4%	9%	4%	0%	4%	10%
No impact	19%	33%	14%	29%	37%	40%	30%	44%	52%	39%	48%	25%	50%	60%
Minor impact	27%	29%	57%	33%	30%	32%	25%	36%	26%	39%	36%	33%	25%	20%
Significant impact	50%	29%	29%	38%	33%	20%	45%	16%	17%	13%	12%	42%	21%	10%
Positive	60%	80%	60%	11%	56%	43%	89%	100%	63%	50%	100%	71%	0%	0%
Negative	40%	20%	40%	89%	44%	57%	11%	0%	38%	50%	0%	29%	0%	0%

Question 3.2 Impact of television without frontiers

	Facilitated cross-border satellite broadcasters	Facilitated cross-border terrestrial broadcasters	Encouraged independent sector	Encouraged deregulation	Increased proportion of European productions	Tobacco advertising	Alcohol advertising	Medical advertising	Other advertising	Encouraged sales/dist offices	Encouraged cross-border expansion of TV services	Increased choice
Not relevant	8%	41%	13%	9%	10%	27%	27%	32%	37%	23%	14%	5%
No impact	25%	18%	35%	27%	48%	23%	27%	18%	16%	41%	43%	32%
Minor impact	17%	27%	22%	27%	24%	23%	23%	27%	21%	18%	14%	27%
Significant impact	50%	14%	30%	36%	19%	27%	23%	23%	26%	18%	29%	36%

Question 4.1 Have you become more involved in audio-visual business in other countries?

	More involved in other EU countries?	If yes, how? Retrans-mission of your services	Establish-ment of new channels	Establish-ment of a new company	Investment in existing channels	Joint venture new channels	Production joint ventures	Co-financing of productions	Co-productions	Other
Yes	67%	63%	74%	63%	37%	42%	58%	68%	68%	0%
No	33%	21%	11%	16%	37%	32%	16%	5%	5%	7%

Question 4.2 Barriers to trade

	Lack of harmonization of contracts/ rights	National licensing restrictions	Quotas	National ownership legislation	Other national regulations	Intellectual property disparities	Mutual recognition of standards/ procedures	Industry subsidies from State	Anti-competitive behaviour	Structure of advertising market	Differing distribution patterns	Importance of parallel trade	Technical or techno-logical differences	National tastes and cultural differences	Language differences
Insignificant	15%	22%	23%	19%	16%	24%	41%	38%	22%	22%	30%	33%	38%	8%	8%
Minor significance	56%	26%	15%	27%	16%	52%	33%	15%	22%	17%	35%	28%	31%	12%	12%
Significant	4%	22%	31%	15%	21%	4%	19%	12%	11%	39%	22%	17%	12%	23%	15%
Very significant	22%	26%	27%	35%	21%	20%	4%	27%	44%	17%	4%	6%	19%	58%	65%
No opinion	4%	4%	4%	4%	26%	0%	4%	8%	0%	4%	9%	17%	0%	0%	0%

Question 4.3 How difficult is it to sell to other EU countries?

	Completed programmes	Co-production rights	Programme rights (e.g. formats)
More difficult	15%	15%	8%
No Change	62%	54%	58%
Less difficult	23%	31%	33%

Of those more difficult:		Of those less difficult:	
Competition from US companies	50%	Product more appropriate	33%
Growth in indigenous production	25%	Lower admin barriers	0%
Competition from other EU comp.	25%	Better distribution networks	33%
Quotas	0%	More channels	33%
Other	0%	Other	0%

Question 4.8 What has been most influential in the development of the European audio-visual industry?

	New delivery systems - satellite/cable	Multiplic-ation of TV channels	Growth in VCR penetration	Home viewing of films	Develop-ment of production technology	Devel. of audio-visual marketing strategies	Develop-ment of subs leisure activities	Devel. of digital technologies	Market trends	Technology	National Government actions/state subsidies	Non-EU National Government actions	Trade barriers outside EU	Quotas or similar	Other
Insignificant	5%	9%	9%	10%	9%	18%	5%	17%	19%	0%	14%	20%	48%	29%	0%
Some significance	5%	0%	45%	52%	30%	23%	50%	9%	19%	19%	29%	30%	19%	29%	0%
Significant	14%	14%	23%	10%	30%	27%	36%	13%	33%	24%	24%	5%	0%	24%	0%
Very significant	77%	77%	23%	24%	17%	18%	5%	61%	19%	43%	19%	15%	14%	0%	0%
No opinion	0%	0%	0%	5%	13%	14%	5%	0%	10%	14%	14%	30%	19%	19%	100%

Question 5.2 Have you benefited from the Media programme?

		Impact of MEDIA programme on your business?	
Directly	29%	Increase market share of European production	32%
Indirectly	25%	Create informal cross-border networks	14%
No	46%	Support small countries	23%
		Support SMEs	32%
		Increase intra-EU exchanges	23%
		Other	0%

Question 5.3 Have you benefitted from the Action plan?

		Impact of Action plan on your business	
Directly	33%	Investment in 16:9 technology	35%
Indirectly	17%	Investment in 16:9 production	30%
No	50%	Other	9%

Question 5.5 Impact of national schemes on integration

		If helped, how?		If hindered, how?	
Helped	41%	Funding of programmes	50%	Discouraging intra-EU purchases	0%
Hindered	9%	Encouraged co-production	70%	Making other EU progs more expensive	67%
No opinion	50%	Other	30%	Other	0%

Question 7.1 Has SMP led to new competitors?	
Yes	17%
Partly	33%
Not at all	46%
No opinion	4%

Question 7.3 Has intra-EU competition been influenced by SMP?	
Significantly	26%
Partly	43%
Not at all	17%
No opinion	13%

Question 7.4 In what ways is the market more/less competitive?

	Number of competitors	Threat of entry by new players	Cost of acquiring product	Price charged for product	Importance of other distribution channels
Increased	96%	71%	92%	73%	78%
Same	4%	24%	8%	14%	22%
Decreased	0%	5%	0%	14%	0%

Question 7.5 Has competition led to you doing the following:

	Overhead cost reduction	Distribution costs reduction	Increased spend due to competition for scarce inputs	Changes to production facilities	Withdrawal from unprofitable markets or segments	Efficiency gains through investment	Workforce level reduction	Efficiency gains through M&As	Increased gains through exploitation of econs of scale	Increased targeting of customer/ products	Price reduction	Acceptance of a lower profit margin	Other
No extent	36%	43%	10%	32%	29%	25%	48%	63%	32%	10%	43%	30%	0%
Minor extent	36%	43%	5%	16%	43%	20%	19%	16%	26%	24%	29%	35%	0%
Significant extent	14%	5%	40%	32%	19%	45%	19%	16%	37%	48%	19%	25%	0%
Very significant	14%	10%	45%	21%	10%	10%	14%	5%	5%	19%	10%	10%	100%

Question 8.1 What has happened to prices as a result of increased competition?

	Movies	Sports	Soaps	Drama	Comedy/ sitcom	Game shows	Light entertainment	Documentaries
Significant decrease	0%	0%	0%	0%	0%	0%	0%	0%
Partial decrease	6%	0%	13%	5%	6%	7%	7%	17%
No change	0%	0%	6%	32%	13%	43%	27%	39%
Partial increase	22%	12%	63%	26%	44%	14%	47%	22%
Significant increase	72%	88%	19%	37%	38%	36%	20%	22%

Question 9.2 Has SMI had a direct impact on your costs?	
Reduced costs	10%
No change	52%
Increase costs	33%
No opinion	5%

If it has impacted, state where:

	Post-production facilities	Tape film duplication	Labour/talent	Production facilities	Equipment	Copyright	Other legal	Marketing	Capital and finance	Other
No change	71%	81%	63%	71%	65%	50%	53%	63%	60%	80%
Reduced costs	12%	13%	0%	18%	24%	11%	6%	0%	20%	0%
Increase costs	18%	6%	38%	12%	12%	39%	41%	38%	20%	20%

APPENDIX D

Organizations interviewed

Companies	**Country**	**Sector**
RTP Radiotelevisão	Portugal	B
Filmes Lusomundo	Portugal	FP, FD, FE
TVI	Portugal	B
Antena 3	Spain	B
Canal Plus España	Spain	B
Television Española	Spain	B
VTM	Belgium	B
RTBF	Belgium	B
VT4	Belgium	B
Nordisk Film	Denmark	TVP, FP
Danmarks Radio TV	Denmark	B
Teledanmark	Denmark	C
Eutelsat	France	S
Gaumont	France	TVP, FP, FD, FE
Hamster	France	TVP
Ciby 2000	France	FP, FD
TF1	France	B
Canal Plus	France	B
ZDF	Germany	B
UFA	Germany	TVP, FP
Bertelsmann	Germany	B
RTL	Germany	B
Sat1	Germany	B

Organizations interviewed (continued)

Companies	Country	Sector
FilmNet	Greece	B
Sky	Greece	B
RTE	Ireland	B
RAI	Italy	B
Action Time	UK	TVP
Channel 4	UK	B
J & M	UK	FD
Yorkshire Television	UK	B
BBC	UK	B
BSkyB	UK	B
Columbia Tristar	US	FD, FP
UAP	US	B
The Travel Channel	US	B
Time Warner	US	FD, FP
NBC	US	B
MTV	US	B
UIP	US	FD
TV 1000	Sweden	B
SES	Luxembourg	S
ENDEMOL	Netherlands	TVP
NOS	Netherlands	B
NetHold Benelux	Netherlands	B
New Media Publishing	Netherlands	TVP
PolyGram	Netherlands	FP, FD, V

Trade Associations	Country	Sector
ACT	pan-European	B
FIAPF	France	FP
ECCA	pan-European	C
IVF	International	V
FIAD	France	FD
CICCE	France	FD
EBU	pan-European	B
VPRT	Germany	B
UAED	Portugal	FD
NVPI Video	Netherlands	V
British Video Association	UK	V
PACT	UK	TVP/FP
The Belgian Video Federation	Belgium	V
Syndicat de l'Edition Video	France	V
Union Videografica	Spain	V
EVE	pan-European	V
SCRIPT	pan-European	FP/FD
RTD	Belgium	C
Olon	Netherlands	B
Vecai	Netherlands	C
Euro Aim	pan-European	FP/FD
EFDO	pan-European	FD

Regulators	Country
Ministry of Mass Media	Greece
CNC	France
Conseil Supérieur de l'Audiovisuel	France
IPACA	Portugal
Ministry of Culture, Flemish Community	Belgium
Ministry of Culture, French Community	Belgium
Thuringische Anstalt für Private Medien	Germany
Landesmedienanstalt HQ	Germany
Medienanstalt Berlin	Germany
Commissariaat voor de Media	Netherlands
Independent Television Commission	UK
Ministry of Culture	Denmark

Key to abbreviations

B	Broadcaster
C	Cable operator
TVP	TV programme producer
FP	Film production
FD	Film distribution
V	Video
S	Satellite operator

APPENDIX E

Case studies

The following 14 case studies were selected for this project:

(a) Canal Plus España
(b) Ciby 2000
(c) ENDEMOL
(d) Gaumont
(e) MTV Europe
(f) NBC Super Channel
(g) NetHold Benelux
(h) PolyGram International
(i) RAI
(j) SES
(k) TF1
(l) TV 1000
(m) UFA Fernsehproduktion
(n) UIP

E.1. Canal Plus España

E.1.1. Background

Launch of Canal Plus España

Canal Plus España (CPE) was awarded a 10-year national terrestrial licence by the Spanish government in September 1989 to operate a pay television service. It was one of three new private national channels licensed under the 1988 broadcasting law to compete with the two channels operated by RTVE, the state broadcaster, which had previously had a monopoly. Both of the other private channels, Antena 3 and Tele 5, are financed by advertising and compete directly with RTVE and with six publicly owned regional channels for audiences and revenue.

The company's major shareholders are: Canal Plus (France) (25%), Grupo Prisa (25%), BBV (16%) and Grupo March (16%).

Grupo Prisa is Spain's largest media group whose interests include El País, the leading national newspaper, and the largest radio network, Ser. Canal Plus provided the expertise on how to establish a pay television service while Prisa has supplied the principal members of the senior management team and actively manages the company. As the Spanish broadcasting law prohibits shareholdings in excess of 25%, the shareholders also include leading Spanish financial institutions.

The service began to broadcast in September 1990. Today, the schedule is split between movies (56% of airtime), sports (20%), music (7%) and news (6%). Five and a half hours of transmissions per day are unencrypted and are used partly to carry advertising and to promote the encoded programme blocks. The monthly subscription fee is PTA 3,533.

Subscribers/audience share

At the end of 1995, Canal Plus España had 1.2 million subscribers, making it the third largest pay service in Europe after Canal Plus (France) and BSkyB (UK). This represents a penetration of approximately 10% of Spanish TV households.

The channel's audience share has remained constant at around 2% since 1993. The Spanish national broadcasters with the largest audience shares are: TVE1 (28%), Antena 3 (26%), Tele 5 (19%), TVE 2 (10%), followed by Canal Plus (2%). The remaining 15% is split between the regional channels.

Financial performance

Table E.1. Financial performance (million PTA)

	1994	1993	1992	1991
Revenues	39,136	29,576	18,301	7,327
Pre-tax profits/(losses)	4,523	2,561	(3,106)	(6,626)

Source: Canal Plus España.

Canal Plus España is very successful in financial terms. It achieved profitability at the beginning of 1993, a year earlier than expected. It is now the most profitable broadcaster in Spain and its 1994 profit margin of 15.9% was higher than that of Canal Plus in France.

Canalsatellite

Canal Plus España launched Canalsatellite, a DTH satellite service, in 1994. This follows a strategy similar to that of its French associate of making it more difficult for competitors to enter the pay TV market and enabling Canal Plus to learn about the multi-channel environment. It also helped to promote Nagravision, the conditional access system used by Canal Plus as the leading standard in Spain. Canalsatellite was operated by Sogecable, a company with the same shareholders as CPE, which has recently been absorbed by CPE.

Canalsatellite's four-channel package includes Cinemania (movies) and Documania (documentaries) launched in March 1993 and two new channels – Minimax (children's) and Cineclassics (movies). All are transmitted via Astra. At the end of 1995 the service had 50,000 subscribers. In 1996 it launched a new sports channel, called Sport Mania.

Cotelsat

In June 1994, a consortium of TVE, Tele 5, Antena 3 and Canal Plus was formed to launch Cotelsat – a Spanish DTH service. Cotelsat would provide subscriber management for their channels on the Hispasat satellite, using Canal Plus' proprietary encryption standard. The service only managed to attract 4,000 subscribers and collapsed in June 1995, when Antena 3 decided to use its transponder for different purposes.

Cablevision

Cablevision was formed in August 1995 as a joint venture between Telefonica de España (50%) and Sogecable (50%) to provide programming and other services for Spain's new cable networks (under the Cable law passed in 1996, Telefonica is guaranteed one of the two licences to be issued for each locality).

Multitel and Antena 3 lodged complaints with the Spanish and European competition authorities alleging that Cablevision violated competition laws. In February 1996, the European Commission (DG IV) announced that the venture had a European dimension because of the stake held by Canal Plus (France) and that it would investigate whether the venture should be allowed. In March 1996 it was approved with some limitations by the Spanish Government.

Production and distribution activities

Since 1990, Prisa has become the biggest force in Spanish film and television production in association with CPE, which has become one of the largest customers for TV rights to Spanish films. This is due in part to the obligation upon CPE that 25% of the films which it broadcasts must be Spanish-made.

Prisa and CPE have established a number of joint ventures in film and TV production and distribution. In 1992, CPE established a film distributor, Sogepaq, jointly with Cinepaq and IDEA, a film rights broker in which Sogetel is the majority shareholder. Sogepaq obtained from IDEA and Cinepaq the rights to distribute a library of 1,500 films and now invests in domestic film production in return for distribution rights and in foreign productions in return for Spanish distribution rights. In 1994, Sogepaq formed Sogepaq Distribución in a 55%/45% joint venture with PolyGram Iberica to distribute theatrically PolyGram's and Sogetel's films and to exploit the video rights.

These associated companies enable CPE to be a multi-product and multi-channel programmer. It can invest as a co-producer in Sogetel's projects, buy film rights from Sogepaq or buy directly from independent distributors. Sogepaq Distribución could enable CPE to launch sell-through videos of its programmes.

E.1.2. International strategy

CPE's business strategy is focused on maintaining its leadership position in the Spanish domestic pay TV market. Its international strategy is mainly concerned with ensuring that it has access to international programming on competitive terms and that it can exploit the international revenue opportunities for Spanish produced programmes in which it invests.

It also seeks to maintain its competitive advantage in terms of expertise in the operating systems and technology involved in the management and operation of pay TV.

CPE achieves this largely through direct and indirect alliances involving its shareholders. On the programming side, its links to the Prisa Group and its alliance with PolyGram (as described above) provide a distribution capability. As Latin America and the USA are the principal international markets for Spanish language programming outside the Iberian Peninsula, these, rather than the EU, have been the main focus of development for the CPE/Prisa production and distribution arms.

On the operational side, the development of pay services, including DTH, has been carried out in close liaison with the Canal Plus group. For example, the French and Spanish services use the same conditional access system. As digital DTH services are developed, initially in France, CPE might benefit from Canal Plus' experience in this area as well.

E.1.3. Impact of the SMP

Television Without Frontiers

TWF was only transposed into Spanish law in December 1994. CPE's management considers that TWF has had a minor impact on the development of the sector in Spain although it led to minor rule changes. CPE considers the liberalization of broadcasting enacted in Spain in 1988 to have been due largely to domestic political and regulatory policy. Spanish law had also established quotas for Spanish production which have been retained following the transposition of TWF.

In assessing the impact of TWF on the sector generally, CPE's management considers that the main areas of significant impact have been the facilitation of cross-border satellite broadcasting and the encouragement of the development of the independent production sector. In the latter case, TWF directly impacts CPE as it introduced the '10%' independent quota which had not previously existed in Spain. The application of TWF's rules on advertising of tobacco and alcohol also led to the Spanish rules being made stricter.

Satellite Communications Directive

Whilst SCD was only implemented in December 1995, CPE considers it to have had an immediate and significant impact. Canalsatellite previously had to be uplinked from Luxembourg to which programme tapes were sent. SCD will enable the signals to be uplinked by Canalsatellite directly to Astra at a lower cost than that which Telefonica would previously have charged when it had a monopoly over uplinks. SCD will open the uplink market to greater competition as demand for satellite uplinks grows.

Copyright harmonization

Copyright harmonization is considered to have had a minor impact on CPE which does not directly produce many programmes.

Broadcast standards

CPE participated in the DVB group which it considers to have been a useful initiative and the right approach for the EU to adopt. It believes that the DVB's standards have established the basis for manufacturers to develop digital set-top decoders at a reasonable production cost.

MEDIA Programme

CPE and its affiliates have received direct and indirect funding from the MEDIA Programme which it considers to have helped to a limited extent in increasing the intra-European exchange of films and programmes. However, CPE's principal criteria for investing in a production are strictly commercial. CPE (and its affiliates) would not invest in a production solely due to the availability of MEDIA Programme funding.

Barriers to trade

CPE regards the cultural and language differences between national markets in the EU as the most significant continuing barriers to trade within the EU. It noted that competition for audiences in broadcasting takes place within national markets, although in certain genres, such as films, products with a strong international appeal are also an important part of the schedule. CPE considers that there has been some increase in the popularity of non-domestic European products and that it is now easier to sell completed programmes and programme rights in other EU countries than in 1985. CPE believed that the EU programme quotas have had a minor impact in facilitating cross-border trade.

However, each market still prefers domestic product and the diversity of national regulations also makes it difficult to create a single European product which can sell in all markets without adaptation. CPE's management believes that it is difficult for the EU to address this by legislation.

In CPE's view, the European film sector has become more export oriented during the last 10 years. This is principally because the cost of producing films for theatrical release, such as those which account for most of CPE's production and non-sports acquisition investment, has risen significantly. It is no longer viable to produce these solely for one national market or even for the European market. Producers therefore have to export productions to North and Latin American markets as well as to Europe and therefore have to ensure that their product has an international appeal.

Effects of competition

The development of more television channels has increased demand for quality programming in Europe and internationally. The growth in pay channels especially those, such as Canal Plus, specializing in film is recognized to have increased competition for programmes and to have led to increased prices. The most significant effect of increased competition on CPE has been to increase its spending on scarce inputs such as film rights and in its production affiliates on fees paid to creative and performing talent. It has also expanded its production capabilities through the joint ventures although this is partly to enable it to meet Spanish production quotas in a way which is commercially preferable. However, it should be noted that the rapid growth of CPE's subscription revenues has meant that its profit margins have not been reduced due to competition.

Prices have increased most for sports programmes as the pay channels throughout Europe have been prepared to pay significantly more than the terrestrial channels had previously done in order to secure rights which are essential to the sale of subscriptions.

E.2. Ciby 2000

E.2.1. Background

Launched in April 1990 by the French industrialist Francis Bouygues, Ciby 2000 is a Paris-based company specializing in the development, financing and production of high quality feature films for the international marketplace.

Ciby 2000 is a wholly-owned subsidiary of the Bouygues Group, a market leader in the construction industry and the majority shareholder/operator of the leading French terrestrial television network TF1 (see separate case study E.11).

Bouygues' diversification into the audio-visual media market began when it took control of TF1 in 1987, after the government's decision to privatize the channel.

The Bouygues Group took TF1 in the direction of new television services, on the one hand, and into production, on the other. Production subsidiaries, Banco, Protocrea and TF1 Films, were set up in 1990 to generate product tailor-made for the needs of the channel.

By contrast, the launch of Ciby 2000 in 1990 was not undertaken primarily with a view to feeding TF1's programming needs, unlike TF1 Films, which focuses on acquiring rights to/and financing mainstream French star vehicles. Ciby 2000's focus on upmarket films with prestigious directors and English language scripts makes it uncharacteristic of the rest of the group.

Ciby 2000's special status gives it the flexibility to work with the top film talent world-wide and puts the emphasis on English language rather than French language production. The company is also free to trade with other broadcasters when negotiating film rights.

Approach to production finance

Although no detailed financial figures were available (Ciby's results are entirely consolidated in Bouygues'), the management indicated that Ciby's turnover approached FF 300 million in 1995. This is a low overhead operation and, consequently, a high proportion of turnover is invested in production.

Because Ciby has confidence in the high quality of the talent with which it works, it is known to take on a large proportion of the production risk itself. Ciby believes that the directors attached to these projects have strong pulling power with an educated audience and that the films - at an average of between \$10 and \$20 million – remain realistically budgeted for the expectations of their natural market. Recent examples of films whose production budgets Ciby 2000 covered:

(a) Robert Altman's \$20 million *Kansas City*;
(b) David Lynch' \$15 million *Lost Highway;* and
(c) Mike Leigh's \$4 million *Secrets and Lies.*

The ability to 'greenlight' films before pre-sales are in place often gives Ciby added negotiating power with potential buyers who are not asked to come in as risk investors and are confident in Ciby's ability to deliver.

Ciby strives to secure continuity in its relationships with top directors, in the form of multi-picture deals. Ciby provides development funding in return for commitment by the directors to produce two to three films with Ciby. Ciby has successfully negotiated such commitments from Pedro Almodovar's El Deseo Productions and from David Lynch's own company. However, film directors are difficult to retain: after making the hit film *The Piano*, the director Jane Campion chose to direct her next film with Ciby's competitors, PolyGram Filmed Entertainment.

However, the reputation of the company for fostering talent and generating 'crossover' success for sophisticated product which does not compromise with commercial pressures is attracting new talent. Recent significant awards for Ciby films include the following:

Table E.2. Awards for Ciby films

Film	Director	Award
The Piano	Jane Campion	Palme d'Or, Cannes 1993 3 Hollywood Oscars 1993
High Heels	Pedro Almodovar	2 French 'Césars' 1994
Underground	Emir Kusturica	Palme d'Or, Cannes 1994

Source: Ciby 2000.

International sales

Ciby's production finance office is located in Paris. A fully-fledged sales operation is based in London and operates throughout the world. Its primary remit is to generate sales and pre-sales for forthcoming or ongoing Ciby projects.

However, the proportion of third party films handled by the sales operation has increased over the past two years, to reach between 30 and 40% of all Ciby sales operations. The diversification should bring greater financial rewards to the sales arm, by increasing revenue from sales commissions.

National strategy

Ciby 2000 has no specific national strategy for its home market. With average budgets of $10 to $20 million, recoupment can only be envisaged with an international upscale film audience.

However, Ciby is testing its capacity to grow into a vertically integrated structure capable of developing, producing and distributing international films, with a 'toe in the water' approach in France. In 1994, it set up Ciby Distribution, which handles the release of Ciby films exclusively for the French theatrical market. The unit is so far making a loss, with disappointing box office figures on most of the titles handled, and no notable hit.

Table E.3. Estimated ticket sales Ciby Distribution releases: 1994-95

Film	Estimated ticket sales
Muriel's Wedding (Australia)	450,000
Don Juan de Marco (USA)	650,000
Through The Olive Tree (Iran)	125,000
The Flower Of My Secret (Spain)	500,000

Source: Ciby 2000.

Some of the films handled by Ciby Distribution are 'negative pick-ups', in which the company has had no up-stream financial participation but only acquired specific distribution rights. This is the case with *Don Juan de Marco* and is a natural growth strategy for Ciby Distribution, which needs to increase the product flow in order to increase its competitive advantage in the search for a crossover box office success.

E.2.2. European strategy

Since its inception five years ago, Ciby 2000 has produced and co-financed between 8 and 10 films per year and claims to be Europe's leading production company in terms of output. However, it would be more accurate to describe Ciby as a 'studio' in the American sense of the word: the company leverages creative and production capital through relationships with established independent production companies rather than being directly involved in physical production itself.

Ciby defines itself as 'European' in terms of the type of high quality director-led films in which it specializes rather than in terms of nationalities. For instance, it has relationships with leading North American film *auteurs* such as Robert Altman and David Lynch. Ciby's Managing Director stressed this factor to us: 'What we offer is an environment that is perhaps more conducive to the work of *auteurs* who have a strong sense of their own style and what they wish to convey to the audience, than the more standardized Hollywood studio system with its assembly line logic. In that sense, we are competitive in terms of the quality of the support we offer those individuals as much as in terms of our ability to cover production costs.' Ciby 2000 therefore seeks to develop relationships with film directors on both sides of the Atlantic who enjoy immediate brand recognition with a certain type of audience the world over, and particularly in the upscale European and US markets.

E.2.3. Impact of the SMP

There are few reported direct effects of the SMP legislation on Ciby's business. The company sees the TWF as helpful but of marginal impact to its core business.

Ciby is also in favour of incentive measures such as MEDIA 95 to help support non-mainstream production in Europe. However, Ciby also stresses that it operates at a level in the marketplace at which no such support is required.

The company is in favour of greater harmonization of subsidy and soft loan regimes between Member States, but is concerned that the rules should not be liberalized to the extent that they give US companies a chance to subsidize their own product and compete unfairly with local producers.

Intellectual property measures have not had a reported impact on Ciby's operations. As a catalogue holder, the company welcomes the extension of the duration of copyright to 70 years but feels that, overall, the reform has had little impact on its own contractual practice, which remains embedded in the French *droit d'auteur* regime.

The company would welcome legislation to strengthen anti-piracy measures at the level of the EU.

Conclusion

Ciby 2000 had difficulties identifying effects on its business development from SMP measures. The company is young (five years old) and has a simple corporate structure. Its single focus on production at the expense of almost any other activity means it has so far been little affected by structural measures. Its overall view is that the market has spearheaded the developments which have made possible the successful growth of Ciby 2000 as one of

Europe's foremost producers of high quality, author-led feature films conceived with the international market in mind.

Despite the lack of demonstrable SMP impact, Ciby 2000 is a useful case study in that it represents a new breed of European film companies, which are attempting to internationalize profitably the scarce and highly marketable resource of European and world-wide film *auteurs*. It is likely, should its success continue, that the company will move further towards vertical integration in forthcoming years, by developing its own distribution capacity outside France.

E.3. ENDEMOL

E.3.1. Background

ENDEMOL Entertainment International (ENDEMOL) was established in 1994 by a merger between the Netherlands' two leading independent entertainment companies, John de Mol Produkties and Joop van den Ende Produkties.

In 1994-95, the combined companies had a turnover of US$ 335 million compared to US$ 150 million in 1991/92. ENDEMOL has subsidiaries in Portugal, Spain, France, Scandinavia, Belgium, the UK and the US. Key activities of the company include:

(a) television production;
(b) theatre production and exploitation of theatres;
(c) exploitation of television rights and formats;
(d) film production.

One of the company's major strengths is the in-house development of drama, sitcom, infotainment and entertainment series.

E.3.2. National strategy

The original Dutch television companies Joop van den Ende Produkties and John de Mol Produkties operate as separate entities within the Netherlands and compete with each other in order to maintain the existing variety of programming on the Dutch market and to ensure that the company is not accused of adopting a monopolistic status by the Dutch government. In the Dutch market they have separate turnover figures and report independent profits. Internationally, however, they operate as ENDEMOL Entertainment International.

The strength of the company lies in programme production. ENDEMOL aims to guarantee a continued source of demand for its production companies and has consequently developed excellent links with broadcasters across the EU. It was thought two years ago that entry into broadcasting would open up opportunities for ENDEMOL and provide it with some security in a highly competitive environment. Indeed, ENDEMOL is currently in the process of finalizing negotiations with the Soccer Association, KPN, Philips, ING Bank and NUON, a regional cable company, for the launch of Sports 7, planned for August 1996.

HMG

The Holland Media Group (HMG), which was to comprise the television stations RTL 4, RTL 5, and the new commercial station, Veronica, has recently been subjected to a critical review by the European Commission. The original shareholders of the HMG were to be CLT, ENDEMOL, Veronica and VNU. The Commission made two specific demands on HMG. First, it determined that the impact of such a powerful consortium may have a detrimental effect on the Dutch market and demanded that ENDEMOL reduce its stake from 24% to 7.5% and then only act as a 'silent shareholder'. It argued that the three HMG channels were expected to account for a combined 60% share of the TV advertising market, and gave HMG the advantage of covering the most lucrative target audience groups with complementary schedules.[89] The major complaint made by the Commission was that ENDEMOL would not only have a 24% share in the consortium but would also have a major production agreement in place, and this constituted an unfair advantage. As a result, ENDEMOL decided not to participate in the consortium. The shares which ENDEMOL would have obtained will be split between Veronica and RTL. ENDEMOL is still negotiating a production agreement with HMG although this, too, is subject to a detailed investigation by the Commission. The outcome is therefore unclear.

Secondly, the Commission demanded that RTL 5 be sold. It concluded that HMG would achieve a very strong position in the Dutch market for TV broadcasting, which could result in an audience share of more than 40%. In the final analysis, the Commission concluded that RTL 5 could remain within the consortium but that it become a speciality channel. RTL 5 has conceded to this demand and has selected to specialize in news.

National legislation

National legislation in the Netherlands has, however, hindered ENDEMOL significantly as seen in Joop van den Ende's attempts to establish TV10. National copyright legislation in other European countries also poses a problem for ENDEMOL as formats are often unprotected. The company is currently facing a conflict in the UK where a programme very similar to an ENDEMOL production is being shown by ITV, but because the transmission never reaches the Netherlands, ENDEMOL is limited in what it can do to rectify the situation.

National subsidies

ENDEMOL's view is that national subsidies are insignificant in the development of the European audio-visual industry. ENDEMOL does not benefit from any national subsidies, although between 1989 and 1992 it did make some use of production subsidies available in Luxembourg.

E.3.3. European strategy

One of the greatest strengths of ENDEMOL is its ability to adapt its own as well as acquired formats into successful programmes in other countries. ENDEMOL's 'breeding ground' is the Netherlands. The company develops formats in the Netherlands which it sells abroad once they have proved successful on the domestic market. The strategy of the group is to secure output deals with broadcasters across the EU and then to arrange for the development of local

[89] Television Business International, February 1996.

production in that country either through co-productions, joint ventures or by establishing a wholly-owned ENDEMOL company.

Another key strand of ENDEMOL's European strategy which is already being implemented is to set up a network of European production companies with indigenous producers and talent. Initially, the aim is to supply broadcasters with suitably re-formatted programming, but the subsidiaries will be encouraged to produce their own home-grown shows.[90]

Unlike companies which export so-called 'ready-made products', ENDEMOL makes shows specifically for each market. For example, shows produced for German television are made in Germany with German actors, participants and live audiences. Germany was the first foreign language country in which ENDEMOL Entertainment introduced its cross-border production strategy by setting up a local production company. Since then, ENDEMOL has proved that it is able successfully to adapt non-German formats for the local market despite cultural differences.

ENDEMOL actively pursues opportunities with other major players in the television market in the EU. As a rule, ENDEMOL strives to establish its own local production companies. If this is not possible, the company seeks to develop joint ventures with already established companies. In certain instances, the company might acquire shares in an existing production company, a strategy it has pursued in Spain and France where ENDEMOL shares ownership of ENDEMOL Gestmusic and ENDEMOL Teleimages respectively.

ENDEMOL now has a network of European production companies working with indigenous producers and talent which has allowed a high degree of cross-border fertilization despite the cultural differences which prevail in Europe.

Germany

ENDEMOL Entertainment Productions is one of Germany's top independent television producers. The company's progress has proven that the adaptation of non-German formats for the local market can be highly successful despite cultural differences.

Belgium

Brussels-based ENDEMOL Entertainment was established in 1995 although ENDEMOL has long produced and co-produced programmes for the Belgian market. The group makes Flemish productions with a Flemish workforce.

Portugal

ENDEMOL Portugal was established in 1994 and has since developed into one of the country's largest television production companies. In the same year, the company signed a three-year contract with commercial broadcaster SIC. Less that one year later, RTP became the company's second client when it commissioned three new programme series from ENDEMOL.

90 Television Business International, April 1994, p. 25.

Sweden

ENDEMOL has recently established a company in Sweden, and is looking to set up subsidiary offices in other Scandinavian countries.

Partnerships

In 1995, ENDEMOL established an alliance with US distributor and producer All American Fremantle International. ENDEMOL exclusively represents the entire All American Fremantle catalogue in Portugal and All American Fremantle exclusively represents ENDEMOL's catalogue in Greece. Additionally, the two companies have agreed to co-operate in the production of ENDEMOL's format *All You Need is Love* for the US market.

E.3.4. Impact of the SMP

Horizontal measures

The freedom of movement of labour has impacted on ENDEMOL as it is now easier to draw up employment contracts.

Increased involvement in the European market

ENDEMOL sells formats throughout the EU and has become more involved in the audio-visual industry in other EU countries than it was in 1985 through the establishment of new companies; production joint ventures; co-financing of productions and co-productions. The company indicated, however, that this increased European activity was not attributed to changes brought about by the SMP but to the increase of commercial stations in Europe which have become major customers. This may, however, be an indirect effect of TWF which has encouraged the development of channels in the EU.

Quotas

ENDEMOL benefits indirectly from the TWF programme quotas across the EU. ENDEMOL's local production offices produce local material and benefit from demands placed on broadcasters to increase their transmission of local material. While this impact is not quantifiable at this stage, interviewees suggested that while quotas do not affect the company directly, the increased demand has had an impact on deals struck and, therefore, on local activities.

Financial support systems

ENDEMOL has not benefited from the MEDIA Programme and has not yet received any incentive from the Action Plan. The interviewee stated clearly that as no one in the Netherlands has wide-screen television, there is little point in adapting to 16:9.

Competition from within the EU

ENDEMOL executives remain confident that they have developed expertise in cross-border production that puts them 'quite far ahead of the competition'. John de Mol believes that ENDEMOL's brand of low-cost, high-rating programming will be in great demand as the multi-channel environment spreads throughout the world: 'Every commercial channel is going to need gameshows.'

ENDEMOL's senior management agreed that an important goal of the SMP was increased competition in the marketplace. Senior management insist, however, that ENDEMOL's activities have not been affected by the SMP or by increasing competition in the production marketplace. While it is true that negotiations with broadcasters have become more arduous for ENDEMOL, and more is expected for the same price, ENDEMOL management maintains that this is due to increased competition in the broadcast market and not the result of the SMP or of increased competition in the production marketplace.

Television Without Frontiers

Television production is one of ENDEMOL's core activities and the company has benefited greatly from the proliferation of commercial channels in Europe. In this respect, it may be argued that the company has benefited indirectly from the changed landscape. However, interviewees argued that any direct effects on the production sector are negligible in the Netherlands and in the other EU territories in which ENDEMOL operates.

E.3.5 EU competition authorities

ENDEMOL considers that its activities in the Netherlands have been restricted by actions taken by the European Commission. Two specific examples of Commission involvement relate to its production agreement with HMG which is subject to Commission investigation and to its involvement in Sportsnet which is also being scrutinized. ENDEMOL feels that its options in the Netherlands are being influenced unnecessarily by the Commission.

ENDEMOL also believes that because it is being hindered in the home market, its development in Europe is being suppressed. It argues that the actions by the EU on competition law grounds hinder its development nationally and across borders.

E.6. Gaumont

E.6.1. Background

International expansion in the early 1980s

In 1978, Gaumont began to deploy outside the French market. Gaumont's President, Nicolas Seydoux, sought to make the company a global operator and saw opportunities in extending the know-how gained at home in its core businesses of production, distribution and production, to Europe and the world.

During those years, Gaumont's international strategy had three main components:

(a) In Italy, Gaumont invested in the construction of new multiplex film theatres, through its subsidiary Gaumont Italia. It also developed distribution and production interests, establishing a fully-fledged production studio. The then head of production, Daniel Toscan du Plantier, embarked on a course of co-developing and producing prestige, high budget cultural films: *Don Giovanni*, the Joseph Losey film of Mozart's opera was emblematic of this approach.

(b) In Brazil, the company launched Gaumont do Brazil, the first step towards the development of vertically integrated production, distribution and exhibition activities in Latin America. Gaumont took control of 18 Brazilian screens.

(c) In the United States, Gaumont bought a controlling stake (50%) in a French language start-up channel, launched in partnership with the French media holding company Sofirad. Through its US subsidiary, it also embarked on a programme of investments in American film theatres.

By 1985, nearly all of Gaumont's interests in those three territories had been sold. During the period preceding divestment, group losses attributable to these foreign ventures reached FF 240 million in 1993 and FF 290 million the following year (on turnover of FF 1.24 billion), resulting in net losses to the group of FF 30 million.

In Italy, Gaumont's decision to develop high-budget Franco-Italian films and to invest in new cinemas was made just before the advent of private television. After 1980, the Berlusconi Group dealt a blow to Italian theatrical attendance by offering two new channels showing a large proportion of imported feature films. By 1983, Gaumont had pulled out of Italy altogether.

In Brazil, the exhibition venture was hit by government legislation in 1984, which made it compulsory for movie theatres to be majority-owned by local businesses. In 1985, Gaumont in Brazil was closed down.

In the US, the Telfrance channel failed to attract viewers, and advertisers soon ignored it. Gaumont pulled out of the venture in 1983. Gaumont appears unusual in its relative unwillingness since the mid-1980s to become an international player, considering the industrial weight it has gained in its home market.

E.6.2. French and European strategy

Exhibition

Building and operating cinemas in France is Gaumont's primary business. Earnings from French exhibition interests today account for over 50% of turnover, after a rapid progression since the early 1980s.

Table E.4. Percentage of Gaumont gross revenues generated by exhibition (France only)

1991	1992	1993	1994
33	34	45	51
FF 405.2 m	FF 460.2 m	FF 594.7 m	FF 588.4 m

Source: Gaumont Annual Report 1994.

The increase in revenue reflects Gaumont's large scale acquisition and renovation effort, begun in the 1980s: from 1986 to 1990, the group invested FF 295 million in refurbishing existing sites and acquiring new ones. From 1990 to 1994, the expenditure on exhibition totalled FF 743 million. A large proportion of this represented Gaumont's first foray into the construction of multiplex sites in city centres and the suburbs of Paris. The first of these theatres became operational in 1995. More sites have become operational in 1996 and 1997.

In 1995, Gaumont exhibition consisted of 41 sites, of which 18 in Paris. These sites totaled 245 screens, of which 75 in Paris and 170 in the province. Gaumont programmed 155 films in 1994, the majority of which were US and French titles fed by Gaumont/Buena Vista (GBVI) and its competitors.

Gaumont's exhibition interests represent just 5% of all French screens. However, those screens are for the majority situated in the most strategic urban sites, attracting audiences from large catchment areas.

Since its experience in Italy, Gaumont has stayed away from foreign investments in theatres and concentrated on France. This year, for the first time since 1980, the group will open a multiplex cinema abroad. The site, in the centre of Antwerp, has been built entirely with Gaumont investment and under its control. However, Gaumont management does not suggest that the Antwerp operation is the premise of a new Gaumont deployment into Europe. Gaumont's stated objective for the time being is to complete the modernization of its existing national screens, to launch its local multiplexes and to ensure a strong return on domestic investments by feeding its theatres with popular movies.

Distribution

With a 1994 market share of 25.5%, Gaumont's distribution arm is the French market leader. It broke new ground in 1991, when it negotiated a joint venture with Disney's distribution arm, Buena Vista. The deal gave the group exclusive access to all new Disney feature-length cartoons and the live action star vehicles produced by Disney's production labels. GBVI can not only rely on a steady stream of blockbusters from the US on an exclusivity basis, but it also handles all the French films made by the group's high profile film production division.

In the past 18 months, US titles handled by GBVI included *Die Hard III, Pocahontas* and the re-released *101 Dalmatians*. French films backed by Gaumont included the domestic blockbuster *Les Anges Gardiens* and the very successful *Elisa*. 1994 saw a decline of total theatrical revenues, which were down 11.5% on the previous year. However, 1993 was an atypical year, with Gaumont releasing *Les Visiteurs*, a Gaumont-produced comedy which became the most successful film in French film history, attracting an audience of 14 million to the theatres and earning FF 100 million for Gaumont. Taking this exceptional factor into account, it is clear that Gaumont has benefited substantially from its Buena Vista alliance, with revenues up 25% on average from 1990–91.

Table E.5. Progression of Gaumont distribution revenue: 1990–94

Theatrical revenue	1990	1991	1992	1993	1994
FF m	777.3	763.0	788.9	1,101.5	974.5
% growth		(-2%)	+3.3%	+28.3%	(-11.5%)

Source: Gaumont Annual Report 1994.

When handling Gaumont-produced films and Buena Vista product, GBVI trades with Gaumont's exhibition competitors as well as the Gaumont theatre chain, in order to achieve the wide releases required to maximize revenue. GBVI therefore deals regularly with the UGC and Pathé chains. However, access to its own exhibition network allows GBVI to take full advantage of vertical integration. The event French films backed by Gaumont are guaranteed a wide release and can often negotiate long runs.

Production

Cinema

The group produces and co-produces between 8 and 12 films each year.

Gaumont also works with a small number of prominent French independent producers, through long-standing and informal output agreements.

From 1975 to 1985 the then Head of Production, Daniel Toscan du Plantier, embarked on a policy of associating Gaumont with high-budget co-productions. The policy, however, resulted in significant losses for Gaumont. After 1985, the Gaumont style became more focused on the domestic market, and budgets were pegged to the perceived earning potential of each project, as the new Head of Production, Patrice Ledoux, strove to strike a balance between director-led *auteur* films and mass appeal films.

The recent blockbuster of the popular comedies *Les Visiteurs* (1993) et *Les Anges Gardiens* (1994) has established Gaumont as the leading force in popular French cinema. These two films are the result of Gaumont's systematic policy of developing France's top film talent's loyalty to the studio by offering attractive financial packages (including generous shares of revenue from exploitation) and allocating extensive resources to the development of new projects.

Table E.6. Gaumont film production investments: 1990–94

Film investments	1990	1991	1992	1993	1994
FF m	166.5	216.0	329.0	430.1	229.8
% growth		+23	34.3	+23.5	(-46.5)

Source: Gaumont Annual Report 1994.

The Gaumont production 'stable' is led by prestigious French directors, including Jean-Jacques Beineix, Luc Besson, Bertrand Blier, Michel Blanc, Jean Becker and Francis Weber. Gaumont also has 'first look' deals with established independent producers such as Alain Goldman, Jean-Claude Fleury and Alain Terzian.

In financing terms, Gaumont's film production trade mark is that it is often prepared to take on the risk of bringing a project into production and funding a large proportion of the production budget, rather than to seek to share the risk at an early stage by pre-selling specific domestic rights and specific national markets. The strategy is high risk but Gaumont relies on its control of the downstream (film and video distribution, exhibition) to maximize return on investment.

As far as foreign markets are concerned, supply and demand factors also explain Gaumont's strategy; foreign pre-sales for French films are extremely difficult to attract, particularly in key markets such as the US and the UK, where there is no tradition of dubbing and only a small interest in sub-titled films by local audiences.

It is partly in order to circumvent this obstacle that, in the past three years, Gaumont has begun to embark on a strategy of developing and producing higher budget English language films aimed at the international market. The approach is typically cautious: it is purely project-led and no specific output target has been set. Gaumont's most notable first efforts have been the Ridley Scott directed epic *1492*, starring Gérard Depardieu, and Luc Besson's thriller *Leon*, both of which were released in the US as well as in key European markets.

Television

The television production division of Gaumont was launched in October 1990 and is now its fastest growing business. Turnover has grown from FF 30 million in 1991 to FF 320 million in 1995. The subsidiary has been profitable every year since its inception.

The company initially focused on high budget French language and English language drama production. It has since diversified into documentaries, low-budget drama (sitcom and soaps) and animation. Output grew from 8.45 hours in 1991 to 101 hours in 1995. In 1995, 51% of those hours were drama series, 25% were single drama. Documentaries represented 10%, animation and sitcom 7% each.

Table E.7. Progression of Gaumont distribution revenue: 1990–94

Television	1991	1992	1993	1994	1995
FF m	78	174	66	190.3	320
% growth		+223	(-263)	+287	+168

Source: Gaumont Annual Report 1994.

Gaumont TV conducts a twin-track business strategy: it produces high quality French language programming made with the French TV marketplace in mind, and it has a systematic approach to English language production targeted at the international marketplace. Sixty percent of Gaumont TV's turnover in 1994 and 1995 was related to international sales and co-production.

With the live action drama series *Highlander* (based on the original feature film, which was successful in the video market), Gaumont TV was the first European TV production company to enter the difficult domestic television syndication market in the US. *Highlander* was developed by Gaumont TV which raised 80% of the financing for the initial series from Europe and partnered US syndication company Rysher Entertainment for the US rights.

E.4.3. Impact of the SMP

Television Without Frontiers

Gaumont TV and Gaumont's film arm found European quotas a useful tool to attract inward investment into European TV software. They also thought that TWF as a whole facilitated the development of satellite broadcasters, the establishment of cross-border broadcasters and the overall expansion of pay TV services.

However, Gaumont TV objects to the French Government's programme quotas, especially the French language quota. Gaumont TV argues that the latter is having the opposite of the desired effect. For example, the French regulator decided that the second series of *Highlander* did not qualify as a French programme so that Gaumont TV was able to raise from French broadcasters only a proportion of the funds which it had raised for the first series. As a result, it had to give away most of the rights to the series to its US partner, which provided the deficit finance. The net effect, according to Gaumont TV, was that an audiovisual asset developed and initially controlled by France, had to be handed over to the US.

Impact of copyright legislation

Gaumont interviewees consider that the impact of EU copyright legislation has been minimal to date. The French *droit d'auteur* regime often forms the basis upon which the EU Directives harmonize European copyright, authors rights and neighbouring rights so that there has been almost no effect on Gaumont's contractual practice.

Gaumont believes that the obstacles to trade due to intellectual property disparities are insignificant, because, whether in a *droit d'auteur* or a common law regime, Member States are bound by the Berne Convention, which provides sufficient guarantees.

Impact of national film subsidies

Gaumont does not consider national subsidies to be a barrier to trade. On the contrary, it stressed their usefulness in helping to maintain quality and competitiveness in European audio-visual software.

Although Gaumont stressed the usefulness of the MEDIA initiative for the industry as a whole, it does not feel the scheme was useful for a group of its stature. It welcomes the role of MEDIA as a structure permitting the financing and marketing of software that may not otherwise have been made.

By contrast, Gaumont has found the 16:9 Action Plan useful in helping it to meet the costs of remastering some of its film library for exploitation on the European widescreen TV market. It stressed that it would not have engaged in that process had subsidy not been available.

SMP and trade

Gaumont exports significantly more software to other Member States than in 1985. However, it attributes this change to 'natural' changes in the marketplace and to the need to maximize sales revenue to cover the increasing costs of film production.

Gaumont also considers that – despite the existence of more channels and more film buyers in general – sales are often more fragmented as a result and the increase in potential buyers does not of itself result in a stronger sales performance. Gaumont believes that the improvement of export performance is product-led and stresses that SMP measures cannot address the basic fact that French language films have difficulties finding a market in other Member States.

However, Gaumont believes that the increase in number of TV channels in France, combined with the French quota regulations on European and French works, has led to an increase in the volume of non-French European programmes shown on French television.

Gaumont sees the multiplication of channels, the growth in VCR penetration and the resulting increase in home viewing as the key factors behind the growth of the industry in Europe. It also stresses the importance of the progress made in production technology. By contrast, it feels that the development of digital broadcast technologies, audio-visual marketing strategies and substitute leisure activities are not yet significant elements.

Gaumont executives believe that the single market has benefited vertically-integrated US exporters of audio-visual software more than it has their European competitors. Its analysis is that whereas American companies sell films which have universal brand recognition, European film companies are mostly national in stature. It believes that European films fail to sell across Member States' borders because of cultural and linguistic barriers and expresses doubt as to the ability of SMP measures to tackle such barriers, as they are not technical or legal in nature.

Gaumont executives believe that the SMP has facilitated competition but that the natural barriers to trade described above mean that competition still occurs mostly at national level.

E.5. MTV

E.5.1. Background

Introduction

MTV is the archetype of a global youth media brand. Launched in 1981 in the US, it now has affiliates operating in Europe, Asia, Brazil and Japan. MTV Europe, the first overseas broadcasting venture for MTV Networks, launched in 1987, two years before the Television Without Frontiers Directive was adopted. Its proposition was a youth oriented pan-European channel, which emphasized what it believed was an increasingly common and integrated European youth culture.

Although MTV Europe was built on the US model, when it launched it was majority owned by EU (UK) interests. As such it could be expected to benefit from the new freedoms of the single market. In particular, TWF would be expected to have facilitated increased distribution and pan-European advertising sales. Given the high music content of the output, harmonization of copyright regimes would also be expected to have had an impact.

In 1996, MTV Europe was a subsidiary of Viacom owned MTV Networks. It operates two music channels: MTV Europe and VH-1. MTV is targeted at the 16–34 age group and is marketed widely in Europe. It began as a pan-European channel with limited nationally targeted advertising and is now moving towards a strategy of providing local programming where appropriate. It is also providing a 13 hour a day channel via Telepiu in Italy.

VH-1 aims for a somewhat older audience and there is a German and a UK service. Unlike MTV, VH-1 was launched as a nationally targeted service. It currently has a UK service and a German language service available in six German states. It is also exploring the market for versions for the Benelux countries and Scandinavia.

Launch of MTV Europe

MTV Europe launched on 1 August 1987. At that time it was controlled by Robert Maxwell who owned a 51% stake in the company; Viacom, the owner of the US MTV Networks, held a 24.5% stake; and British Telecom owned the remainder.

In February 1990, Viacom purchased British Telecom's stake in MTV Europe. In 1991, it purchased Maxwell's stake and MTV Europe is now wholly owned by Viacom.

Its network reached over two million homes by the end of 1987; and by the end of 1988, it reached over five million homes in 12 countries. This was a combination of cable homes, hotel rooms and terrestrial re-transmission (in Greece).

By November 1995, MTV Europe claimed a reach of 51 million homes in 36 countries (see Table E.8).

E.5.2. European strategy

Targeting strategy

MTV targets young adult viewers from the age of 16 to 34 with programming that consists primarily of music videos and concerts, music and general lifestyle information, comedy and dramatic series, news specials, interviews, documentaries and other youth oriented programming.

When MTV launched, it was among the first channels in Europe to pursue a segmented strategy. Unlike mainstream national channels, which aimed for a broad audience in a narrow (national or local) geographic area, MTV was aimed at a well defined audience segmented across a wider geographical area. The wider geographical area was necessary because the potential audience for its programming was restricted, not only by the tight targeting, but also by the limited penetration of cable and satellite distribution systems.

In this sense, MTV was exploiting the economies of scale afforded by operating a single programme service across Europe.

As penetration has grown and wider distribution has been achieved, MTV Europe has retained its targeted approach, but has begun to target smaller geographical areas. Its VH-1 format, aimed at a somewhat older audience is being rolled out across Europe with different services for each market.

Distribution strategy

MTV Europe's distribution strategy has simply been to reach as many households as possible in the shortest possible time. Prior to 1989, cable networks were essentially the only outlet; but in 1989, the launch of Astra created a new direct to home market in the UK, German and Scandinavian markets. By this time, the year in which TWF was adopted, MTV already had 10 million subscribers.

The channel argues that membership of the EU was not a significant factor in determining the roll out of the channel across Europe, as obtaining licences in non-EU states has generally been no more difficult than in EU Member States, at least initially. The key issue in determining MTV's target territories is the number of multi-channel homes which can be served through its satellite footprint.

The process of reaching agreement for carriage and the structure of carriage deals differ between countries and among cable operators. Although TWF has made it simpler to obtain a licence to be carried, the decision-making process remains fragmented. In some markets, the decision is primarily a commercial one, but in others, such as Germany, regulators play a key role.

Competitive strategy

When MTV Europe launched, it was as a broad-based pan-European service. Its proposition was that young Europeans were more likely to have common interests and that music offered an international subject matter with which to attract a pan-European audience with a single programme offering.

For advertisers, the proposition was that MTV could support a pan-European campaign for international youth oriented brands which could link themselves with the MTV brand as a support for national campaigns.

Given the low penetration of multi-channel television in most European countries, MTV could only become profitable by spreading the cost of the channel over a wide area with a single programme offering. However, as multi-channel television has grown and offered profitable opportunities at Member State level, MTV has been challenged by an increase in the number of local channels and, in particular, local music channels, such as Viva in Germany, The Music Factory in the Netherlands and Videomusic in Italy.

MTV is moving towards greater localization of its services with VH-1 and MTV regional expansion. Its proposition to advertisers remains that unlike most other television channels, it can offer pan-European coverage. Meanwhile, it is also looking towards digital compression technology to allow for further national opt-outs to facilitate local advertising sales.

E.5.3. Impact of the SMP

Distribution

It would be expected that the SMP would have increased the distribution of pan-European channels such as MTV.

MTV believes that the single market programme has impacted on its distribution in four ways:

(a) right to re-transmission;
(b) increased distribution of a uniform service;
(c) help in addressing discriminatory carriage rules; and
(d) right to re-transmission.

TWF has had an important impact on the development of the company, although it is difficult to know to what extent licences would have been granted in most Member States in the absence of TWF.

MTV believes that in the absence of any harmonization it would have been difficult to make use of the economies of scale to launch the service. According to one executive: 'I don't think pan-European broadcasting would have got off the ground.' On the other hand, it is likely that channels would have launched to serve cable and satellite markets within Member States.

MTV had secured the necessary 'down-link' licences in a number of countries before TWF. However, agreements were generally on the basis that the UK licence was broadly acceptable, given that TWF was expected to be implemented.

The legal costs saved by not needing to apply for separate licences in each Member State have never been calculated by MTV, but senior management believes that there have been significant savings as a result.

Wider distribution with a uniform service

TWF has facilitated MTV's distribution, in particular in France. When the Conseil Supérieur de l'Audiovisuel insisted that MTV sign its own Convention in order to be carried on French cable networks, it also attempted to require that MTV follow the more strict French quota rules. MTV successfully refused on the grounds that it was not licensed in France and that it merely had to meet the UK rules.

The 'must carry' debate

In 1987, MTV had little difficulty gaining access to cable once it had received down-link licences. The reason for this was that there were few other services for the cable networks. As a result, cable operators and local authorities had little incentive to exclude MTV.

As cable networks, particularly in Germany and the Benelux countries, have become crowded, MTV – along with other pan-European channel operators – has come under pressure from local competitors which were favoured under local 'must carry' rules. These gave national channels priority for carriage over non-national channels.

The most crowded cable networks in Europe are in Germany. In autumn 1995, as the cable networks filled up, Germany's media authorities were unable to persuade Deutsche Telekom (DT), which controls German cable networks, to make further capacity available for the launch of new channels. DT had decided to reserve the capacity for the launch of digital services in 1996.

Each of the German *Länder* has its own media authority, with local laws governing the licensing of channels. In North Rhine-Westphalia (NRW), the local law gave preference to channels established in and licensed by the state. As capacity filled up on the main bandwidth of the networks, pan-European, non-EU channels were threatened with replacement by local channels and of being moved to the hyperband frequencies, which would involve losing up to 75% of homes. In November 1995, the European Commission responded to complaints from channels not licensed by NRW, that the NRW law breached Article 54 of the Treaty of Rome, by warning the NRW media authority that the law was illegal. The authority has enacted a new law which will remove the preference for local channels.

Although the issue is a temporary one as digitization should reduce the capacity constraints, pan-European channels regard it as a very important one, as continuity of service is vital as local competitors establish themselves.

Pan-European advertising sales

Accurate advertising sales data is not available. MTV would not reveal its revenue or profitability for reasons of confidentiality.

However, MTV believes that TWF has produced benefits for MTV in facilitating pan-European advertising sales, but also that the most important barriers have not yet been overcome.

The licensing of services from the country of uplink has facilitated pan-European advertising sales, although these had been possible before TWF. For example, in the absence of TWF, channels broadcasting to Germany would have had to insert a 'break bumper' warning that the programming was about to be interrupted by advertising messages. MTV believes this would not fit in with the brand-conscious style of the channel and TWF has enabled it to avoid doing so.

However, MTV believes that harmonization has not yet been achieved in some areas:

(a) While in many respects, UK regulation of satellite broadcasters is more relaxed than in many Member States, the UK is more restrictive on matters of taste and decency. This has led to cases in which commercials banned in the UK could not be shown by MTV although they could be shown elsewhere in Europe.

(b) The lack of harmonization of audience measurement systems is cited by MTV as the most important economic barrier to pan-European advertising sales. Audience measurement systems are fragmented across Europe because they have developed around the needs of local broadcasters, and there is no single measurement standard or 'currency' to enable comparison between Member States.

(c) Clients are not yet organized on a pan-European basis. Most advertisers still market their products separately in each Member State and do not have specific budgets for pan-European advertising. This is a structural barrier rather than a legal/administrative one susceptible to EC remedies.

(d) Support programmes. MTV has not received funding from either the MEDIA Programme or (despite trying to find some appropriate output) the Action Plan for the Introduction of Advanced Television. However, MTV has received funding for specific output from a number of other programmes sponsored by the European Commission's DG X including a campaign aimed at persuading Europe's youth to exercise its right to vote in the European elections; and a programme which contrasted life in the far north and the far south of the Union.

Copyright

The executives whom we interviewed did not believe that the Copyright Directives had impacted on MTV's business in any quantifiable way.

MTV has had a complaint lodged with the European Commission (DG IV) against Video Performance Ltd. (VPL) and the major record companies, claiming a breach of Articles 85 and 86 of the Treaty of Rome.

Standards

MTV was involved early on in the DVB Group, particularly in the working group on conditional access. Its primary concern was that dominant players could create gateways through the use of proprietary conditional access systems. Senior management believed that although it did not mandate a common interface, the Television Standards Directive was a minimally effective compromise.

Conclusion and future issues

MTV was set up as a pan-European channel at a time of some enthusiasm for pan-European broadcasting. The development of its business model can be summarized as follows:

(a) at launch it aimed to broadcast to as many young people in multi-channel homes in any country covered by its satellite footprint. The pan-European model allowed for the exploitation of economies of scale;
(b) it supported the service through pan-European advertising sales, subscription and sponsorship which tied closely into its programming; and
(c) as multi-channel distribution has moved towards making nationally targeted channels viable, it has begun to offer more targeted services, both through different programmes and separate advertising windows. These have been made possible by digital compression and encryption technology.

There can be little doubt that the existence of the single market and of TWF in particular has benefited MTV in helping to solve carriage issues within the EU.

However, MTV argued that the EU measures so far enacted will face a greater test as analogue cable distribution capacity becomes scarce prior to upgrades to digital networks. One of the principal remaining regulatory barriers for MTV in most markets is that distribution systems tend towards local monopolies, and that the monopolies are often under local political regulation. It believes that national interests will continue to underpin regulatory decisions at the Member State level.

The full impact of TWF may only now begin to be felt. The invocation of TWF to combat 'must carry' rules (such as in Germany) provides an important source of protection for MTV and other pan-European channels where there are capacity constraints.

Key issues for the future include:

(a) the extent to which national regulators will find new ways to favour local channels;
(b) whether EC intervention will be able to counter this;
(c) whether the country of uplink rule in TWF may be changed to country of establishment; and
(d) whether new services will be made subject to quotas.

Table E.8. MTV Europe Network development (millions of homes)

	Total EU	Total non-EU
1987	1.80	0.39
1988	5.57	1.19
1989	9.47	2.45
1990	16.66	3.59
1991	26.95	5.44
1992	35.06	7.81
1993	41.94	11.21
1994	46.16	12.76
1995	43.11	8.29
CAGR 1987-95	0.488	0.464

Source: KPMG.

Table E.9. MTV Europe Network development: EUR-12 (millions of homes)

	1987	1988	1989	1990	1991	1992	1993	1994	1995
Belgium		1.13	2.42	2.90	3.15	3.52	3.59	3.63	3.62
Denmark	0.14	0.41	0.52	0.65	0.93	1.15	1.21	1.27	0.91
France		0.06	0.15	0.36	0.57	0.79	0.93	1.12	0.99
Germany	0.29	1.02	1.70	5.82	10.37	14.51	18.24	20.35	15.55
Greece		0.75	0.91	1.46	1.54	1.54	1.54	1.54	1.54
Ireland	0.22	0.26	0.26	0.31	0.32	0.33	0.09	0.39	0.36
Italy					3.53	4.71	6.42	7.11	11.00
Luxembourg			0.01	0.02	0.07	0.08	0.08	0.09	0.08
Netherlands	1.06	1.82	2.66	3.33	3.86	4.39	5.24	5.51	4.52
Portugal			0.00	0.01	0.01	0.03	0.05	0.11	0.05
Spain			0.25	0.30	0.51	1.26	1.29	1.29	0.05
UK	0.08	0.11	0.59	1.50	2.08	2.73	3.26	3.76	4.45
Total EU	1.80	5.57	9.47	16.66	26.95	35.06	41.94	46.16	43.11

Source: KPMG.

E.6. NBC Superchannel

E.6.1. Background

NBC Superchannel is available to 66 million European homes and shows a mix of programmes, including four hours of live business news produced by Financial Times Television for CNBC. NBC also uses popular US programming from its network, *Tonight with Jay Leno* for example, but the channel easily meets European programme origin quotas.

Other broadcasting activities conducted by the parent company GE/NBC includes:

(a) NBC – the most popular network in the USA (winner of the last six Sweeps) with owned and operated stations and 200 affiliates;
(b) news and sports programming;

(c) CNBC – cable business news network reaching 60 million US cable homes. NBC also has NBC Desktop – a video on demand business news service in the US and now part-owned by Microsoft, launched in Europe on Astra 1D, in the autumn of 1995;
(d) minority investments in US cable channels: Arts and Entertainment, Court TV, American Movie Classics, Bravo, Prime Network;
(e) MSNBC: joint venture with Microsoft to provide a 24-hour TV news and on-line news channel from July 1996;
(f) NBC Super Channel: general entertainment channel for Europe and the Middle East;
(g) CNBC Europe – distribution in Europe on Astra 1D and also fed to CNBC Asia in Hong Kong; provides 24 hours of live business news with feeds from CNBC in the US and Asia in addition to 7 hours per weekday of European production;
(h) CNBC Asia – 24 hour business news channel in Hong Kong with 12½ hours produced locally plus feeds from CNBC Europe and the USA; carried on PAS2 and AsiaSat2;
(i) NBC Asia – general entertainment channel carried on Palapa C1 and AsiaSat2; and
(j) Canal de Noticias NBC, Latin America. NBC has a partnership with and equity holding in Television Azteca, a privatized Mexican broadcaster.

Financial profile

GE/NBC global broadcasting revenues increased by 8% in 1994, the last year for which figures are available, as a result of stronger advertising revenues. Operating profit increased in 1993, 1994 and 1995 due to higher prices for advertising, improved ratings and improved CNBC operations.

Table E.10. General Electric Broadcasting: turnover and operating profit

	1994 ($m)	1993 ($m)	1992 ($m)	1991 ($m)	1990 ($m)
Turnover	3,361	3,102	3,363	3,121	3,236
Operating profit	500	264	204	209	477

Source: 1994 Report and Accounts.

Table E.11. General Electric Broadcasting: turnover and operating profit as a proportion of total

	1994 (%)	1993 (%)	1992 (%)	1991 (%)	1990 (%)
Turnover	7.9	7.7	8.4	7.9	8.3
Operating profit	5.7	3.9	2.9	3.1	7.2

Source: 1994 Report and Accounts.

No separate European accounts are available.

The history of Superchannel

NBC, the current owners of the company, did not take control of the service until October 1993. However, some of the leading company executives interviewed were able to give an account of the channel's previous history which is relevant to understanding its current position.

It is their opinion that much of the groundwork which assisted the channel's later development came through the early attempts to establish Sky Channel during the period 1981 to 1984. The use of public telecoms operator satellites such as Eutelsat 'broke the ground' for the delivery of new television services across European borders. Although Member State governments resisted the new signals intrusion, the tacit support of UK government officials eventually led to cable connections for Sky Channel in the Netherlands which helped create a European satellite TV market.

The issue hung on the definition of a broadcaster's country of origin and on reception being the key definition of signal ownership. The UK lobbied for these to be with the originator, which until now has remained the *de facto* position.

Superchannel's creation began in 1985 when the UK ITV (commercial) stations (other than Thames TV) plus Virgin, the music company, formed MusicBox to create a European style of MTV (the original US brand launched its European service in 1987).

Revenue streams were poor and the owners began to conceptualize a pan-European 'Best of British service'. The term Superchannel emerged as the brand name.

In 1986, full control of MusicBox passed to the ITV companies and Virgin. It was intended to use the music channel's carriage to distribute the planned Superchannel. Consumer research conducted for the launch questioned whether a pan-European English language entertainment channel would be popular.

This concern was compounded by the legal complexity surrounding rights availability for much of the planned service. UK actors' and writers' unions refused to give permission for their members' work to be used without compensatory payments which were deemed too high. As a result, Superchannel was unable to obtain blanket rights clearance.

During 1986 to 1988, the programmers began a strategy to convert the station to a youth oriented niche channel by supplying children's programming. However, with low revenues and a small stock of available rights, the channel came under pressure from new services willing to pay more for these rights.

Superchannel maintained its own percentage audience share as the European cable and satellite universe expanded, but its share did not grow in line with expectations.

During the late 1980s, the ITV owners disposed of their shares. The Italian group, trading as BETA, owned by the Marcucci family, bought control of the group. Virgin and BETA negotiated the withdrawal of Virgin's facilities service contract.

The company struggled financially until 1993 when NBC took full control.

NBC wanted to turn Superchannel into a news and business service modelled on the US CNBC service which has an entertainment oriented prime time. Furthermore, existing licences with local cable operators then in force in much of Europe specified a general entertainment service. During this time, European content rules and limits to cable capacity bandwidth gave local cable operators the power to enforce existing carriage agreements.

Currently, NBC Superchannel is available to 66 million homes and shows a mixture of programmes including top US shows from the NBC network linked to European information, current affairs and news services, some fronted by leading celebrities. News is supplied by the UK ITN service and Financial Times TV.

The channel has now launched a sister service, CNBC, for business television. It is transmitted via Astra 1D.

A concern for NBC Superchannel is the rise of European national commercial channels which supply general entertainment television, plus new niche competitors such as BBC World, focusing on news and news features.

E.6.2. Impact of the SMP

The following points were made by Superchannel's management:

(a) During the early 1980s, the legal ambiguity concerning the use of telecom satellites facilitated pan-European TV distribution as a means of market entry and assisted the development of Superchannel. However, the continuation of complex telecom and public broadcasting monopolies has made it difficult for Superchannel and similar services to compete effectively.

(b) National laws relating to carriage, local content and advertising were and still remain an issue. Their importance has grown as analogue cable capacity has reached saturation, giving operators the power to choose between rival services. There are no current EU legal problems for Superchannel, but rules of local content are used as an excuse by cable operators when they wish to downgrade the tier or terminate the service.

(c) There is a widespread practice of cable operators charging a 'carriage fee' even when it is claimed this does not occur. Many European cable operators charge these via euphemistic titles such as 'marketing support'.

(d) Conversely, the inability of many cable programmers to charge subscription fees due to local rules and price capping has limited the quality of programming offered.

(e) There is a limit to pan-European advertising brands which in turn limits the advertiser support for pan-European services. Packaging law reform which allows a common identity to emerge for products like pharmaceuticals could be an aid to the development of a pan-European sales market.

E.7. NetHold

E.7.1. Background

NetHold is an international holding company with subsidiaries offering fully integrated pay TV packages to 2.7 million subscribers, in 15 European countries and 36 African countries.

In all these markets, it has moved progressively towards a fully integrated operation, encompassing rights acquisition for pay TV uses, programming, encryption technology, broadcasting and subscriber management services.

In the past two years, the group has invested substantially to prepare for the transition to digital pay TV and take full advantage of the commercial benefits (greater consumer choice and personalized service) which digital technology will bring.

Table E.12. NetHold markets by territory: 1995

NetHold markets	Population (m)	Population (million homes)	NetHold subscribers (000)	NetHold penetration (%)
Benelux	21.2	8.5	390	4.6
Nordic	23.4	10.0	395	4.0
South Africa	41.2	4.4	920	20.9
Rest of Africa	626.0	22.5	90	n.a.
Italy	57.2	20.3	800	3.9
Mediterranean	11.1	3.3	97	2.9
Central Europe	66.4	22.0	35	n.a.
Total	**846.5**	**91.0**	**2,727**	**3.0**

Source: NetHold.

History of NetHold

The FilmNet pay TV film channels started broadcasting in Belgium, the Netherlands and Denmark in 1985. At that time, the systems were owned by the Swedish office hardware and stationery group Esselte. By 1989, FilmNet was available in the Nordic countries, but the holding company was in trouble. The FilmNet package was acquired in 1991 by Network Holdings (NetHold), a joint venture formed by the Swiss luxury products and tobacco group, Richemont, and South Africa's own pay TV group, M-Net.

In October 1993, the group split off its subscriber management and customer services subsidiary, MultiChoice, from its channel operating companies, FilmNet and M-Net. In 1994, Richemont acquired a 25% stake in Italy's pay TV operator Telepiu. The group's activities also include Irdeto, which develops the pay TV access technology used by the group.

NetHold's strategy as a group is to operate nationally targeted programme channels whilst obtaining the benefits of vertical integration by using common subscriber management and conditional access technology developed and operated by separate group service companies. It also aims to reduce the cost of purchasing programme rights by buying these on a group basis where possible and by acquiring rights on a regional (e.g. European) rather than just national basis.

E.7.2. European strategy

NetHold's European operations are generally national in scope, with separate tailor-made pay TV packages operating autonomously in each country. There are some regional services, notably for Nordic territories and for Central Europe but apart from these services, NetHold does not programme pan-European satellite channels.

NetHold's European interests consist of:

(a) Benelux: FilmNet and MultiChoice subsidiaries in the Netherlands and the Flemish Region of Belgium. The package includes FilmNet (movies) and Supersport (sports only);
(b) Nordic countries: a similar package is on offer. NetHold also has a strategic alliance with the Swedish TV4 for the development of digital services;
(c) Greece: one film and sports channel on offer since October 1994;
(d) Italy: the group now owns 32.5% of the Italian pay TV system, Telepiu, which has 800,000 subscribers;
(e) Central Europe: a five-channel package is now on offer in Poland, the Czech Republic, Hungary, Slovakia, Slovenia and Croatia. MultiChoice services the DTH market, with a growing cable retransmission element as well; and
(f) Multichoice Europe Ltd: Multichoice is the subscriber management services (SMS) arm of NetHold. Aside from the FilmNet premium package, Multichoice distributes and offers SMS to third-party channels such as Discovery Europe, CMT Europe, QVC, the Adult Channel, ZTV, BBC Prime, and TCC.

European digital TV developments

NetHold intends to be a significant player in the supply of digital television services in the medium term. The move to this technology is a further step in the group's strategy of vertical integration into all the elements of the digital supply chain. In due course, NetHold will therefore be active in all of the following areas:

(a) downlinking of programme-carrying signals;
(b) compression of signals;
(c) multiplexing into 'bouquets' of channels and addition of conditional access signals;
(d) uplinking of multiplexed signals;
(e) selling/leasing of transponder capacity;
(f) distribution and maintenance of individual decoders; and
(g) operation of subscriber management systems.

The move to digital has been accompanied by the systematic booking of large excess transponder capacity on the Eutelsat, Astra and PAS4 satellites, 24 transponders in total, with the capacity to carry 150 separate audio-visual services across NetHold's subscriber base in Europe, Africa and the Middle East. The group will need the large capacity in order to move into the pay-per-view business with an offer diverse enough to attract subscribers away from video rental.

It is also consistent with its strategy of devising 'bouquets' of thematic channels and programmes devised specially for specific regions of Europe.

In February 1996, NetHold completed negotiations with the leading Flemish cable operator in Belgium, Intermixt, for the delivery of NetHold's digital package to a local audience. 70% of Flemish households will have access to the service, which will retail FilmNet's standard channels as well as international and local channels, transactional services such as home shopping and near-video-on-demand.

Future issues

NetHold's European services, which in some cases are still at an early stage, are not yet profitable in aggregate. However, financial analysts (e.g. Lehman Brothers) have commented that the group has strong financial prospects in the medium term and is well positioned to capitalize on the anticipated growth in European pay TV. NetHold's advantages are considered to include its parent's financial strength, its own geographic diversity and its high degree of vertical integration.

E.7.3. Impact of the SMP

Impact of TWF

NetHold sees TWF to have had a positive impact because, in principle, it enables a pan-European broadcaster to operate across frontiers without having to seek a licence from each territory situated in the footprint. In practice, this legal facility has not been utilized by NetHold which is generally a multinational operator rather than a pan-European one. Most of the FilmNet packages are targeted at a specific national market in which they have obtained a local licence. The need for the group to be able to sell subscriptions for its pay channels within a national market and to provide local support for its marketing and subscription management has meant that it has been preferable in appropriate markets to obtain a local licence. This perspective may change with the development of digital services.

Impact of copyright legislation

To a large extent, NetHold's primary business is more likely to be affected by potential future EU legislation on digital encrypted services than it has been by the Copyright Directives issued to date.

Of the three directives, NetHold's business was most affected and in a positive way by the Cable and Satellite Copyright Directive (CSD). The company found that CSD removed a key ambiguity about the clearing of programme rights for pan-European broadcast use. The move away from clearance per territory and towards a single clearance will, they say, facilitate European satellite and cable growth.

However, NetHold believes that there remain ambiguities over the role played by collecting societies. The CSD requires cable retransmission to be managed through collective management while allowing a specific exemption for broadcasters. In some Member States, the rights of broadcasters to authorize or to refuse to authorize is at times not recognized by cable operators. In practice, says NetHold, the power granted to broadcasters is proving difficult to operate.

NetHold is not affected by the Directive on the duration of copyright: its rights acquisition arm ProNet only negotiates short licences for pay TV uses around the world and has, as yet, no strategy of investing in software.

Other effects

NetHold was active in the discussions of the DVB and broadly welcomes its conclusions. As the Broadcasting Standards Directive builds on the work of the DVB but has not been fully implemented, NetHold was not prepared to comment on it.

The group deplores the effects of piracy on the broadcast business as a whole and wishes to see adequate EU legislation in this field.

There were no reported effects on the issue of movement of workers. Although international in structure, NetHold remains national in scope and tends to hire employees locally to suit the specific demands of the market.

The group would wish to see a clearer EU policy regarding mergers and acquisitions in the media business. It believes that current merger rules lack clarity and the difficulty for industrial interests in reading the signs prior to engaging in merger operations may occasionally act as a disincentive.

Finally, NetHold would like to see a modification of the VAT regime to allow its services to qualify for the lower VAT rate (entertainment).

E.8. PolyGram

E.8.1. Background

The subject of this case study is PolyGram's film production and distribution operations.

PolyGram Filmed Entertainment (PFE) launched in 1992. It now claims to be Europe's biggest film production and distribution company. It has built a film business on the model of its music business, based on a label approach which offers creative autonomy to a number of subsidiary production companies, which is backed by PolyGram's international marketing and distribution network.

Having been established just four years, PolyGram Filmed Entertainment has operated only under the rules of the single market. However, as a major producer of films with an international distribution capability for both cinema and video exploitation, PolyGram is an important contributor to debates on the effectiveness of the single market on the audio-visual industry.

In areas of copyright and financial incentives, it has been a vocal lobbyist. Its tape distribution business may also be expected to have been affected by the free movement of goods.

History of PolyGram[91]

The origins of PolyGram go back to the founding in 1898 of Deutsche Grammophon Gesellschaft (DGG). PolyGram itself began operations in 1962 as a joint venture between NV Philips' Gloelampenfabrieken (now Philips Electronics NV) and Siemens AG. Under the joint venture, Siemens assigned to Philips 50% of its subsidiary DGG, in return for 50% of Philips Photographische Industrie.

The subsidiaries were reorganized in 1972 as PolyGram, and in transactions in 1985 and 1987, Philips purchased Siemens' 50% interest. PolyGram became a public company in 1989 when Philips sold 16% of its shares. Philips currently holds 75% of PolyGram's shares.

[91] Source: PolyGram NV Annual Report 1994.

Today PolyGram is a global entertainment company, and one of the three biggest recorded music producers and publishers world-wide. In addition to DGG, its labels include Motown, Mercury, Polydor, Vertigo, Fontana;. A&M, Verve and Def Jam (50% owned) for popular music and Decca/London and Philips Classics for classical music. PolyGram's principal activity is the creation, acquisition and production of recorded music which it markets and distributes through its network of subsidiaries in 40 countries and through licences elsewhere world-wide.

In recent years, PolyGram has also been expanding its production and distribution presence in filmed entertainment. PolyGram's production labels include Propaganda, Working Title, Interscope (51% owned), Island Pictures, Cinea and Pan-Européenne.

Financial summary[91]

1994 was the first year for which PolyGram split its music and filmed entertainment in its annual report. In 1994, net sales in film were HFL 982 million, representing 11% of total sales. However, filmed entertainment posted a loss of HFL 42 million, compared to a profit of HFL 1,111 million for the music segment.

This was in spite of the spectacular success of *Four Weddings and a Funeral* which grossed over US$ 250 million in box office receipts. In 1995, the division again turned in a loss, of HFL 68 million.

Table E.13. PFE revenues: 1991–95

	PFE revenue (million HFL)	PFE operating income (million HFL)
1991	332	n/a
1992	556	n/a
1993	683	n/a
1994	982	-42
1995	1,235	-68

Source: Company reports/ Variety Deal Memo.

Global strategy

PolyGram describes its strategy as being to cover, as quickly as possible, all of the major territories world-wide.

Hollywood studio vs local labels

PolyGram is regularly referred to as the closest thing in Europe to a Hollywood studio. Certainly, PolyGram believes that a strong production source in Hollywood is vital to building a world-wide film business. As a result, it has bought into a number of production companies in the US. There is also speculation that it would be keen to buy one of the majors should it become available.

However, unlike the Hollywood studios, PolyGram also aims to produce locally, in local languages, using local talent. To this end, it has adopted a strategy of taking controlling interests in local production companies with strong track records and relationships with local stars and agents.

Its films, through Working Title in London, Cinea, Pan-Européenne Production in France and Meteor in the Netherlands, are aimed at national audiences, but with the potential to use the PolyGram distribution network, should they prove capable of generating cross-border audiences.

In this sense, it operates its production business in a similar fashion to its music business, complementing international product which primarily comes from Hollywood or the UK with local product.

The strategy allows a high level of creative independence with the backing of an international distribution and marketing operation.

'We went from being in permanent cash flow crisis and struggling to raise finance for no more than two films a year, to being able to focus on the material, relationships with writers and directors, etc. With the overhead covered and easier access to production finance, we can concentrate on what we do best.'[92]

Control of distribution

PolyGram's aim is to gain gradual control of the entire distribution process for its product in key world markets. For video, it has primarily been able to exploit the distribution networks used for its music product. For film, PolyGram has set up or acquired distributors in France, Spain, the Netherlands, Belgium, Ireland and the UK.

In the US, it has adopted a two-tier approach: for higher budget films PolyGram has to sell domestic rights to a US distributor. PolyGram's lower budget films are distributed by Gramercy, which was set up four years ago as a 50-50 joint venture with Universal Pictures. In 1995, PolyGram bought out Universal's stake.

E.8.2. Impact of the SMP

Introduction

PolyGram's music business acknowledged Europe as a single market in terms of the structure and running of the business long before the single market. However, in filmed entertainment, the detailed operation of the markets differs by country.

However, the SMP has had little impact on the strategy of PolyGram which continues to seek a mixture of product with global appeal and product with national appeal.

Impact of Television Without Frontiers

The principal impact of TWF on PolyGram has been the result of Article 7 which relates to windows of exploitation. The fact that the windows begin as of the first theatrical release

[92] Managing Director of PolyGram subsidiary quoted in PACT magazine 1995.

anywhere in Europe does not, according to PolyGram, take into account the realities of release patterns, which mean that films are released at different times in different countries.

In addition, the ability of Member States to establish more restrictive rules than those in TWF has affected PolyGram. For example, France has been able to impose mandatory windows which delayed the video release of *Four Weddings and a Funeral* until after the peak Christmas period.

PolyGram believes that quotas should be phased out within a 10-year period.

Impact of copyright legislation

The recent adoption and patchy implementation of EU copyright measures to date means that such legislation, in the opinion of PolyGram, has had no measurable effect on the business. However, measures which have been adopted are expected to have a significant impact in the future.

The main area of concern is the stress in European copyright law on the rights of the creators rather than the producer. As a result, in PolyGram's view, measures tend to be adopted in a mentality of subsidies for the arts, rather than by the needs of the business which supports them.

Most important, the Rental and Lending Rights Directive grants performers in an audio-visual work the unassignable right to an 'equitable remuneration'. It is not yet clear how performers will interpret such rights and organize themselves to collect such remuneration. The danger for producers, in PolyGram's view, is that this leads to increased uncertainty when taking the decision on whether to invest in a film. It fears making agreements with performers, with terms based on the risks inherent in film making, and then finding, in the cases where it has a hit, that performers will demand a greater sum in order to receive an 'equitable' share. Given the high failure rate for each hit, PolyGram fears this will lead to lower investment in films.

The danger, according to PolyGram, is that European films will be at a commercial disadvantage compared to films made in the US where there is no 'equitable remuneration' clause to increase uncertainty and reduce the expected returns from a successful film. PolyGram said: '*Film d'auteur* can flourish on the back of a healthy film industry; no film industry can survive on *film d'auteur*.'

Horizontal measures' impact on sourcing

The opening up of the single market by horizontal measures has enabled PolyGram to locate its distribution and duplication operations in the most economically efficient territory. The removal of many of the barriers to the efficient distribution of video cassettes has enabled this to happen.

Role of funding programmes

PolyGram believes that the MEDIA Programme has been useful as a provider of subsidies for certain projects. However, it believes that in order to create a commercial European cinema industry, the EU should adopt policies which are industrial rather than cultural in nature. It points to tax and other breaks offered to US audio-visual companies setting up in California.

PolyGram has been a leading voice in the campaign to establish a European Film Guarantee Fund. It argues that such a fund would create commercial incentives to maximize performance of a film, whereas subsidies merely provide a cushion which allows film makers to be less concerned about commercial performance.

According to Alain Levy, President of PFE: ‘To think there is a magic formula, whereby if only one could set up European distribution of movies by and for Europeans, it would solve this problem [that Hollywood films are dominant in Europe], is a myth... The magic lies in the mixture of Hollywood movies and local language movies owned, controlled and distributed by European based companies.’

Conclusion and future issues

PolyGram’s audio-visual strategy is based on its music strategy, offering a label approach which combines international hits with local product, all of which can use PolyGram’s international marketing operation to leverage overseas sales where it is believed that the product will travel.

Discussions with PolyGram executives suggest that they do not see the SMP as having a significant impact on the company’s strategy to date. Given that PFE launched in 1991 and that copyright legislation is yet to be fully implemented, this finding is not surprising.

The key areas of interest to PolyGram’s business are copyright and exploitation windows. It believes that there is a danger that SMP copyright measures have the potential to damage the European audio-visual industry. Harmonization of windows has not created great problems for PolyGram as these are negotiable on a bilateral basis; but the ability of Member States to impose mandatory windows, as is the case in France, has restricted the ability of the company to fully exploit its biggest film hit to date.

PolyGram also believes that the issue of media concentration will be extremely important in the years to come. As a programme supplier, PolyGram is concerned by the level of concentration in the television business, in particular in the area of pay TV. As such an issue should be addressed at an EU level, PolyGram looks forward to the Green Paper on this matter.

In addition, PolyGram welcomes the publication of the Green Paper on Commercial Communications (COM(96) 192) highlighting the regulatory shortcomings preventing trans-frontier direct marketing activities. For instance, PolyGram is not in a position to advertise on television a film which is distributed theatrically. In some countries where discounts and free offers are not allowed by national legislation, PolyGram is prevented from establishing record and video clubs.

PolyGram is also looking for support from the EU to address piracy issues in Third World countries. It believes that a trade policy instrument should be developed enabling the EU to take sanctions against countries that do not protect intellectual property rights.

E.9. RAI

E.9.1. Background

Development of the organization

Radio Televisione Italiana (RAI), the Italian state public service broadcaster, operates three of the main national television channels in Italy: RAI 1, 2 and 3. RAI 1 was established in 1954 and is a general interest station for all audiences showing game shows, films, sports and news and is dedicated to family entertainment. In 1961 RAI 2, a station with an output similar to RAI 1, began operation with an emphasis on the transmission of social information and services. In 1979, RAI 3 was launched. This station has a remit to broadcast more cultural programming, including theatrical and drama output and classical music. It also concentrates on regional programming such as local news issues. All three channels are financed by a combination of advertising revenue and licence fees.

Summarized history of the Italian broadcasting sector

Until 1974, RAI enjoyed a monopoly in television in Italy. In 1976, the Constitutional Court declared that this monopoly was unconstitutional and thereby authorized the existence of the private channels that had been set up in the previous two years. This decision led to a massive increase in the number of Italian private regional channels. For example, 40 channels rapidly developed to serve Milan and the surrounding area.[93] A second major terrestrial television player emerged at this time, Berlusconi's Fininvest. In 1975 it launched a cable TV channel, TeleMilano. Fininvest now controls three national networks granted under the so-called 'Mammi' 1990 Broadcast Act which compete with RAI. These are Canale 5, Italia 1 and Retequattro.

The Mammi Broadcast Act was passed in 1990 and allowed RAI and Berlusconi to retain three networks each. In the same year, Berlusconi launched a pay TV channel, Telepiu.

Involvement in film and television production

Since 1976, RAI has been involved in the co-production of Italian films. RAI 1 is normally involved as a majority co-producer, whereas RAI 2 is less insistent on being an active co-production partner. RAI 3 takes more interest in developing original films internally. During the 1980s, RAI decreased the amount of resources applied to film production as it needed to concentrate on its television output in the face of increased competition from Fininvest. However, in 1995, RAI announced that it had decided to reinvest in film production. $19 million will be channelled into feature film production in 1996, which appears a very small investment compared to RAI's $125 million per annum investment in television production.[94]

International and geographical profile

Although RAI's primary focus is broadcasting, via its three national channels in Italy, it also has an international perspective. According to RAI, RAI International's primary world-wide

93 A Media Map of Western Europe – CIT Research Limited.

94 Variety, July 1995.

audience could reach 20 million. In 1996, RAI International was formed as the Italian-language foreign service of RAI. The New York based company, RAI Corp., which is fully owned by RAI, has become the marketing arm for RAI in North and South America.

In addition, RAI International handles the transmission of a TV service called RAI International which is available 14 hours a day in both North and South America. In addition, RAI Corporation transmits two hours a day via cable to the New York metropolitan area and is unlinked to a satellite for free reception throughout the US, Canada and Latin America.

E.9.2. European strategy

RAI 1 and RAI 2 have been available for a number of years in 11 European countries via Eutelsat's Hot Bird 1. In addition since February 1996, RAI 3 is retransmitted via satellite. However, in the past this service has been a free to air satellite channel, which has had no direct source of revenue for RAI but instead fulfils RAI's desire to become a significant presence in Europe and to broadcast, as far as possible, to the Italian speaking population in Europe. RAI believes that it has been hampered in developing its national and international presence by the economic crisis and political upheavals in Italy.

RAI is trying to expand its operations through its own sales and marketing arm, SACIS. The following stated goals have been identified by RAI:[95]

(a) to make better use of its production and co-production budgets;
(b) to acquire more quality programming hours for less money;
(c) to enter the new multimedia arena;
(d) to deal with issues surrounding the potential growth in the Italian cable industry;
(e) to expand RAI's reach throughout Europe; and
(f) to make RAI a major international player.

A way for RAI to fulfil these goals is through closer involvement with its European partners, especially with the public sector broadcasters. RAI has historically had close relationships with the BBC in the UK, ZDF in Germany and France Télévision and these relationships have become more important in recent years for RAI. RAI has been involved in co-productions for the last 20 years and has recently been involved with France Télévision and TV2 in the genres of animation, education and historic drama production. RAI has recently completed a co-production with the BBC of *Nostromo* which has been filmed in English but will then be dubbed into Italian. Another joint production has been entered into with Beta Films in Germany to develop a minimum of six historically based TV films. These will be made in either German, English or Italian and then dubbed into the other languages. In addition, RAI has also entered into co-production agreements with producers outside the EU, including New Regency in the United States.

RAI stated that these alliances and co-production ventures were formed to exploit the expertise that these companies have within the television production sector. In particular, they enable RAI to develop relationships with broadcasters who have local knowledge or particular expertise in certain genres of programming. RAI believes that one of its production strengths

[95] Video Age, January 1996.

is in historic dramas and its has therefore formed alliances with other broadcasters who are at the forefront of production in this genre.

E.9.3. Impact of the SMP

General comments

RAI believes that its operations have not been directly influenced by European legislation but have been dominated by national issues. It believes that it has been unable to develop its European strategy fully because of the continuing political uncertainty in Italy and the economic upheavals which have accompanied it. In addition, RAI is constrained by national legislation on satellite broadcasting. The Mammi Act, whilst referring to all media, does not mention cable and satellite broadcasting. This fact creates legal uncertainty within the Italian broadcasting sector, which is felt more acutely by RAI as a public service broadcaster. However, RAI does have an agreement in place with the Italian government which ensures that RAI continues to carry out satellite trials.

Impact of Television Without Frontiers

The Mammi Broadcast Act enacted TWF and imposed on public and private national broadcasters a quota for relevant European programming (as defined by TWF), of which 50% must be work of Italian origin. TWF also allowed RAI to take advantage of the provisions in the Directive to broadcast to other territories and to promote its channels in other Member States.

The Action Plan for Advanced Television

RAI does not believe that this has been effective in fulfilling its aims. Although RAI has supported the introduction of 16:9, it believes that the Italian public will not invest in widescreen televisions in very large numbers. In addition, RAI believes that once funding of production in this format is complete, few producers will voluntary incur the increased costs to produce in this format.

Role of funding programmes

RAI maintains that the MEDIA Programme has had an impact on co-productions across borders and has encouraged independent producers to produce or co-produce films. Although RAI has not received funds directly from the MEDIA Programme, it has benefited indirectly from an increase in the volume of better quality programmes made both by Italian and by other EU producers.

E.9.4. Future issues affecting RAI's development

The Italian broadcasting landscape is undergoing some fundamental changes. There are plans for much of the country to be cabled by the end of 1998. This process is being driven by STET and Telecom Italia through their related company, STREAM. In addition, STREAM has been carrying out video on demand trials and Telepiu, owned by Fininvest, NetHold and Kirch, is planning to show football games on a pay per view basis. Other revenue earning opportunities are being developed by other Italian companies in the broadcasting sector. For example, the Cecchi Gori Group is planning four digital television channels to challenge Telepiu.

All of these activities are of major importance to RAI which is at present constrained from competing directly in cable and satellite areas. RAI believes that the Italian broadcasting marketing is developing in the direction of access to these distribution methods being controlled by one or two companies, e.g. the Telecom Italia will control cable access.

RAI wants to confirm its historic role as content provider but also wishes to offer a wide range of new services. RAI therefore has ambitions to be a service provider of all types of audio-visual communication, but domestic legislation has not made clear the possible limits on activity in these new markets.

As can be seen from the above discussion, RAI is at present attempting to confront the many issues which affect its traditional, home broadcasting market and the threats which are posed by the new entrants. RAI does not currently consider cross-border broadcasting as an integral part of its operations.

E.10. Société Européenne des Satellites (SES)

E.10.1. Background

Formation of SES

Société Européenne des Satellites (SES) was incorporated in March 1985, but the project to establish a Luxembourg based satellite operator dedicated for broadcasting was made possible by the award of five broadcast frequencies to each European country (including Luxembourg) in 1977.

At that time many European governments and their technical advisers considered that the most effective approach to satellite broadcasting was to use high powered satellites with a relatively small number of transponders and channels to transmit signals direct to home based dishes. Examples included France's TDF and the UK's Unisat DBS projects.

The Luxembourg government was keen to support the development of new media technologies as a means of promoting economic development in Luxembourg and considered service provision for satellite broadcasters as an attractive opportunity. It originally proposed a satellite service for CLT-RTL, but CLT had already made plans for its own satellite.

An alternative solution was then proposed by a group of private investors of launching a medium-powered satellite which would service a consortium of European programmers rather than just one targeted at a single country.

In 1983, the Luxembourg government granted a franchise to the private consortium to use the satellite frequencies which had been allocated to the Luxembourg PTO in 1977. However, the initial consortium failed to raise finance and evolved into what became SES.

Currently 80% of SES's shares are held by private international investors including Deutsche Telekom, Deutsche Bank and Dresdner Bank and 20% by the Luxembourg government through public financial institutions. SES operates the Luxembourg satellite frequencies under an agreement with the Luxembourg government which expires in 2010.

A crucial technical development for SES was the advances in transistor technology which made it technically feasible to distribute TV signals to relatively small dishes with a signal strength of only 50 dBW. This was much lower than that of the 'high powered' satellites, such as the French TDF or the British Unisat.

SES decided to exploit this technology and designed its 'Astra' satellite service to be a medium powered satellite with a footprint covering most of Western Europe in which there were already 20 million households connected to cable and MATV systems.

Astra's first satellite, 1A, was launched in December 1988 and began transmissions in February 1989. A further five satellites have been launched since then and two more are planned to be launched by 1998 in the same geo-stationary position in which a maximum of eight satellites can be placed. The last satellite Astra 1H will be a replacement satellite. By 1997, excluding 1H, Astra will have 120 transponders of which 64 are analogue and 56 digital. The launch dates of each satellite and transponder capacity are set out in Table E.14.

Table E.14. SES satellite launch dates

Satellite	Launch date (planned)	Digital/analogue	Transponders
1A	Dec 1988	Analogue	16
1B	Mar 1991	Analogue	16
1C	May 1993	Analogue	16
1D	Nov 1994	Analogue	16
1E	Nov 1995	Digital	18
1F	Apr 1996	Digital	22
1G	(1997)	Digital	16
1H	(1998)	Digital	18

Source: SES.

All satellite control operations are carried out at SES's headquarters in Betzdorf, Luxembourg. SES has offices in the UK, Germany and Spain which carry out marketing. There is also a field office in Los Angeles.

SES employs 170 staff of 15 European nationalities. Most are technical staff, others are involved in marketing and financial/corporate activities.

In 1995, SES's sales revenue was LFR 10,337 million on which it generated net income of LFR 2,878 million representing a net margin of 28% of sales. The growth in revenue and net income from 1992 to 1995 is set out in the table below and reflects the increase in transponder capacity.

SES's principal expense lines in 1995 were depreciation (30% of revenue), taxes, franchise fees and other expenses (24%), interest paid (9%), staff costs (5%) and insurance (4%).

SES's investment in satellites and ground stations totalled LFR 48,333 million at the end of 1995. Capital expenditure is financed partly by debt and partly by shareholders' equity. In 1995, the equity totalled LFR 19,802 million and the debt finance, LFR 14,715 million.

Table E.15. SES financial performances: 1992–95

	1995 (LFR million)	1994 (LFR million)	1993 (LFR million)	1992 (LFR million)
Sales revenue	10,337	8,881	6,714	5,443
Net income	2,878	3,991	2,920	2,446

Source: SES.

The total cost of a satellite is around LFR 10,000 million and includes the purchase of the satellite, launch costs and launch insurance, together with ground station equipment. SES plans an investment of LFR 30,000 million by 1998 for the launch of the three new digital satellites.

SES's rental charges for a transponder are negotiated separately for each contract with a broadcaster. Lease periods are usually for 10 years. These contracts are commercially confidential, but we estimate a typical annual charge for a transponder to be approximately ECU 5 to 6 million. Eutelsat's recent launch of Hot Bird 1 and the forthcoming launch of Hot Bird 2 are expected to increase competition in the supply of satellite capacity for broadcasting. Transponder rentals may fall as a result. The cost of a transponder is a relatively less significant element for many channels than the costs of programming and marketing.

E.10.2. Strategy

SES strategy was to position itself as the first Europe-wide satellite operator dedicated to broadcasting. By using a medium powered satellite, it could achieve a larger footprint than the high powered national systems. SES was regulated as a telecommunications satellite under fixed satellite services rules and did not have to comply with the Broadcast Standards Directive which required the use of D-Mac or D2 Mac for DBS broadcasting. Broadcasters using Astra were able to choose which format to use. This gave them more flexibility and also gave Astra a wider base of potential customers. Astra also differentiated itself from other operators, such as Intelsat and Eutelsat which also provided telecommunications services, by positioning all of its satellites in one orbit position (19.2 degrees East). Astra provides a back up system for its satellites, so that if one fails it can ensure that the channels continue to broadcast.

Broadcasters using Astra were able to uplink from Betzdorf or via the public telecommunications operator (PTO) in the country where their studios were located. PTOs had a monopoly over uplinks except in Luxembourg.

Competitive position

SES remains the only privately owned satellite operator dedicated to broadcasting. Its major competitor is Eutelsat which was established originally to operate telecommunications satellites by the European PTOs but has now launched a dedicated broadcasting satellite: Hot Bird. There are also a number of satellites targeted at national markets including: TDF1 (France), Kopernicus (Germany) and Hispasat (Spain).

SES has become the European market leader in terms of the number of homes receiving its signals through direct to home dishes, SMATV or cable. Most satellite receiver systems bought for home use, especially in the late 1980s and early 1990s, are only able to receive signals from one satellite location at a time unless redirected manually. This gave Astra an initial advantage in many markets in which it was the first to transmit programmes which could be received by small (60–75 cm) dishes. Its strategy of maintaining all its satellites in the stationary orbit location has also helped it to achieve a high reach across Europe as channels on each of its new satellites could be received by a large number of viewers without requiring them to change dish position. SES also promoted the use of a Universal LNB in order for viewers to see programmes transmitted on both its higher and lower frequency band transponders.

Astra's own market research indicates that, in 1995, 61 million homes in 22 countries could receive TV programmes transmitted by Astra. A more limited survey covering 15 countries (not just in the EU) with 15 million DTH and SMATV homes, indicated that Astra was the only satellite operator whose signals were exclusively received in 78% of these homes and that it shared reception with other operators in a further 14% of these homes. Other operators had exclusive access to only 7% of the homes covered.

SES management regards its key competitive strengths to have been:

(a) its co-positioning of satellites in one orbital position;
(b) an active marketing policy to promote Astra in European markets and stimulate consumer purchases of satellite dishes; and
(c) the ability of consumers whose dishes are aligned to Astra to receive a large number of different channels.

Future developments

Astra 1E which was launched in October 1995 offers 18 digital transponders and over the next 18 months, SES will be adding 38 more transponders on two satellites. A digital transponder is estimated to provide capacity for between six and ten channels. Rentals for a digital transponder are expected to be similar to those for an analogue one, thus cutting the costs for an individual channel. As channels share a transponder, broadcasters are creating 'bouquets' of digital TV and radio services which may be marketed together. Some of these will include channels owned by a number of different broadcasters. SES also expects digital services to include pay per view and multimedia and data transmission in addition to TV channels.

Existing pay television operators in Europe have acquired rights to most of Astra's digital capacity as SES has prioritized companies with the necessary financial strength, media expertise and experience of subscriber management. As at 7 June 1996, 56 transponders have been allocated as follows:

An important factor in the development of digital services apart from the choice and quality of programming will be the availability of set top decoders at a price acceptable to consumers.

SES has considered how to exploit the liberalization of telecommunications in Europe and is applying for a second orbital position in the Ku-band as well as for Ka-band frequencies on 21 orbital slots. The second orbital position will reinforce existing markets, develop new, emerging markets and enable reception by small single feed dishes. New services may include two-way services for PCs, whereby a satellite uplink from the home would provide the return path, in addition to phone or cable.

Table E.16. Allocation of Astra transponders: June 1996

Broadcaster	Total	Astra 1E	Astra 1F	Astra 1G
BSkyB	4	1	3	0
Canal Plus	10	4	4	2
CLT	10	5	2	3
Kirch	10	3	5	2
Pro7	3	1	1	1
NetHold	8	3	3	2
Viacom	2	0	2	0
Other	9	1	2	6
Total	**56**	**18**	**22**	**16**

Source: SES.

Astra 2A should be launched in August 1997 and 2B is planned for 1998. BSkyB has taken leases on 14 transponders on Astra 2 which is expected to carry a number of services targeted at the UK.

E.10.3. Impact of the SMP

SES as a provider of services to broadcasters is not directly covered by many of the SMP measures. Clearly, it is indirectly affected by them to the extent that its broadcaster customers are impacted.

SES identified TWF and SCD as having had a significant positive impact on the sector as a whole and on its own business. The Cable and Satellite and the Broadcast Standards Directives were considered to have had a less significant impact.

TWF

Although plans to enable a Luxembourg based satellite operator were initiated prior to the enactment of TWF, it is nevertheless viewed as having facilitated the development of SES's business by establishing a clear framework for satellite broadcasting within the EC. Most of the channels utilizing Astra 1A were targeted at specific national markets and were licensed by the relevant Member State. In some cases, the licensing regime effectively complied with TWF although it pre-dated it.

The underlying drive for the growth in demand for transponder capacity was the limited spectrum available for new terrestrial channels. However, SES considers that demand for transponders was further facilitated by the provisions in TWF which require Member States to ensure freedom of reception and not to restrict re-transmission. TWF is considered to have ensured that satellite delivered channels had the right to obtain carriage on cable and to have helped to stimulate direct-to-home reception.

Satellite Communications Directive (SCD)

SES considers the SCD to have had a significant impact already on its business, even though it has not been implemented yet by many Member States. The number of customers for whom SES provides satellite uplink facilities from Betzdorf has already reduced significantly.

Customers have been allowed to establish their own uplink facilities or have been able to obtain cheaper services now that the PTO monopoly on uplinking has ended in their domestic country.

SES considers that the situation prior to the SCD had made it more complex and more costly for broadcasters to organize uplinking via SES in Luxembourg if they did not wish to use the national PTO. The removal of the monopoly is therefore expected to reduce the customers' costs and to make it easier for channels to use satellite transmitters. In the short term, it also reduces the SES income from uplinking services, but this is considered to be less important strategically than the removal of a potential barrier to satellite transmission for broadcasters.

Cable and Satellite Directive

SES considers that the CSD largely regularized the situation which already existed in many Member States. As such it had a positive but limited impact.

Broadcast Standards

SES was a founding member of the European Project Group for Digital Video Broadcasting (DVB) and Astra's digital transmissions are fully compatible with the DVB's technical specifications. It strongly supports the approach taken to the development of digital broadcast standards as broadcasters were included in the process together with manufacturers.

Future barriers to trade

SES is keen that European regulations should continue to encourage the development of more satellite channels which extend the choice available to viewers. It considers that the regulatory regime in the EU should give broadcasters flexibility in the development of their business.

(a) It views the possibility of programming quotas being made more restrictive as potentially harmful to its business since this might hamper the development of new satellite channels. SES is also concerned to understand how quotas would be applied to digital services such as PPV, some of which use non-European material (e.g. US movies) as their core material.
(b) Differences between Member States' regulations regarding advertising are also considered by SES to hinder both pan-European channels and those which are targeted at more than one country.

E.11. Télévision Française 1 (TF1)

E.11.1. Background

Télévision Française 1 (TF1) is France's leading commercial channel. It was created as a public broadcaster in 1975 as result of the law passed in August 1974 which disbanded the ORTF and was privatized in 1987.

Structure of the French broadcasting market

The French television marketplace has three nation-wide public terrestrial networks financed with a mixture of licence fee and advertising and two private networks, also terrestrially delivered. Deregulation in France started in 1984 with the licensing of Canal Plus. TF1, the leading channel was privatized and taken over by the construction conglomerate Bouygues. The other two channels, France 2 and FR3, remained in public ownership. In 1986, two more terrestrial frequencies were allocated to private channels, M6 and La Cinq.

Between 1991 and 1994, France witnessed a major upheaval in its audio-visual landscape. Ownership rules changed; La Cinq collapsed and there was a re-definition of the remit of public channels. As a result, three distinct groups emerged amongst the advertising financial channels:

(a) TF1, with a broad-based mass market target audience aimed particularly at women and young people;
(b) the two state-owned commercial channels (F2 and FR3), also aimed at the mass market and older people; also Arte, La Cinquième, educational and cultural channels; and
(c) M6 which focuses on younger targets.

TF1 believes that the state-owned France Télévision has benefited from unfair advantages and that the collusive relationship between France 2 and 3 in advertising, programming and programme acquisitions, has distorted competition in the marketplace. It has raised this in formal complaints to the EU as well as to the French government.

Financial performance of the Group

In 1994, TF1's turnover was FF 8,424 million, 9% up from FF 7,759 million in 1993. Consolidated operating profit was FF 786 million in 1994, compared to FF 31 million in 1993. In 1995, TF1 reported a profit of FF 600 million. The following table highlights some key financial indicators between 1993 and 1995.

Table E.17. Key financial indicators: 1993–95

	1993	1994	1995
Total revenue	1,206	1,354	1,500
Publishing/distribution	832	870	910
Eurosport	169	225	260
Production	101	105	153
LCI	-	44	107

Source: Dynabourse, Paris.

Audience share

TF1 is the leading channel in terms of audience share. Its generalist programme offer is based on six major themes: news, drama, sport, entertainment and game shows, children's programmes and movies. The success of TF1 may be attributed to its professionalism in terms of its organizational and commercial structure, but it has also developed an aggressive and targeted acquisition policy. The following table highlights the audience share of the main French broadcasters in 1995.

Table E.18. Main French broadcasters' audience shares: October 1995

	Audience share (%)	Delivery	Ownership	Funding
TF1	38.4	Terrestrial	Private	Ad/sponsors
France 2	26.1	Terrestrial	Public	Licence fee/ad/sponsors
France 3	15.9	Terrestrial	Public	Licence fee/ad/sponsors
M6	11.1	Terrestrial	Private	Ad/sponsors
Canal Plus	4.6	Terrestrial	Private	Subs/ad/sponsors
Others[1]	3.9			

[1] Including La Cinq and Arte.
Source: TBI Yearbook, 1996.

TF1's audience share has fallen from 40.9% in 1993 to 37.8% in 1995. TF1's management attributes this to the advent of a number of theme channels which captured audience share to the detriment of the big generalist channels.

Advertising revenue

TF1 derives 85% of its consolidated turnover from the sale of advertising airtime.

In 1994, gross advertising revenues rose by FF 793 million, representing 41.2% of the TV advertising market's total growth. Income from advertising rose 4.4% in the first half of 1995 to FF 3.8 billion, but the market has been growing at about 6%. TF1 management argues that one reason for this has been 'low balling' by France 3, offering cost per thousand 20% below those of TF1.

E.11.2. Effect of national legislation

National regulatory obligations

The obligations of French television channels relate essentially to the production and transmission of French and European television programmes, to the broadcasting of advertising material, to limits on advertising time, and to the showing of films.[96] The regulations imposed are stringent and specific. The laws are more restrictive than the minimum requirements laid down in TWF. Since April 1992, programme output on all television channels in France must be 40% French-produced and 60% EU-produced between 6 pm and 11 pm Monday-Saturday except Wednesday when the time period is 2 pm to 11 pm. Terrestrial channels may not broadcast more than 192 films per annum (the maximum is lowered to 104 between 20.30 and 22.30) and the broadcasting of films is forbidden on Wednesday, Friday and Saturday before 22.30. These regulations are supplemented by the media chronology rule, which protects cinemas by imposing a delay of three years on TV before the broadcasting of a film, and two years for films co-produced by the channel.[97]

The increasing popularity of US movies is of concern because French channels collectively need 1,000 to 1,300 films annually for their schedules and are obliged to dedicate 40% of their

96 Alessandro Silj, 'The New Television in Europe', 445.

97 Jean-Noël Dibie, 'Aid for Cinematographic and Audiovisual Production in Europe', 54.

movie prime time slots to French films. Furthermore, in order to provide support for national production, 50% of films broadcast must be in the original French language and 60% of EU origin.[98]

In order to support the national production of audiovisual works, broadcasters are also obliged to invest 15% of turnover in French productions of which 10% of turnover must be into French productions made by independent producers. In accordance with the law on the audiovisual sector of January 1989, terrestrial channels are also obliged to invest 3% of their net advertising revenues into co-producing Francophone features.

Commercial breaks within programmes are also restricted. They are forbidden on F2 and FR3 after 20.00 and limited to one break per series/film of a maximum of four minutes on TF1.[99]

Quotas

As seen above, all French terrestrial channels are subject to obligations which are generally stricter than TWF. TF1 regards national quotas as commercially harmful. Earlier this year, the CSA announced that it would fine TF1 for failing to respect its broadcast obligations – it had shown just 58.3% European content, thereby missing the 60% quota. This was amended to an obligation to invest an extra 45 million francs in French non-documentary programming. It was reported that TF1 had been unable to meet the quota because of difficulty in finding European non-documentary material that suited its broadcasting needs.

TF1 executives believe that national quotas distort the European market. The management maintains that the TWF rules should be applied to all countries equally. TF1 argues that clauses such as 'where practicable' allow broadcasters too wide an interpretation and gives them the freedom to ignore the quotas. This gives unfair advantage to broadcasters licensed in countries which adopt a more relaxed approach to the interpretation and enforcement of quotas.

E.11.3. National strategy

TF1's compliance with national regulations

In compliance with the requirement placed on TF1 to commission independent production, it has signed an output deal with the Société Française de Production et de Création (SFP), which committed it to commissioning work from SFP for the three years from 1993 to 1996.

In its *bilan d'exécution du cahier des charges* of 1994, TF1 highlighted its compliance with transmission quotas. These are tabulated in Table E.19.

TF1's compliance with transmission quotas between 20.00 and 22.30 in 1994 is tabulated in Table E.20.

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98 ibid., p.55.

99 ibid., p.54.

Table E.19. TF1's compliance with transmission quotas: 1994

French language works		European		Non-European		Total
Volume[1]	%	Volume	%	Volume	%	Volume
87	51.2	102	60	68	40	170

[1] Number of productions.
Source: TF1 Bilan d'Exécution du Cahier des Charges, 1994.

Table E.20. TF1's compliance with evening transmission quotas between 20h and 22.30 in 1994

French language works		European		Non-European		Total
Volume	%	Volume	%	Volume	%	Volume
56	53.8	63	60.6	41	39.4	104

Source: TF1 Bilan Exécution du Cahier des Charges, 1994.

TF1 production and co-production

TF1 production

Since privatization, TF1 has invested around FF 8,000 million in French production. In 1994, it invested FF 1,415 million, including FF 376 million through two subsidiaries: TF1 Production and Banco Production et Protocrea. The two subsidiaries delivered around 20 dramas and 60 documentaries of executive productions to the TF1 channel or to different partners. According to TF1's 1995 annual report, the Group is the number one investor in the French movie industry among non-encrypted channels.

TF1 has steadily increased its investment in original French-language fiction, making TF1 one of Europe's leading producers of television drama. The amount spent in 1992 (FF 757 million) exceeded the sum imposed by the channel's quotas.

Co-productions

TF1 Films Production invested FF 172.3 million in 1993 to co-produce 17 theatrical films representing FF 23.76 million more than in 1992 (FF 10 million per feature). In 1993, TF1 co-produced 84 films, 18 of which were broadcast by the end of that year, with an average audience rating of 24.22% for an average market share of 42.39%. TF1 does not co-produce large quantities, partly because it is a highly nationally focused broadcaster. What it does co-produce tends to be mostly in the high-range bracket.

Fiction

The most significant change in TF1 programming is taking place in this area. In the past two years, audiences have become more committed to French language fiction. In the autumn of 1994, TF1 shifted from two to three evenings of French language fiction per week. TF1 has allocated a provisional FF 1 billion to investments in French fiction in 1996. TF1's programming costs in 1993, 1994 and 1995 are highlighted in Table E.21.

Table E.21. TF1 programming costs by genre: 1993, 1994, 1995

	1993	%	1994	%	1995	%
All programmes	3,924	100	4,170	100	4,420	100
Entertainment and game shows	1,149	29.3	1,180	28.2	1,210	27.3
News	680	17.3	720	17.2	730	16.5
Fiction	617	15.7	670	16	740	16.7
Sports	539	13.7	565	13.5	595	13.4
Films	416	10.6	455	10.9	520	11.8
Youth	339	8.6	375	8.9	410	9.2
Documents and factual magazines	91	2.3	105	2.5	115	2.6
Other	93	2.5	100	2.8	100	2.5

Source: Dynabourse, Paris.

Diversification of TF1: video, data services, home shopping, book and music publishing

TF1 has branched out from its core business to home shopping, publications (which include film and non-film videos, books, CDs, audio cassettes and videotex services). This is an interesting strategy to pursue given that many European companies are increasingly concentrating on core activities and selling assets. TF1 is developing as a producer of programmes and services and launching into pilot projects for multimedia and digital services. This diversification generated revenues of FF 321 million in 1992 for TF1 Enterprises. Creation of TF1 Video at the end of 1992 generated almost FF 200 million in 1992. Since 1988, TF1 Video has sold almost 6 million videos.

The group's subsidiaries (including Eurosport) contributed FF 1,206 million in 1993, 15.5% of group turnover. TF1 Enterprises is now France's largest video distributor after the US majors, with 10% of the market.

E.11.4. European strategy

Expansion in Europe

Since 1985, TF1 has become more involved in the audio-visual industry in other EU countries although TF1's strength lies within France. Patrick Le Lay claims that concentrating on the national market is no mistake. He argues that TF1 is stronger because it is not implanted in Europe. TF1 has recently stated, however, that it is interested in reaching investment agreements with Antena 3 and Tele 5, the Spanish private-sector TV companies. This is part of an internationalization plan which also envisages co-operation with an Italian multimedia group.

Establishment of new channels

Eurosport was created in 1989 by Sky TV and handed over to TF1 in May 1991. In January 1993, an agreement was signed between TF1, ESPN and Canal Plus to bring Eurosport and TV Sport under the same banner. In 1994, Eurosport enlarged its European coverage and has become the leading pan-European sports channel. It is available in around 40 countries in eight different linguistic versions and is received by around 60 million households.

La Chaine Info (LCI) was launched in June 1994 as the first continuous French-speaking news channel. Available on cable and integrated into the Canalsatellite package, LCI has positioned itself as a major thematic channel. After six months of activity, LCI posted revenues of FF 30 million, derived from cable fees, advertising revenue and programme sales to TF1. LCI is received by around 70% of French cable subscribing homes. Since February 1995, LCI has been sold within the Canalsatellite package, thereby extending its viewership and increasing its revenue stream.

Pay TV

In January 1995, TF1 signed an agreement with Canal Plus which brought the LCI programme under the Canal Plus satellite package, Canalsatellite. From TF1's point of view, the move reveals a realistic approach to the new market.

Along with CLT, FT and Lyonnaise des Eaux, TF1 has a 24.5% stake in Europe's first pay-per-view programme, TELECARTE, the operator of Multivision. In April 1996, TF1, with France Télévision, M6, CLT and Lyonnaise des Eaux launched a rival system to Canalsatellite.

Alliances, M&As

TF1 and France Télévision are to launch a joint-venture company to explore the possibilities of digital broadcasting. Although editorial and decoder issues have still to be decided, the pact commits both broadcasters to using Eutelsat satellites only.

Cross-border operations

European broadcasters are increasingly taking advantage of the new regulatory environment to capitalize on terrestrial overspill by generating new revenue. TF1 has recently been involved in a conflict with Belgium over control of advertising airtime. The background to the conflict arose as Belgian advertisers sought to find ways to shift their advertising spending to the more affluent north of Belgium. One way to do this was to take account of the overspill from France in evaluating advertising weights in Wallonia. As a result, an increasing number of French advertisers sought to reduce their spending in Wallonia. TF1 took advantage of this new opportunity and opened a Belgian branch in 1990 with 15 staff. It offered a separate rate-card for Belgian advertisers in Wallonia.

TF1's aim was to sell advertising airtime in Belgium in a fashion similar to BBC World or RTL but the Wallonian government found this unacceptable. The Belgian government stopped TF1's initial experiments on constitutional grounds. TF1 has decided not to pursue the case. The Group estimates the revenue which could have been earned from Belgium at FF 100 million.

TF1 is also involved in a conflict with Belgian cable companies over payment of copyright fees. Whilst TF1 was a public broadcaster, it qualified as a channel for whom the cable companies recover copyright costs from viewers at 15% of subscription fees. However, as TF1 is now private, the cable companies have argued that it should pay the copyright fees itself. Flemish cable companies refuse to tolerate a situation where a foreign broadcaster such as TF1 does not pay copyright fees while Belgian stations such as VTM and RTL-TV1 do. They claim that all commercial broadcasters should be treated equally.

E.11.5. Impact of the SMP

Impact of TWF

TF1 maintains that the impact to date of TWF on its activities as a broadcaster is limited. This is due to the fact that French national legislation is more rigid and demanding than the TWF provisions. Management at TF1, however, cited the following TWF objectives as having had a minor impact on the broadcasting sector overall: the facilitation of establishment of cross-border satellite broadcasters; the encouragement of the development of the independent TV production sector by increased demand; the encouragement of the deregulation of commercial broadcasting and changes in the rules relating to types of advertising permitted on television, particularly tobacco and retail. However, TF1 believes that the provisions of TWF should be applied equally across the EU and that implementation should be harmonized.

TF1 takes the view that the TWF failed to address the imbalance between the public sector and private channels. For this reason, on 10 March 1993, TF1 complained to the European Commission against the French State with regard to its methods of financing and exploiting France 2 and France 3.

TF1 also argues that TWF has had little impact because it presumes the existence of a uniform audience for European programmes, which in reality does not exist. The market remains nationally focused and there is very little cross-border exchange of domestic programmes. TF1 notes that it is particularly difficult to export French programmes in the European market.

TF1 management believe that certain SMP ‘horizontal’ measures have had an impact on the Group, in particular the removal of physical trade barriers and the free movement of persons across the EU.

TF1 claims that it is restricted in the marketplace by national regulations which distort the level playing-field and which it sees as contrary to the ideals of the single European market. These require TF1 to devote a proportion of its budget to French language programmes which do not sell easily elsewhere in the EU or in the world. TF1 argues that other EU broadcasters can fulfil EU quotas with programmes with a wider appeal. However, it is extremely difficult to quantify the impact of this. TF1 also argues that because it is obliged to focus so extensively on the national market, it is restricted from taking advantage of new developments in other countries. TF1 also argues that a major shortcoming of TWF is that it did not address the imbalance between public and private channels. However, it is noted that TWF did not aim to harmonize national subsidies across Europe and therefore should not be criticized for something it did not set out to achieve. TF1 also argues that TWF has failed in that it prevented the group from selling airtime in Belgium.

E.11.6. Future issues

Since privatization, TF1 has consolidated its position as a commercial broadcaster and has continued to diversify its activities. TF1’s position in the television market was not challenged in 1995 despite the drop in its market share. The Group is determined to reinforce its leadership of the television market.

E.12. TV1000

E.12.1. Background

The service

TV1000 was launched in 1989 and is a satellite pay TV channel broadcasting in three languages to Sweden, Norway and Denmark. It is uplinked from London and is transmitted via the Astra 1A, Intelsat 702 and Sirius satellites. It is planned, however, that the Astra 1A satellite will be shut down in 1996. Reception is mainly by DTH receivers but the channel is also carried by around 15 cable networks throughout Scandinavia.

Scandinavia (excluding Finland) has around 8 million TV homes of which almost 60% have satellite dishes or cable. Cable networks are well developed in all three countries with 50% penetration but, due to the geography of the region, many areas are inaccessible to cable so the opportunity for growth is limited. The DTH market is less well developed with penetration of 9% but there is potential for growth. Table E.22 shows the penetration of satellite and cable in Scandinavia excluding Finland.

Table E.22. Satellite and cable penetration in Scandinavia

	TV homes (m)	DTH homes (m)	Penetration (%)	Cable homes (m)	Penetration (%)
Sweden	3.98	0.30	8	1.97	49
Norway	1.77	0.18	10	0.67	38
Denmark	2.27	0.23	10	1.36	60
Total	**8.02**	**0.71**	**9**	**4.00**	**50**

Source: Zenith Media.

TV1000 relies 100% on subscription revenue and takes no advertising. The company does not publish subscriber numbers, but they have been estimated at over 300,000 across all three countries.[100] TV1000's main competitor is South African owned FilmNet, which is estimated to have a similar number of subscribers.

Ownership

TV1000 is owned by the Modern Times Group (MTG) (93%) and Time Warner (7%). MTG holds all the media interests of the Kinnevik Group. MTG's other broadcasting interests include commercial satellite channel TV3, commercial terrestrial channel TV4 (22%), music channel ZTV, home shopping channel TVG and women's channel TV6. In addition, it has interests in broadcast services in the Baltic States. There are substantial opportunities for cross-promotion between these channels.

[100] Cable and Satellite Europe, January 1995.

Table E.23. Chronology of Kinnevik's broadcast interests

Chronology
1936 Industriforvaltnings Kinnevik founded
1987 TV3 launched
1989 TV1000 launched
1992 TV4 licensed in Sweden
May ZTV launched via cable
1993 May Interactive Television launched
August EVTV Estonia launched
1994 Kinnevik split into four sub-groups, Modern Times Group founded; TV6 and TVG launched
July TV3 in Latvia starts broadcasting
August ZTV starts broadcasting
1995 TV1000 Cinema launched, TV6 and TVG launched in Norway and Denmark
March Acquires 34% of Lithuanian channel Kaunas Plius
July MTG signs agreement to provide content to Microsoft Network

Source: TV International, October 1995.

Programming

Programming consists mainly of films with children's programmes and series, sports and music events. Approximately 30% of its programmes come from within the European Union and about 40% from Europe as a whole. The rest is mostly from the USA.

FilmNet, TV1000's main competitor, has acquired the first-run pay TV rights to many Hollywood movies. FilmNet also owns an all-film channel, the Complete Movie Channel, and is planning to launch a sports channel called SuperSport.

Classic movie channel, FilmMax, was launched in 1992 but, by mid-1995, it was only attracting some 60,000 subscribers and was dropped later that year.[101]

All-film service TV1000 Cinema was launched in December 1994 allowing TV1000 to use a multiplex format, i.e. showing different genres on the two channels at the same time. The closure of FilmMax created spare capacity on cable networks which TV1000 Cinema was then able to fill.

[101] Cable and Satellite Europe, January 1995.

TV1000 has negotiated a series of second pay TV windows with Fox and other Hollywood studios, allowing it to show the films after FilmNet has shown them. In addition, TV1000 is beginning to fund its own movies using local producers.

E.12.2. Strategy

Location

The decision to uplink from London was made because a sister company, TV3, has a broadcast centre there and it was more expedient to use those facilities than to find others in Sweden. However, uplinking from London means that TV1000 is subject to regulation in the UK, i.e. by the ITC which in some areas (e.g. pornography) is stricter than in Sweden. For this reason, TV1000 is moving its broadcast operations from London to Stockholm in 1996. It will hire broadcast facilities from Utbildningsradion, a subsidiary of state broadcaster SVT.

Paradoxically, the reason that TV3 broadcasts from the UK is to avoid Sweden's tighter regulations on advertising, especially during children's programmes.

Content

TV1000 has no exclusive rights to Hollywood major products – it does have non-exclusive deals with Warner Bros., Fox and Columbia Tristar. For the latter two deals, it can show the films after they have appeared on FilmNet. However, TV1000 does have more local programming and describes itself as the only pay TV channel with a Scandinavian character.

Strategy

TV1000's goal is to be the number one pay TV channel in Scandinavia. By some measures, it already is, but it faces the constant threat of competition from FilmNet.

MTG's strategy is one of vertical and horizontal integration. It has developed a subscriber management system called Viasat, which distributes smart cards to DTH subscribers and manages 570,000 subscribers in Scandinavia.[102] Its customers are TV1000, TV1000 Cinema and TV3 in Sweden, Norway and Denmark. MTG also has interests in production and post-production houses and on-line services.

MTG has not attempted to enter other EU markets because its programming would not be suited to them and also because of the dominance of the major satellite broadcasters in those markets.

E.12.3. Impact of the SMP

Broadcast standard

TV1000 applied for funding from the Action Plan for Advanced Television and has begun to broadcast in 16:9 format using the D2 MAC standard. As Sweden is a 'late-starter' state, TV1000 was able to obtain financial help for programme conversion and broadcasting

[102] TV International, October 1995.

equipment at preferential rates. It has currently converted 100 films but plans to convert a total of 160 over the next year.

Labour

Freedom of movement of labour within the EU has only had a minor impact on TV1000 since there was always such freedom of movement between Scandinavian countries. It has made working in London, where TV1000's broadcast operations are based, easier for Swedish nationals.

Competition

In 1995 MTG entered into a joint venture with Tele Nor and Tele Danmark called Nordic Satellite Distribution (NSD) to expand the scope of Viasat's business by bringing the capacity of five satellites under one roof. This would give Viasat a monopoly over pay TV in the region. However, in its present form, the venture has been ruled anti-competitive by the European Commission. It is seeking a fourth partner from Finland to dilute the influence of the other three parties and will submit revised proposals to the Commission.

There has been little impact on the market for film rights as this is controlled by the American distributors association, the AFMA. However, prices have risen, reflecting the increase in demand.

Quotas

TV1000 is gradually increasing the European content of its programming, currently around 30%, although this is primarily for commercial reasons rather than to comply with the TWF quota. It is seeking to differentiate itself from FilmNet by offering more local product and developing a national character. However, the channel still relies on US programming, especially films, for a large part of its schedule and it is unlikely that the level of European programming shown on TV1000 will reach 50% in the near future.

E.12.4. Future issues

TV1000 is planning to commence a service in Finland bringing the number of languages in which it broadcasts to four. This represents the limit that can be transmitted using analogue technology and hence, for the moment, there are no plans to expand into other countries.

The advent of digital broadcasting will allow TV1000 to expand the number of channels and hence the range of services it offers to subscribers.

MTG is to launch a pay-per-view channel during 1996.

Financial highlights

Table E.24. TV1000

(million SKR)	1993	1994
Revenue	475	472
Operating profit/(loss)	(92)	(106)
No. of employees		35

Source: Kinnevik Annual Report 1994.

Table E.25. Modern Times Group AB

(million SKR)	1993	1994
Revenue	1,998	2,304
Operating profit	89	89
Pre-tax profit/(loss)	(2)	117
Total assets		3,557
No. of employees		895

Source: Kinnevik Annual Report 1994.

E.13. UFA

E.13.1. Background

This case study examines the production and, to a lesser extent, the distribution operations of UFA Film und Fernsehen GmbH, which is a subsidiary of Bertelsmann, Europe's largest media company.

The case study concentrates on UFA Berlin Film & TV Production, Germany's largest television production company. In order to examine UFA's cross-border trade more closely, UFA Film und Fiction Rights, which acquires and distributes the rights for fiction programming, was also interviewed.

The case study covers the following subjects:

(a) the history of the UFA companies;
(b) the current state of television production activity;
(c) the German television production sector;
(d) international strategies of the production and distribution businesses; and
(e) UFA's views on the impact of the SMP on its business.

E.13.2. Company development

Early development of UFA

UFA (Universum Film) was founded in 1917 and prior to World War Two, it was a vertically integrated film company, comprising Europe's largest film studio (at Babelsberg), distribution and exhibition. After the end of the Second World War, the company was geographically split between East and West – the Babelsberg studio became the East German and DEFA studio, the West German operation, initially banned from operating by the US, continued feature film production but was bankrupt by the early 1960s.

In 1963, UFA was bought by the publishing company, Bertelsmann, which sold off the main assets: the library of film rights; the cinema chain (today, the Riech family's UFA Theatre is Europe's largest cinema operator, measured by number of screens). Production activity continued and the company moved into television production. During the 1980s, UFA was one of the major content suppliers to the public service broadcasters, ARD and ZDF. The company was well-positioned to benefit from the boom that was to occur in the 1990s, led by the introduction of commercial television in Germany.

UFA Produktion is now part of UFA Film & Fernsehen GmbH (Holding) and belongs to Bertelsmann's BMG Entertainment division which also includes the world-wide music business; video distribution; CD production; television broadcasters RTL, Premiere and Vox. Other production interests include Trebitsch Produktion.

UFA Production

UFA is now Germany's top television producer. (Other major producers are Bavaria Film, Studio Hamburg, ENDEMOL and Kirch Group's Beta companies.)

UFA Film und Fernsehen operates several limited production companies:

(a) UFA Fernsehproduktion;
(b) UFA Filmproduktion;
(c) Westdeutsche Universum Film;
(d) UFA non-fiction Productions; and
(e) UFA München.

It also has a number of production joint ventures:

(a) Grundy UFA TV Productions – a joint venture formed in 1992 to produce daily soaps – three are now in production;
(b) UFA Babelsberg – a joint venture with Compagnie Générale des Eaux, owner of the Babelsberg studios, to produce international television and film co-productions;
(c) ELF 99 Medienproduktion und Vermarktung with CLT; and
(d) New Media – new media products – with CLT.

UFA produces over 500 hours of prime-time and access prime-time programming each year. It produces in many formats: TV movies, series and mini series, daily soaps (Grundy UFA is the clear market leader in Germany), documentaries, factual programming and feature films.

UFA's main customers for television programming are: RTL – notably, two daily soaps, *Gute Zeiten Schlechte Zeiten* (the German version of the Grundy format, *Restless Years,* and one of Germany's highest rated programmes) and *Unter Uns*; ARD – *Verbotene Liebe* (*Sons and Daughters*), ZDF and RTL2.

Due to its ownership by Bertelsmann, UFA has had problems supplying to the Kirch-affiliated broadcasters, Sat 1 and Pro 7. However, it has not automatically benefited from its indirect affiliation with Bertelsmann's broadcasting interests, RTL, Premiere, RTL2 and Vox – due to German media ownership restrictions, Bertelsmann has only a minority interest in each of these and, particularly in the case of RTL, another main shareholder (CLT) has been keen to stop Bertelsmann from providing UFA with an unfair advantage in programme supply.

The German television production sector

The television production sector has been revolutionized by the rise of commercial television in Germany. The public broadcasters, ARD and ZDF, had always commissioned some programming from independent companies but tended always to commission from the same companies, providing little competition in the market.

In the early 1980s, the new CDU government deregulated the broadcast market and commercial broadcasting was introduced: RTL launched in 1984, Sat 1 in 1985. Initially the commercial broadcasters were hampered by start-up costs and had little to invest in programming. Programming strategy was to offer audiences everything that the public broadcasters did not: available US content; game shows produced cheaply in-house (e.g. *Tutti Frutti*); pornographic films. They were successful in building up audiences and advertising revenue and were then able to invest more in programming. It had long been recognized that domestic programming was most popular amongst viewers, so investment was made in this area – for example, the commissioning of daily soaps. From 1991, demand for domestic production boomed. The other key areas of investment for German broadcasters are US feature films and sport (football and tennis).

Commercial broadcasters tend to use medium to large production companies which can be relied on for high quality content. ARD's and ZDF's commissioning practice has also changed in response to the much more competitive broadcasting environment. A large number of 'one man' companies which had made documentaries, TV movies or feature films have disappeared since the 1980s.

Another development is that broadcasters are beginning to integrate vertically by purchasing stakes in production companies.

UFA and film production

UFA's primary interest is in television production. Since 1983, UFA has been involved with 10 feature films, six of which have been successful in German speaking territories. Feature films are not seen as an attractive activity, due to the economics of film-making in Germany:

(a) the production budget raised for a German feature would typically be a maximum of DM 5 million. A broadcaster and a national or regional subsidy would provide DM 1–2 million each and the rest from risk capital;
(b) such a production would be unable to compete with a US feature which would have a typical budget of $50 million. Therefore, the film's success will only ever be limited – generally, around five German films will achieve a box office gross of DM 10 million each year.

Over the past two years, German films have attracted larger audiences and there are now much better opportunities to increase the market share of domestic films.

Through UFA Filmproduktion (*Catherine The Great*) and UFA Babelsberg the company is becoming more oriented towards English language international co-productions: for example, *Star Command*, a science fiction co-production with Paramount.

E.13.3. UFA's international strategy

Production

UFA's television production is clearly divided between domestic and international projects. The bulk of programming is aimed purely at the German market and will be financed 100% by a German broadcaster.

UFA is also involved with international co-productions, although it classifies these as a new business field (Co-production International lists UFA involvement in 15 titles). It has worked with European, US and other producers. This year, UFA signed a co-development and co-production agreement with Paramount and Proctor and Gamble to produce television movies.

UFA does not have significant operations across Europe, although it has representations in the UK, Italy and the US.

Distribution

The UFA Distribution and Rights Trading Department is located in Hamburg and there are no other European offices. The activities focus on acquisition and distribution of international fiction rights in Germany; the department also acquires German and international programmes for European and world-wide distribution.

UFA Fiction Rights Trading Department has also established a joint venture with Canal Plus in 1995 for the acquisition and distribution of European or world-wide fiction rights. This complements Bertelsmann's other alliances with Canal Plus such as co-shareholdings in Premiere, Vox and in the MMBG digital pay television group. UFA and Canal Plus are jointly represented in major television markets.

UFA believes that Germany is the most competitive market in Europe for rights acquisition and distribution. This is seen to be due to the rivalry between the public and private broadcasters and the high expectations for digital television in Germany. UFA believes that other European markets, such as the French market, are protected by production and broadcast quotas which keep programme prices low. Competition for rights acquisition and distribution within Germany is purely domestic; there are no major players from outside Germany.

E.13.4. Impact of the SMP

Audio-visual directives

UFA was unable to identify any impact of EU legislation on its production or distribution businesses.

While the interviewee from the production business was aware of the various audiovisual directives, he considered that none of them had had any impact on UFA's activities. The interviewee from distribution claimed not to be aware of TWF or the other directives.

UFA considers that the deregulation of German broadcasting which has led to an increase in demand for programming was due to a domestic impetus. It noted that the principal channel launches took place before the enactment of TWF.

In UFA's view, the major German broadcasters transmit a majority of European programming in response to viewer demand; for this reason, their European programming is nearly always German. Thus, the European works quota is not considered to have had an impact on demand for UFA's programmes. The strong growth of demand from German broadcasters is now levelling off and German producers are therefore beginning to seek other areas for growth.

MEDIA Programme and Action Plan for Advanced Television

UFA has not benefited from any individual EU programmes, such as MEDIA or the Action Plan for Advanced Television. It regards MEDIA as too bureaucratic and the conditions for acceptance on its schemes as prohibitive. However, UFA is considering applying to the MEDIA Programme for distribution activities. UFA also considers that MEDIA is unable to overcome cultural differences between Member States and therefore cannot help to address the fragmentation of the industry.

UFA applied for wide-screen funding but was initially unsuccessful. It has since been offered some funding (because Germany is a major contributor to the scheme) but as German broadcasters do not transmit in wide screen, there is no strong impetus to go ahead with this.

Barriers to trade

In terms of production, the major barriers to cross-border trade are considered by UFA to be language and cultural/taste differences. While viewers' preference for domestic programming has always existed, the growth in competition between broadcasters has meant that viewers are now better catered for by broadcasters; this accounts for the growing significance of domestic programming in Europe. The SMP is not seen to have had any effect, direct or indirect, on the evolution of UFA's production business.

For distribution, UFA stated that it was just as easy to distribute to a non-EU state (for example, Russia) as it was to a EU state (for example, Greece). As for production, the biggest barrier to trade in programme rights was seen to be language, an issue which UFA considers that the EU is unable to tackle. Culture was not viewed as an important barrier.

Horizontal EU measures, such as freedom of movement of labour, have had a marginal effect on production: UFA sources some inputs (labour, talent, etc.) from other European countries and the SMP has made it easier from a practical standpoint to do this. However, in terms of talent, domestic actors are still more popular amongst audiences – there are very few, if any, pan-European stars.

E.14. UIP

E.14.1. Background

UIP BV was formed in 1981 in the Netherlands, as a joint venture between MCA/Universal, MGM Inc. and Paramount. The principal purpose was to distribute films produced and acquired by the three partners and their affiliates for theatrical and non-theatrical exhibition outside the US and Canada.

UIP BV licenses the films of its three partners to UIP, a UK based unlimited company which is responsible for the distribution of the partners' films in all countries outside North America. This company sub-licenses the film rights which it receives from UIP BV to various national distribution companies. In the UK the distribution company is UIP (UK) and it has the right of first refusal to distribute films produced or distributed by each of the three partners in its parent company.

UIP distributes its shareholders' films in over 100 countries around the world, including all 12 Member States. In addition, it distributes many independent producers' films in the EU and elsewhere. It has financed and/or distributed more than 175 films made by independent European producers between 1989 and 1995. These have included *La Belle Epoque, Jamon Jamon, Shadowlands* and *Ladybird, Ladybird.* Europe represents approximately 60% of UIP's world-wide theatrical revenues. UIP's partners believe that their distribution network is the most cost efficient method of distributing films across the EU. UIP believes that these efficiencies lead to cost savings which ensure that a wider choice of films are distributed than might otherwise be the case.

The UIP Pay TV Group, which operates as a division of UIP BV, is involved in the licensing in the pay television market world-wide excluding the United States and Canada. In Europe UIP Pay TV's licensees include BSkyB in the UK, Canal Plus in France and Spain, Premiere in Germany and Telepiu in Italy.

International and geographical profile

Where local exhibition market conditions make it economically feasible, UIP has established its own companies; in other territories it operates through a network of licensees. It distributes directly in 40 countries world-wide including 11 of the 12 EU Member States. The exception is Portugal, where UIP operates through a locally established licensee (Lusomundo). The UIP joint venture enables its shareholders to reduce some of the large fixed costs of maintaining a world-wide distribution network. These cost savings are ploughed back into additional productions and also enable UIP to maintain an extensive branch network in the EU which is to the advantage of exhibitors and the cinema goers.

E.14.2. European strategy

Market strategy

UIP has been an active and major player in film distribution in Europe since 1981 (and its predecessor company, CIC had operated in Europe since 1970). Initially, its organization was built to facilitate the distribution of films within each territory in the most efficient manner. This includes ensuring that it considers the regional vagaries of the national markets. In Germany, for example, because of the extensive independent exhibition structure, UIP operates through a network of five branches and one agency to better service exhibitors and to target marketing on a local basis. In Spain, where effective distribution requires the different regional tastes to be taken into account, UIP is the only international distributor with several branches.

UIP views Europe on a territory by territory basis. It has evolved its organizational structure to be able to provide the best possible service to the individual Member State's exhibition market. In France, Germany, Italy and Spain, UIP has branches throughout these countries to respond to the highly fragmented exhibition market. In contrast, UIP has one branch in Ireland and operates from its London headquarters in the UK as the exhibition markets in these countries are much more concentrated.

Relevance of market strategy for prospective pan-European film distributors

UIP believes that the factors which have influenced its development are relevant for the growth of a pan-European film distribution industry. Pan-European film is difficult because of the different language, dubbing and censorship issues in each territory. UIP believes that, in the area of film, there is no unified single market in Europe, but a number of different markets with different national requirements, driven by different national tastes and preferences. Accordingly, it is more important to view each territory individually.

E.14.3. Impact of the SMP

General comment

UIP views each Member State independently of its neighbours so that it can address the vagaries of the local markets which differ greatly. UIP believes that the SMP has not created a single market in Europe for film, and has therefore had little impact on the strategy of UIP which continues to adapt its corporate structure to mirror the changes in the exhibition markets in the Member States. The advent of multiplexes in certain Member States, which began in 1985, and the increase in the quality of film product have enabled UIP to grow its business within Europe. Its strategy has become one of ensuring that it concentrates its marketing efforts in the most efficient way in each individual territory. It has found that a marketing campaign which works effectively in one Member State does not necessarily transfer successfully to another.

Moreover, UIP continues to believe that, in an industry where the risk of failure is very high, it is becoming increasingly important to pursue a strategy which successfully markets products to the largest possible audience. To achieve this aim, UIP is convinced that a thorough understanding of each individual territory is the key to effective film distribution. A successful advertising campaign is more important than ever to the optimization of the commercial prospects of a film. Thus, any increase in the support for marketing of European film product would enhance the chances of a film becoming more commercially successful outside its national boundaries.

Impact of Television Without Frontiers

As a theatrical distributor, UIP considers it is not affected by TWF.

Barriers to a single market

Although there is a perception amongst European film distributors that language and national tastes are serious barriers to pan-European distribution, UIP stated that the cultural and linguistic barriers between Member States seem to impact most adversely on European product. Distributors have been able to distribute their films successfully across Europe provided they take account of each individual Member State's exhibition market. UIP believes that the relative success of Hollywood film product across the EU, and the disappointing performance of European films outside their national markets, supports their view.

Another barrier which UIP highlighted is the perception that there is not a European film product; either a film is pan-European and is usually financed, produced and distributed by a Hollywood studio or it is a national picture, appealing to national tastes, and is generally less successful from a pan-European stand point. UIP believes that these factors have hindered the development of pan-European distribution networks. It is important for funding programmes to ensure that the projects that they sponsor are commercially viable.

UIP commented that the different censorship laws in each Member State have led to higher print duplication costs, and therefore are indirectly harmful to pan-European film distribution. UIP also highlighted the fact that the relatively high costs associated with the distribution of European films, in the areas of subtitling, dubbing, print and advertising are additional barriers to the efficient distribution of a European product.

Role of funding programmes

UIP stated that it does not believe that artificial financial support mechanisms are in themselves capable of resolving the problems affecting European audio-visual products. Rather, it believes that such problems require an examination of their root causes and call for solutions tailored to address the source of the difficulties. For instance, UIP believes that greater attention needs to be paid, in feature-film making, to development and scriptwriting, post-production, and audience research. Nonetheless, UIP considers that certain initiatives of the MEDIA Programme are potentially meritorious. For example, UIP believes that the EFDO programme, which offers conditionally repayable loans to film distributors who are willing to undertake pan-European distribution of European films, was a positive concept and was capable of helping to achieve a single market in the audio-visual arena.

UIP stated that one obstacle to the creation of a single market was the difficulty which European films face in finding audiences outside their home countries. The pan-European distribution of European films has proved exceptionally risky and expensive for distributors. EFDO's objective was to mitigate some of the high risks involved in this activity, thus encouraging distributors to distribute a greater number of European films across a wider area. UIP maintained that only by exposing European audiences much more frequently than is now the case to films created in other European countries will it be possible to gain more widespread acceptance by European audiences of films from neighbouring countries.

UIP stated that the potential of EFDO has been largely diluted as a result of the decision that EFDO should deny funding to pan-European distributors such as UIP who are, by virtue of their size, present in almost all Member States of the EU. In UIP's opinion it is optimally placed to give such films the best, broadest and most professional distribution. The EC's policy of excluding companies like UIP, which it believes is in violation of EFDO's objectives and written guidelines, has, in UIP's view, greatly diminished the potentially beneficial impact of EFDO's mission. In UIP's opinion this has hindered the development of a single market in the audio-visual sphere. UIP believes that European film producers and audiences are harmed by this decision, which has had the effect of curtailing the number of European films which are seen by citizens of other Member States.

The nationality requirements introduced by EFDO, at a very late stage, which preclude the granting of distribution loans to UIP and all other non-European-owned distributors have been continued in the draft MEDIA II guidelines for distribution currently in circulation. In UIP's view, this approach makes it unlikely that meaningful advances will be achieved in the short to medium term in attracting cross-border enthusiasm for European films. UIP believes that only by harnessing the expertise and resources of the largest pan-European distributors, whose ultimate ownership may be American, Canadian, Japanese or even French, will it be possible for European films to break out of the restrictive confines of their national borders. Thus, UIP maintains that the creation of a single market in European films would be materially assisted by a removal of the nationality criteria from the MEDIA II Programme draft distribution guidelines.

Conclusion

SMP initiatives have had little effect on UIP's activities. It has changed its distribution structure only to address any issues that were emerging from the local, national markets.

UIP believes that SMP initiatives which have had the potential to have a positive impact on the audio-visual area, in particular for feature films, have been frustrated through the unnecessary introduction of inappropriate obstacles. The creation of a single market in this area, according to UIP, is inherently difficult because of the many different languages, regulatory regimes, censorship and dubbing requirements in the individual Member States. However, in order to be effective in moving closer towards the goal of a single market, UIP believes that any interventionist measures that may be employed should seek to encourage European filmmakers to become more commercially aware. This means taking more account of the differences which characterize the fragmented marketplace for films in Europe.

APPENDIX F

National measures implementing Directives

	TV Without Frontiers Directive Dir. 89/552/EEC	Rental & Lending Rights Directive Dir. 92/100/EEC	Term of Copyright Directive Dir. 93/98/EEC	Cable & Satellite Directive Dir. 93/83/EEC	Standards for Satellite TV Broadcasting Dir. 92/38/EEC	Standards for Transmission of TV Signals Dir. 95/47/EC
Belgium	Community Decrees	Law of 30th June 1994 on Copyright and Neighbouring Rights	Law of 30th June 1994 1994 on Copyright and Neighbouring Rights	Law of 30th June 1994 1994 on Copyright and Neighbouring Rights	Not implemented	Not implemented
Denmark	Act No. 1065 23rd December	Act No. 395 of 14th June 1995 on 1992 on Radio & TV Activities	Act No. 395 of 14th June 1995 on Intellectual Property	Act No. 395 of 14th June 1995 on Intellectual Property	Not implemented	Not implemented
France	Law No. 92-61 of 18th January 1992 and through 3 decrees of 27th March 1992	Law No. 92-997 of 1st July 1992	Not implemented	Not implemented	3 decrees of 13th November 1992, 27th March 1993 and 6th February 1995	Not implemented
Germany	Law denoted " States Agreement on Broadcasting in the Unified Germany" of 30th August 1991 and transformed into laws of the federal states	4th Amendment to the Copyright Act of 23rd May 1995	4th Amendment to the Copyright Act of 23rd May 1995	Not implemented	Not implemented	Not implemented
Greece	Presidential Decree 236/1992 - amended by Presidential Decree 231/1995	Law 2121/93	Reflected in Law 2121/93	Not implemented	Not implemented	Not implemented
Ireland	Secondary legislation SI No. 251 of 1991	Not implemented	Secondary legislation SI.No. 158 of 1995	Not implemented	Not implemented	Not implemented
Italy	Law No. 223 of 6th August 1990 and various Decrees	Legislative Decree No. 285 of 16th November 1994	Not implemented	Not implemented	Not implemented	Not implemented
Lux	Partly implemented by Law of 27th July 1995	Not implemented	Not implemented	Not implemented	Not implemented	Not implemented
N'lands	Primary and secondary legislation	Not implemented	Not implemented	Not implemented	Not implemented	Not implemented
Portugal	Decree Law 330/90 of 23rd October and by Law 58/90	Not implemented	Not implemented	Not implemented	Not implemented	Not implemented
Spain	Broadcasting Act 1990	Law 43/1994 of 30th December 1994	Not implemented	Not implemented	Not implemented	Not implemented
UK	Broadcasting Act 1990	Not implemented	Not implemented	Not implemented	Not implemented	Not implemented

APPENDIX G

Reports

In this appendix we summarize significant data sources which we have used in the main report and give detailed analyses of the quantitative information summarized in the main text of the report.

G.1. Sources of programming

Below are summaries of the conclusions of five reports on European broadcasters' source of programming.

G.1.1. Report 1: European Commission

The European Commission has surveyed the origin of programming by European broadcasters in order to monitor compliance with Articles 4 and 5 of the Television Without Frontiers Directive. Results were published in 1994.

The European Commission's assessment was that there was: 'general upward trend, especially where a majority proportion of European works was not being broadcast at the outset'. It also stated that: 'The definite conclusion to emerge from analysis of these first national reports as a whole is that in 1991–92 ... the vast majority of broadcasters under the jurisdiction of the Member States broadcast a majority proportion of European works.'[103]

The results of the study showed that two thirds of the broadcasters surveyed were showing a majority of European programming. The Commission noted that general entertainment terrestrial broadcasters generally showed a majority of European programming and that channels which did not comply with the quotas fell into the following categories:

(a) special interest and thematic channels (e.g. Sky Movies, TV Asia);
(b) newly launched channels (e.g. Pro 7, VTM, Antena 3);
(c) channels encountering problems of programme supply from European distributors.

G.1.2. Report 2: Club de Bruxelles

A survey by Club de Bruxelles concluded that the bulk of imported US programming is fictional because other genres such as news, sports, light entertainment and advertising will nearly always be domestically produced, as they are necessarily tailored to an individual national market.

It pointed out that: 'Interestingly, as the market matures, established television channels in Europe are increasingly relying on long-running domestic series for viewer loyalty.'[104] The rationale for this is that US fictional programming rarely gains the highest audience ratings, while domestic programming can.

[103] Communication from the Commission to Parliament and the Council on the Application of Articles 4 and 5 of Directive 89/552/EEC (Television Without Frontiers) (COM(94) 57 final).

[104] Club de Bruxelles, *Media in Europe towards the Millenium*, March 1994.

Steve Morrison, deputy chief executive of Granada TV in the UK, has pointed out that UK fictional programming, such as *Cracker* and *Prime Suspect*, is now achieving the level of audiences (14 million) which used to be only achieved by a few US 'blockbuster' films.

G.1.3. Report 3: International Institute of Communications

A survey undertaken by the International Institute of Communications in 1990 showed that all European countries acquire a significant proportion of programming and that the US is the main source of acquired programming.

Table G.1. Source of European programme acquisitions

Country	Programming acquired from another market	Acquired from US
Portugal	49%	22%
Ireland	36%	11% (inc. Canada)
France	31%	18%
Netherlands	28%	14% (inc. Canada)
Italy	27%	17%
Greece	24%	9%
Spain	23%	17%
Denmark	20%	12%
UK	20%	10%
Germany	10%	10%
Belgium	8%	n/a

Source: International Institute of Communications.

G.1.4. Report 4: CSA

The Conseil Supérieur de l'Audiovisuel has carried out research into non-domestic European programming shown by national networks. A survey of prime time programming in September/October 1994 gave the following results:

Table G.2. Proportion of non-domestic prime time fiction programming in Europe

Country	Prime time non-domestic fiction
France	9.3%
Germany	3%
UK	0%

Source: CSA.

The source of imported European programming on French channels was the UK (49%), Germany (41%), Italy (8%) and Spain (1%). In Germany, ZDF was the main broadcaster of non-domestic European programming, followed by RTL2 and Sat 1.

The main conclusion from the CSA figures is that levels of non-domestic European programming are low in the largest European markets. Whether the level is increasing or decreasing is not yet clear.

G1.5. Report 5: Media Business School

A report commissioned by the Media Business School, published in 1994,[105] examined the issue of prime time programming in Europe specifically and concluded that there were two reasons for the prevalence of domestic programming in prime time:

(a) competition for national audiences leads broadcasters to use indigenous productions, rather than taking risks with scheduling; and
(b) the development of local production industries has allowed broadcasters to cater to national tastes without the need to co-produce extensively.

The report stated: 'The only substantial pan-European culture is that of America. American shows, particularly feature films, continue to be key features in every channel's evening line-up.'[106] The report noted an increased prevalence to domestic programming since 1993.

G.2. Economic significance of the European audio-visual sector

The following tables are the basis on which the overview of the audio-visual sector in Chapter 2 has been prepared. The aim of these tables is to provide data at a Member State level.

105 Media Business School – European Primetime – Who Shows What.

106 ibid.

G.2.1. Size of the European cinema industry

Table G.3. Gross box office revenue in the EU/other world regions (million ECU, 1994 prices)

	1980	1985	1990	1993/94
Belgium	55.4	39.7	71.0	99.2
Denmark	36.9	23.9	39.2	44.7
France	526.5	489.6	632.2	673.6
Germany	391.5	266.4	469.7	667.0
Greece	39.2	26.4	44.3	21.3
Ireland	35.6	14.7	26.9	35.8
Italy	365.7	252.6	455.2	441.4
Luxembourg	1.3	1.9	2.3	3.5
Netherlands	84.8	47.5	84.2	91.1
Portugal	23.4	16.4	18.1	15.3
Spain	241.3	139.1	247.1	284.8
UK	289.1	150.3	437.3	536.9
EUR-12	2,090.6	1,468.6	2,527.5	2,914.7
USA	2,329.2	3,177.5	4,255.8	4,567.8
Asia	1,058.6	1,646.3	2,553.1	3,070.3
World	7,569.1	7,760.9	11,863.9	13,467.4

Source: Screen Digest.

G.2.2. Size of the European video industry

Table G.4. Video rental and sell-through revenues at retail level (million ECU, 1994 values)

	1988	1989	1990	1991	1992	1993	1994
Belgium	53.9	72.1	75.9	78.4	85.5	116.0	153.1
Denmark	55.8	50.7	58.8	65.9	67.5	105.0	102.2
France	231.2	382.6	509.0	670.7	867.0	965.4	784.0
Germany	569.5	522.3	592.6	763.0	712.2	785.8	870.8
Greece	19.9	20.9	11.6	11.0	9.6	9.7	0.0
Ireland	42.6	50.1	62.3	64.4	54.4	61.0	70.4
Italy	98.4	250.9	356.0	403.4	476.5	501.2	427.9
Luxembourg	0.7	1.9	2.4	2.9	3.3	3.7	0.0
Netherlands	81.6	77.2	93.0	127.7	141.7	171.2	186.8
Portugal	19.7	28.2	39.3	42.1	49.0	39.5	47.5
Spain	216.7	253.3	221.3	170.5	204.3	258.1	325.0
UK	619.1	886.9	992.0	1,139.5	1,247.2	1,489.2	1,440.3
EUR-12	2,009.1	2,597.1	3,014.2	3,539.5	3,918.2	4,505.8	4,408.0

Source: EVE/IVF – The European Video Directory, Screen Digest.

G.2.3. Television revenues by source

Table G.5. Public broadcasters' revenue from public subsidies (million ECU, 1994 values)

	1985	1988	1990	1992	1994
Belgium	266.4	317.2	345.3	326.7	332.6
Denmark	5.9	0.0	0.0	0.0	0.0
France	3.3	5.9	91.1	86.2	0.0
Germany	0.0	0.0	0.0	0.0	0.0
Ireland	0.0	0.0	0.0	0.0	0.0
Italy	0.0	0.0	66.7	62.7	0.0
Netherlands	0.0	0.0	3.6	3.3	3.0
Portugal	7.5	9.4	43.9	40.7	43.1
Spain	0.0	0.0	2.9	0.0	259.9
UK	230.7	207.1	282.5	251.9	245.0
EUR-12	513.8	539.6	836.0	771.5	883.6

Source: EBU/individual broadcasters.

Table G.6. Public broadcasters' revenue from viewer licence fees (million ECU, 1994 values)

	1985	1988	1990	1992	1994
Belgium	0.0	0.0	0.0	0.0	0.0
Denmark	252.8	278.7	266.2	274.5	287.7
France	696.3	752.7	855.9	1,037.3	1,209.0
Germany	1,992.7	2,646.0	3,017.8	4,253.9	4,357.8
Ireland	179.0	158.8	124.8	93.9	76.0
Italy	868.6	1,024.7	1,098.8	1,279.7	1,344.7
Netherlands	458.6	484.3	453.7	452.1	468.0
Portugal	31.2	34.3	32.6	0.0	0.0
Spain	0.0	0.0	0.0	0.0	0.0
UK	2,059.6	1,998.6	2,015.5	2,137.8	2,167.0
EUR-12	6,538.7	7,378.1	7,865.3	9,529.2	9,910.2

Source: EBU/individual broadcasters.

Table G.7. Television advertising revenue (million ECU, 1994 values)

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Belgium	65.4	76.6	95.6	90.9	189.5	218.3	227.4	242.8	248.3	277.7
Denmark	0.0	0.0	1.3	18.0	79.3	97.2	99.5	102.6	170.3	186.1
France	698.0	867.2	1,140.2	1,410.0	1,536.1	1,634.0	1,679.3	1,755.8	1,715.5	1,822.6
Germany	727.0	759.6	819.1	917.4	1,098.3	1,354.1	1,696.1	1,905.1	2,041.1	2,311.3
Greece	84.6	100.0	109.6	123.1	125.9	170.0	209.1	304.3	405.2	531.5
Ireland	48.8	53.1	55.1	56.2	58.6	55.6	60.2	66.6	72.7	79.0
Italy	1,269.0	1,402.4	1,614.2	1,783.8	1,799.7	1,920.6	1,989.1	2,020.5	1,964.5	1,956.3
Luxembourg	..	..	..	..	..	..	..	..	..	..
Netherlands	120.8	132.3	165.7	187.9	205.7	251.4	262.1	307.8	322.6	347.5
Portugal	49.0	64.5	93.4	119.3	131.5	140.1	159.8	193.3	223.5	275.5
Spain	618.9	770.1	924.0	1,114.1	1,355.4	1,537.0	1,291.2	1,158.3	1,068.6	1,040.7
UK	2,123.6	2,502.2	2,685.4	2,910.1	2,911.3	2,701.6	2,564.2	2,600.4	2,705.8	2,904.2
EUR-12	5,805.1	6,728.0	7,703.6	8,730.8	9,491.3	10,079.9	10,238.0	10,657.5	10,938.1	11,732.4

Source: Zenith Media.

Table G.8. Pay television revenue (million ECU, 1994 values)

	1990	1991	1992	1993	1994
Belgium	342.5	369.4	385.4	456.4	477.3
Denmark	45.7	58.1	71.5	94.9	100.8
France	854.3	993.5	1,057.7	1,287.2	1,363.9
Germany	414.2	613.7	818.5	1,178.6	1,365.5
Greece	0.0	0.0	0.0	0.0	0.0
Ireland	29.9	33.9	38.5	47.9	55.5
Italy	0.0	11.3	39.2	94.0	184.0
Netherlands	0.0	0.0	0.0	0.0	0.0
Portugal	328.3	388.7	417.7	491.5	535.3
Spain	0.0	0.0	0.0	0.0	0.0
UK	15.0	54.8	103.8	176.1	254.6
EUR-12	2,029.9	2,523.4	2,932.3	3,826.6	4,336.9

Source: Kagan.

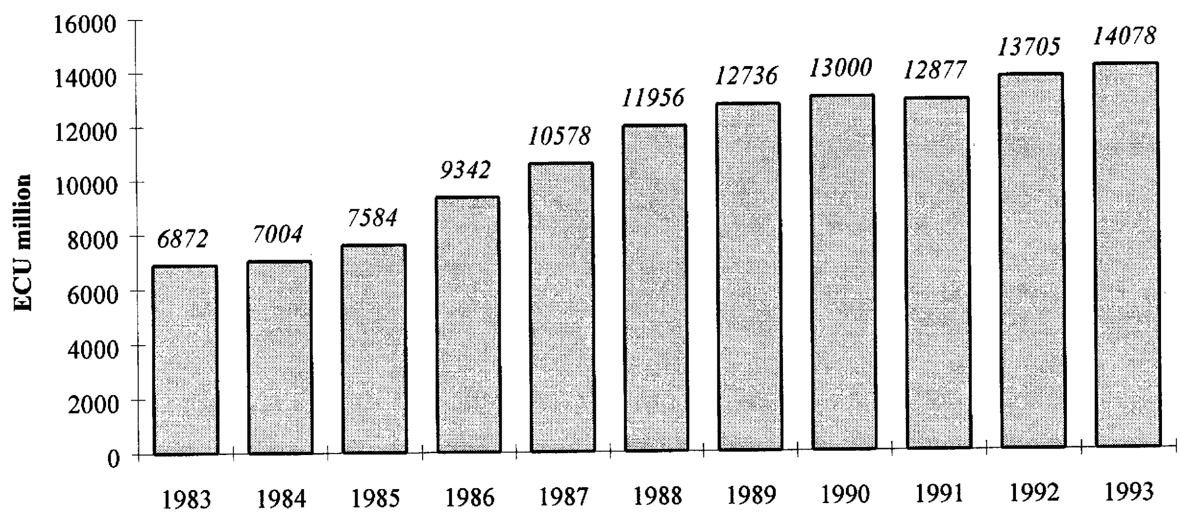
APPENDIX H

Developments in competition

H.1. The growth of TV advertising revenue in Member States' markets

Increase in competition would be expected to lead to lower prices and a more than compensating expansion of demand. This would result in a higher increase in total advertising expenditure than would result solely from normal economic growth. Total television advertising expenditure in the 12 EU Member States increased steadily in real terms during the period as indicated in Figure H.1.

Figure H.1. Total television advertising expenditure in EUR-12 (GDP adjusted, 1993 prices)



Source: Zenith/KPMG.

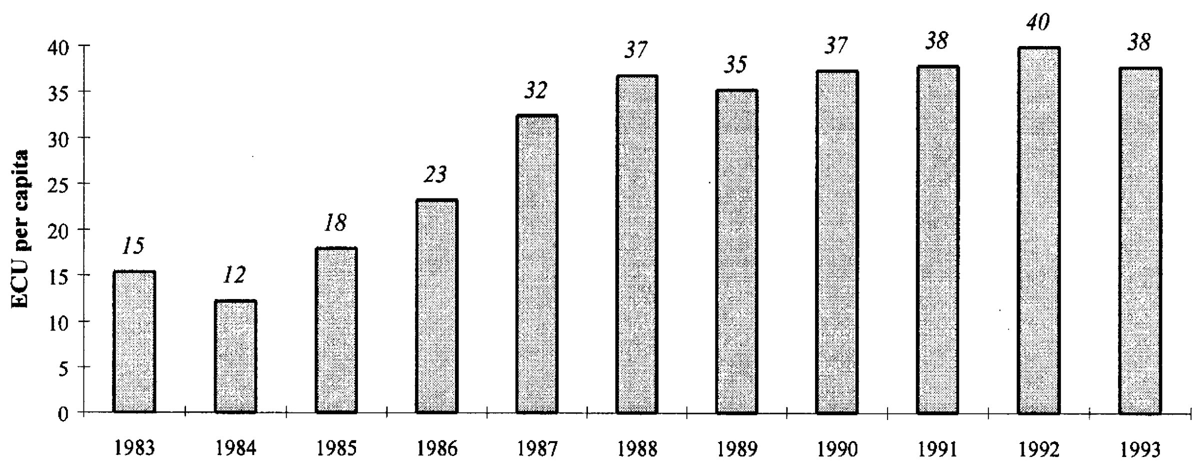
Figures for advertising expenditure in Figure H.1 are at constant 1993 prices and have been adjusted for movements in GDP.[107]

The smooth increase masks different stages of growth in individual Member States, most of which experienced sharp increases in advertising expenditure soon after the launch of national commercial channels. This indicates that liberalization of broadcasting in each Member State has led to increased advertising revenue. We give some examples of the effects of new channels in individual Member States in Figures H.2 to H.4.

107 GDP is adjusted by assuming an elasticity of TV ad revenue to changes in GDP of 1.2. This is a rough guide which approximates well for mature TV markets such as the UK and Netherlands, but may be less accurate for developing markets, and it will have been affected by local regulations on advertising minutage.

In Figure H.2, the period during which new channels (Canal Plus, La Cinq and M6) were launched and TF1 was privatized, was the period in which television advertising tripled (1984–88). Since 1988, expenditure has levelled off.

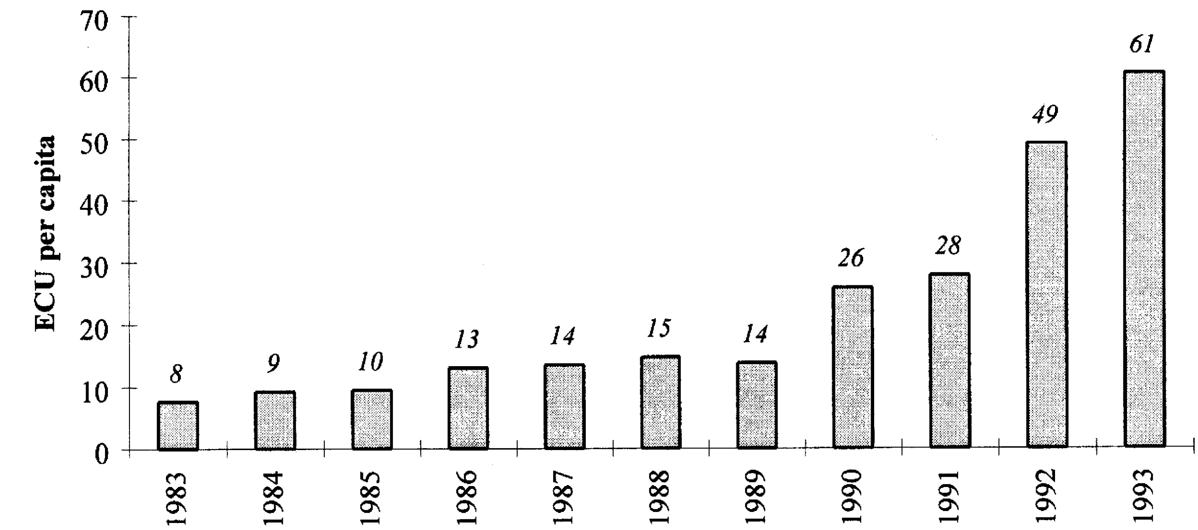
Figure H.2. France: advertising expenditure per capita (GDP adjusted, 1993 prices)



Source: Zenith Media, KPMG analysis.

By contrast, in Greece, growth in advertising expenditure on TV grew rapidly much later, again concurrent with the launch of private television channels (Figure H.3).

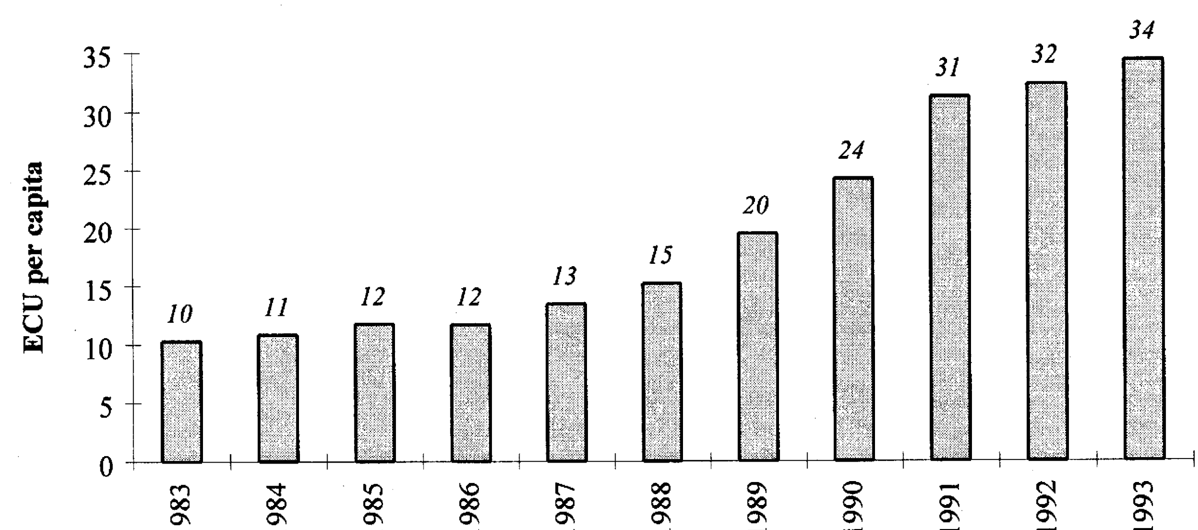
Figure H.3. Greece: advertising expenditure per capita (GDP adjusted, 1993 prices)



Source: Zenith Media; KPMG analysis.

Where distribution is limited, as in Germany, the growth in expenditure resulting from new channels develops much more slowly as distribution of the new channels becomes more widespread. When RTL Plus and Sat 1 launched, their primary distribution channel, the German cable networks, reached 25% of German households. This has grown steadily during the late 1980s, as has TV advertising expenditure.

Figure H.4. Germany: advertising expenditure per capita (GDP adjusted, 1993 prices)



Source: Zenith Media; KPMG analysis.

H.2. Impact of competition on the level of concentration in the industry

In this section, we present the available evidence on changes in the concentration of audience share that occurred in the EC over the last five to eight years, as measured by:

(a) the audience share of the top two channels in each country; and
(b) the Herfindahl concentration ratio or Herfindahl index, which takes into account overall concentration in the market (the Herfindahl index is smaller, the more even the distribution of the audience share across all the channels operating in a country).

In the case of the Herfindahl index we have excluded the audience share of channels that are available through cable and satellite only. This is due to lack of data for the time period and countries covered. This will not affect the main results of this section which aims to identify the extent to which there has been increased competition (and reduced concentration) between mainly advertising funded channels. Table H.1 presents the change in the audience share of the top two channels and Table H.2 presents the Herfindahl indices.

Table H.1. Audience share of top two TV channels (%)

	Belgium	Denmark	France	Germany	Greece	Ireland	Italy	Netherlands	Portugal	Spain	UK
1986				40.9				90.0			81.0
1987				42.0				90.0		93.9	80.0
1988				40.3				82.0		93.5	79.0
1989	62.8	73.2	64.0	41.7	47.6	75.0	39.8	73.0	100.0	94.0	81.0
1990	72.7	72.0	64.0	40.6	62.6	82.0	41.5	82.8	100.0	74.0	80.0
1991	72.9	84.0	63.4	38.6	64.9	76.0	40.5	81.0	93.0	57.0	76.0
1992	72.0	75.0	66.4	37.3	63.9	74.0	37.2	76.0	92.0	45.7	75.0
1993	71.7	75.4	63.5	36.9	66.7	74.0	36.6	80.0	51.0	39.4	73.0
1994	64.6	77.0	64.5	33.6	55.5	74.0	36.8	74.0	44.0	38.0	71.0

Source: KPMG.

Table H.2. Herfindahl indices

	Belgium	Denmark	France	Germany	Greece	Ireland	Italy	Netherlands	Portugal	Spain	UK
1986				0.38				0.82			0.35
1987				0.36				0.82		0.68	0.34
1988				0.31				0.70		0.63	0.33
1989	0.20	0.32	0.24	0.25	0.22	0.63	0.16	0.43	0.57	0.70	0.34
1990	0.19	0.31	0.24	0.24	0.22	0.50	0.16	0.41	0.59	0.40	0.35
1991	0.19	0.37	0.24	0.19	0.24	0.46	0.16	0.43	0.62	0.27	0.31
1992	0.18	0.31	0.27	0.17	0.24	0.43	0.15	0.42	0.59	0.22	0.30
1993	0.18	0.32	0.25	0.15	0.25	0.43	0.16	0.40	0.28	0.22	0.29
1994	0.19	0.32	0.26	0.17	0.16	0.44	0.16	0.34	0.34	0.22	0.28

Source: KPMG.

Before we present the results, it should be stressed that the evidence relates to audience shares of individual channels. To the extent that a company (or the State) owns more than a single channel, then the level of the Herfindahl index will be uninformative about the real extent of concentration and competition. For that reason, we only examine the trends in the concentration measures without making any comparisons of levels.[108]

As can be seen from the tables the results are mixed. Very significant drops in concentration have occurred in Spain and Portugal followed by the Netherlands and Germany. In Ireland, the Herfindahl index suggests a reduction in concentration but the top two market shares have not changed. This suggests a more equal distribution of the remaining audience share amongst the other channels.

There has been very little change in concentration in Italy, France, Denmark and Greece. In the case of Greece, there has been significant deregulation with two major private channels setting up over the period, and a number of smaller ones; the figures, however, reflect a significant shift of audience share from the state channels to the two new private channels. In the case of France, despite the appearance of new channels and subscription television, there has been no noticeable change in the concentration of audience share for TF1, Antenne 2 and the other channels.

The key issue with respect to increased competition and reduced concentration is whether it has translated into relatively lower real prices for advertising. The next section presents the results of regression analysis which examined whether real prices for advertising have been reduced as a result of the changes in the extent of competition in the broadcasting sector.

Real cost of advertising

Regression analysis has been used to test whether the change in competition and concentration has had a statistically significant impact on the price of advertising. We examined 'cost per thousand' (CPT) which is the cost associated with reaching 1,000 people for the main TV channels within individual EC countries. Historic information on the level of CPT by channel is available from Zenith Media.[109] In order to assess the impact at the national level, we constructed a national CPT variable. This is the arithmetic average of the CPT by channel for all channels for which we had information in each EC country.

The impact of the SMP on CPT has been examined for Belgium, Denmark, France, Greece, Ireland, the Netherlands, Portugal and the UK. Data for the remaining EC countries examined within this study – Germany, Italy, Luxembourg and Spain – were either not available or insufficient to obtain reasonable regression results. The main drivers of CPT can be assumed to be:

(a) advertising expenditure: when the demand for advertising airtime increases and in turn, advertising expenditure grows, we would expect an associated increase in the average price for advertising (i.e. a rise in the average CPT, all other things being equal); and

108 This is particularly true in Italy where the state controls RAI (1, 2 and 3), with a total audience share in 1994 of 46%, and Mediaset/Fininvest controls, through RTI, Rete 4, Canale 5 and Italia 1, with a total audience share of 43%.

109 This represents the CPT on which media buyers report (after deducting discounts); it should therefore provide, on average, an accurate estimate of the cost of advertising.

(b) Herfindahl index: the Herfindahl index captures the concentration of TV channels in the market. An increase in the level of concentration leads to an increase in the level of the index. Thus, a higher degree of competition within the market leads to a lower level of concentration and should lead to lower advertising prices. This implies that we have a positive correlation between the Herfindahl index and CPT. However, there may be no impact on cost (i.e. no relationship with the Herfindahl index), or even a negative relationship where the index may be reflecting a purely 'statistical' relationship with no causal link. The reason for this is that, in general, CPT has increased over the period and the Herfindahl index has decreased in most of the countries under examination.

The regression results[110] presented in Table H.3 below provide estimates of the coefficients of the explanatory variables and the R-squared statistic (providing a measure of the extent to which advertising expenditure and the Herfindahl index explain CPT). Due to the unavailability of data, the estimation period is not consistent across the countries and the last column of the table reports the sample size for each regression. It should be noted at the outset that the very small sample size and the possible lack of 'independence' between CPT and advertising expenditure imply that these regression results must be treated very cautiously and taken overall as indicative of the likely impact.[111]

Table H.3. Regression results for cost per thousand: Dependent variable is cost per thousand

Country	Variable co-efficients (t-statistics in parenthesis)[1]			
	Advertising expenditure	Herfindahl index	R-squared	Sample size
Belgium	21.09	20.96		
	(3.61)	(1.15)	0.92	1989-93
Denmark	8.36	-9.02		
	(3.40)	(-0.88)	0.72	1989-93
France	35.06	-22.67		
	(2.96)	(-1.56)	0.66	1986-93
Greece	17.23	-65.29		
	(1.51)	(-0.82)	0.36	1989- 93
Ireland	1.17	-7.90		
	(0.16)	(-1.55)	0.42	1986-93
Netherlands	6.85	-1.14		
	(1.07)	(-0.20)	0.74	1989-93
Portugal	6.12	1.23		
	(7.20)	(2.18)	0.94	1989-93
UK	4.90	-17.9		
	(0.38)	(-1.60)	0.07	1989-93

[1] The t-statistic is a statistical test for the hypothesis that a coefficient has a particular value. If the t-statistic exceeds 1 in magnitude, it is at least two-thirds likely that the true value of the coefficient is not zero, and if the t-statistic exceeds 2 in magnitude, it is at least 95% likely that the coefficient is not zero.

Source: KPMG.

Although the R-squared statistics suggest a relatively good fit with the exception of the UK, the very small number of observations implies that there may be significant bias in the coefficient estimates. We will therefore examine the qualitative impact, rather than attempt to

[110] Natural logarithms of the explanatory variables were used, and the data was also converted into real terms.

[111] A much more extensive analysis, with more data on more variables, would be required in order to provide rigorous econometric results; unfortunately, such data is not available at the moment.

provide any quantitative estimate. It is evident from the above results that advertising expenditure has a positive impact on CPT for each country (whilst keeping the Herfindahl index variable constant), although it is not statistically significant for Ireland, the UK and the Netherlands and is only marginally significant for Greece. The relationship between the Herfindahl index and CPT is summarized in Table H.4 below. Note that the majority of the coefficients are statistically insignificant or marginally significant and the results should therefore be interpreted as indicative only.

Table H.4. Impact of concentration on CPT

Country	Relationship between Herfindahl index and channel cost (+ve, -ve, no relationship)
Belgium	+ve
Denmark	no relationship
France	-ve (marginal)
Greece	no relationship
Ireland	-ve (marginal)
Netherlands	no relationship
Portugal	+ve
UK	-ve (marginal)

Source: KPMG.

Table H.5 below summarizes the results reported earlier by providing information on the change in competition and concentration in the broadcasting sector as well as the estimated impact on advertising prices. Belgium and Portugal have witnessed lower advertising rates, as a result of decreased concentration and increased competition. This is particularly true in Portugal, where there has been a very significant reduction in concentration over the 1989 to 1994 period.

Table H.5. Concentration and cost of advertising

Country	Has concentration changed over the 1986–93 period	Has change in concentration impacted on real advertising prices[1]
Belgium	Small reduction	Significant decrease in real prices
Denmark	No change	No change
France	No change	Marginally significant increase in real prices
Germany	Large reduction	No relationship established
Greece	Small increase	No change
Ireland	Average reduction	Marginally significant increase in real prices
Italy	No change	No relationship established
Netherlands	Large reduction	No relationship established
Portugal	Large reduction	Significant decrease in real prices
Spain	Large reduction	No relationship established
UK	Large reduction	Marginally significant increase in real prices

[1] Please note that the use of the term significant in the table refers to statistical significance, i.e. whether the regression results suggest the existence of a link or not.

Source: Data on Herfindahl index regression.

Concentration has also fallen significantly in Germany, the Netherlands and Spain. Note, however, that in Germany, the level of competition was already quite high.

In the case of the Netherlands, we were not able to establish any significant link between the degree of concentration and advertising prices. This is not surprising in view of the very low number of observations we had. The data for the CPT in Spain is unfortunately rather erratic and we were not able therefore to establish any relationship at all.

In the other countries there has been no significant change in concentration, with the exception of Ireland, where, as already noted, the change in concentration did not affect the two largest channels. In the case of the UK, the regression equation is not well determined and we cannot therefore make any assessment of the link between CPT and concentration based on it.

There is little evidence to suggest that advertising prices in countries other than Portugal and Belgium are lower than they would otherwise have been as a result of increased competition. It should be noted, however, that:

(a) first, the data for a number of these countries are few and erratic; and
(b) second, in a number of these countries, notably France, Denmark and Greece there has been no change in concentration in the period under review. This is also true in Italy, but the Italian market was one of the first to deregulate in Europe, resulting in a comparably low level of concentration from the beginning of the period under review.

APPENDIX I

EU cross-border M&A

Cross-border M&A activity monitored by the KPMG database is detailed on the following page.

Table I.1. EU cross border M&A: 1987–94

Year	Buyer (Member State)	Company (Member State)
1987	CLT (LUX)	RTL TVi (BEL)
1987	CLT (LUX)	M6 (FRA)
1988	Video Music (ITA)	Super Channel (UK)
1989	CLT (LUX)	RTL 4 (NET)
1989	Canal Plus (FRA)	Canal Plus TVCF (BEL)
1990	Fininvest (ITA)	Pathe cinemas (UK, NET)
1990	RCS Editori (ITA)	TF1 (FRA)
1990	Canal Plus (FRA)	Cinepacq (SPA)
1990	VNU (NET)	RTL4 (LUX)
1990	HTV (UK)	Hamster (FRA)
1990	JV: Kirch Gruppe (GER), Canal Plus (FRA)	
1990	Canal Plus (FRA)	Teleclub (GER)
1990	Philips (NET)	Broadcast TV Systems (GER)
1990	Canal Plus (FRA)	Sportnet (NET)
1990	Comp Gen. d'Images (FRA)	Sportnet (NET)
1990	Canal Plus (FRA)	Sport Kanal (GER)
1990	Paretti/Marcucci (ITA)	Super Channel (UK)
1990	Fininvest (ITA), Kirch (GER)	Starcom (FRA)
1990	JV: NDR (GER), Granada (UK), Hachette (FRA)	
1990	JV: BAC Films (FRA), Erre Produzione (Ita), Iberoamericana Films (SPA), Palace Group (UK), Telemunchen (GER)	
1990	Canal Plus (FRA)	Canal Plus Espana
1991	Philips (NET)	Super Club (NET)
1991	PolyGram (NET)	Working Title Films (UK)
1991	PolyGram (NET)	Palace Productions (UK)
1991	Chargeurs (FRA)	Allied Filmmakers (UK)
1991	Canal Plus (FRA)	Premiere (GER)
1991	Havas (FRA)	TVI (POR)
1992	Kirch Gruppe (GER)	Telepiu
1992	CGE (FRA)	Defa Film (GER)
1992	VNU (NET)	RTL4
1992	Chargeurs (FRA)	Guild Entertainment (UK)
1992	RCS Editori (ITA)	Majestic Films (UK)
1992	Philips (NET), Chargeurs Pathe TV (FRA)	
1992	JV: CGE (FRA), Bertelsmann (GER)	
1992	JV: ARD, ZDF, France TV	Arte
1993	CLT (LUX)	Tele Cinco (SPA)
1993	PolyGram (NET)	Cinea (?)
1993	Apax (UK)	TV Kanal 5 (GER)
1993	Philips (NET), Thorn EMI (UK)	Viva (GER)
1993	CLT (LUX)	RTL 5 (NET)
1993	CLT (Lux)	RTL 2 (GER)
1994	Canal Plus (FRA)	Vox (GER)
1994	PolyGram (NET)	Sogepaq (SPA)
1994	CLT (LUX)	Channel 5 (UK)
1994	News Int (UK)	Vox (GER)
1994	JV: Bertelsmann (GER), Canal Plus (FRA)	
1994	CLT (LUX)	M6 (FRA)
1994	CLT (LUX)	Vox (GER)
1994	Endemol (NET)	Gestmusic (SPA)
1994	CLT (LUX)	Endemol Entertainment (NET)
1994	JV: Canal Plus (FRA), PolyGram (SPA)	

Note: This database includes outright and minority acquisitions and joint ventures between companies registered in different countries. Deals are sourced from public sources and from KPMG's international corporate finance network.

Source: KPMG M&A database.

APPENDIX J

Sources of secondary data

Table J.1. Sources of secondary data

Contents	Time period	Source of data
Television		
Total hours broadcast by TV channel in EUR-12	1983–86, 1991–92	European Audio-visual Observatory, Screen Digest
Number of imported programmes in prime time top rated shows	Feb-94	TV World
TV channels launched in EUR-12 from 1936–95	1936–95	KPMG from TBI and other sources
DTH penetration of TV households in EUR12	1989–94	Zenith Media
Percentage of EU productions transmitted by European broadcasters	1988, 1991, 1992	EC - COM (94) 57
Proportion of imported programming	1973–83	Screen Digest from UNESCO
Employment at major European broadcasters	1988, 1990, 1992, 1994	European Audio-visual Observatory from London Economics
Household reach of pan-European channels	1985–95	New Media Markets, individual channels
Major broadcasters' turnover in EUR-12	1990–92	Screen Digest
TV advertising revenue by channel	1988–94	Zenith Media, European Audio-visual Observatory
TV advertising revenue by channel	1987–94	Screen Digest
BBC, ITV, RTL and France programme spend as a % of revenue	various	BBC, ITV, RTL, CNC
Audience share of foreign broadcasters in EU	1993	Young & Rubicam - Media Overspill in Europe
Origin of TV broadcasts - repeats, own productions etc.	1990, 1995	Eurostat from JN Dibie - L'Europe de l'audiovisuel
Investment in TV Production (France, Germany, UK)	1989–93	ACT
TV broadcasts - proportion by type - repeats, own production etc.		EBU
TV advertising expenditure	1983–93	Zenith Media
Cable and total multichannel penetration of EU TV households	1975–94	SBC Warburg: A review of European Advertising
Multichannel penetration – worldwide comparison	1990–94	Screen Digest
TV households and TV viewing in EU	1986, 1995	Zenith Media, Veronis Suhler, Nielsen Media
Number of satellite transponders in Europe	1982–94	KPMG from World Satellite Directory, Cable & Satellite Yearbook, Zenith Media
European TV revenue - advertising, subscription, licence fee, other	1990–94	KPMG from EBU, Zenith Media, Kagan
EU broadcasters' cost per thousand	1986–93	Zenith Media
Trends in media rates for EU broadcasters	1985–93	Zenith Media
Audience shares of EU broadcasters	1981–94	Zenith Media
Broadcasters average weekly output	1983–93	Screen Digest
Co-productions by genre	1978–94	TBI Coproduction International
Percentage of independent productions transmitted in EU	1991, 1992	EC - COM (94) 57
Total investment in film production/average per production	1987–94	Screen Digest

Table J.1. (continued)

Contents	Time period	Source of data
Number of domestic origin films exhibited	1985-95	Screen Digest
US film earnings by source	1984–94	Goldman Sachs
Earnings by source of selected European films	1994	Media Business School - Budgets and Markets
European films' source of production finance	1994	European Filmfile
Cinema box office market share by film's country of origin	1982–93	CNC
Box office revenue for all films	1985–93	European Audio-visual Observatory
Top 10 films at EU box offices	1991–94	Screen International
Number of cinema screens in Europe	1994	Screen Digest
Number of multiplex cinemas, market share	1989–93	Screen Digest
UK cinema operator profitability	1989–94	Screen Finance from Dodona Research
Top film distributors in EU	1994	Screen International, UIP
Number of films produced in EU	1980–94	European Audio-visual Observatory, CERICA – Statistics of the Film Industry in Europe
Average annual rate of change in number of EU produced films	1981–1988, 1989–1994	European Audio-visual Observatory, CERICA – Statistics of the Film Industry in Europe
Number of co-produced films in EU	1983–94	European Audio-visual Observatory, Screen Digest
Box office revenue	1980–94	Screen Digest
Gross cinema box office revenue per capita	1980–94	KPMG from Screen Digest, Zenith
European cinema attendance	1982–94	Screen Digest
Independent US film earnings in Europe	1990–94	American Film Marketing Association, KPMG
Cinema attendance worldwide	1982–93	Screen Digest
US films expenditure on print and advertising	1980–94	Motion Picture Association of America
EU cinema box office revenue	1985–93	Screen Digest
Number of cinema screens	1985/1993	European Audio-visual Observatory
Cinema and video as a proportion of leisure spend	1988–92	Screen Digest
Average cinema ticket price	1990–94	Screen Digest
VCR penetration in EU	1980–94	EVE
Number of video rental and sell-through outlets in EU	1990–94	Screen Digest, EVE
Turnover per sell-through and rental outlet in EU	1990–94	Screen Digest, EVE
Video rental and sell-through transactions in EU	1990–94	Screen Digest, EVE
Revenue from video rental and sell-through	1990–94	Screen Digest, EVE
Average video rental and sell-through unit price	1990–94	Screen Digest, EVE
Consumer expenditure on video and cinema as % of total leisure spend	1988–92	Screen Digest, EVE
Audio-visual balance of trade EU/US	1988–93	IDATE figures
Size of EU/other regional markets in film, TV, video	1980, 1985, 1994	KPMG from Zenith Media, Blockbuster, Screen Digest
Audio-visual trade statistics	1983–93	Eurostat
Total sector revenues	1983–93	Eurostat
Value of cross-border M&A	1987–94	KPMG M&A database
EU audio-visual investment in US	1987–94	KPMG M&A database

APPENDIX K

Case-law and infringement proceedings

In this appendix, we describe some cases and infringement proceedings relating to the audiovisual sector in the EU.

K.1. Cases and proceedings related to the scope given in TWF for Member States to lay down more detailed or stricter rules

K1.1. *Leclerc-Siplec* v *TF1 Publicité and M6 Publicité* (Case C-412/93 [1995] ECR I-179)

In *Leclerc-Siplec*, the issue put to the ECJ was whether the TWF Directive, and certain Articles of the EC Treaty, were to be interpreted as prohibiting Member States from banning televised advertising in respect of certain sectors of economic activity, in particular the distribution sector. In February 1995 the ECJ stated that the TWF Directive is intended to provide a set of minimum rules to govern broadcasts emanating from and intended for reception in different Member States. Article 3(1) of the Directive permits Member States to provide a more detailed and stricter regulation of the areas covered by the Directive as regards television broadcasters under their jurisdiction. The ECJ decided that the Directive's objective of ensuring that Member States guarantee the freedom to provide broadcasting services while complying with the minimum rules laid down by the Directive was not affected where Member States imposed a stricter rule upon the television broadcasters in question. Article 3(1) of the Directive contains no restriction as to the interests which Member States may take into account. In this case, although the Member State's restriction was specific to the distribution sector, it was applied uniformly and therefore was not in contravention of Article 30 of the EC Treaty and could not be perceived as being anti-competitive. However, it should be noted that the case did not consider Article 59 of the EC Treaty.[112]

K.1.2. Implementation of TWF in Sweden

At present, a case is pending before the ECJ regarding implementation of TWF in Sweden. Swedish law contains a ban on advertisements aimed at children under 12. The ECJ has to rule whether Community law allows one Member State to ban advertising, originating from and broadcast by an organization established in another Member State where the rules and conditions are less stringent, on grounds of its consumer protection laws. In accordance with the dual principles of 'country of origin' and 'mutual recognition' underlying the TWF Directive, Member States are not allowed to restrict broadcasts from other Member States if these broadcasts comply with that Member State's rules and, therefore, the provisions of the Directive. Regardless of what the ECJ's judgement will be, the Swedish Government may still

[112] In a first attempt to discourage the excessive resort to Article 30 of the Treaty, and previous to the Leclerc-Siplec case, the ECJ held in *Keck and Mithouard* (Joined Cases C-267 and C-268/91 [1993] ECR I-6097) and *Hünermund* v *Landesapothekerkammer Baden-Würthemberg* (Case C-292/92 [1993] ECR I-6787), that any non-discriminatory national restrictions of commercial freedom justified under Community law, including such 'selling arrangements' as advertising, could not be challenged under Article 30 of the Treaty.

lay down more stringent rules and conditions in relation to its domestic television broadcasters.[113]

K.1.3. *Altenburger & Stralunder Spielkartenfabriken* v *ZDF*

The issue of sponsorship rules was addressed in *Altenburger & Stralunder Spielkartenfabriken* v *ZDF AO*. The German Federal Supreme Court prohibited sponsorship and product placement in general and decided, very restrictively and without any analysis of the situation on a case-by-case basis, that the public could be misled and confused. Under TWF, the publisher's sponsorship would have been illegal in the case in any event because ZDF actively encouraged the purchase of a book. Nevertheless, the prohibition of sponsorship in general by the German Supreme Court could not be upheld, since the Directive makes sponsorship legal if certain conditions are met.

K.2. Cases relating to cable and satellite broadcasting

K.2.1. *Autronic AG* v *Switzerland*

In *Autronic AG* v *Switzerland* of 22 May 1990, Autronic complained that the granting of permission to receive uncoded television broadcasts for general use from a telecommunications satellite had been made subject to the consent of the broadcasting state, thereby infringing its right to receive information, as guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR'). The ECHR acknowledged that the legal basis for interference could be found in national and international law and that the prevention of disorder in telecommunications and disclosure of confidential information were legitimate aims. However, considering, *inter alia*, that several other telecommunication satellites broadcasting television programmes have come into service, and the Swiss Government's concession that there was no risk of obtaining secret information by means of dish aerials receiving broadcasts from telecommunication satellites, the ECHR held that the interference was unlawful.

K.2.2. *Groppera Radio AG* v *Switzerland*

In *Groppera Radio AG and others* v *Switzerland* of 28 March 1990, the Swiss Government had introduced legislation which prohibited licensed cable operators from broadcasting programmes from stations which did not comply with international telecommunications legislation. In Switzerland, this effectively prohibited cable retransmissions of programmes produced in and broadcast from Italy. The ECHR determined that Article 10 did apply in this case, but that, although the ban constituted an interference by a public authority with the exercise of the principle of freedom of expression, it nevertheless pursued the dual aims of prevention of disorder in telecommunications and the protection of the rights of others by ensuring a fair allocation of frequencies at a national and international level. The ECHR ruled that such aims were legitimate and fully compatible with Article 10 of the Convention.

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113 While Sweden has a full general ban on advertisements aimed at children under 12, Greece has a ban which prohibits advertising of toys only. The Greek restrictions have been subject to an action initiated by the Commission under Article 169 of the EC Treaty.

K.3. Cases relating to competition law

K.3.1. *Coditel* v *Ciné Vog Films* (I and II)
(Case 62/79 [1980] ECR 881 and Case 262/81 [1982] ECR 3381)

Both cases arose from an action brought by a Belgian film distribution company, Ciné Vog Films, against, *inter alia*, a number of Belgian cable TV companies, collectively referred to as the Coditel companies ('Coditel'), for infringement of copyright. Coditel enabled their subscribers to receive a broadcast from Germany of a film for which Ciné Vog had exclusive distribution rights in Belgium. The Belgian Court of Appeal held that Article 85 was not applicable, and referred the matter to the European Court of Justice on the basis that Articles 59 and 60, on the freedom to provide services, might have been breached. The Court held that these Articles did not preclude an assignee of copyright in a film in a Member State from relying on his right to prohibit the exhibition of that film in that state, without his authority, by means of cable diffusion, if the film so exhibited is picked up and transmitted after being broadcast in another Member State by a third party with the consent of the original owner of the right.

Two years later, in 1982, the Court of Justice heard an appeal on this issue by Coditel, who claimed that the Court of Appeal erred in holding Article 85 to be inapplicable. The Court of Justice accepted Coditel's argument that Article 36, which provides an exception to the abolition of quantitative restrictions between Member States *inter alia* for the protection of industrial and commercial property (which includes copyright), should not apply where it is incompatible with Article 85. It did not, though, accept Coditel's argument that the criteria to bring the situation within Article 85 were met: it did not accept that the contract between the owner of the copyright and Ciné Vog should be regarded as the purpose, the means or the result of an agreement, decision or concerted practice prohibited by the Treaty.

The Court did decide, though, that, where appropriate, it is for the national court to ascertain whether, in a given case, the manner in which the exclusive right conferred by the contract is exercised is subject to a legal or economic situation the object or effect of which is to prevent or restrict the distribution of films or to distort competition in the film market.

K.3.2. ARD (89/1536)

The Association of Public Broadcasting Organizations in Germany (ARD) concluded agreements on television broadcasting rights for new feature films to be produced by MGM/UA between 1984 and 1988. The Commission objected to the agreements, considering that the number and duration of the exclusive rights acquired rendered access for third parties unreasonably difficult. ARD agreed to allow the licensing of films to other television stations during so-called 'windows', which designate periods relating to individual films during which the exclusivity granted to ARD is lifted, and during which ARD will not use the films. The windows vary in length between two and eight years. The ARD also agreed to allow licensing throughout contract territory to other television stations which show non-German language versions of the films, and which were previously prohibited under the agreements.

The Commission exempted the agreements under Article 85(3). This is the first Decision to clarify that exclusive agreements relating to television rights may be contrary to Article 85, whilst making clear that exemption will be granted where sufficient access facilities are made available to third parties.

On several other occasions the Commission has had to review agreements between television stations aimed, in practice, at giving the parties to the agreements exclusive rights and preventing others from retransmitting or distributing the works. In each case the Commission has required the parties to amend their agreements to allow third parties non-discriminatory access to the markets concerned.

K.3.3. Screen Sport/EBU (91/130)

The Commission upheld a complaint by Screen Sport, the European transnational satellite television sports channel, against Eurosport. The complaint challenged a series of agreements between *inter alia* the Eurosport Consortium, an association of broadcasting organizations and members of the EBU, Sky Television and News International, which established Eurosport as a joint venture satellite television sports channel in competition with Screen Sport.

Since the Eurosport Consortium members and Sky were potential competitors in the market for transnational television sports channels, the Commission concluded that the agreements eliminated any incentive for Sky to offer substantive competition to Eurosport. Furthermore, privileged access on the part of Eurosport to sports programming, particularly live sport, placed it in an unfairly favourable position as against Screen Sport and other similar channels not enjoying similar access, denying them an equal chance of providing as comprehensive a range of sports coverage. Consequently, the request for exemption of the Eurosport agreements under Article 85(3) of the Treaty was refused.

In a later decision, after amendments to the EBU rules removing many restrictions, the Commission granted an exemption under Article 85(3) to the Eurosport system. Although the system limited competition, it allowed a number of improvements through rationalization and cost savings which benefit members from small countries, in particular by allowing them to show more and better quality sports programmes than would otherwise be the case.

K.3.4. Auditel (Case T-66/94 [1995] ECR II-239)

On 24 November 1993, the Commission adopted a Decision that an agreement between Auditel shareholders to use only an Italian ratings index infringed Community competition rules. The Decision was adopted in response to the notification by Auditel of the system it has established in Italy for measuring and disseminating television audience ratings, which, though in practice seemed to be intended to prevent a ratings war between the main Italian television channels, but was nevertheless a restriction of competition, in that it deprived shareholders of any freedom to use other figures. Exemption was refused because the restriction was not indispensable and led to the elimination of competition. Auditel deleted the offending agreement shortly before the Decision was adopted.

K.3.5. MSG Media Service (Case IV/m.469)

Three German enterprises, including Deutsche Bundespost Telekom (as it then was) notified the Commission of a plan to set up a joint venture, MSG Media Service, to operate on the market of technical and administrative services for digital pay TV operators. The Commission analysed the effects of a proposed merger on three product markets in Germany.

The enterprises offered the Commission undertakings relating to the use of a common interface, non-discrimination towards pay TV suppliers and an adequate supply of digital cable transmission capacity, subject to certain conditions. The Commission regarded these undertakings as inadequate as they were either conditional or mere declarations of intent. It took the view that the proposed merger was liable to create or strengthen lasting dominant positions and should therefore be considered incompatible with the common market.

K.3.6. UIP

The Commission granted a five-year exemption to a series of agreements entered into between Paramount Pictures Corporation, MCA Inc. and MGA/UA Communications Co. regarding the creation of a joint venture, United International Pictures (UIP), which distributes feature films produced by its parent companies for exhibition in cinemas within the Community. The companies pooled their distribution activities in the Community to gain efficiencies by avoiding administrative duplication, and granted UIP exclusive rights to their respective productions.

The agreements notified were amended at the Commission's request, ensuring, for example, that parent companies remained independent from each other and from UIP, and that each could enter into co-production agreements with third parties in the Community. The exclusivity provisions were limited, by allowing UIP to have only the right of first refusal to the parent companies' films. The Decision indicates that the Commission takes a positive view of rationalization and cost saving measures in the distribution of feature films, given the structural peculiarities of the film industry. Joint ventures set up for the joint distribution of feature films may be exempted, if they do not unduly restrict the competitive room for manoeuvre for the undertakings concerned.

UIP's exemption expired in July 1993 and UIP has continued to trade as if the exemption was still in place. The Commission has not yet taken any action either to grant a further exemption or to investigate UIP's activities further.

APPENDIX L

Community legislation, etc.

L.1. Regulations

4064/89: Council Regulation (EEC) of 21 December 1989 on the control of concentrations between undertakings (OJ L 395, 30.12.1989, p. 1)

L.2. Directives

86/529/EEC: Council Directive of 3 November 1986 on the adoption of common technical specifications of the MAC/packet family of standards for direct satellite broadcasting (OJ L 311, 6.11.1986, p. 28).

89/104/EEC: First Council Directive of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ L 40, 11.2.1989, p. 1), as amended by Directive 92/10/EEC (OJ L 6, 11.1.1992, p. 35).

89/552/EEC: Council Directive of 3 October 1989 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 298, 17.10.1989, p. 23), as amended by Directive 97/36/EC (OJ L 202, 30.7.1997, p. 60).

90/388/EEC: Commission Directive of 28 June 1990 on competition in the markets for telecommunications services (OJ L 192, 24.7.1990, p. 10), as amended by Directives 94/46/EEC (OJ L 268, 19.10.1994, p. 15), 95/51/EEC (OJ L 256, 26.10.1995, p. 49), 96/2/EC (OJ L 20, 26.1.1996, p. 59) and 96/19/EEC (OJ L 74, 22.3.1996, p. 13).

92/38/EEC: Council Directive of 11 May 1992 on the adoption of standards for satellite broadcasting of television signals (OJ L 137, 20.5.1992, p. 17).

92/100/EEC: Council Directive of 19 November 1992 on rental right and lending right and on certain rights relating to copyright in the field of intellectual property (OJ L 346, 27.11.1992, p. 61).

93/83/EEC: Council Directive of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable re-transmission (OJ L 248, 6.10.1993, p. 15).

93/98/EEC: Council Directive of 29 October 1993 harmonizing the term of protection of copyright and certain related rights (OJ L 290, 24.11.1993, p. 9).

95/47/EC: Directive of the European Parliament and the Council of 24 October 1995 on the use of standards for the transmission of television signals (OJ L 281, 23.11.1995, p. 51).

96/19/EC: Commission Directive of 13 March 1996 amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets (OJ L 74, 22.3.1996, p. 13).

L.3. Case law

Case 78/70 *Deutsche Grammophon* v *Metro* [1971] ECR 487.
Case 45/71 *GEMA* v *Commission* [1971] ECR 791.
Case 127/73 *BRT* v *SABAM* [1974] ECR 51.
Case 155/73 *Sacchi* v *Italian Republic* [1974] ECR 409.
Case 16/74 *Centrafarm* v *Winthrop* [1974] ECR 1183.
Case 52/79 *Procureur du Roi* v *Debauve* [1980] ECR 833.

Case 62/79 *Coditel* v *Ciné Vog Films* [1980] ECR 881.
Joined Cases 55 and 57/80 *Musik-Vertrieb Membran* v *GEMA* [1981] ECR 147.
Case 262/81 *Coditel* v *Ciné Vog Films* [1982] ECR 3381.
Joined Cases 60 and 61/84 *Cinéthèque* v *Fédération nationale des cinémas français* [1985] ECR 2605.
Case 352/85 *Bond van Adverteerders* v *Netherlands State* [1988] ECR 2085.
Case 156/86 *Warner Brothers and others* v *Christiansen* [1988] ECR 2605.
Case 341/87 *EMI Electrola* v *Patricia Im- und Export and others* [1989] ECR 79.
Case T-70/89 *BBC* v *Commission* [1991] ECR II-535.
Case C-292/92 *Hünermund* v *Landesapothekerkammer Baden-Württemberg* [1993] ECR I-6787.
Case C-23/93 *TV10* v *Commissariaat voor de Media* [1994] ECR I-4795.
Joined Cases C-267 and C-268/91 *Criminal proceedings against Keck and Mithouard* [1993] ECR I-6097.
Case C-412/93 *Leclerc-Siplec* v *TF1 Publicité and M6 Publicité* [1995] ECR I-179.
Case T-66/94 *Auditel* v *Commission* [1995] ECR II-239.

L.4. Other

COM(90) 78 final: Communication from the Commission to the Council and the Parliament on audio-visual policy.
COM(90) 480 final: Commission Green Paper: Pluralism and media concentration in the internal market: an assessment of the need for Community action.
89/337/EEC: Council Decision of 27 April 1989 on high definition television (OJ L 142, 25.5.1989, p. 1).
89/467/EEC: Commission Decision of 12 July 1989 relating to a proceeding pursuant to Article 85 of the EEC Treaty (IV/30.566 — UIP) (OJ L 284, 3.10.1989, p. 36).
89/536/EEC: Commission Decision of 15 September 1989 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.734 — Film purchases by German television stations) (OJ L 284, 3.10.1989, p. 36).
90/685/EEC: Council Decision of 21 December 1990 concerning the implementation of an action programme to promote the development of the European audio-visual industry (MEDIA) (1991-95) (OJ L 380, 31.12.1990, p. 37).
91/130/EEC: Commission Decision of 19 February 1991 relating to a proceeding pursuant to Article 85 of the EEC Treaty (IV/32.524 — Screensport/EBU Members) (OJ L 63, 9.3.1991, p. 32).
93/424/EEC: Council Decision of 22 July 1993 on an action plan for the introduction of advanced television services in Europe (OJ L 196, 5.8.1993, p. 48).
Council Resolution of 22 July 1993 on the development of technology and standards in the field of advanced television services (OJ C 209, 3.8.1993, p. 1).
94/922/EEC: Commission Decision of 9 November 1994 relating to a proceeding pursuant to Council Regulation (EEC) No 4064/89 (IV/m.649 — MSG Media Service) (OJ L 364, 31.12.1994, p. 1).
COM(94) 57 final: Communication from the Commission to the Council and the European Parliament on the application of Articles 4 and 5 of Directive 89/552/EEC (Television Without Frontiers).
COM(95) 224 final: Towards the information society.
COM(96) 192 final: Commission Green Paper: Commercial communications in the internal market.