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<th>European perspectives on the changing media environment and public service programming: the German experience.</th>
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In the Federal Republic of Germany broadcasting finds itself in a difficult stage of development. This phase has started approximately ten years ago when private broadcasting was first introduced in Germany.

1. Right up to 1985 public broadcasting held a monopoly in the former Federal Republic of Germany. Public broadcasting which still does exist today is non-profit, organizational and journalistic independent and financially sustained by broadcasting fees paid by the individual listeners, supplemented by income from advertising. In former East Germany broadcasting was totally state controlled that is, in organization and journalism, it was government dependent and was financed from state budget. Since unification of the two German states in October 1990 equal organizational and legal conditions apply. The Western system has been transferred to the new states. Public broadcasting and private broadcasting come under the same legislation. This side by side of public broadcasting and private broadcasting we call the dual system of broadcasting.

Broadcasting in Germany falls under the competence of the 16 states which in their totality form the Federal State. There are two reasons for that: on one hand cultural affairs are within the competence of the states and it's general understanding in my country broadcasting forms a part of cultural life. On the other hand this federal structure, this is decentralized structure of broadcasting, makes it impossible for the central power to control or misuse
broadcasting for their own ends as did happen during the period of fascism in Germany 1933 to 1945.

It is the prerogative of state parliaments to fix the monthly broadcasting fees to be paid by listeners for all broadcasting stations under the public broadcasting structure. Every four to five years state parliaments in joint cooperation readjust these fees. Responsibility for broadcasting programmes and administrative control of public broadcasting stations - and there are 11 of them - rest exclusively with the general directors who are elected for a limited time into office (usually this period lasts for four to six years). Election of leading management personal as well as jurisdiction over budgets and the control of management rests with specifically created committees which are independent of government and in which all socially significant groups are being represented. For a résumé one can say: the Federal State represented by the 11 States - through legislative initiative creates the independent public broadcasting and guarantees its existence. However the role of the state is limited to merely this function. All what remains additionally for the state is a rather limited supervision in legal matters. Each of this broadcasting stations is sovereign in its activities - except fixing the fees.

For the purpose of handing out licenses to private broadcasting stations, which are predominantly financed through advertising, based on legislation the states have created special institutions which, similar to public broadcasting, are politically independent and are financed to a certain extend through broadcasting fees.
These committees also have the task to control observation of the rules and conditions attached to the license. They have the power to withdraw the license.

All judicial fundaments and competences are based on the constitution of the Federal Republic of Germany. This prevents manipulation of the fundamentals by changing political majorities. Should politics be unhappy with certain programmes of public broadcasting - and usually it will be the political parties which will express this dissatisfaction, because they might consider expressed views as too critical or disrespectful - the only way to make their influence felt is through the existing broadcasting committees. In these broadcasting committees representatives of all relevant social groups are gathered including political parties. Relevant social groups in the German context include representatives of the various religious groups, trade union representatives, employers representatives, social and charity organizations the science and the fine arts etc. Political parties delegate members to the broadcasting committees according to their representation in state parliaments. Those representatives of political parties don't hold the majority in these committees and therefore are forced to team up with sympathizers within the other groups represented in order to form majorities. The broadcasting committees cannot determine or change the programmes of the broadcasting stations. This right rests exclusively with the director general. However, broadcasting committees elect the director general and in many cases also the directors and editors. Therefore, it is more through indirect means that politics secure its interests and make its influence felt. An other channel to exercise power is through the right to determine and
change broadcasting fees. However, also in this sector, it has become more difficult for political parties to exercise power after the Federal Constitutional Court has prohibited acts of political despotism in fixing broadcasting fees. Anyhow, there does remain a certain level of political influence as these committees fix the date, the amount and the duration of the broadcasting fee for the period to come. Public broadcasting has been endangered since its very foundation. However, all these challenges have never seriously damaged its independence. It is the diversity of programmes which still makes public broadcasting the heart, the core of electronic communication in Germany. Looking back at post war German history - there exist consensus in German society - that in the Western part of Germany, public broadcasting was undoubtabley one of the most essential pillars of building a democratic society.

In contrast, private broadcasting survives on advertising. It forms a part of market economy. Private broadcasting is profit oriented and is bound to achieve high listening figures. In contrast to public broadcasting programmes in private broadcasting have to be attractive to the masses to enable advertising to achieve its target in the market. While public broadcasting tries to appeal to the citizen or to use the more precise term "citoyen", public broadcasting tries to attract the customer, the consumer. What makes this fight about attracting listeners and viewers so thrilling is the fact that both, the citoyen and the consumer are hidden under the same address.

For the private stations, there are limits in this competition attached to the given license, limits which restrict their entrepreneurial
freedom. They also have to consider the need for information by providing broad variety of programmes. Those stations holding a license for full spectrum of programming have to observe certain time-limits on advertising. Finally, shareholding in private broadcasting corporations is limited in order to prevent market domination.

In all what I have said so far, there have been no indications on why the dual system finds itself in a problematic phase of development as I have said in the beginning. Allow me to try to exemplify the structure of the underlying problem.

Let me start up with the conclusion, that broadcasting in Germany can take place only based on law. The reason for that is the constitution or, to be more precise, the fundamental constitutional right of each citizen to express his views and opinions freely and to draw information from all publicly available sources without any hinderence. To secure these rights the constitution explicitly guarantees the freedom of press, film and broadcasting. I refer to the constitution to make perfectly clear that broadcasting is not being protected for its own sake, but in order to guarantee free information and communication in a democratic society. Freedom and existence of broadcasting is being guaranteed to serve the interests of the citizens. Freedom of broadcasting is serving society. Its institutional guarantee in the first instance serves the citizens and their rights in a democracy and not the freedom of enterprises. The constitutionally guaranteed right of free opinion, on one hand contains the right of defence for each citizen against the state. And in that respect it's a basic human right, on the other hand, it is
demanding active participation in political life by each citizen. In this respect it targets the general public, which is constitutional for a functioning democracy.

I have to ask for your clemency having gone into this constitutional excurse and by no means do I want to lecture you. However, this basic understanding I consider necessary in order to understand the problem which I am going to touch upon now.

2. The following description of the dual system in Germany will be restricted to the television sector. Many years of political infighting have preceeded the final approval of private television in Germany. Since all the technical possibilities of implementation and distribution of television had been established during mid 70ties, the fight finally was over formulating the concrete conditions of utilization: Who and under which conditions should be given excess to the market? The private economy including publishers of newspapers asked for rather liberal criteria for admission, asked for minimal restrictions to entrepreneurial activities. On the other hand, political parties, the churches, trade unions and also state governments of the political left always tried to contain private broadcasting in the obligation to serve the public interest. Not at least to protect public television from a deadly competition. However, it was the Constitutional Court which finally set the pass by deciding several guiding court cases. Today we have to confess that efforts of the legislature in all institutions created to hand out licenses and control the broadcasting corporations to a large extend did not succeed. One reason for this failure may be that on one hand in the private sector, that is in the market, exactly this
concentration of power took place which one originally intended to prevent. Even worse, this process of concentration has taken place beyond all dimensions. Today the corporations stretch beyond the level of their own programmes. They have embarked on trading in programmes and in recent times got themselves actively involved as network operators. Attractiveness to the masses holds first priority in drafting and composing programmes. The originally demanded multiplicity in programming has actually never rooted in these private TV corporations. And when public broadcasting unnecessarily tried to compete with the programmes offered by private stations, it happened at the expense of pluralism and quality of its programmes. As a result, the dual system originally presented as a well controlled and peaceful side by side of two different concepts of programming and philosophies to the benefit of the viewers has developed in a rather unexpected way. Today both groups, the private stations and public broadcasting try hard to win over the viewers by presenting an almost identical product. The original idea of a stimulating competition of differences in a supply of programmes has degenerated into a fight for market shares. The originally targeted pluralism of programmes has finally ended up in a great number of almost identical programmes.

In Germany there exist three private TV-corporations next to the two public Television programmes which can be received nationwide via cable and/or satellite. "Full spectrum of programming" we call those which contain information and news as well as entertainment and culture. Additionally there do exist numerous corporations which offer branch programmes targeting particular viewers groups for instance by providing children programmes,
music, sports channels, news programmes etc. Some of these stations are legally connected with those earlier mentioned private TV-corporations. Some of them are additionally linked up with foreign partners. I should not forget to mention that there exists also pay TV. Other services like "view on demand" or "teleshoping" presently are in an infant stage of development. Under the aspect of advertising, these many programmes possibly do exhaust the German market. Therefore we will probably see a period of concentration in next future. A trend towards concentration has been existing since very beginning as only a few corporations were able to raise the funds necessary to provide the enormous start up costs. Legislation and licensing conditions restricting shares ownership may be restrictive to this process of further concentration. However, there seems to be some hidden accumulation of shares beyond given legal limitations, for instance via family member ownership. Shareholding for an individual presently is limited to 49.9% of the paid up capital, if the corporation provides a nationwide full spectrum of programming.

Those holding 49.9% in the full spectrum tv corporation must not at the same time hold more but 25% of shares in another two corporations. Considering the limited advertising market in Germany these rather generous shareholding regulations consequently led to a concentration of power in the hands of a few. This process of concentration, one could even say market control, is supplemented by incorporating other sectors as for instance programme purchasing. One of the biggest trader in film rights in the world is operating from Germany who at the same time, is majority shareholder in one of the three nationwide engaged TV corporations. And as this par-
ticular trader in films, is also majority shareholder in the biggest
newspaper trust which at the same time owns 20% of the shares
in exactly his private TV-corporation. One can say without
exaggeration: the legislative which, as I see it, could have foreseen
all these developments, doesn't play an essential role in this huge
commercial media business any more.

What is of interest for us in this process of economic market control
over broadcasting is not just the economic aspect but the effective
control of electronic communication and on the other hand control
of the public through mere economic power.

What is happening to public broadcasting in this situation and in this
process of development? The biggest problem of public
broadcasting is its instability. Instead of putting all emphasis on the
legally backed task to provide a wide spectrum programme and
instead of actively standing against trends towards mass attractive
programmes, public broadcasting increasingly is chasing after these
trends. There are two reasons for that: on one hand public
broadcasting wants to prevent that its share in advertising - and by
that in income - will further dwindle away. In a tough competition to
win over advertising customers however, public broadcasting can't
compete with the private corporations due to a limit of maximum
twenty minutes of advertising per day. These advertisings have to
be beamed before 8:00 p.m.. On top of it, no advertisings must be
broadcasted on Sundays. On the other hand private corporations
only face the limitation that advertisements is permitted up to 20% of
their broadcasting time. And they may spread their advertising
over the whole day. Based on these regulations the income from
advertising in the public broadcasting has been reduced drastically. This is by more than 50 % over the last years. This has brought down to 15 % the share of the budget contributed by advertising. Income from public fees cannot compensate for these losses. Particularly as they can be increased only in greater intervals. Anyhow, to put the topic of increasing fees on the agenda is rather unpopular with state parliaments. And in future it will be more unpopular and by that even more difficult to increase fees, the more the standard of public broadcasting will become a like to that of private broadcasters. To reduce costs significant cuts have taken place in the overall structure of programmes. Soft entertainment is increasingly dominating early evening programmes which are important to get the advertising messages across to the customers. This takes place at the expense of serious information programmes. Licensing fees for attractive sports events, be it soccer, tennis or athletics have exploded over recent years and are hardly affordable for public broadcasters any more. And this also applies for the costs of A-category movies. However, attractive sports and movies are indispensable to maintain attractiveness of public broadcasting for the viewers. Ambitious self-productions which an earlier days had been a trade mark of public broadcasting have become very rare. Additionally an explosion in actor’s fees has taken place. A serious problem also for script-writers who have based their economic existence on books, journals and public broadcasting. Soap operas cannot compensate for these losses in the cultural sphere. As a result of heavy competition with private television corporations public broadcasting in vast areas has adopted also programme philosophy of those private corporations. Scale for the success of the programme is not the quality of a programme any more.
The number of switched on tv-sets, the range of a programme have become more important. Programmes for minorities or dealing with difficult and more complex subjects oriented towards a demanding audience don't rank very high in programme philosophies any more.

Facing this dilemma the printed media are not really supportive for the public broadcasting as they themselves are deeply involved in tv business. Printed media make best use of this interconnection by promoting private TV-corporations and favouring commercial programmes through extensive coverage. Quite frequently print media do agitate aggressively against the increase of viewer's fees considered so necessary by public broadcasting.

Emaciation of public broadcasting can partially be brought under control by avoiding a competition based on quantities with those private stations and by taking thought of the original task laid down in the constitution. Possibly this might result in a decrease in the number of viewers. However, recovering a quality oriented programme, it will be assured its place in society. Therefore it's my recommendation that public broadcasting should totally break away from advertising. Advertising will increasingly turn out to be problematic for the public broadcasting in our dual system. In this respect, I see the Britishe Broadcasting Corporation as a model. This would also relieve the strain on the political side in dealing with the continuous question of increasing viewer's fees. In the initial phase however, a compensation for losses would be indispensable.

I am convinced, that economic interlinkages of that kind as presently can be found in Germany should be prohibited by law.
Such diverse and to a large extend uncontrolled market domination by tv corporations, but also in the sector of trade in movie licenses and technical distribution systems which even could stretch into the area of new receiver technics, increasingly improved to be highly problematic. Cross ownership relations in the media sector are absolutely unexceptable in a democratic society.

The concentration of all these activities in the hand of the same enterprises which on top of it control the printed media, is not compatible with the principle of power-sharing which forms an essential requirement of democracy and which has to prevail also in a period of extended mass communication.

I don't want to hide that presently in European broadcasting policies there is a strong trend towards deregulation, to open the "economic good" broadcasting all flood gates towards concentration.

To be public is possibly the highest value of democracy and broadcasting is one of its most important and precious instruments. Recent developments in the German media scene may tell us how fast and partly thoughtless this value and its priority has been overrun by economic aspects. However, we are not subject on to this development and this is what I have tried to point out this morning. This is a part of our german experience of which I hope that having submitted it to you might be of use the one way or other for you. Thank you very much.