

Institut für Rundfunkökonomie  
an der Universität zu Köln

Olexiy Khabyuk, Manfred Kops (Eds.)

Public Service Broadcasting:  
A German-Ukrainian Exchange of Opinions.

Results of the Conference  
on June 22<sup>nd</sup>, 2010 in Kyiv, Ukraine

**Working Papers  
of the Institute for Broadcasting Economics  
at the University of Cologne**

**No. 276**

**Cologne, in December 2010**

**Arbeitspapiere des Instituts für Rundfunkökonomie**  
**Working Papers of the Institute for Broadcasting Economics**

ISSN der Arbeitspapiere: 0945-8999

*ISSN of the Working Papers: 0945-8999*

ISBN des vorliegenden Arbeitspapiers 276: 978-3-938933-82-4

*ISBN of the Working Paper at hand: 978-3-938933-82-4*

Schutzgebühr 18,-- €

*Price 18,-- €*

Die Arbeitspapiere können im Internet eingesehen  
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<sup>1</sup> The conference was organized by the Institute for Broadcasting Economics at the University of Cologne in cooperation with the Kyiv Mohyla School of Journalism and financially supported by the German Academic Exchange Service (DAAD) and the Federal Foreign Office.

<sup>2</sup> The results of another Conference that was organized in cooperation with the Kyiv Mohyla School of Journalism have been published as: Olexiy Khabyuk, Manfred Kops (Eds.): Public Service Broadcasting: A German-Ukrainian Exchange of Opinions. Results of the Conference on October 20th, 2010 in Cologne, Germany, Series Working papers of the Institute for Broadcasting Economics, No. 277, Cologne 2010, <http://www.rundfunk-institut.uni-koeln.de/institut/pdfs/27710.pdf>.



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Part 1:  
The Situation of the Media in Ukraine.  
Public Service Broadcasting Wanted?



Yevhen Fedchenko\*

## Current State of the Media in Ukraine: Challenges and Dangers. Opening Remarks

As our conference is international, my task is most difficult and trivial at the same time – to brief our international participants in 10 minutes on what Ukrainian media system is about. Probably everything I am going to tell you is very well known to all Ukrainian participants, but I encourage them to reflect on this anyway.

I have been looking for the good metaphor to start my brief. Since our media system is almost 20 years old, I have decided to compare it with a 20-year-old teenager. It's young, promising, idealistic (I do not remember exactly if we were very idealistic in our twenties), very often critical of others but not so much of themselves, sometimes ignorant, sometimes infantile. In the case of Ukrainian media, we can add some other important features: almost always under political pressure, struggling for freedom of speech and struggling to survive economically. Here I want to quote the president of our university, Sergiy Kwit (it's always good to quote your boss!). Later in his brief he will use the words "ghost of public broadcasting", we can also use the word "ghost" to describe both freedom of speech and political pressure – it's where the ghost of political pressure is clashing with the ghost of freedom of speech. That would be my other metaphor to describe current media environment in Ukraine.

Speaking of the political pressure and censorship ghost, we understand the worries of Ukrainian journalists and share their concerns about future of the profession and that's why Kyiv Mohyla academy hosted a "stop the censorship" movement first meeting a couple of weeks ago. Even when sometimes we realize that we cannot find much solid evidence of major pressure on journalists, many journalists argue that we cannot stand and wait until we have evidence of such pressure – it will be too late and we will not be able to recover our rights and freedoms.

Journalists' concerns are very understandable in a media culture where we have the Gongadze case never properly investigated and the masterminds punished. These concerns are understandable in a society where any bureaucrat can take a journalist's microphone away or where a president's bodyguard can obstruct a journalist's right to monitor centers of power, as happened to my former colleague Sergiy Andrushko from the STB TV channel just a week ago. But now every time authorities do injustice towards journalists they immediately

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apologize – a very good tradition and very unlikely move for the Ukraine of, let's say, 10 years ago.

But let us try to speculate about the nature of this apologetic mood: do those in power have a better understanding of what the role of journalists is in the society as our society moves through different stages of transformation? I am afraid no. There is no improvement in any basic understanding and we hear these apologies just because authorities do not want to have any ramifications because of their misbehaviour – least of all international pressure. Ukrainian authorities have never – I want to emphasize this – have never had a basic understanding of journalism's role in society. Has Ukrainian society understood this role and appreciated it? – hardly.

But let's ask ourselves if the problem of Ukrainian journalism lies only with political pressure. Why does the problem of censorship worry only the media crowd and why do we see very little pressure to increase the role of journalists in the society from Ukrainian society in general? The problem is not only about the president or parliament, even though their understanding of the issue and practices are often problematic. It's also about journalists themselves: how we see the profession and how we change it. One of my students has researched the image of journalists in media – in other words how we see ourselves. Content-analysis of Telekritika – one of the main places for media critics – shows that the most frequent word describing journalists is “unprofessional”. It sounds very disturbing to me. Another student has researched the discrepancy between what the audience wants to watch and what they are shown – it's very different: a huge gap exists, media does not want to recognize the needs of their audiences. Basically it neglects them. Another research shows that more and more Ukrainians – especially young ones – are actively moving from traditional media to the new media – for example, social networks. The number of Facebook users in Ukraine has doubled in the last two years. There people can find something of the notion of trust they used to have with traditional media . There is no more trust in Ukrainian traditional media. This is the main problem.

Journalists/editors/producers have been trading on audience trust for too long, selling news and corrupting the profession. The idea was we are a growing transitional market – let's become capitalists and then when we are rich and old we can afford truth and objectivity. It never goes like that. You either have that always or never. Of course if we compare what we had 20 years ago and what we have now – we will notice evolution. Everything has changed. Many people will not believe that 20 years ago we did not have any media system, no rules, no standards. At the same time many will argue that the growth is very slow, the pace ridiculous, the means unethical, the results questionable.

Some paradoxes: Ukrainian journalists have been trained so heavily by numerous international training and media bodies – probably more than journalists in any other country. And still we have very poor quality of published or broadcast content. We have had so many opportunities for self-reflection and structural reforms through different media advocacy groups, trade unions and professional gatherings – and we still have not reached a media culture based on





knowledge, service to society and professional solidarity. Part of our media crowd easily grasps new technology and innovation – like those who, just two days ago, graduated from our joint program with the Ahmetov Foundation. But very often they are at odds with their owners and editors. Other markets usually have the opposite trend.

And the very last paradox: Ukraine has had two bright examples of public service broadcasting. One was in television: in 1996-1997 the Vikna news program which was not state controlled or commercially motivated, and subsequently vanished into history. Another example was Gromadske radio, which successfully operated for few years and, again, vanished into history. Then my question is for our whole discussion today: is Ukraine a right place for anything public? Why have we lost these values in just couple of years of operation? Why is the Ukrainian audience not supporting this type of media? And finally, can Ukrainian journalists support the core values of public broadcasting?



Sergiy Kvit\*

## The Ghost of Public Broadcasting Service in Ukraine

Establishing Public Broadcasting Service (PBS) is a challenge and the most important task for Ukraine today, as long as its successful functioning is a witness of proper level of democratic development based on national economics, civil society and freedom of speech. Public Broadcasting Service has been one of the ticklish topics in Ukraine since 1991. During the years of independence, we have had professional considerations and broad public discussions about different models of public broadcasting functioning in the Western Europe, USA and Russia. However, the Ukrainian model still has not started working.

Implementation of necessary legislative changes or adjusting titles does not mean factual introduction of PBS. R. Pavlenko and I. Klymenko cite a comparative research of mass communication media in 19 countries, conducted by Baltic Media Centre in common with IREX. A special mention of the high level and democratic character of East-European media legislation (at that time – except Serbia and Belarus), which was in many aspects borrowed from the West-European, was made. However, another conclusion was that these laws do not always function – public media, practically, has not become independent, and works under strong political leverage. In the case of Russia, that meant just deception: a title of a TV channel – “Public Russian Broadcasting” – does not correspond to the content of the public broadcasting. For us, first of all, it is necessary to find out the real state of the Ukrainian media-market with the naming of all the main events in chronologic sequence.

In the spring of 1997, a television organization “Public Ukrainian Radio and Television Broadcasting” (Ukrainian abbreviation – HURT, close to meaning “team”) was established. The same year, in November, the Parliament passed a decree “About Establishing Television and Radio Organization of Public Broadcasting of Ukraine”, which stipulated giving the HURT Corporation the status of the television and radio organization of public broadcasting of Ukraine as a necessary part of the system of public television and radio broadcasting, and allocating for the Corporation state-wide channels UT-2 and UR-3. The same resolution obligated the National Committee to issue the HURT Corporation a license for 10 hours of broadcasting everyday on UT-2. But the matter did not get any farther than a declaration of intent.

It can be said that Public Broadcasting in Ukraine started from a project of Public Radio (2002-2005) founded by O. Kryvenko. As experts have remarked iron-

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ically, Public Radio has ceased to exist in full the swing of discussions about Public Broadcasting Service. Actually, it has appeared as an independent broadcaster with a well-defined audience. However, this has been a striking professional experience of ideological struggle for freedom of speech rather than public broadcasting.

The next example of misunderstanding related to promotion of the idea of PBS in Ukraine was a rather comical denomination discussion. Experts and politics were trying to cope with concepts for defining this kind of broadcasting – like “civil”, “social”, and “public”. T. Shevchenko, reasonably, proposed to call it “Ukrainian”, “national”, or even “people”, emphasizing that in the Ukrainian translation of the English formulation “Public Broadcasting Service” all these terms can be used as synonyms. The matter was complicated by the difference in the Ukrainian language between definitions, which sound the same, “hromada”, but refer to separate meanings of a small local community and a huge community as the whole society, although sometimes both of them can be synonyms, close to idea of “public”. T. Shevchenko underlined that the main characteristic feature of this PBS (which can be defined in Ukrainian as public / social / people / civil) is that it works in the public interest or serves citizens.

One more example we should also treat as a misunderstanding is the so-called Public Broadcasting Project by O. Tkachenko (2005). According to its logic, independence from the state creates favourable conditions for development of commercial activity which, in turn, should further professional independence. The “potential of the advertisement market” was the focus of O. Tkachenko’s attention. But the public component of the project is still unclear. Advertisers are not interested in production of programs belonging to the spheres of interest of public broadcasting, which are patently non-commercial. On the contrary, drawing more and more advertisement, a TV channel will inevitably reduce public priorities of broadcasting.

The same year, 2005, a coalition for “Public Broadcasting” was established. It included the National Association of Television and Radio Broadcasters of Ukraine, Public Council Concerning Freedom of Speech and Information, Public Organization of “Telekrytyka”, Institute of Politics, Academy of Ukrainian Press, “The Equality of Opportunity” Committee, and the Kyiv Independent Media Trade-Union. Within the frame of activity of this organization, a number of interesting documents appeared; among them: “Concept of Program Policy of Public Broadcasting of Ukraine” (working group – O. Tkachenko, V. Dobrovolska, E. Blyzniuk, V. Vybranovskyi, Z. Butyrynskyi, Y. Zakharchenko, O. Panuta) and “Basis of Editorial Policy for Information Editorials of Society (Public) Broadcasting” (working group – I. Kulias, N. Lihachova, D. Krykun, I. Chemerys, O. Chekmyshev, S. Datsiuk, K. Lebedieva, T. Zhmakina, V. Kovalenko). T. Lebedieva emphasized that in establishing public broadcasting, one should not confide in the government because it is used to one-way communication and propaganda sleights.



After the Orange Revolution, the idea of transformation of the National Television Company, National Radio Company, Region State Television and Radio Companies, “Culture” TV and “The World Service of Ukrainian Television and Radio” into a new Public Broadcasting Service was popular. T. Stetskiv and A. Shevchenko, heading the National Television Company of Ukraine, were trying to establish on its basis four channels of Public Broadcasting.

According to A. Shevchenko, this process should keep the following principles:

- 1) the society is the owner of the broadcaster (it cannot go private)
- 2) the society finances it
- 3) the society controls its program policy

Although the project of PBS was popular in general, and was being promoted, the political will of the top government of the state was needed for its implementation. But it was not shown, although this is hard to understand applying common sense: the audience of The First National TV Channel fluctuates with 2-3% of viewers. At the same time, all the Ukrainian political leaders, no matter if they are in office or in the opposition, seek control over it, in spite the fact that the inefficiency of this attribute of power is obvious. This is based on the post-soviet psychology of the Ukrainian politicum, which encourages them to treat mass media only as tools for public opinion manipulation. As a threat to its job, the unqualified staff of NTCU consolidated surprisingly quickly against the idea of Public Broadcasting, and the project stopped.

However, a special responsibility for the not-implemented project of Public Broadcasting Service is on the Orange Revolution leaders who gave conformable promises at Maidan in 2004, and personally on V. Yushchenko. Five years of his cadency was just enough for implementing Public Broadcasting. I was awe struck, as a member of the National Committee for Freedom of Speech Maintaining and Information Field Development under the President of Ukraine (2006-2010), that Public Broadcasting was among the first and the last issues of our activity – with a gap of four years, like, let us discuss this topic once more. The government was not going and is not going to implement this project.

the consolidation of Ukrainian media organizations on principal questions should be noted. The National Committee for Freedom of Speech Maintaining, which I have already mentioned, developed “The Principles of Implementing Standards of Public Broadcasting in Ukraine”:

1. The main thing differing public broadcasting from state broadcasting is its independence of government institutions and its work on behalf of the whole society. Public broadcasting is established, unlike state broadcasting, on this basis.
2. Public broadcasting in Ukraine is based on state ownership. Television organizations based on state ownership can exist in the form of public broadcasting only.



3. At a channel of public broadcasting, a collegial administrative board should be formed; it is obligatory.
4. Nomination and dismissal of executives of public broadcasters should come within the terms of reference of the collegial administrative board.
5. The principle of forming the collegial board should presuppose participation of the President of Ukraine, the Parliament of Ukraine, and of non-government organizations.
6. Public broadcasters should give a yearly account to public, as well as to the President of Ukraine and the Parliament of Ukraine.
7. Independence and activity objectives of public broadcasters should be formalized in legislation.
8. Public broadcasters should have their own editorial statutes.
9. Financial vehicle of public broadcasting should guarantee its independence.

In May of 2005, Parliament proceedings on “Perspectives of Public Broadcasting Establishing in Ukraine” were held, with all the necessary consensuses and announcements of different positive perspectives. In March of 2007, a declaration about cooperation with a view to implement public TV and radio broadcasting in Ukraine was signed by the Head of the Parliament Committee for Freedom of Speech and Information, A. Shevchenko, the Head of the National Committee for Freedom of Speech Maintaining and Information Field Development under the President of Ukraine T. Petriv, the Head of the State Committee on Television and Radio Broadcasting of Ukraine E. Prutnik and the Head of the National Committee of Ukraine on issues relating to Television and Radio Broadcasting V. Shevchenko.

In 2006-2007, the State Committee of Television and Radio Broadcasting developed projects of Directions of the Cabinet of Ministers of Ukraine “About Confirming the Concept of the State Program of Establishing Society Television and Radio Broadcasting in Ukraine” and “About Confirming the Concept of State Program of Scientific and Technical Development of State Television and Radio Broadcasting in 2006-2009”.

In February 2008, a Decree of the President of Ukraine #148/2008 appeared. It evoked negation and indignation of the professional community. Regarding the presupposed parallel existence of public and state broadcasting, hypocrisy of the state power and its unwillingness to translate promises into actions became evident. Next year, in 2009, A. Shevchenko registered a project of a new version of the Law “About the System of Public Broadcasting of Ukraine”, which was rejected by the Parliament in June. T. Petriv at least twice, in 2008 and 2010, prognosticated the establishment of Public Broadcasting, but no factual consequences followed.

From this short overview of the main events, at least a few conclusions about the next steps of Ukrainian media community can be made. First, Public Broadcasting needs to pool together the efforts of all the people participating in the



field of media in Ukraine – non-government organizations, experts and journalists. Second, this project can be implemented only if it gets the support of the whole Ukrainian society. Third, a concerted action for lobbying public broadcasting in Parliament and Government is necessary. Fourth, public broadcasting should become a part of the political rhetoric of the opposition. Regardless of different conditions for the functioning of PBS in other countries of the world, in particular its incurableness in Great Britain, for Ukraine public broadcasting continues to be inalterably relevant, because of the necessity to protect the public interest and to balance professional competition in this direction between all the Ukrainian broadcasters. The ghost of Public Broadcasting Service must be embodied.





Part 2:  
Public Service Broadcasting in Germany –  
a Theoretical Approach



Peter Schiwy\*

## Public Service Broadcasting – a Legal Definition

Ladies and gentlemen, dear colleagues,

First I would like to say I am terribly sorry for having to take the risk of boring you, but unfortunately the topic of my lecture is a very judicial one and therefore the opposite of fun.

But please be so kind as to allow me to explain a legal definition and its explanation in the first two minutes of my lecture and I will try to be a little bit more captivating later on.

The legal definition of broadcasting in the German Interstate Treaty on Broadcasting and Telemedia (Interstate Broadcasting Treaty) reads as follows:

*“Broadcasting means a linear information and communication service; it means the provision and transmission of offers for the general public for simultaneous reception in moving images or sound along a schedule, using electromagnetic oscillations. The term includes offers which are transmitted in encrypted form or can be received against special payment.”*

If you were listening to these sophisticated lines as a jurist, you would know that they were written by a colleague; a less judicially educated person will hardly understand the meaning.

Compared to other basic rights, German jurisdiction has constituted the freedom of Public Broadcasting very extensively. Among other things, the basic principles of the dual broadcast order (meaning the existence of both private and public-law broadcasting) were established by the Federal Constitutional Court in Karlsruhe. A considerable amount of broadcast verdicts have defined the standards of an independent broadcasting system without any influence from executive authorities on its contents. Broadcasting is both media and a factor in the process of the free formation of opinion, which is constitutionally protected. Broadcasting puts opinions on the air and, due to its broad coverage, reaches more individuals than almost any other means of communication. Therefore, well-balanced programmes must be guaranteed. The special standards of the public law on broadcasting are based on this concept. Private broadcasting can exist in line with constitutional requirements only by the diverse and well-balanced creation of programmes for the purpose of a basic service that is not dominated by any political or social powers. It is the public broadcasting we have to pay for which has to provide this basic service. In general, every German household is forced to pay almost 18 Euros per month, that is around 170

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UAH per month per person, to be able to view TV and listen to radio. In this respect, "basic service" is not to be understood as a minimum service with a pure high-culture format. In fact, the assignment for basic service also covers the entertainment and sports sectors, not only the information sector. However, the decision on how these sectors have to be proportioned in the entire programme are made by the institutions. Unfortunately, the sometimes extensive expansion of the sports sector at the disadvantage of pure political or cultural broadcasting gives cause for concern.

On the other hand, private broadcasting, the second pillar of the dual system, does not have to fulfil such strict standards of balance. The total programming of the private broadcast stations must merely reflect the diverse points of view of the whole social stratum. By this it is taken into account that the private broadcast stations cannot resort to fee financing and thus they are forced to sell commercials. They depend on a high number of viewers, as the charge for air-time is calculated by cost per mille (cost per thousand).

This concludes the introduction part of my presentation. Let us widen our practical view a little bit.

Germany, as you might know, is with about 80 Million inhabitants the biggest country in Europe – if you don't include the Ukraine, Turkey or Russia. It is densely populated, has a high per capita income and belongs to the economically wealthiest nations. It is very successful at exporting goods, mostly machines and cars. But when it comes to the media sector, nobody would think that Germany is one of the leading nations. There are hardly any German media companies or trusts which are as famous for international activities as companies from the US, Japan, Great Britain or France. Even though the German radio market is regarded as being a very competitive one, it is still mainly national.

This is due to several facts that distinguish the German system from others. First it has to be mentioned that traditionally the media in Germany are not seen as an economic sector but rather as a fundamental cultural commodity and expression of societal needs, which means integration, political participation and unbiased information for everyone. At all stages of its development – except during the Nazi and the Soviet Regime in the former GDR – the media system has been decentralized, dominated by a wide variety of small and middle-sized businesses, never monopolized and always well-protected by law and jurisdiction.

But what looks very favourable on the one hand produces some difficulties on the other: The German media system is one of the most complicated in the world. This is due to several distinct aspects:

- One reason is Federalism, in which a total of 16 states are individually responsible for all elements pertaining to the media. Although in principal this encourages more diversity, in reality it also leads to a greater necessity for mutual cooperation, permanent consultation and compromise.



- Germany in general is famous for its highly regulated and bureaucratic systems. These also includes the media. Broadcasting laws regulating media comprised of press, radio and TV exist in all federal states. To come close to ensuring a certain congruence on a national level, treaties are in place between the federal states to regulate standards, especially with regard to broadcasting development. To put it ironically, unfortunately, even the Germans had to learn that the special qualities of TV broadcasting don't match those of the state boundaries. TV is broadcast nationally and satellites even make it international.
- Germany is a member of the European Union. The regulations laid out since the late eighties by the European Community in the areas of broadcasting and satellite communication are therefore also applicable by law in Germany. This applies to the freedom to establish media companies and the freedom to broadcast in all member countries. There are fixed standards concerning child welfare and protection, advertising (concerning amount, duration and products), for counterstatements and for liability.
- Only Germany supports a dual Public Broadcasting System, at a world-wide record level of cost of more than 7 billion Euros per annum. The TV and radio markets are dominated by two public provider systems, which are the ARD and the ZDF.

Another possible consequence of this highly complicated and non-transparent system is that few foreign publishing houses or broadcasters have entered the German market. On the other hand, severe restrictions from domestic anti-trust laws are forcing German corporations to seek their fortune in other European states, but hardly ever in the United States. Internationalization has however – particularly due to the enormous financial requirements involved – greatly increased foreign investment in Germany. As in everywhere else in the world, online-communication, e-commerce, search engines, entertainment programs, films, popular music and the hardware sector are dominated by Americans. But the so-called "traditional media" are, with a few exceptions in the TV sector, still German companies.

Fundamental to the German media system are Germany's constitutional guarantees of freedom of information and of expression, as well as freedom of the press. The media are independent of the state. State media policy – including all laws – only serves to support the freedom of the press, its independence from the state, independence from other economic or social groups, and most of all, to guarantee diversity of information for the public. The Constitutional Court of Germany continually defends freedom of the press and requires that the government impose regulations to ensure that freedom. This means, in practice, that anybody can publish newspapers and magazines in Germany. However, permission from a federal state for a radio or television broadcasting license is necessary. This licensing policy has to observe strict legal norms and is controlled by a board of trustees.

Even so, I must emphasize that the role of German traditions in developing a system of public broadcasting has been a minor one. After the Second World



War, the German Public Broadcasting system was established on the English model. The Allied Forces imposed this system in Germany as a guarantee for independence from state propaganda influence.

The Basic Law, the Constitution of the Federal Republic of Germany, came into being in 1949. The politicians who drafted it decided to give the competence for cultural affairs, and thus for the new media system, to the Länder (states). The authors of the Constitution thereby took account of the disastrous consequences of the suppression of all freedom of information and expression during the National Socialist and the Soviet regime from 1933 to 1989. Basic Law, Article 5 (Freedom of expression):

- (1) Every person shall have the right to freely express and disseminate his opinions in speech, writing, and pictures and to inform himself without hindrance from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship.
- (2) These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons, and in the right to personal honour.
- (3) Art and scholarship, research, and teaching shall be free. The freedom of teaching shall not release any person from allegiance to the constitution.

Consequently, in Germany journalists work free of state control. But publishing companies' editorial guidelines and the media companies' profit-oriented business policy can influence the topics journalists cover and how they treat them.

The federal states' media laws can be classified in three groups:

1. Press laws,
2. Laws regulating public broadcasting corporations,
3. Media laws regulating commercial broadcasting companies.

The states have standardised the law covering electronic media by means of several state treaties. Thus, the State Treaty on Broadcasting in United Germany, of 31 August 1991, transferred the federalist broadcasting system of the Federal Republic of Germany to the broadcasting system of the former German Democratic Republic.

In this speech, I have had to concentrate my attention on aspects of the German mode of broadcasting, and its legal and organisational framework. The financial framework will be described by Mr. Kops, the next speaker.

In the 16 German federal states, public broadcasting corporations transmit over 16 radio and 15 television channels. Each of them has its legal basis in either state broadcasting laws or in interstate treaties

The state media authorities allocate the licences for commercial radio and television companies, which are valid for nationwide transmission. In their own territories, the state governments try to licence as many financially strong programme providers as possible because media companies are regarded as a



growth industry. Applicants for licences orient themselves for the most favourable rules for them under media law. For instance, the state media laws' provisions on cross-ownership vary greatly. Some give licensing priority to press organisations, others exclude newspaper publishers from having a stake in broadcasting companies.

In the view of the Federal Constitutional Court, the Federal Republic's constitution asks the legislature to guarantee a public broadcasting system financially independent of the government and free in its coverage and thus enabled to report on all important issues unaffected by the particular ruling parties. The Federal Republic owes its liberal and efficient mass communication system basically to the jurisdiction of the Federal Constitutional Court. In this respect, public radio, organized in a way that it is not controlled by the state, can itself be seen as a power, one which is separated from the other powers of the state.

Well, I'm sure that this presentation has been anything but entertaining. Maybe we can make up for that in private conversation.





Manfred Kops\*

## Public Service Broadcasting – an Economic Definition

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## Public Service Broadcasting – An Economic Definition

### 1. The Market, the State, and the Voluntary Sector as Alternatives for the Provision of Goods

In general, economic theory distinguishes three alternative ways to provide goods: the market, the state (government), and the voluntary (non-governmental, non-profit) sector. Each of these institutions has advantages and disadvantages, capabilities and weaknesses, which have been discussed in detail in many economic text books, both in general<sup>1</sup> and applied to different types of goods or different sectors of economies in particular.<sup>2</sup>

- The *market* relies on self-interest and profit making, and thus is highly cost efficient, motivating and dynamic. It is a capable instrument to discover latent demand, and to adapt to the preferences of consumers. And it also is an instrument to influence preferences and to create new demands. As the decision to offer and buy goods is left to the individual, the market also allows the utmost freedom in decision-making.

On the other hand, for certain goods the market may fail: It may not (or not sufficiently) provide public goods and goods with positive externalities, and may provide too many goods with negative externalities. It also may fail for goods which are not excludable (i.e. when it is not possible to enforce payments), for goods which have sub-additive costs, i.e. economies in scale and scope (which may lead to monopolies and a lack of variety), and for goods for which the information about the product quality differs between the suppliers and the consumers (so called “asymmetric information” which may lead to moral hazard and adverse selection). Besides these weaknesses in allocative efficiency, the results of a market provision may differ from a society’s ideal of the fair distribution of income and welfare.

- The *state* relies on sovereign authority and cohesion. As a central and authoritarian decision maker it can take into account positive and negative externalities and asymmetric information; and it can provide non-excludable goods, which need to be financed publicly by taxes and fees.

On the other hand, the state is less cost efficient, and it is less motivating and dynamic than the market, as it does not rely on the consumers’ individual evaluation, and as it is not based on free individual decisions but on central (collective) decision-making. The state may also cause distributive deficiencies, as politicians and bureaucrats are not always benevolent but sometimes maximize their own benefits instead of distributing income and welfare according to the respective societies’ distributive norms.

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<sup>1</sup> See for instance GHOSH 2001, DUBBINK 2003, WINSTON 2006.

<sup>2</sup> For the broadcasting sector see sections 1.2. - 1.4. below.



- The *voluntary sector* is neither driven by private profit making, nor by the politicians' and bureaucrats' target to assure and obey political power. Instead it relies on intrinsic motives, e.g. to care for loved ones (child raising, caring for the old and sick), to create durable beauty or originality (arts) or to influence and convince others (poetry, literature and journalism). These motivational powers may lead to the provision of goods that are innovative, consumer-oriented and at the same time in the interest of the public.

On the other hand, the voluntary sector per se suffers from financial straits, as the goods and services provided are non-excludable (and thus cannot be sold). Because of the notorious scarcity of resources of most voluntary organizations, their goods and services usually lack professionalism and quality. In addition, the voluntary sector may have deficiencies with regard to the distributive results, as its non-governmental, non-profit organizations also may be managed by selfish individuals who cannot be controlled perfectly by the organizations' members and thus try to achieve private benefits.

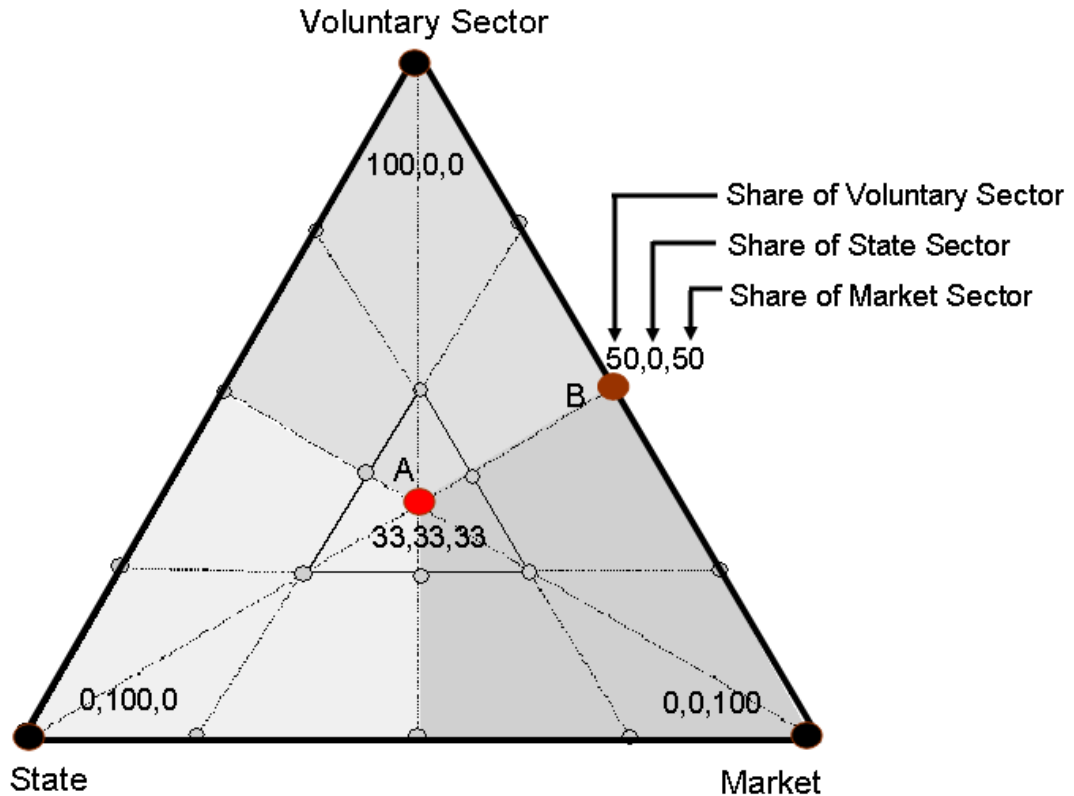
Because of these pros and cons, the market, the state, and the voluntary sector are combined in all existing economies. However, the size (or relative importance) of the three institutions varies. In capitalist economies the market dominates; in centrally planned economies the state dominates, and in many traditional or less developed economies the voluntary sector dominates. These differences can be explained both by differences in the capability of the three institutions (e.g. due to the different stages of the social and economic development of the countries) and by differing ideologies about these capabilities – which may be based on the experiences people have had with the alternative institutions in the past.

As in other countries, in Germany there is also a permanent discussion about the question if goods should be provided by the market, by the state, or by the voluntary sector (also called “third sector”). In Post-War Germany we have answered this question in general: We consider the market as the primary solution. However, as our term “Social Market Economy” indicates, we also consider it necessary to complement the market by a non-market provision of certain goods and services. For many realms of our economy, the market dominates this mixed provision (e. g. for the production of consumer goods as cars, clothes or food); for other realms a public provision by the state dominates (e.g. for schools, universities, transport infrastructure, or for the inner and national security); for again other realms the voluntary sector dominates (e. g. for many cultural, charitable and social goods and services). From that regard the term *mixed economy* probably is a better description for the German economic system than the term market economy or social market economy.

Figure 1 describes this mixed economic order graphically. Here the three corners of the triangle represent the three pure forms of the provision of goods by the market (the low right corner of the triangle), by the state (the low left corner) and by the voluntary sector (the upper corner). And the space within the triangle represents mixtures of these three ideal types. Point A in the centre of the triangle, for instance, represents an economy in which the market, the state, and the

voluntary sector are of equal importance for the provision of goods. And point B in the middle of the right border line describes an economy in which the voluntary sector and the market sector are of equal importance (and the state sector has no influence at all).

Figure 1:  
The Influence of the Market, the State, and the Voluntary Sector  
for the Provision of Goods



If there are reliable empirical data about the sectors' economic value added, one can also exactly quantify the relative importance of the three sectors. Then a service which for instance is provided with equal shares by all three sectors has a vector of 33,33,33 (point A in figure 1); and a service which is provided half by the voluntary sector and half by the market (and not at all by the state) has a vector of 50,0,50 (point B).



## 2. The Market, the State, and the Voluntary Sector as Providers of Broadcasting Programs

### 2.1. The Market as Provider of Broadcasting Programs

What has been said for goods in general also holds true for broadcasting programs<sup>1</sup> in particular. Like other goods, broadcasting programs satisfy private needs of the listeners and viewers on the one hand, e.g. the need to be entertained, to be informed, or to be educated. With regard to these attributes there is a private willingness to pay: Broadcasting programs can be sold to “consumers” by subscriptions, either separately (pay per view) or as program bundles (pay per channel). In addition, broadcasting programs are a most suitable means to catch the viewers' and listeners' attention for advertisements. They therefore are appropriate carriers of commercials and sponsoring messages, which are sold to advertising companies.

In both forms broadcasting programs can generate private revenues and profits.<sup>2</sup> And they did: During the last century, at least until the end of the last decade, in most of the industrialized countries of the Western world the turnarounds and profits from broadcasting programs, especially from television programs, grew faster than the economies in general. In developing countries broadcasters meanwhile belong to the fastest growing industries as well.

The World Trade Organization (WTO) emphasizes these attributes of broadcasting programs as private goods and as commercial goods, for instance. It considers the markets' advantages as being highly efficient and preference orientated, cutting slack and abolishing unattractive or unprofitable program offers (or programs for audiences that are not able to pay or that are not attractive to consumers and as targets for advertisers).<sup>3</sup> Thus the WTO protects and promotes international free trade, including for services, and also for the audiovisual sector.<sup>4</sup> And it tries to expand this mission to more and more industries, also

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<sup>1</sup> We restrict Broadcasting programs to radio and television programs here. But the term also could be extended to new forms of electronic mass communication. Since 2009, the German Interstate Broadcasting Treaty (“Rundfunkstaatsvertrag”), for instance, also considers audiovisual online services (“Telemedien”) as broadcasting programs. See KOPS/SOKOLL/BENSINGER 2009, pp. 40 et seq.

<sup>2</sup> For a description and forecast of the economic importance of 14 entertainment and media segments see PRICEWATERHOUSECOOPERS 2010, for the German TV Industry also see Radtke /Dilevka 2009.

<sup>3</sup> The trade policy of the WTO is described at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm11\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm11_e.htm).

<sup>4</sup> See KOPS 2005, KOPS 2006a; KOPS 2006b. It should be mentioned, however, that the WTO's “General Agreement on Trade in Services” still makes considerable exceptions for audiovisual products, as some of the cultural and social functions of the media have been recognised. See MICHEL 2003.



to the audiovisual sector.<sup>1</sup> Also the European Commission which is trying to expand its competences for broadcasting and media politics against the member states of the European Community, frequently emphasizes the advantages of the market; and it tries to strengthen the market as the main provider of broadcasting programs.<sup>2</sup>

On the other hand, *market failures* or market deficits also apply to broadcasting programs. Only a few of them are obvious, others are subtle or hidden. In order to discover them, one has to adapt the general economic theory to the peculiarities of broadcasting programs, whilst taking into account the findings of other social sciences (like communication theory, political science, and political journalism).<sup>3</sup> Only then can the general economic attributes of the theory of market failure be properly translated into journalistic and artistic/creative attributes. And only then will it become apparent that there are several forms of market failures which cause a divergence between the markets' offerings and the desired outcome, especially with regard to the social and political functions of the media, and especially with respect to the media's important functions for the promotion of public communication.<sup>4</sup>

The main forms of such market failures and deficits for broadcasting programs are:<sup>5</sup>

- *Highly sub-additive costs (economies of scale and scope)* cause horizontal, vertical, and diagonal media concentration. This allows the monopolistic or oligopolistic program providers to dominate public opinion and to promote their own commercial interests. It also leads to a focus on mainstream programs ("more of the same"), while programs for minorities (which are more expensive for each of the few viewers and listeners) are not provided.<sup>6</sup> In the course of globalization of program markets, this mechanism may lead to focusing on identical contents and formats worldwide and to a diminishing

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<sup>1</sup> The WTO expresses this expectation on its homepage (ibid) as follows: "The Uruguay Round was only the beginning. GATS requires more negotiations, which began in early 2000 and are now part of the Doha Development Agenda. The goal is to take the liberalization process further by increasing the level of commitments in schedules." BEVIGLIA-ZAMPETTI 2005, p. 279, concludes: "the WTO regime provides a highly relevant and sophisticated framework for the audio-visual sector, both in the area of trade liberalization and in that of the protection of rights. ... We have so far only witnessed the opening salvos in the discussion."

<sup>2</sup> See MICHALIS 2010.

<sup>3</sup> ibid

<sup>4</sup> See KOPS 2006b; KOPS 2011.

<sup>5</sup> See ibid, pp. 107 et seq.; KOPS 2001b, pp. 57 et seq.; HELM 2005b; WARD 2006.

<sup>6</sup> See GRANT/WOOD 2004; KOPS 2006b; KOPS 2011a.



amount and scope of programs that are in the interest of minorities (also with regard to local, regional or even national program content).<sup>1</sup>

*Non-excludability* means that the supplier cannot hinder consumers, who are not able or not willing to pay for a product, from consuming it. Non-excludability thus impedes a decentralized “quid pro quo” exchange between suppliers (providers) and consumers (recipients) of broadcasting programs, and it promotes forms of indirect exclusion (e.g. of air time for advertising companies), causing negative program effects (such as ignoring the programming needs of people with low income or with an invariable consumer structure).

- *Production and consumption externalities* cause deviations between the overall welfare created by the sum of individual production and consumption decisions and the total public welfare. Positive externalities of programs that generate public welfare (e.g. by supporting integration, democracy, and peace), for instance, are not positively evaluated (and thus are not included by the calculations of markets); and negative externalities of programs that reduce common welfare (e.g. by supporting separation, dictatorship, and violence) are not negatively evaluated (and thus are not excluded by the calculations of markets).<sup>2</sup> Because of these externalities, some voices even consider broadcasting programs not as private economic goods at all, but dominantly as public “cultural” goods that should not be provided by the market at all.
- *Information asymmetries* between the providers and recipients of the broadcasting programs (e.g. of news, political commentary, consumer awareness) can generate an “adverse selection”, i.e. the substitution of programs with non-visible attributes (so-called trust goods) with programs with visible attributes (so-called search goods).<sup>3</sup> At the same time they change the journalistic and artistic/creative attributes of programs, e.g. increasing program elements that are more seductive (such as emotional, sensational, fictional, offending, or violent elements).<sup>4</sup>
- *Intransitive consumer preferences* allow broadcasting programs with high private and public benefits that are preferred under circumstances favourable for a rational choice to be displaced by programs with smaller or even negative benefits under other, less favourable circumstances (e.g. after a hard

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<sup>1</sup> Ibid. This is the theoretical background for attempts to exclude the media from the WTO’s “General Agreements on Trades in Services” (GATS). See e.g. METZE-MANGOLD 2006; METZE-MANGOLD/MECKEL 2006.

<sup>2</sup> GRAHAM/DAVIS 1997, pp. 11f.

<sup>3</sup> For the differences between search goods and trust goods and the economic consequences of allocating them by markets see e.g. SHAPIRO 1983.

<sup>4</sup> These consequences are characterized in more detail by newer studies in political journalism. See e.g. LEDBETTER 1997, HAMILTON 1998.



days' work, television programs are passively consumed, mainly providing entertainment, relaxation and escape).<sup>1</sup>

In Germany, the dispute if broadcasting programs (or the mass media in general) are marketable private goods ("Wirtschaftsgüter") or non-marketable public goods ("Kulturgüter") has a long tradition. It can partly be unravelled if one distinguishes between different forms of benefits: On the one hand the media create private benefits ("consumer benefits"); for instance by informing, entertaining or distracting its "consumers"; for this part the market can unfold the above mentioned capabilities. On the other hand the media create positive or negative effects for "third parties" which are not involved in the market decisions, or even for all members of society (the "citizen benefit" of the media). For instance, the media can contribute to more intensive public communication and public decision making (which boosts the functioning and efficiency of the society to the benefit of all members of society), but it can also cause social conflicts and disintegration (to the disadvantage of all).<sup>2</sup>

In sum, one can say that the market is not as competent in the provision of broadcasting programs as it is for most consumer goods, but that programs should also be distinguished with regard to its contents, remits, and making. Then it might turn out that for certain broadcasting programs the market may fail considerably, but for other programs it may work fairly well.<sup>3</sup>

In addition to these allocative criteria, the *distributive effects* of a provision of broadcasting programs have to be considered. Whereas for many goods a distribution by the market, which is determined by the people's income and purchasing power, is accepted (also with regard to its value as an incentive to work), for broadcasting programs this might be disadvantageous: When people with a higher income are better served with broadcasting programs than people

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<sup>1</sup> See BRENNAN/LOMANSKY 1983 who distinguish between „ reflexive preferences” and „ market preferences”. Also see KOPS 2005b, pp. 355 et seq.

<sup>2</sup> For this analytical differentiation between consumer benefit and citizen benefit of the media, and for the difficulties to separate both elements in practice, see KOPS/SOKOLL/BENSINGER 2009, pp. 77 et seq.

<sup>3</sup> While some of these allocative market failures occur in broadcasting programs in general (e.g. economies of scope), others are restricted to special types of programs or their importance varies according to specific attributes of the programs. Externalities, for example, are higher for programs that focus on public information (e.g. news magazines or political magazines, and political reports), and are lower for programs that focus on entertainment (e.g. sports or TV-serials and films). Likewise, information asymmetries are higher for programs whose benefits rely mainly on non-visible attributes (such as truth, actuality, fairness, or plurality, which determine the value of political reports). And they are lower for programs whose benefits mainly rely on visible attributes (such as action, excitement, or comedy). The economic (and journalistic and artistic/creative) tributes of the programs thus determine whether they can be provided by markets or should be provided, at least partly, by governments or non-governmental public organizations.



with a lower income, there is the risk that societies split into information “haves” and “have-nots”, and that this gap will increase in the long run – with negative impact on the societies’ coherence and stability.<sup>1</sup> This risk becomes even higher for “information societies”, in which more and more functions (education, culture, politics) are imparted by the media – and especially by broadcasting (and during the last years also by new online services). The buzz phrase “digital divide” describes this risk of modern information societies, and it indicates that not only for allocative reasons but also for distributive reasons should broadcasting programs and other communication services not be provided solely by the market.<sup>2</sup>

## 2.2. The State as Provider of Broadcasting Programs

The disadvantages relating to commercial and third sector broadcasters could be prevented by state broadcasters. A benevolent state broadcaster could and would provide programs of public value that are not profitable (and therefore would not be provided by commercial broadcasters, e.g. educational programs for poor viewers and listeners who are unable to pay a subscription or to buy the advertised goods) or programs with high external benefits (e.g. programs that support the integration and stability of a society, or programs that foster the cultural heritage and traditions of a country and its regions). And – in contrast to the third sector – a benevolent state broadcaster also could and would ensure that the voices of all social groups would be represented, regardless of their motivation and financial or non-financial capabilities.

However, these theoretical capabilities are hardly relevant, as state broadcasters in fact are not benevolent. Instead, they attempt to express and popularize the political ideas of the respective government and to ensure that a particular government will be re-elected. This target reduces and biases the content of broadcasting programs with political content (like news or political debates, reports and commentary). Since the attitudes of governments are supported systematically and the attitudes of political oppositions are systematically suppressed, fair competition between competing political ideas is prevented. Broadcasting then does not serve the citizens’ interests, but rather the governments’ interests. This risk is reduced (though not abolished), when the respective parliament, not the government, is the decisive authority on broadcasting.<sup>3</sup>

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<sup>1</sup> See PHELPS 1986, pp. 130f. For the negative distributive consequences of a market provision of the media see KOPS 2011a.

<sup>2</sup> Although it did not use the economic terminology and did not explicitly refer to the economic theory of market failure, the Federal Constitutional Court of Germany (“Bundesverfassungsgericht”) has persistently emphasised these risks in its jurisdiction.

<sup>3</sup> To achieve this target, parliaments’ competences for broadcasting law and broadcasting policy should be strengthened, and safeguards that hinder governments from exerting force against rival political ideas should be put in place. These safeguards may be in the form of comprehensive duties for governments, or the absolute or 2/3 parliament majority for laws that affect broadcasting and mass media in general. This can be achieved by strengthening and explicitly formulating parlia-

In addition, state broadcasters suffer from some other disadvantages. Compared with commercial broadcasters, they are less efficient (as they are not disciplined by market competition and are not driven by profit-making), and they also are less consumer-oriented, i.e. they only react slowly to the viewers' and listeners' changing program preferences. The latter disadvantage is even higher for broadcasting than for other sectors of the economy, because broadcasting requires a high degree of administrative support, and programming cannot be standardized and qualified – two peculiarities that make the controlling of cost and quality by accounting and benchmarking more difficult (but also more important) than for most other industries.

Additionally, a provision of broadcasting programs by the state may also have distributive defects. Although access to broadcasting services, or, more generally, to communication services according to the criteria of need, rather than those of purchasing power, might be an advantage (see above), this does not mean that a non-market provision necessarily assigns broadcasting programs more appropriately than markets: Depending on the distributive criteria (need indicators) that are considered by politicians and bureaucrats and their administrative execution, the distributive results of a non-market system can be as inappropriate or even more inappropriate than distribution according to market factors.<sup>1</sup> At the least, when it comes to patronage and bribing, the lack of transparency, accountability, and political legitimacy of some of the non-market factors for distribution induce negative allocative effects.<sup>2</sup> For these reasons the choice between market provision and non-market provision can only be made by cautiously weighing up all allocative and distributive pros and cons of both alternatives. Also here a distinction between the different content, remits, and making of broadcasting programs seems necessary.

In sum one can conclude, however, that for different reasons state broadcasters are inappropriate program providers. They tend to abuse broadcasting programs to preserve and increase the state's political power. This is especially true when this influence is not based on decisions of the particular parliament (the "state"), but is only performed by the government or certain governing politicians and bureaucrats.<sup>3</sup>

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ments' competences in the form of written law, preferably constitutional law. However, historic examples show that even with such safeguards, governments tend to abuse broadcasting and the mass media for their own propaganda purposes.

<sup>1</sup> BAUMOL 1986, Chapter 1.

<sup>2</sup> Like disincentives to work or to invest.

<sup>3</sup> Whereas in this paper the terms state (broadcasting) and government (broadcasting) are generally used as synonyms, this footnote can indicate that there actually are important differences between a state broadcaster, which is controlled by the parliament (i.e. both by the politicians of the government and of the political opposition) and a government broadcaster, which is only controlled by the actual governing politicians (to the disadvantage of the politicians of the actual political opposition). For the more



### 2.3. The Voluntary Sector as Provider of Broadcasting Programs

The voluntary sector has neither systematic commercial interest nor systematic political interests. From that standpoint it could well provide unbiased broadcasting programs that mirror the opinions of citizens. This conclusion, however, requires:

1. a strong and diverse civil society with many organizations that champion public affairs and public welfare and that are willing and able to articulate their attitudes via public communication,
2. a government that creates or improves the financial capabilities of civil society (e.g. by granting the right to levy public revenue, e.g. a license fee),
3. a government that does not abuse its role as a sponsor of civil society by influencing the (political) opinions of the institutions of civil society.

Unfortunately there are no societies for which these conditions are fulfilled perfectly. Not all relevant groups of society are similarly motivated to engage in public communication: Some groups have higher motivational powers to lobby for their targets than others. In addition, most civil society organizations suffer from a structural financial scarcity, as they provide public goods that cannot be excluded (and for which no revenues can be levied from the users of the public goods). Non-governmental organizations are therefore restricted to voluntary financial contributions from their members.<sup>1</sup> For this reason they usually lack financial revenues and their performance is less professional and less qualified than the performance of state broadcasters which possess the legal rights to yield taxes or other compulsory levies. For the same reason, broadcasters from the voluntary sector are also less professional and less qualified than commercial broadcasters which can raise market revenues as they can exclude viewers and listeners who are not willing to pay for their programs and advertisers who are not willing to pay for advertising time.<sup>2</sup>

To solve this structural deficit, the state could subsidize voluntary sector broadcasters (civil society broadcasters) or the state could vest them with their own public revenue base. This could abolish their structural fiscal scarcity, and enable them to provide goods and services as professionally as governmental organizations or commercial companies. However, with regard to the overall fiscal

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general comparison of the state as an alternative to the market and the voluntary sector, this peculiarity, however, can be neglected in this paper.

<sup>1</sup> The funding rules of public service broadcasting in different countries are described by FLECK 1984; ALBARRAN/CHAN-OLMSTED 1988; BLUMLER/NOSSITER 1991; McCORMACK 1999; McKINSEY 1999; MACQUARIE 2002; McKINSEY 2004; IOSI-FIDIS 2010.

<sup>2</sup> SEIBEL 1992. The problems that result from limited financial resources and the dependence on “occasional volunteers with limited time” are illustratively reported by Dorothy Collins SWANSON 2000, who founded and ran “Viewers for Quality Television”, an American grassroots organisation consisting of more than “1500 advocates of innovative and enriching television programming”.

burden for the citizens, the state has to restrict this aid to a few institutions. The chances to produce a sufficient output of better quality become higher for these select few, whereas they simultaneously become lower for all institutions that are not promoted by the state. The chance to participate in public communication is thus distributed unevenly, and the diversity of voices is low. In addition, governments often abuse their positions as sponsors of civil society: They use it as a “golden chain” to create good behaviour from those institutions that get – or want to get – financial support. It is obvious that under these conditions civil society broadcasters can be forced to articulate positive attitudes about the government and to renounce critical reports and statements.

The fact that in many countries a non-governmental public provision is not legitimized by formal and transparent forms of collective decision-making should be considered as another disadvantage of broadcasting programs provided by the voluntary sector.<sup>1</sup> This applies especially to the non-governmental provision of broadcasting, for which only few countries have explicit rules regarding public decision-making.<sup>2,3</sup>

On the other hand, a non-governmental broadcasting system has some advantages compared to a governmental broadcasting system: While intrinsic motives are important for citizens' voluntary engagement (and for the common welfare that is pursued by civil society organizations), they are less important for governmental organizations (where the engagement of most politicians and bureaucrats primarily attempts to increase income and political power). To prefer governments over civil society organizations can therefore *suppress the intrinsic motives* that could compensate financial weaknesses and thus could suppress creative and innovative solutions. This holds especially true for broadcasting, where the quality of journalists' work depends heavily on intrinsic motives, such as the search for truth, upholding freedom of information and freedom of expression, and the pursuit of social, cultural, and educational objectives.

For these reasons the evaluation of the voluntary sector is ambivalent. In most countries it is only granted a supplementary role of providing certain program contents that are not sufficiently provided by the market and the state, mainly for smaller, but highly motivated subpopulations (like local communities, religious groups or activists that lobby for certain cultural or educational targets, for the support of disabled or underprivileged people or for the protection of the en-

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<sup>1</sup> SEIBEL 1992; FRANKE 1998; BUSSHOFF 2000

<sup>2</sup> For descriptions of the decision-making rules of public service broadcasting in different countries see FLECK 1984; HOFFMANN-RIEM 1996; ALBARRAN/CHAN-OLMSTED 1998; TRACEY 1998; IOSIFIDIS 2010.

<sup>3</sup> This is not a general argument in favour of a governmental provision, but it is valid as long as non-governmental forms of public decision-making are missing. The main reasons for this are the citizens' insufficient willingness to participate in those processes and the considerable transaction costs that are induced by them. The lack of formal mechanisms of collective decision-making can be explained by the economic principal-agent-theory (see e.g. BLANKART 1994).



vironment). But the effects of this supplementary role should not be underestimated: Also the quality, variety and objectivity of state broadcasters and commercial broadcasters will be affected positively if strong civil society media exist as a counterpart and watchdog of the public interest.

### 3. Mixed Provision of Broadcasting Programs

#### 3.1. Measuring the Influences of the Market, the State, and the Voluntary Sector as Providers of Broadcasting Programs

The choice between markets, states (or governments) and the Voluntary Sector (civil society organizations or NGOs) must be made by trading back and forth the specific advantages and disadvantages described above. For broadcasting programs these advantages and disadvantages have to be evaluated with regard to its economic, journalistic and artistic/creative effects. Due to the peculiarities of these effects, this choice can vary for different types of broadcasting programs. In most countries for instance entertainment programs are provided to a large extent by markets, since market failures (especially asymmetrical information and externalities) are not very important for this type of programs. On the other hand, in many countries non-political educational and information programs are provided by governments that possess the content for these types of programs anyway, as they serve other governmental functions (like the promotion of education and professional qualifications, the support of tourism and international trade, or consumer protection). Also, in many countries cultural, political and religious programs are provided by NGOs like religious communities, local communities, universities, and public service broadcasters, at least to some extent.

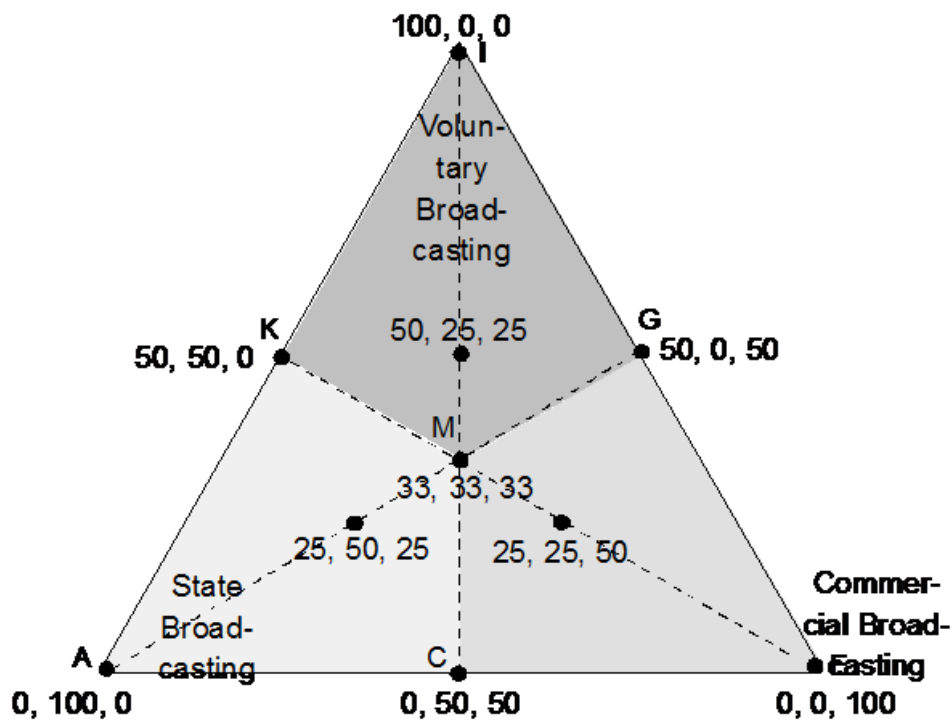
Supposing it is possible to quantify the importance of these alternative provisions,<sup>1</sup> the broadcasting order of a country could then be characterized in the same way that has already been described for mixed economies in general (in section 1): If all broadcasting programs would be provided by the voluntary sector, the vector would be 100, 0, 0; and this order would be located at the upper corner of the triangle (figure 2). If all broadcasting programs would be provided by the state, the vector would be 0, 100, 0; and this order would be located at the left corner of the triangle; and if all broadcasting programs would be provided by the market, the vector would be 0, 0, 100; and this order would be located at the right corner of the triangle. All combinations, i. e. all mixed broadcasting orders, could be located correspondingly: A broadcasting order in which the market and the state, for instance, would provide 50 % of all programs, would be located in the middle of the baseline of the triangle (point C); and a broadcasting order in which each of the three sectors would provide one third of all programs would be located in the middle of the triangle (point M).

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<sup>1</sup> One way to quantify the importance or influence of the three sectors would concentrate on the funding structures or revenue structures of the broadcasters. This approach, which is favored by economists, would have to identify a broadcaster's revenues as market revenues, state revenues, and voluntary sector (civil society sector) revenues. This approach (which we partly follow below) is described in greater detail in my paper "Adjusting the Remits and Resources of Public Service Broadcasting" (in this volume, pp. 87-118). It also has to solve some conceptual and methodological problems (see *ibid*), and it has the disadvantage that it neglects non-pecuniary influences (see *ibid*, again).



Figure 2:  
The Influences of the Market, the State, and the Voluntary Sector  
as Providers of Broadcasting Programs



### 3.2. A Classification of Broadcasting Orders, Based on the Influences of the Market, the State, and the Voluntary Sector

Based on this structure, more detailed classifications are also possible. Figure 3 shows one: Here the broadcasting order is classified as “pure” if the dominating type of funding exceeds 50% of the total budget (i.e. the other two types of resources attribute less than 50% to the total budget). In this classification a broadcaster is thus classified as:

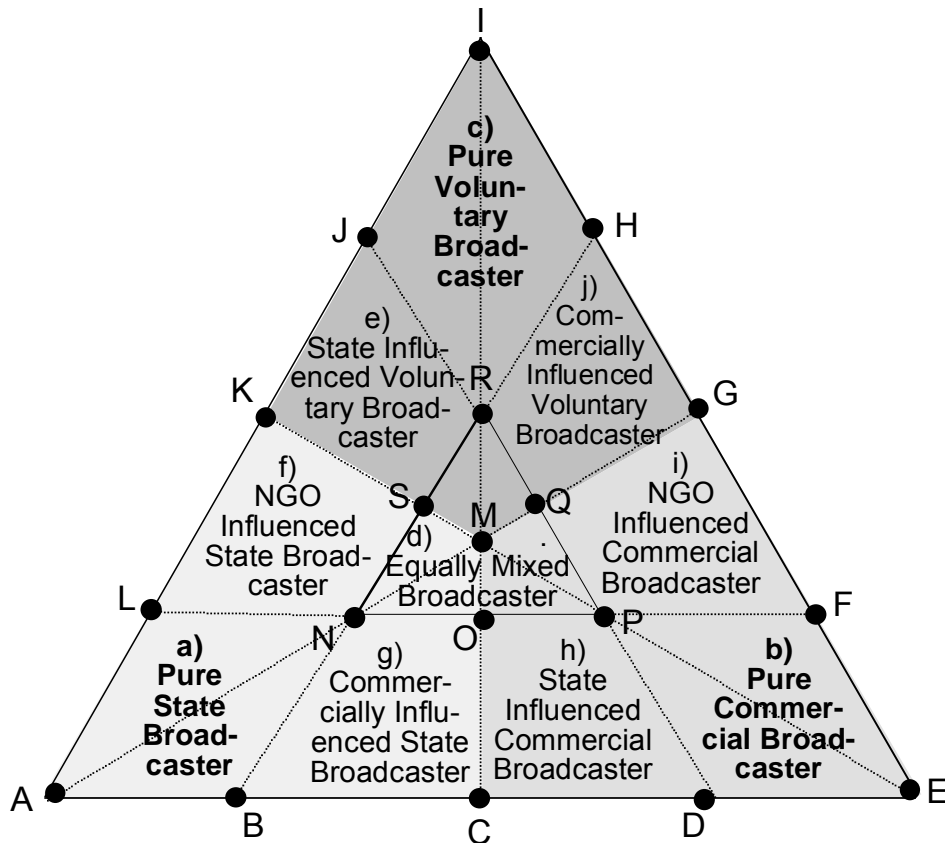
- “*pure state broadcaster*” if the state revenues exceed 50% of the total revenues (in figure 3 this type is located inside the rhombus ABNL),
- “*pure commercial broadcaster*” if the market revenues exceed 50% of the total revenues (rhombus EFPD),
- “*pure voluntary broadcaster*” if the voluntary revenues exceed 50% of the total revenues (rhombus IJRH).

In addition to these types of “pure” broadcasters (or better: of broadcasters that are dominantly financed by only one type of revenue), seven types of “mixed” broadcasters are distinguished in Figure 3:

- Equally mixed broadcasters* (in figure 3 this type is located inside the inner triangle NPR). Here the state, the market and the voluntary sector all contribute approximately one third to the total budget. Minimal deviations from equal shares are allowed, but all sectors must contribute at least 25% to the total budget.



Figure 3:  
 A Geometric Exposition of the Revenue Structure of Broadcasters,  
 Distinguishing Three “Pure” Forms and Seven “Mixed” Forms of Revenues  
 e) “State influenced voluntary broadcasters” (JKSR) are predominantly finan-



ced by voluntary donations, but also receive state revenues like taxes, state grants or license fees. *Public service broadcasters* also belong to this type, as they depend on the state’s decision to grant them state revenues or to provide them with their own public revenue source (e.g. the license fee, or a supplement from the state’s resources from electricity, telephone or the like) and as the state allows them to enforce the collection of this public revenue source. The particularities of whether such broadcasters are nonetheless relatively independent from the state depend on the specific laws and the political culture of the country in question, as is the case in Germany, where the amount of the license fee is determined by an independent commission,<sup>1</sup> or whether they are extremely dependent on the state or not. In the latter case they would have to be classified as:

- f) “NGO-influenced (or ‘Civil Society-influenced’) state broadcasters” (KLNS). For this type the state’s influence is either dominant due to direct political directives or due to the “golden chain” that exists if no transparent, jurisdictional and enforceable rules determine how much revenues the state has to

<sup>1</sup> See *ibid.*



spend on the broadcasters. In addition, a broadcaster that receives a discretionarily paid license fee may fall into this category even if it is labelled as an “independent broadcaster” or as a “public service broadcaster”.

- g) “*Commercially influenced state broadcasters*” (BCON) are dominated by the state, but in addition the market (i.e. private companies) has a limited influence. One reason may be that a greater portion of the broadcasters’ revenues stems from the market; in this case the broadcasters are forced to obey market rules in order to receive these revenues. Another reason may be the connection between political and economic interests, which is only seldom visible (e.g. if politicians own private media corporations or if media owners possess political positions). In this regard, broadcasters that are financed solely by state revenues may indirectly be steered by private companies to a large extent (and thus should be classified as “commercially influenced state broadcasters” or even as “state influenced commercial broadcasters”, see below). On the other hand there may also be broadcasters that are financed solely through market revenues, but are still dependent on the state (e.g. if the state establishes and defeats their monopolistic market positions by prohibiting new market entries).
- h) “*State influenced commercial broadcasters*” (CDPO). Here the market dominates, but the state also has a certain influence, either as a considerable portion of total revenues stems from taxes or state grants or as an indirect influence from the state exists, which was mentioned above (and predominates) for type f (and which in comparison to type f is less important here).
- i) “*NGO influenced commercial broadcasters*” (FGQP). Here the market also dominates, but NGOs have a certain influence, either because they spend a considerable amount on donations or because they have other ways to make their voice heard by the broadcasters. Some countries for instance empower certain NGOs (like labour unions, churches, consumer organizations) by law to participate in programming or at least to systematically observe and evaluate broadcasting programs. In other countries there are at the very least informal ways of lobbying and networking, through which NGOs can influence the broadcasters’ programming decisions and program contents.
- j) “*Commercially influenced voluntary broadcasters*” (GHRQ). In addition to donations, these broadcasters either receive a considerable portion of market revenues, or they are influenced considerably by indirect influences of the market, e.g. when subsidies are given by private companies only under the (often unexpressed) condition that the broadcasters promote the companies’ products or at least renounce all actions that could impede the companies’ success.

### 3.3. A Classification of Broadcasting Orders, Based on the Influences of the Market, the State, and the Voluntary Sector, and on the Number of Broadcasters

For a more realistic classification, not only the influence of the state, the market, and the voluntary sector for the provision of broadcasting programs, but also the number of broadcasters should be considered. It certainly makes a difference if there is only one broadcaster which is equally funded by the state and the market (revenue vector: 0, 50, 50), or if there are 5 broadcasters which are funded by the state only, and another 5 broadcasters which are funded by the market only, even if the revenue vector of this pluralistic order is 0, 50, 50, as well.

Table 1:  
Four Types of Broadcasting Orders,  
Determined by the Number of Broadcasters  
and by the Broadcasters' Revenue Structures

| revenue structure<br>of the broad-<br>caster(s)  | (all)<br>pure                    | (all or some)<br>mixed            |
|--|----------------------------------|-----------------------------------|
| number of<br>broadcasters                        |                                  |                                   |
| one broadcaster<br>(monistic order)              | (1)<br>pure monistic<br>order    | (2)<br>mixed monistic<br>order    |
| more than one broadcaster<br>(pluralistic order) | (3)<br>pure pluralistic<br>order | (4)<br>mixed pluralistic<br>order |

Table 1 shows such a more detailed typology: As before, it distinguishes between “*pure orders*” in which the broadcaster(s) are only funded by one sector and “*mixed orders*” in which the broadcaster(s) are funded by two or all three sectors; but in addition it also distinguishes between orders with only one broadcaster (“*monistic order*”), and orders with more than one broadcaster (“*pluralistic orders*”). Combining these two attributes we get four types of broadcasting orders:

1. “*pure monistic orders*” with only one broadcaster, being funded purely by the market only, the state only, or the voluntary sector only (see the geographical presentation in the first row of figure 4);
2. “*pure pluralistic orders*” with more than one broadcaster, each of them being funded purely by the market only, the state only, or the voluntary sector only



(see the geographical presentation of some possible combinations in the second row of figure 4);<sup>1</sup>

3. “*mixed monistic orders*” with only one broadcaster, being mixed funded, i.e. partly by the market, by the state, and by the voluntary sector (see the geographical presentation of some possible combinations in the third row of figure 4);
4. “*mixed pluralistic orders*” with more than one broadcaster, being funded purely or mixed, i.e. partly by the market, by the state, and by voluntary sector (see the geographical presentation of some possible combinations in the fourth row of figure 4).

### 3.4. Fine Tuning the Influences of the Market, the State, and the Voluntary Sector as Providers of Broadcasting Programs

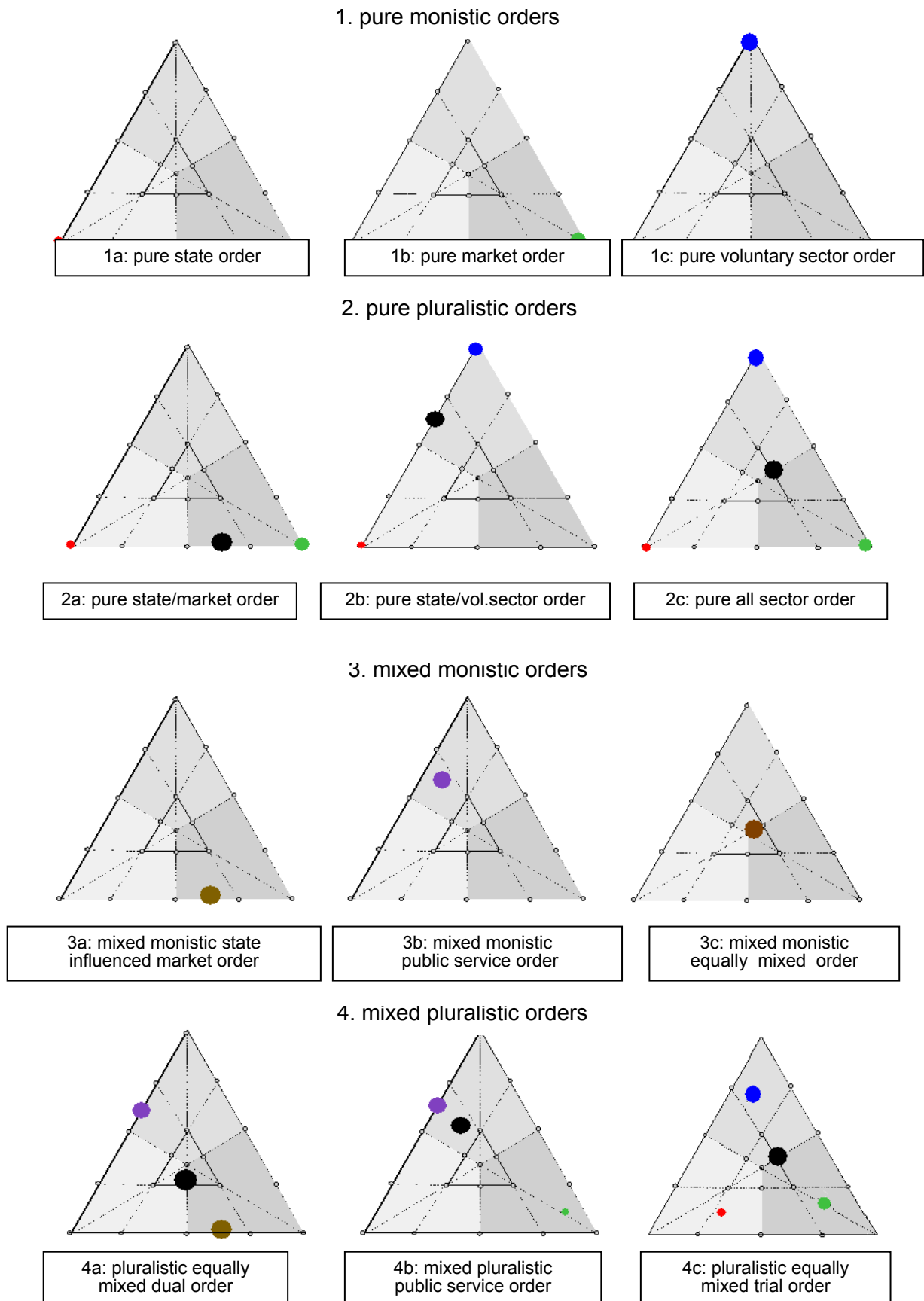
The influences of the market, the state, and the voluntary sector as providers of broadcasting programs should be observed, controlled and readjusted permanently, as the technical, economic, and legal framework for broadcasting change rapidly and also as the capabilities of these three institutions (or at least its evaluation) varies over time.

Broadcasting orders differ in their flexibility to adjust or “fine-tune” the three sectors relative importance or influence according to changes in the technical and economic framework and/or to changes in the evaluation of the sectors’ allocative and distributive capabilities. In a pure monistic order (type 1 in table 1), the relative importance of the three sectors cannot be altered at all, once the decision has been made that the broadcasting programs should be provided only by the market, the state, or the voluntary sector. A gradual increase of the markets’ influence, for instance, which could be reasonable as a reaction to new technologies or to changes in the behaviour of the users, would not be possible within an order that only consists of one (pure) state broadcaster or one (pure) voluntary broadcaster. Nor could the influence of the market be varied within an order which only consists of one pure market broadcaster. The only option for an adjustment would be a total system change: If a society came to the conclusion, for instance, that the state had become less capable of providing broadcasting programs than the market, a state broadcaster would have to be abandoned, and a commercial broadcaster would have to be established in its place.

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<sup>1</sup> There the colored dots represent the different existing broadcasters; and the black dots represent the average revenue structure for the sum of broadcasters that exist in this order.

Figure 4:  
Fine Tuning the Influences of the Market, the State, and the Voluntary Sector





In contrast, in a *pure pluralistic order* (type 3 in table 1), the relative importance of the three sectors can be altered gradually: Here only the number and/or sizes (budgets) of the broadcasters with a preferred revenue structure have to be increased (and/or the number and/or size of the broadcasters with a non-preferred revenue structure have to be decreased).<sup>1</sup>

A continuous fine-tuning of the sectors' influence is also possible for mixed orders. Even within a *mixed monistic order* (type 2 in table 1) the influence of the sectors can be altered – either by varying the proportion of pure revenues the (one) broadcaster receives from the state, the market, or the third sector, or by varying the sectors' relative importance for those revenues that are “mixed” in themselves (like the license fee that combines influences from the state and the voluntary sector).

For “*mixed pluralistic orders*” (type 4 in table 1), containing more than one broadcaster with mixed revenues, such fine tuning is even easier. Here the influence of a sector can be altered in two ways: firstly, the funding structures for one or more of the existing broadcasters can be changed, and secondly, the number and/or size of those broadcasters that possess a preferred funding structure can be increased (or the number and/or size of those broadcasters that possess a non-preferred funding structure can be decreased).

The question of which of the distinguished orders is most capable cannot be answered in general. Only for pure monistic orders there is a consensus that they are not appropriate for modern societies which need to combine the advantages of all allocation mechanisms in order to provide broadcasting programs that both serve the consumers and the public. This opinion is also confirmed by the observation that there are no pure monistic orders in practice (maybe with the exception of a few totalitarian counties that still believe that broadcasting merely is to the competence of the state). More complicated is the comparison between mixed monistic orders and mixed pluralistic orders. As an advantage, monistic orders can profit from in-house economies of scope and scale (which are especially strong for the media).<sup>2</sup> In addition in-house plurality of content can be a journalistic advantage. On the other hand, there are strong arguments for “pluralistic orders” which generate competition between several broadcasters.

For these pluralistic orders also the question has to be answered if the broadcasters should all be “pure” (and then act straight and observable according to the pure rules of the market only, the state only, and the voluntary sector only, respectively), or if there also should be one or more “mixed” broadcasters (whose actions are determined by the combined effects of the involved sectors). Also this question cannot be answered once and for all. On the one hand, one can argue that alternative institutions can best unfold their specific capabilities if they are financed strictly by pure revenues, and that mixed revenues dilute these capabili-

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<sup>1</sup> In the diagrams these variations of the broadcasters sizes or budgets again would be exposed by the sizes of the respective dots.

<sup>2</sup> See chapter 2.1. above; for details see KOPS 2011a.

ties. On the other hand, one can argue that pure revenues make the broadcasters more dependent on the state, the market or the voluntary sector respectively, and that a mixed revenue structure reduces this dependency and protects the broadcasters' independence.

### 3.5. Public Service Broadcasting as a Hybrid Order

Considering the typology developed above, it becomes obvious that public service broadcasting is no pure order. It is a mixed – or *hybrid* – order. It is influenced by the voluntary sector (civil society) and it is influenced by the state/governments. Also the market may have a certain influence.<sup>1</sup> Referring to Figure 3 (page 40), public service broadcasters thus should be codified to the blue parts of the triangle: They would be classified there as “NGO-influenced (or ‘civil society’ influenced) state broadcasters”, if the influences from the state are stronger (L), or as “State-influenced voluntary broadcasters”, if the influences from the state are lower (J).<sup>2</sup> Also broadcasters which are partly influenced (but not dominated) by the market (N, S, R), would have to be classified as public service broadcasters according to this typology (see figure 5).

Figure 5 also clarifies that many broadcasters that label themselves as “public service broadcasters” do not deserve this status if one takes into account the incentives and program outputs that result from its revenue structures. Broadcasters that depend primarily on market revenues act like commercial broadcasters – and should be labelled as such. And broadcasters that depend primarily on state revenues act like state broadcasters – and should be labelled as such.<sup>3</sup>

Also within the group of broadcasters that – according to our typology – are to be classified as public service broadcasters, the influence of the market, the state, and the voluntary sector may vary considerably. Consequently, a fine tun-

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<sup>1</sup> In Germany, for instance, public service broadcasters are allowed to make revenues from advertising and sponsoring to a certain extent (at present about 5 % of the total budget, see KOPS 2011b, in this volume, pp. 87 et seq, p. 101).

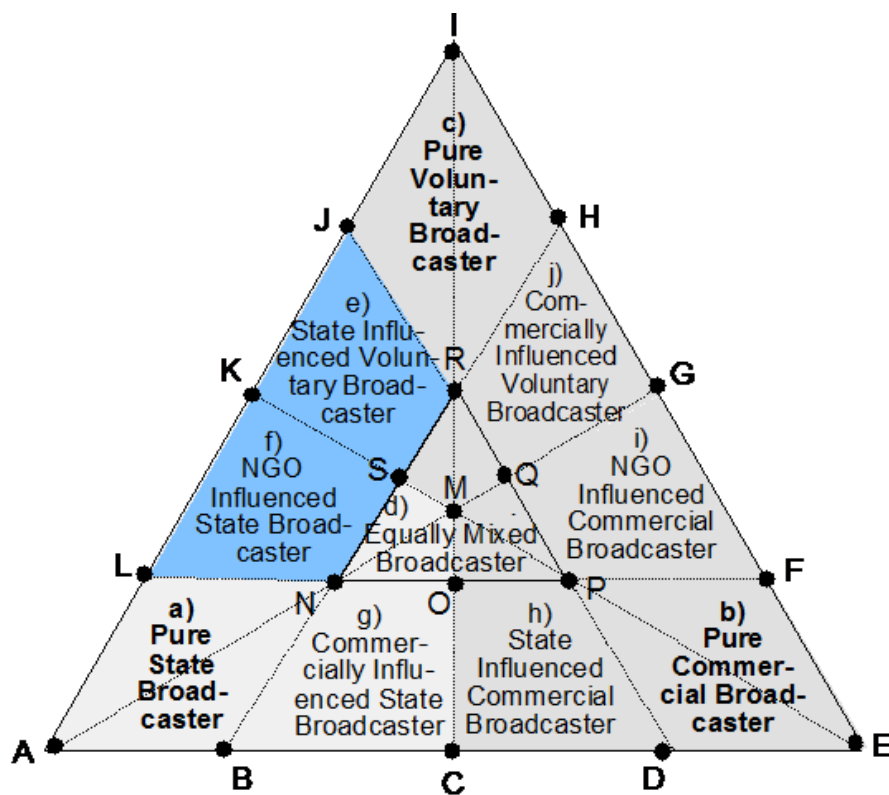
<sup>2</sup> As mentioned already, it is difficult to quantify the relative influence of the three sectors in practice. Even for the influence of the market, for which the market revenues are a rather good indicator, forms of hidden influences exist which hardly can be detected and quantified (like its “self commercialization” or an inappropriate domination of market shares as criteria for the quality and success of public service broadcasters and). Even more complicated is the identification and quantification of the relative influence of the state and the civil society, especially as these influences are not only exerted by the broadcasting councils, but also by external forces which are directed towards the councils and the broadcasters' directorates and journalists.

<sup>3</sup> See KOPS 2007, pp. 58 et seq., for an empirical classification of broadcasters from more than 20 European countries which, in a study by McKINSEY 1999, were all labeled as „Public Service Broadcasters”. The re-classification of the revenue structures of these broadcasters clarified that a substantial share of these broadcasters in fact could not be classified as public service broadcasters, as the market's and/or state's influences on them were too high.



ing within this category is also possible and necessary. For public service broadcasters which are considered to be influenced too strongly by the market (in figure 5 for instance the broadcasters N, S, and R) measures should be taken to reduce this influence, e.g. by limiting revenues from advertising and sponsoring. And for public service broadcasters for which the influences of the market are considered too low (in figure 5 for instance for the broadcasters L, K, and J) measures should be taken to increase them, e.g. by reducing or abandoning the regulations for advertising and sponsoring, or by allowing new forms of “commercial communication”, like split screen advertisements, or product placement.<sup>1</sup>

Figure 5:  
Public Service Broadcasting  
as a Hybrid Order between the Market, the State, and the Voluntary Sector



Hence, the shaping and adjusting of broadcasting orders in fact is a two-step procedure. In a first step the number and size of the broadcasters of the different types have to be determined, and for those orders that include public service broadcasters, in a second step the influences of the three sectors have to be determined in detail, and eventually have to be corrected.<sup>2</sup>

<sup>1</sup> For the necessity and possibilities to fine tune public service broadcasting in Germany see KOPS 2011b, in this volume, pp. 87 - 118.

<sup>2</sup> The German history of this procedure may be instructive for the present debate in the Ukraine for several reasons, and it is told by KLEINSTEUBER 2011a, KLEINSTEUBER 2011b, KHABYUK 2011, KOPS 2011b, and SCHIWY 2011 (all in this volume), and by the papers in KHABYUK/KOPS 2010.





Sometimes such corrections may shift a public service broadcaster too near to the state sector or too near to the market sector. Actually it is transformed then into a state broadcaster or a market broadcaster. But sometimes also the opposite transformation takes place: State broadcasters gradually can come under stronger influence of the civil society, and if this transformation is strong enough and endures, a public service broadcaster is born. It may be small and weak in the beginning, but if the civil society fosters and cultivates it, and protects it from a re-adoption by the state, it may finally provide the society with free public opinion making and free public communication.

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## **Public Service Broadcasting – a Political Definition**

Yes, thank you very much Mr. Deynychenko. I am in fact from academia, teaching communication and journalism. I am, this is important to say, from the University of Hamburg; please don't say Hamburger University. There is one in Illinois in the US that is owned by the McDonald's Company, so please keep the distinction. If you visit the city, you will have problems finding the famous hamburger in Hamburg. The thing is, we have nothing to do with this purely American product. In fact, there was a McDonald's restaurant around the corner in my quarter of the city, but it went bankrupt and a supermarket for organic food moved in. Isn't this symbolic? Now, you're not interested in this. Unfortunately, we have already had two presentations and many of the things I wanted to say have already been said. So I will give you a few additional ideas – altogether twelve – I hope short points.

(1) The first point is about the nature of public service broadcasting. Of course the idea was not invented in Germany. It was developed in the time between the two big wars in Britain by the BBC and was also practiced during these years in Scandinavia. In West Germany it was introduced after 1945 by the occupation forces as something completely new. Now we are very happy about that and there are some specifics exclusive to the German version. But public service broadcasting is universal in Western Europe and was introduced in Central and Eastern Europe after the end of communism. If you look at it from the outside, you will realise that Europe is a laboratory: a place where all kinds of diverse organisations have been tested.

To give you an idea on how public service broadcasting works, I will take the example of the Netherlands. The country is one of the oldest democracies in Western Europe, and in the early 1920's, when radio was the newest medium, radio enthusiasts got organised just like in other countries, and established associations of amateurs; sometimes they even built radio receivers themselves because they were expensive to buy. During those years the Dutch society was highly fragmented; in fact, it was organised in so called "pillars", organisations of Catholics, Protestants, of Social Democrats and Conservatives and so on. When radio service started, they established links together and organised radio in a very specific way. It was a public service and the citizens had to pay a license fee, but they paid it to their respective pillar, which all worked together and jointly produced the first radio programme. Under this system, if you had a large following you had more money and more programming time. But basically it was

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a system where the state just provided for public financing; everything else was done by civil society groups themselves and they were largely independent.

I will give you another example: Switzerland, which is also an old democracy, much older than Germany. You have heard before that we in Germany pay one of the highest license fees in the world. This has to do with the federal system: all in all we maintain eleven broadcasting organisations. But there is one country where citizens pay even more, and that is Switzerland. This small country has four official languages, and the unfortunate thing is that the three major ones are German, French and Italian. All are spoken in much larger neighbouring countries, and the television consumption of the average Swiss is therefore much dominated by programme imports. Almost two-thirds of the Swiss speak German and tend to watch programmes from Germany. But Switzerland is keen to keep parts of the country linked via public media. So they maintain four different broadcasting corporations that provide radio and television programmes for German, French, Italian and Rhaeto-Romanic – a local language – audiences. And they invest a lot of money in keeping this all Swiss. Whereas television is an expensive medium and foreign influence remains strong, regionalised Swiss radio is extremely prominent and is the leading medium for people in the region. In fact, more than two-thirds of listening time is for public service radio and non-Swiss reception is minimal. Switzerland happens mainly in public service radio.

So these are just different examples of what you can find in Europe. Switzerland might help to find ideas on how you can cope with the problem of two languages in Ukraine; I don't know how to solve it. But be assured we have many different models available in Europe, not only the German model.

(2) I come to the next point, point number three. Mr. Schiwy mentioned how important the federal principle in Germany is. Now, this is a unique thing. We are a federal republic with 16 states, and the states are entirely responsible for broadcasting. The federal government only has a say in international broadcasting (Deutsche Welle). This arrangement requires a unique set of organisations which cannot be copied – it is part of German history. It makes public service broadcasting expensive, but at the same time it reflects our federal order and as such it contributes to the harmony and stability of our society. For example, I come from the North – we are Protestant – and in the South, the Bavarians are Catholic. They are at least as distant to us as, let us say, Italians or Finns. When they attempt to speak German, we rarely understand them. But they have their broadcasting structure and we have ours. And although it is very much decentralised and localised, it helps the Germans to keep together; a little bit as in Switzerland, it works as glue for a fragmented society.

(3) Our broadcasting system – this is my third point – is extremely regionalised, just because of the reasons I told you. My research institute participated in a European comparative study that was commissioned in Spain and covered all the states of Western Europe. In a European comparison, we found that the German system was the only one that had been built “bottom up”, that is out of the region, where it is still strong, whereas the national part is mainly coordina-



tion and rather weak. The capital Berlin just provides a small portion because programming originates in all parts of the country.

Today we see tendencies of broadcasting decentralisation in many Western European countries. Take the BBC for example. It used to be mainly a London institution. The intellectuals and the elites of London send their arrogant messages via broadcasting to the rest of the country and the world. During the last years they have been forced to go to Manchester or Edinburgh and do some broadcasting from there, but London is still dominant. We have always had our broadcasting centres in Munich, in Cologne, in Leipzig, in Hamburg. The study I mentioned emphasised that we have the most localised television structure in Europe and we are quite happy about that. The same is true for radio: with very few exceptions (like Deutschlandfunk) we have no national radio in the country.

(4) My next point is about the political function of public service broadcasting. You know we have this famous philosopher Jürgen Habermas who developed the theory of the bourgeois public sphere. Public sphere is the wrong translation of the German word “Öffentlichkeit”, which does not exist in other Western European languages. I understand it’s close to “glavnost” or “glasnost” in Slavic languages. His theory is that a democracy needs platforms for the citizens to exchange their ideas about politics and social life; platforms where they can discuss, where they can present different opinions of what should be done. These platforms are virtual assemblies of the citizens. Public service broadcasting has a natural affinity to this idea of a public sphere – so it really contributes to the political life in the country.

Mr. Schiwy already mentioned that we feel public service is good for integrating people – for keeping citizens with different interests, different outlooks and different understandings in touch. And in fact our public service system offers a considerable amount of programming time for the discussion of politics in rounds that include the different currents in the country. This provides, in practice, the platforms that Habermas theorised about. One example: each Sunday evening we have the extremely popular detective movie “Tatort” on the First Channel (I’ll talk about that later) and after that there is a weekly political discussion headed by the moderator Anne Will. There, each week politicians from all sides of the political spectrum come together to discuss German politics. Everybody hates the broadcast but on Monday morning people ask me, “Did you see what stupid things they said?” So a lot of people watch it. It is a kind of living pluralism. And that is the kind of platform that we need in a democracy. If you look at the United States for example, you will find the increasing political polarisation there reflected in the media: the Republicans have their Fox Channel, the Democrats have their MSNBC Channel, and both are successful, in the middle, CNN is loosing viewers. We encourage our public service broadcasters to provide pluralistic platforms and that makes sure that viewers learn about other positions. People in a functioning democracy should say something like this: “I am definitely on one side, but I know what the other side is saying. So, I can defend my own judgement. ” That’s very important for understanding in a fragmented society.



(5) My next point: control of politics. We have heard that public service broadcasting is expensive. But the society gets something in return. Public service broadcasters employ many professional journalists whose job it is to report politics in depth; hopefully they also do some kind of investigative enquiry into politics. We have special political magazine formats on television each week, and there journalists report on many aspects of what is going on in the country. I tell you, our politicians are not better than your politicians, but we are able to control them better. We have more mechanisms for keeping them in their place before they earn too much money and put it in their private pockets. Public service broadcasting is a strong instrument against corruption.

This one also applies to foreign politics. Our public service broadcasters have some of the most extensive networks of correspondents around the world. For example, our second channel, ZDF, works with 19 correspondent offices outside of Germany. ARD, the umbrella organisation of our regional broadcasters, has sent out about 50 correspondents who work for either television or radio, sometimes for both. Public service provides the basis for rather in-depth reporting on what is going on in the world. And we need that. We are not a world power like the United States or perhaps Russia, but we are still a country with plenty of international responsibilities. We are also one of the top exporters in the world. So, we've got to know what is going on in the rest of the world. If you compare public service news with commercially produced news in Germany, you will realise there is a big gap: hard news, international reporting and background analysis are the domain of the public sector. If you compare United States news with German news, you will realise that we simply get a fuller picture of what is going on in the world. Nearly all news in America is of a commercial nature. But when it comes to the small public (not public service) broadcasters PBS and NPR, they cooperate heavily with the BBC (and also with DW) because they lack the means themselves for covering the world. A survey says that Americans get 18 percent of international news from the BBC. Public service news has become a successful export product.

(6) Balanced reporting. You have already heard that public service broadcasting somehow has to do with combining different currents in society: with what a variety of parties, associations, NGOs etc. in a pluralistic society have to say. The only way to cope with this situation is to follow a policy of "balanced" reporting. Journalists are required to report on different sides: sometimes of the two large parties, sometimes of employers and employees, sometimes of the two large churches. This philosophy also creates problems: we have five parties in the parliament, two large ones and three small ones. The small parties sometimes complain that they are not well represented. All this is not perfect, but to secure a wider range of positions, we have representatives of the "socially relevant groups" in our Broadcasting Councils (more on that later in this conference) and they make sure that once in a while they are mentioned and reported on in the news. We even have some small segments in radio programming that are provided by church journalists. Other examples are the trade unions and trade associations that demand equal representations of their voices. The independ-



ence of the system is not just written in legal paragraphs, it's embedded in the structure of the whole system. Of course, there are always people who say: "We want to be mentioned, too." And the system sometimes is not as flexible as it should be. There are proposals to extend this principle of balanced reporting, but only very few want it to be abolished.

(7) Practiced federalism: I talked about the famous Anne Will broadcast every Sunday evening. Before that, there is the most successful detective series in prime-time and it enjoys high ratings. It's called "The Scene of the Crime" – "Tatort" – and it is different from about any other of the many detective series in the world. Each Sunday it comes from a different corner of the country and over the thirty years of its existence, it has worked with dozens of locations and chief detectives. So one week the dead bodies are in the Saarland, then in Bremen, then you find them in Saxony or in Bavaria – lots of killing in Germany. But with public service broadcasting, it is "balanced killing" and regional broadcasters are heavily competing with each other about the best story. As an added value, we get folkloristic information about living (and dying) in all quarters of the country: "The Streets of Chicago" takes place everywhere. The federal principle even makes it easy to have another partner participating and that is Austria. So it is regularly part of the show and we are searching for the killer in Austria – in Vienna for example. It would be a perfect model for Europeanised series taking place in different parts of the continent. So far this is just a dream.

(8) Now let me talk about quality, which is my eighth point. You can require quality in paragraphs but this does not guarantee anything. It is more important to implant it into an organisation. As our public service system is well financed, it can maintain large news departments: we have well-trained journalists who have time to specialise on certain regions or on certain topics, or concentrate on investigative reporting. All in all we have a rather high level of reporting. The public broadcasters also play an important role in training young journalists. There are lots of applications for apprenticeships in the organisations, even though not all of them can be employed later on. Public service broadcasting improves the overall quality of journalism in a country.

(9) My ninth point is culture. Usually it is written into the remit for public service broadcasting: broadcasters have to concentrate on culture. Again this is more than a declaration: the obligation is built into the system. Public service broadcasters provide a number of special cultural channels (and commercial broadcasters do not). The oldest one is 3sat, which is jointly managed with Austria and Switzerland. It covers not just Germany but the German language areas of Europe. Another cultural channel is Arte, which is bilingual; there are always two audio streams, one in German and one in French. In fact, this way we learn about cultural developments in both regions of Europe: France and Germany. Culture speaks an international language and this way we also get pictures from neighbouring countries. These culture channels are not strong in terms of ratings: they do not maximise audience shares and they show low rating percentages. But they provide support for all kinds of cultural initiatives. In addition, the public service broadcasters are required to finance German filmmakers. Each



year, about 100 million Euros go into film production. Support gives the film makers the chance to connect with their viewers. Their film goes into the cinemas first and then it is shown on television. Our public service broadcasters are top producers of culture in the country.

(10) Public service and memory is my next point. Public service broadcasters are to a much higher extent required to produce non-fictional material than commercial broadcasters. These shows could be documentaries, films on nature, on animals, on history or whatever. An important ongoing process is reporting about the Nazi period. Those were the darkest years in our history and all of Europe suffered under the German dictatorship. So we regularly broadcast historical documentaries on how that could happen in Germany, what it means for us today and why it shall never happen again. Now we are producing this material not just for Germany; it is also shown, for example, on the American History Channel.

(11) My second to last point is entertainment. It's also in the remit of public service broadcasting that they offer some entertainment; in fact, some of it is high-quality entertainment. The most prominent program is running every few weeks on the second channel and is called "You bet?": "Wetten, dass?" It is a live show with rather spectacular bets and prominent participation. The action is always new, not like a formatted and ritualised serial show. Some candidates may smell hair, jump from high towers and do other crazy things. It is one of the few shows that is still popular with the whole family. Accordingly, the ratings are high. The idea has recently been picked up by Chinese television.

(12) My last point is technology and the switch to digital. I am talking about digitalised transmission, about High Definition (HDTV) and so on. The public service broadcasters are following a rather clear strategy. When they invest in new technologies and go into DVB or HDTV they always offer open solutions and cover every corner of the country. They provide access for everybody without people paying an additional fee. Earlier this year, our television broadcasters started HDTV-transmission. The public service broadcasters ARD and ZDF are providing an open HDTV signal, and if you have the right equipment and are connected to satellite or cable, you can get HDTV services. The commercial broadcasters are in the business to earn money and jointly have started a HD+ platform that unfortunately does not work well so far. But they plan to ask for a "service fee"; in fact they are using it to step into a new kind of pay TV: TV will mean (partially) paid content. So, in the future the alternative will be between open access to public television and somehow payable commercial TV that still carries advertisements.

All in all there are lots of different aspects to public service and I wanted to present just twelve different points to you.

Thank you very much.

Part 3:  
Challenges for Public Service Broadcasting –  
in Germany and Worldwide



Olexiy Khabyuk\*

**Protecting Service Broadcasting from State Intervention:  
A Mission Impossible?**

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Olexiy Khabyuk

## **Protecting Service Broadcasting from State Intervention: A Mission Impossible?**

### **1. Introduction**

The question posed in the title of this paper is closely linked with the question of exactly what can be regarded as public service broadcasting. There are many different definitions and concepts of PSB. Despite of their multiplicity, all serious definitions have one thing in common – the concept of independence from the state. Thus mechanisms for the protection of public service broadcasters from undue state influence are gaining importance.

### **2. “Flood Gates” of State Intervention in Public Service Broadcasting**

The term “flood gates” is a good metaphor to characterize the nature of state intervention in public service broadcasting. It originally describes a mechanism whose purpose is to control water flow. Water – or in our case state intervention – is for this mechanism something natural because it is part of the system. But if “flood gates” do not function properly and allow too high a level of intervention, an overflow will be produced which will lead, in the last resort, to the failure of public service broadcasting.

Different sources describe similar and rather overlapping kinds of “flood gates” (see e.g. BRANTS/SUINE 1992, pp. 111-114, BLUMLER/GUREVITCH 1995, pp. 62 - 64). All in all, state intervention is rather difficult to describe because it cannot be openly observed. It is therefore necessary to make conclusions about it assessing available information concerning these “flood gates”, also taking into account the situation of media in general. Following KOPS 2010a and 2010b, we distinguish 7 groups of such criteria, described below.

#### **1. Autonomy or degree of regulation, external regulation**

According to assumptions presented in SVENDSEN 2002, the autonomy of a broadcaster is strongest when it is subject only to self-regulation. Autonomy declines if regulation is conducted by a regulating authority, a ministry and/or the parliament. The same is with legal regulation – regulation by act and contract narrows the autonomy of a broadcaster quite strongly. Regulation by act and order/statutes/permission has a somewhat weaker impact on autonomy. The same intensity can be assumed for regulation without act because of the state’s potential for discretionary intervention. A broadcaster, whose activity is regulated by act only has the maximum autonomy.



## 2. Type/ownership/object of corporation, governance structure

In most cases, ownership and object of a public service broadcasting corporation correspond, e.g. in Germany, where public service broadcasters are organised as “corporations under public law”, are owned by the public (not the state) and pursue a public mission. In contrast, in Denmark, the channel “TV2” is organized as a commercial joint stock company, but owned by the state. It pursues a public service mission in an understated form, although it doesn’t receive any revenues from broadcasting fees. It is also free to make profits. (THUESEN 2006, THUESEN 2009). Another special form of broadcasting can be found in the USA: the Public Broadcasting Service (PBS) is organised as a private company, is owned by non-commercial broadcasters and has a non-commercial mission. Thus a detailed analysis is necessary in this regard to explore the risk of state influence.

One can assume that state ownership and a state-type of corporation imply the strongest dependence on the state and the public forms usually result in a less intensive dependence. Certainly, state-owned commercial companies (like in Denmark) can be affected by strong state influence if there are no restrictions on state control. In addition, governance structure and the broadcasters’ mission are strongly connected with the type of corporation. State impact depends, for instance, on the number of state representatives in the supervision and governing bodies and on their power of decision and competences. External regulation usually goes together with stronger influence than in the case of internal self-regulation (see point 1).

## 3. Legal definition and factual implementation of the programme remit and content regulation

The legal definition of programme remit is of major importance for assessing state influence in broadcaster’s activity. Specifications that are imposed in this area directly determine the programme output. In this context the factual implementation also has to be considered, because it can bias the legal definition. Often the legal programme remit remains merely a declaration of intent.

A distinction can be made between a broad and a narrow legal programme remit. A broad programme remit can favour the broadcaster’s autonomy (see point 1), but also be a trap for state intervention. A contract-based narrow programme remit can restrict the programming of a public service broadcaster to such an extent that this will lead to audience loss and hence to weakening the broadcaster’s independent position. As for the factual implementation, several other questions are important: Who is in charge of decisions about the content and how strong is the influence of the state representatives? How is the control of remit’s implementation constituted (post-control, pre-control/censorship)? Do public appointments of content (e.g. election spots) exist?





#### 4. Legal definition and factual implementation of revenues

Funding is a highly important enabling factor for the independence of public service broadcasters. Funding has to be independent from state and commercial influences, and sufficient and predictable midterm. Who is paying (state, citizens, commercial sector), what are the revenues' fixing and granting procedures (contract vs. discretionary payments) have to be considered. It can be shown that optimal funding is provided by a licence fee (see KHABYUK 2010a, p. 116-117).

#### 5. Institutions and methods for the collection of revenues

The significance of the revenue collecting procedure is often underestimated. If the state collects (directly or indirectly) the revenues, it can be tempted to use part of the revenues for own purposes. If a state-independent organization is in charge of revenue collection, the extent of state control of the organization has to be estimated.

#### 6. Appointments and management of personnel

The appointment procedures for top-management are crucial for broadcasters' independence from the state. Despite state-distant funding, programme remit and governance structure, state-obeying management can ruin all these mechanisms, guiding the broadcasting organisation according to commands received from its "liege lord". Of course, such efforts of the management can be opposed by resistance from journalists. The higher the professionalism of journalists, the stronger the compliance to a code of conduct among journalists, the more independent journalists are in their work and the stronger the freedom of speech existing in the country, the lesser the impact of state interferences on them (see KHABYUK 2010b, p. 23). Thus it is important to know about the broadcasters' recruiting policies for journalists, their rights within the organisation and in the country in general.

#### 7. Content outlets

Last but not least, broadcasting licensing procedures can play a role in suppressing a broadcaster. Whether there are legal provisions for priority granting of a broadcasting licence to public service broadcasters, who owns the technical facilities and whether must carry rules exist for broadcasting networks must be clarified.



### 3. The Situation of German Public Service Broadcasting

The current situation of public service broadcasting in Germany shall be described here only briefly. A more detailed description can be found in KHABYUK 2010b, pp. 23-33.

#### 1. Autonomy or degree of regulation, external regulation

Public service broadcasting in Germany is regulated mainly by the “Interstate Treaty on Broadcasting and Telemedia”,<sup>1</sup> related interstate treaties (equals to federal laws), federal state laws and broadcaster’s statutes. An important role is played by the Federal Constitutional Court, whose rulings have strongly influenced legislation in favour of the independence of public service broadcasting. German public service broadcasters are regulated rather strongly by laws and statutes. However, they enjoy strong autonomy because the federal governments which are responsible for culture (and broadcasting as a part of culture) in Germany, exercise only a narrow “legal supervision,” which excludes programming issues. Federal state government also has the right to delegate a representative to all meetings of the broadcasting councils with the exception of meetings of the programme committee. Its measures may only concern infringements that have not been removed or perceived by the broadcasters’ supervisory bodies in a timely manner. There exists no special regulating authority and the parliaments execute only certain narrow competences in the licence fee determination procedure (see point 4).

#### 2. Type/ownership/object of corporation, governance structure

As a reaction to an attempt by the German federal government to establish a second TV channel in the form of a commercial company, the 1<sup>st</sup> Broadcasting ruling of the German Constitutional Court determined in 1961 that the autonomous “corporation under public law” (supervisory bodies constituted not only of party representatives, but also of representatives of societal groups combined with public ownership) had to remain the only acceptable organisational form of public service broadcasting. According to this ruling, only federal states should have exclusive legislative power in broadcasting politics. This has led to the decentralised organisation of broadcasting, which in turn implies less control through state bodies. The object of public service broadcasting, and simultaneously the programme remit, is very general and broad (see point 3).

The governance structure of the biggest regional broadcaster – the Westdeutscher Rundfunk (WDR) – shall be described here as an example. The main bodies of the WDR are the Director General (“Intendant”), the broadcasting council and the administrative council. The *broadcasting council* consists of 47 members, of which 13 are appointed by the federal state parliament of North

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<sup>1</sup> The current German version of the “Interstate Treaty on Broadcasting and Telemedia” can be found here: [www.alm.de/fileadmin/Download/Gesetze/RStV\\_aktuell.pdf](http://www.alm.de/fileadmin/Download/Gesetze/RStV_aktuell.pdf). An unofficial English translation of an older version of the Interstate Broadcasting Treaty is available here: [www.alm.de/fileadmin/Englisch/9\\_RAESTV\\_Englisch.pdf](http://www.alm.de/fileadmin/Englisch/9_RAESTV_Englisch.pdf).

Rhine-Westfalia (where the WDR is located), 21 members by different societal groups, 10 members from sectors of journalism, and 3 members from elderly and disabled people and people of immigrant origin. The broadcasting council is responsible for the election and dismissal of the Director General, and it can declare in written form violations of programme principles in programs, although pre-control of programs before transmission is not permitted.

The *administrative council* counts 9 members, of which 7 are appointed by the broadcasting council (max. 2 of them may be members of parliaments) and 2 are employee representatives. A membership in the broadcasting council excludes membership in the administrative council. The administrative council monitors the Director General in all management activities except programming decisions. It can demand reports from the Director General, and inspect accounts, calculations and writings etc. Its acceptance is required in cases of labour contract conclusions with directors and the Director General, acquisitions and sales of companies, shares, major transactions, bank loans, extraordinary expenses, changes in the organizational structure of the corporation etc.

The *Director General* governs the WDR independently. He is responsible for the programming and for all strategic operations of the broadcaster, and he has to ensure that all programs comply with legal requirements. He also has the sole right to propose candidates for election as directors through the broadcasting council. The decision-making in the board of directors does not underlie the principle of collective responsibility, but rather is subordinated to the Director General. He is relatively free to make programming decisions, but more dependent with regard to economic and technical decisions (controlled by the administrative council). The power balance in the WDR is clearly distributed in favour of the Director General; such governance structure is called “Director General’s Corporate Governance”.

### 3. Legal definition and factual implementation of the programme remit, content regulation

The definition of the PSB programme remit is rather broad. On proposal of the Director General the WDR issues programme directives, especially concerning details about the implementation of the remit and principles of journalistic and qualitative standards. Every two years the WDR also publishes a report about the fulfilment of its remit, the quality and quantity of the existing offerings and the main points of the planned offerings. The Director General reports annually to the broadcasting council about the implementation of the remit.

The Director General’s program directives have been recently narrowed concerning telemedia offerings (= offerings on the internet, digital channels). A so called three-step-test has had to be conducted for new or changed telemedia since June 1<sup>st</sup> 2009. By this test, the broadcasting council checks whether those offerings meet societal needs and enlarge the broadcasters’ journalistic competence (“publicistic value”). Transmitting television and radio programs on the Internet is normally restricted to seven days (if they pass the three-step test); sport events are limited to 24 hours. Typical commercial telemedia, e.g. price or



insurance calculators, dating sites etc. are prohibited. The three-step-test procedure can last up to one year; a positive decision of the broadcasting council and an approval by the “legal supervision” are required.

#### 4. Legal definition and factual implementation of funding

In Germany public service broadcasters are predominantly financed by licence fees. Since 2009, the TV fee has been €17.98 per month (€5.76 for radio only or for PC with internet access). Revenues from advertising and other commercial sources are allowed, but are less important (they amount to only 14% of the total revenues). The amount of the licence fee is calculated by a commission of experts (“KEF”), who check the funding demands claimed by the public service broadcasters with regard to proper calculation. They also have to check the funding demands with regard to the legitimacy of the broadcasters’ programming decisions, which is a difficult job as they have to respect the broadcasters’ programming authority. After these checks, the KEF suggests the appropriate amount of the licence fee to the federal state parliaments, which may only deviate from these suggestions under narrow conditions.

The KEF consists of 16 independent experts who are nominated by the federal states for 5 years. Members of parliaments are not allowed to be members. Since the 8<sup>th</sup> ruling of the Federal Constitutional Court in 1994, the KEF has gained more power and independence to determine the amount of the licence fee. When in 2005 the federal state parliaments for the first time in the history deviated from the KEF recommendations (they approved an increase of €0.88 instead of the €1.09 the KEF had suggested), the Federal Constitutional Court determined that this deviation was illegal and did not fit with the narrow conditions that would allow such a deviation (either missing access to information or an undue financial burden for the licence fee payers).

#### 5. Institutions and methods for the collection of revenues

Formerly, the licence fee in Germany was collected by the Federal Post. In 1976 the public service broadcasters founded a separate organisation for this task, called “GEZ” (“Gebühreneinzugszentrale”), to become independent from the Federal Post and to optimise the collection procedure (the GEZ is more efficient and less expensive than that of the Federal Post or of the German taxing authorities). Almost all households which possess a receiving device are registered by the GEZ. However, the number of fee payers has been declining because of demographic reasons and a growing number of fee evaders (who probably do not realise or accept that the fee also has to be paid for new mobile and hybrid devices that can receive broadcasting programs and audiovisual services). The public service broadcasters hope that the device-independent household fee, which will replace the present fee from 2013, will stop this downward trend and also will make it unnecessary to determine if somebody possesses a receiving set.



#### 6. Appointments and management of personnel

As was reported in point 2, the Director General is appointed by the broadcasting council. Other members of the director board are approved by the broadcasting council, but only on the proposal of the Director General. The journalist staff is appointed by the management independently from the boards. Journalists are considered to be independent, have strong rights and observe journalistic values. It should be noted that some appointments of the top-management in German public service broadcasting obey the rules of political proportion – if the Director General belongs to or sympathizes with a certain party, his deputy usually is supported by the rival party (MEYN 1999, pp. 185-188). But such political interventions have become more difficult to maintain since most of the broadcasting councils have reduced the number of state representatives in their broadcasting boards to one third, as a reaction to the 6<sup>th</sup> Broadcasting ruling in 1991. Additionally, it is wrong to conclude that journalists who are party members are not independent enough to criticize their own party. This has been proven by numerous examples.

#### 7. Content outlets

After World War II, the broadcasting transmitters were passed to the direct ownership of public service broadcasters. Public service broadcasting is given priority in the procedure of licence granting. In addition, the federal state laws contain “must carry rules” that give the highest priority to public service channels, e.g. for the terrestrial distribution of signals and for the distribution in cable networks.

### 4. Conclusions

Although there are certain mechanisms to defend against state intervention in broadcasting, it is difficult to establish public service broadcasters that are independent from the state. Even one biased factor, e.g. the recruitment of personal or funding, can ruin a broadcaster’s independence. The most important drivers for the independence of public service broadcasting are the broadcasters’ management and staff. But the politicians and the representatives from civil society must also contribute to protect public service broadcasters independence and enable them to serve the public interest.



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The Control of Public Service Broadcasting in Germany:  
Norm and Reality of the German Broadcasting Councils  
("Rundfunkräte")

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Hans J. Kleinsteuber

## **The Control of Public Service Broadcasting in Germany: Norm and Reality of the German Broadcasting Councils ("Rundfunkräte")**

### **1. Introduction**

The presentations this morning have already explained, that public service broadcasting (PSB) in Germany is meant as a form of professional broadcasting with strong public participation and non-governmental public control. Its functioning first and foremost is allocated to the so called "Rundfunkräte", councils that consist of representatives of socially relevant groups of society. These councils were deliberately designed in the post-war period to guarantee public involvement in public service broadcasting, and their accountability to the public is chartered to serve. These days Germany's broadcasting councils tend to be on the defensive as PSB wages a defensive battle at the European level against commercial competitors and their lobbies.<sup>1</sup> ARD (the first public channel) and ZDF (the second channel) have been accused of receiving non-authorised state aid, something incompatible with EU financing competition law. Proceedings of the European Commission [EC] were suspended in April 2007, but not before posing several uncomfortable questions concerning the authority of a broadcasting council categorised as a "monitoring body internal to the institution", and the Courts of Audit (Rechnungshöfe) and the State Parliaments (Landesparlamente) because they regularly receive reports from the broadcasting councils.

This smells of state control at worst and contiguity at least. A fundamental contradiction is also pointed out: "The radio and television broadcasting council determines the guidelines for the programmes and advises the programme directors on radio broadcasting activities and programmes. The fact that the radio and television broadcasting council is also in charge of checking that these rules and guidelines are observed can lead to a conflict of interests between its function as a monitoring body on the one side and its role in broadcasting and programming on the other side".<sup>2</sup>

The situation begs reflection on how the tasks of Germany's broadcasting councils could be reformed and modernised, a discussion that has already started about options for improvement and strengthening the structure and practice.<sup>3</sup> In 2009 the councils were compelled, under EC pressure, to launch a "public value test" (similar to the UK) wherever they intend to introduce new programming.

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<sup>1</sup> Former contributions of the author to this topic include KLEINSTEUBER 2007a, also KLEINSTEUBER 2007b.

<sup>2</sup> EUROPEAN COMMISSION 2007, Point 256

<sup>3</sup> LILIENTHAL 2009



Each proposal is subjected to a rigid “three-step-test” that allows competitors to intervene. The final decision rests with the broadcasting council, which must fulfil additional duties – duties it has not been prepared for. At this writing the new policy is just beginning and it is too early to discuss procedures and results. But it is certainly appropriate to question how it all started, what is going on and what is at stake.

## 2. The Idea of a Broadcasting Council

The broadcasting council was an idea of Hans Bredow, self-appointed “Father of German Broadcasting”. How did this come about? In 1926, as the leading figure in the Post Department (Postministerium), Bredow became Director of the State Broadcasting Company (Reichs-Rundfunk-Gesellschaft), which administratively monitored all regional broadcasting bodies. Bredow was a top administrator charged with guaranteeing “non-partisanship”. There was no question of democratic control. In those days Bredow perceived radio clients merely as the authors of posted petitions – better than nothing, but only just.<sup>1</sup>

Bredow was by no stretch a democrat, but he was steady and preferred to go to jail rather than collaborate during the dark years of the Nazi regime. In 1946 the Western Allies welcomed his advice and he submitted a position paper to the Hessischer Rundfunk that included the idea of a broadcasting council to bring together “representatives of central organisations and experts”. In 1947 he produced a report on the new regulation of broadcasting and there he argued this idea as “the way in which the audience could become a broadcasting stakeholder, in order to create real public broadcasting”.<sup>2</sup> This was not about handling economic aspects, which would be the purview of a separate administrative council. His idea of broadcasting councils was rooted in rejection of both the bureaucratic state of the Weimar period and the Nazi seizure of power. His notion was unprecedented, even at an international level. The concept of “Public Service”, promoted by the Allies, took on a uniquely German complexion.

Historians dispute whether Bredow’s aim was to selflessly establish democratic control over broadcasting or instead to establish himself as leader of the proposed body, i.e. to carve out a personal stronghold. In fact he did become the administrative council leader of Hessischer Rundfunk. Whatever the case regarding personal intentions, his idea survived and broadcasters in the Western zones of occupation created broadcasting councils. There were differences between zones. In the American zone (where Bredow was most influential) the delegates of civic associations obtained the most mandates (meaning seats or positions), whereas in the British zone the members of Parliament were also taken into account. Subsequently, wherever a new broadcast operator came along it received its own council. This was the case for ZDF (its council is called the television council), for the Deutsche Welle, and for the new states that

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<sup>1</sup> BREDOW 1927, p. 34

<sup>2</sup> BREDOW 1951, p. 24



joined the Federal Republic, from Saarland to the more recent states of the GDR. The dual system existing since the mid '80s gave birth to the media councils as a counterpart within the state media bodies (Landesmedienanstalten) with the aim of regulating commercial competition.

### 3. Broadcasting Councils Today

Although hard to believe, there have been no significant changes since the practice was formulated. With each change of government the composition of these councils is reconstituted: the conservative party CDU, for example, tends to involve associations of World War II refugees whereas the Social Democrats prefer consumers' associations. But the concept has remained untouched. Indeed, the political conventions that produced Germany's broadcasting regulations continued to secure its influence.

Since its foundation in 1961, the television council of ZDF has been a playground for politicians. Among its 77 members, 16 come from the federal states, 12 from political parties and 3 from the national Federation. Since 2007 the leader of this council has been CDU politician and MP Ruprecht Polenz, earlier the secretary general of his party.<sup>1</sup> Many top representatives from the federal states and the Federation sit on the councils, along with former ministers and state secretaries, as the parties delegate seats to high-ranking office holders. Social Democrat Kurt Beck, Minister-President of Rhineland-Palatinate, is the current leader of the administrative council where many other minister-presidents, ministers and secretaries of state are also members. It is a triumph of the party-proportionality principle. Actually, ZDF was created during the CDU government, therefore the General Director (Intendant) and a majority of programme directors were initially appointed by the Christian Democrats, with a smaller proportion by the Social Democrats. Black (CDU) and red (SDP) "circles of friends" met (and still meet) in the ZDF rooms and prepared the meetings of the television council together.

Even so, socially relevant groups have 46 mandates (seats) and membership represents a cross-section of society's associations, employers, trade unions, churches, sports, culture organisations, and so on. In reality many influential social forces feel close to one of the two main parties and so the small parties barely manifest. To avoid helplessness in dealing with the pressure of cliques led by the parties, the unaffiliated mandate-holders meet in a sort of "grey" circle of friends. New social Movements, NGOs and citizens' groups, although playing an increasing role in shaping Germany's public sphere since the 1980s, are barely represented compared with older established associations. Self-organised associations of broadcasting users, as in the Netherlands, don't stand a chance as sponsors of public service broadcasting in Germany. Thus, one must be cautious in stipulating how much and how far 'the public' is actually repre-

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<sup>1</sup> [www.zdf.de](http://www.zdf.de)



sented and has any real influence on public service media in these broadcasting councils.

However things are not as politicised everywhere, and political pressure on public broadcasters is decreasing as the dual system makes broadcasting councils less important. Former Chancellor Helmut Kohl, once himself a ZDF bigwig, was able to demonstrate through his series “Zur Sache Kanzler” (translated: “Come to the Point, Chancellor”) on commercial channel Sat.1 that politicians could be far less inhibited when appearing on private TV channels than on ZDF. As for the Deutsche Welle, which the author knows very well, 7 out of 17 members of their broadcasting council are politically inspired selections from the Federal Government, the Parliament (Bundestag), and the second chamber, the Federal Council (Bundesrat) – mostly career politicians. However, there are no circles of friends, the proportionality principle has shrunk (formerly the two main political parties distributed among each other the directorship and council presidency), and conflicts between political parties seldom emerge. This trend is also due to the fact that career politicians are heavily burdened multi-functionaries and seldom attend council meetings, whereas the “greys” are firm fixtures. Therefore, there are no career politicians imposing a leader for the council or for the boards.<sup>1</sup>

In recent years scholars have not written much about these broadcasting councils. And if they did, what came into their minds was mostly not very friendly. For example, there is a thesis that the councils are populated by amateurs who are unable to cope with the job. That point of view implies that the councils vis-à-vis the executive committees do not really have a say and only provide a kind of ‘democratic garnish’. This description is surely too harsh and does not match the author’s experience, although it is correct to define some representatives as amateurs with regard to broadcasting, but who might have other areas of expertise coming from different political, economic and social fields to decide on key issues. This happens because, and peculiar to recruiting for Germany’s broadcasting councils, mandate-holders do not need any specific qualifications for performing the office. Some become gradually acquainted with the increasingly complex matters they must handle, while other rely on the makers and programme directors to work things out. Who is skilled enough and owns sound expertise in Video Journalism, Digital Radio Mondiale or Internet Protocol Television? And who is ready to admit that they do not know anything about such matters? The few surveys among members of broadcasting councils demonstrate that they are not very much at home with these subjects.<sup>2</sup>

From the perspective of the many multi-functionaries who crowd the councils, it is attractive to be a member in order to meet, at such a high level, politically, economically and socially influential persons and be able to keep in touch with them. When the ZDF television council meets, a great number of top politicians

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<sup>1</sup> KLEINSTEUBER 2007c

<sup>2</sup> BROSIUS 1999, NEHLS 2009



gather in a relaxed atmosphere, no other platform provides anything comparable. The politicians are not very reliable, and reliably attend the meetings only when a programme director must be chosen. But usually the person appointed has already been selected in advance, and often not by the council but behind the scenes. From the point of view of politicians, membership is useful because the mandate is a resource of power and good for advancing one's career.

A few figures are pertinent to understand the scope of the membership system. In 2008 a total of 514 persons worked in the 12 broadcasting councils of German PSB. Of these, 157 were politicians. Others had seats in parallel bodies that oversee the commercial sector – altogether close to one thousand representatives. A study of all the PSB councils looked especially at the presence of trade union representatives – one of the core “groups” in Germany – and found 49 of them in the public councils.<sup>1</sup> Thus, more than three times that many come from the “political bench”.

It has been clear for some time that things cannot go on like this. The broadcasting councils have made themselves cosily at home, do not have, as a rule, much authority over the conduct of broadcasters, and do not attract attention in any significant way. If, by way of exception, a public debate on the broadcasting councils takes place (about the choice of programme directors or scandals, for example), they are portrayed in a critical way and publicly lambasted. It is apparent that the councils are partly to blame for this state of affairs. The potential for modernisation of Germany's broadcasting councils can benefit by investigating arrangements elsewhere. Britain, in particular, is a useful reference because there the leadership structure of the BBC, the ‘mother of public service broadcasting’, has been subject to major reorganisation for partially similar reasons. The result was the BBC Trust, created at the beginning of 2007, which can be considered today's “state of the art” in this area.<sup>2</sup> Much of that experience is applicable to Germany.

#### **4. Driving Politics Back**

German jurists always emphasise the notion that public service broadcasting is independent and at ‘arm's length’ from state control. This does not, however, prevent politicians from crowding Germany's broadcasting councils. It is not hard for them to do that because they are making the laws. While it is true that political parties represent relevant sections of society, they surely are not the only representatives doing that. In addition, by nature their party and personal self-interests encourage pursuing their own goals. They want to secure high positions for their colleagues and influence programmes because parties are constantly campaigning for the next elections. Due to well-trained inconsiderateness, their credibility continues to drop. This is evident in poor polling numbers, in the decline in co-operation, and in the shrinking loyalty of citizen members.

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<sup>1</sup> NEHLS 2009, pp. 71f.

<sup>2</sup> [www.bbc.co.uk/bbctrust](http://www.bbc.co.uk/bbctrust)



The self-pleased appearance of party leaders acquiring positions of power and prestige very often is enough to promote these fruits of frustration. This is especially true for broadcasting councils, and that is why it is so important to reduce the volume of blacks and reds in the councils and bring in more greys instead (“grey” is indeed a derogatory term for referring to representatives of the civic society, which of course comes in all colours).

I know from experience that chronically overloaded politicians, apart from attending the meetings when an programme director must be appointed, rarely materialise, that when they do they are often badly informed; however, they are keen to make it clear that they have control over the broadcasters through regulations and licence fee arrangements. One often gets the impression that as the influence of politicians decreases, they tend to be even more controlling in their behaviour. It is obvious that the dominance of politicians over broadcasting councils must be driven back, almost certainly by force, as they are unlikely to surrender easily or voluntarily. Big cliques of politicians inevitably induce politicisation and proportional distribution of mandates. Empirical investigation would all but certainly reveal that, apart from key decisions about the staff – which politicians like to partition among themselves – they do not leave much of a mark very often.

Keeping career politicians out of broadcasting councils actually should not be so difficult: one could simply incorporate in juridical principles the non-eligibility of politicians to take part in council tasks. There is a good example for this in the agreement stipulated by Hamburg and Schleswig-Holstein in 2007, when these two German states joined their broadcasting bodies together. Under the paragraphs about “personal prerequisites”, it is clearly stated that those “who belong to a legislative or decreeing body of the European Communities, of the Council of Europe, of the Federation or of one of the States, or who are officials for one of the superior Federal or State authorities” cannot become council members.<sup>1</sup> How would the ZDF television council look if this regulation were valid in Mainz as well?

For a better composition of future broadcasting councils, ‘better’ meaning something other than political omnipresence, the importance of socially relevant groups should be promoted. Historically, broadcasting councils have been taking into account, above all, established interest groups. In practice, German society has developed over the past 30 years into a pluralised entity where new assemblages dealing with postmodern subjects (like the environment, human rights, consumers, women, migrants, citizens’ groups and so on) abound. When composing new councils, principles of modern governance should be the basis for design and formation. In this it is clear that politicians are not the only ones making decisions (government) because a “round table” of representatives from the three big sectors (politics, economy and civil society) should meet, each with their own “benches”. In governance theory, “stakeholders” – considered as

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<sup>1</sup> Medienstaatsvertrag HSH 2006, § 43.1



participants or competent amateurs – are embedded in the decision-making process because they combine the necessary distance, commitment and subject-specific expertise that are needed for effectiveness.<sup>1</sup>

The BBC Trust is an example. It is composed of twelve members who meet at least once a month with many duties, like working in committees and speaking in public. The Trust regularly invites citizens from throughout the United Kingdom to public meetings where questions are answered and suggestions obtained. The chairperson of the Trust – a university professor with great experience in politics at a municipal level – must be available for BBC work four days a week, while the work allocation of normal members is two days per week. The chairperson earns £140.000 a year, and members between £35.000 and £40.000. Backing the development of the BBC broadcasters continuously and actively is the focus.

How does one become a member of this distinguished body? Vacancies are advertised and the independent institution, “Commissioner for Public Appointments”, monitors the appointment of new members. Candidates must possess specified qualifications:

- Commitment to the goals of the BBC and sound understanding of the challenges that public broadcasting will have to deal with;
- Ability to understand and represent the point of view of fee-payers;
- Willingness to meet the audience at public events and swap ideas with them, and ability to act for the public interest;
- Ability to work effectively at the board level.

A commission including the BBC chairperson interviews the candidates. Then, it makes a recommendation that must be approved by the Home Secretary, by the Prime Minister and ultimately by the Queen, who in turn finally appoints new BBC Trust members. In 2009, members were expert in varied fields including radio, regulation, competition, economics, public sector and the public sphere, programme making and journalism. Some represented specific regions of the United Kingdom. Politicians were notably absent.

Of course everything is not perfect in the United Kingdom and Tony Blair was able to successfully put pressure on those in the BBC who were criticising his Iraq policy. Nevertheless, political interference in everyday business seems low, especially as financing does not depend, as a rule, on politicians. Ultimately the BBC Trust perpetuates the successful, non state-operated policy of the old BBC board, building on its good reputation in Great Britain. There is no special emphasis on staging occasional inspections because Trust members must “know the ropes” and give proof of their competencies; they serve as a kind of bridge between citizens and the broadcaster.

Certainly this model cannot be directly transferred to Germany.<sup>1</sup> But it is appropriate to think about ways to bring more expertise into the broadcasting coun-

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<sup>1</sup> HINTZ 2009



cils. Mandates could be taken away from politicians and handed to media experts from different segments of society. In addition, first membership in the councils could benefit from a coaching or mentoring process by veteran members in order to pass on their experience and lessons learned to the next generation. German broadcasting councils are often too large to run efficiently and the 77 ZDF council seats should be able to accommodate each segment of society. However, the high numbers reinforce internal hierarchies and leadership, and the effort of individual members is devalued. On top of that, all members obtain substantial expense allowances and are well taken care of – another reason why they hardly ever raise any objections. Much money could be saved. Moreover, the councils sit far too seldom to carry out any substantial surveillance, e.g. the Deutsche Welle council holds a regular meeting only four times a year and the other councils sit six or seven times a year.

### 5. Access for Every Citizen: Working in Public

The Bundestag operates publicly, as required in the German basic law, (the Grundgesetz). In contrast, broadcasting councils, the small ‘parliaments’ of broadcasters, hold their meetings behind closed doors as a rule. I say “as a rule” because the councils of Bayrischer Rundfunk and Radio Berlin Brandenburg (RBB) operate publicly. This policy is the result of a decade-long tradition. RBB sessions could even be followed on the internet until 2007, when they were deleted without substitution – and without any explanation.

The lack of accountability to the public is in sharp contrast with the situation in other countries. The public has played an important role in the USA, perhaps more than elsewhere. Although the USA has been portrayed as a paradise of deregulation for many years, in fact the Federal Communications Commission (FCC) which is in charge of radio and TV licensing makes many decisions in open forums and works in a transparent house of glass. The logic is simple: everyone using a public frequency for transmitting (“public airwaves”) must give an account to the public of what they offer in exchange. All data concerning each licensing process is publicly available and the FCC comes to a decision during public meetings.<sup>2</sup> Citizens provide a degree of control by following the licensing process and are able to object at any time. All relevant documents are stored in databases that are accessible to anyone with an Internet connection, and contestations can be lodged not only on site but also on line. Of course American media concerns do not seem any less grandiloquent for all that. Still, it is possible to know what their intentions are step-by-step, which offers citizens’ organisations new possibilities for taking action against excessive use of media power or depictions of violence in content. The BBC Trust also makes its meeting records available to the public and on the internet. All interested parties know their rights.

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<sup>1</sup> For a comparison of different national systems of media supervision see HOLZNAGEL/KRONE/JUNGFLEISCH 2004)

<sup>2</sup> [www.fcc.gov](http://www.fcc.gov)





In Germany, by contrast, there is no clear procedure for dealing with the records of proceedings. Recently, a Ph.D. student requested a look at the protocols of a broadcasting council for her dissertation. Lacking clear instructions and procedures for handling such a routine request, this had to be examined by the whole council and was discussed for a long time before the request was ultimately approved. The Ph.D. student, degraded to the role of supplicant, had in the meantime easily secured access to the protocols by the time the discussion was over. The sticking point was that she needed official permission to be able to quote them.

Broadcasting councils without the public are anachronistic. Because they are supposed to represent the breadth of society, they should represent that very part of society calling for more public involvement and accountability. It is oxymoronic to categorise as PSB an approach to broadcasting that denies the public it is supposed to serve, and by which any public company must be held accountable. Each sitting council should be public (including the online broadcasting of it) and the agenda, decisions and protocols should be uploaded on the internet as a routine matter. In this respect, the German Bundestag's Plenum deals with the public in quite an exemplary way. Special questions liable to data privacy laws, for example questions concerning personnel, can be tackled in non-public sittings.

We Germans don't deal well with transparency. The NGO "transparency international" confirms this, ranking Germany among the less transparent European countries.<sup>1</sup> A central element of transparency policy consists of giving citizens access to the protocols and files of public institutions. Ultimately, all citizens are sovereign and administrations should work on their behalf. But German Freedom of Information legislation concerning public access to protocols at a national level was only introduced in 2006, after years of dispute. The same has happened in only half of the states (Länder) – providing more evidence for arcane policy. Laws concerning public access to protocols are restrictive too, since many inquiries cost money and can be expensive. On the whole, Germany is among the worst countries in Europe when it comes to providing information to the public.

The Federal Freedom of Information Act in Germany (Informationsfreiheitsgesetz) applies to "authorities" and is an attempt to provide "access to official information" (§1). Although public broadcasters are neither authorities nor agencies of the state, the law could nevertheless be applied to them, given their public sector status. Indeed, a first commentary to the law includes among the "authorities" the German broadcaster Deutsche Welle, although stipulating that Deutsche Welle "however, is obliged to grant access to information only when operating beyond its mandate and beyond the exercise of broadcasting freedom".<sup>2</sup> There are even clear exclusion criteria for the regulation department:

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<sup>1</sup> [www.transparency.de](http://www.transparency.de)

<sup>2</sup> MECKLENBURG/PÖPPELMANN 2007



“There is no right of access to information if the making public of it could have a negative effect on the supervision or monitoring activities carried out by ... regulation bodies”.<sup>1</sup> This affects the Federal Network Agency (Bundesnetzagentur) which, for example, is in charge of assigning transmission frequencies. The legal situation is partially unsettled and by no means citizen-friendly. In addition, broadcasters seem not to have the slightest intention of operating more transparently.

How does this compare to other countries? In the USA, Freedom of Information Act regulations affect the FCC, too. A section of the FCC Internet portal presents all access details, illustrates processes, and names the persons in charge<sup>2</sup> of the various FCC general activities (licensing and supervision activities are subject to the special prescriptions described above). The British supervising authority Ofcom and the BBC have similar arrangements. The BBC has a special Freedom of Information Website where all those interested can get information about the framework conditions.<sup>3</sup> Some answers to frequently asked questions are provided as well: for instance, in June 2007 the ten best paid BBC executives, the amount of all BBC expenses for taxi transportation, and the construction of prayer areas within BBC office buildings were among the themes tackled.

Compared to this, the German legal situation is depressing. An invitation to take advantage of one's right to view broadcasters' protocols and data is nowhere to be found. Even in the absence of clear legislation on the matter, one would think the broadcasters themselves would want to improve their transparency, given the importance of that for improving relations with the public in an increasingly challenged environment. One should think they would take every opportunity to become more credible in the eyes of the public and reduce public scepticism against them – as evident also in the case of their relations with the European Commission.

Currently, the council's concerns are dealt with, as a rule, by the directorship (Intendanz, the office of the general director). That is like saying the German Government manages the Bundestag. Hans Bredow, quite cleverly, has already demanded that broadcasting councils be an independent body. Making that viable requires that broadcasting councils maintain a distinct legal personality. A council needs its own secretariat which prepares meetings independently, deals with inquiries from the outside, and can get information from the broadcasting house whenever demanded. A dedicated budget should be allocated, which would enable convening expertise and commissioning research (as Ofcom does) when useful or necessary. Such is required for a broadcasting council to be independent, instead of being at the mercy of directorships with their infor-

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<sup>1</sup> Informationsfreiheitsgesetz 2006, § 3.1d

<sup>2</sup> [www.fcc.gov/foia](http://www.fcc.gov/foia)

<sup>3</sup> [www.bbc.co.uk/foi](http://www.bbc.co.uk/foi)



mation gloss. This would guarantee that professionals from the broadcasters' elites do not wrap up council members.

The BBC Trust does not depend on the BBC for its lease on life; on the contrary, the Trust perceives itself as having a "sovereign" function towards the BBC. A substructure called Trust Unit supports it in its activities by dealing with subjects such as achievements, finances, strategic issues, audience and standards. For this the Trust Unit receives adequate funding of over €11m per year. That model could be adapted by Germany without hesitation. One really must wonder how it is possible to call the members of a broadcasting council "watch-dogs of a system" if they only meet a couple of times a year, cannot produce any independent enquiries and, organisationally, are attached to the very body they are supposed to be monitoring?

In Germany there is no light and easy way to register complaints about problems and grievances. When investigating the German broadcasting system, the European Commission noted that, "Third parties can complain by turning either to the monitoring bodies within the broadcasters, or to the federal states carrying out the legal supervision. Third parties can appeal against the decision of a federal state by turning to the relevant court".<sup>1</sup> Should one really write to a broadcasting council's chairperson, or even activate minister-presidents and the German courts, to simply express a critical opinion? Unsurprisingly, hardly anyone does.

Everyday complaints about issues like signal quality failure and violations against programme rules can only be proven by experts. A specified person or dedicated professional post responsible for gathering, proofing and dealing with incoming complaints is needed. Elsewhere streamlined and independent bodies along the lines of ombuds-structures are increasingly important in the media because they have recognised the function as a valuable early warning system. In recent years much of the US daily newspaper press has been investing in quality management and in intensifying contact with readers. It is in their best self-interests to do so. Even in Germany, the WAZ group, one of the largest newspaper groups, has instituted an ombuds-council bound to a code of conduct in 2007.<sup>2</sup> Usually these ombuds-persons are experienced journalists or academicians who personify independence and credibility.

In Switzerland there is also an independent complaint authority for radio and television<sup>3</sup> in charge of handling complaints about all suppliers, public and commercial alike. Before it is activated, an ombuds-place vets the complaint.<sup>4</sup> The authority mostly intervenes if an established law has been violated or if access to a programme has been illegitimately denied. The authority's proceedings are public, as are its decisions. In the USA the FCC collects complaints and is ex-

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<sup>1</sup> EUROPEAN COMMISSION 2007

<sup>2</sup> KAISER 2007

<sup>3</sup> [www.ubi.admin.ch](http://www.ubi.admin.ch)

<sup>4</sup> ELIA 2007



pected to take them into account when deciding about renewing licences, although in practice this does not happen a lot. In Great Britain the highest authority is the regulatory authority, Ofcom, and the BBC maintains a sophisticated internal complaints procedure.<sup>1</sup> Each time a complaint is made, the BBC must react and both complaints and reactions are reported on the internet. A special committee of the BBC Trust deals with appointment issues. In this way not only complaints but also praise can be communicated.

In Germany the formal starting point for registering complaints should be the secretariat of each broadcasting council. There an ombuds-person would collect complaints, evaluate their legitimacy, and where appropriate, clarify problems with the broadcaster. An ombuds-person should be an experienced journalist or other media expert able to distinguish between an unavoidable weakness or occasional unintentional mistake and a clear or systematic trespassing of limits. The person should have an office and a vote in the broadcasting council to raise awareness. It is important to be clear in this respect: it is not a matter of complaining about the programmes or creating a gateway for political criticism. The aim is rather tackling basic issues for ensuring highest quality in public service management.

## 6. Germany's Misery: Back to the State?

In the 20th century Germany pioneered the virtuous notion of including socially relevant groups in broadcasting councils as autonomous members with responsibility for and authority to hold PSB companies accountable to the public they are chartered to serve. Unfortunately this can no longer be taken for granted. The media councils of public broadcasters are appointed by the federal Parliament, and groups merely have nominating power. The party proportionality principle is direct and that is why socially relevant groups become appendages of political parties. In the MABB, the state broadcasting body for Berlin and Brandenburg, decisions and appointments of notabilities are made by a two-thirds majority of parliament. As for the broadcasting body MA-HSH (Hamburg and Schleswig-Holstein, founded in 2007), the parliament chooses council members and the party proportionality principle ensures that those lacking political connections have no chance. Within this broadcasting council, citizens are not allowed to attend "secret" meetings, while government representatives can take part in all meetings and intervene as they wish. The signed treaty allows this. It is not surprising that two of the fourteen members of this broadcasting council must be jurists, effectively excluding 99 % of Germans from membership. This is a way of securing for them access to broadcasting and an absolute monopoly on its control through the back door, if you will. As broadcasting consultants in the state chancelleries, jurists prepare all laws and contracts, as well. Although the broadcasters' legal advisors try to repel their concupiscence, many directors of PSB media bodies come from this sector – and in some federal states they even legally have to. There is no constitutional reason for this – only

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<sup>1</sup> [www.bbc.co.uk/complaint](http://www.bbc.co.uk/complaint)



paragraphs written by the jurists themselves. If Germans do not react, the result will be an unbearable politicalization of all monitoring structures and increasing disconnectedness from the citizens.

Currently, there is a grotesque fragmentation of private-commercial broadcasting supervision among more than 14 bodies. Recently they came together to create a federal Commission for Authorisation and Monitoring (Kommission für Zulassung und Aufsicht, ZAK). The directors of the supervisory bodies for commercial broadcasting took part in the meetings, but again representatives of socially relevant groups were not granted a place, even at a federal level. Societal control is tacitly, gradually and systematically being dismantled. The very bodies supposedly representing all German citizens and constituting a kind of autonomous “fourth power” are under siege.

This has become even more important during these times of severe attacks by commercial competitors in television, and as new rules question the “public value” in media. Never have broadcasting councils been more important. But to be effective instruments of the public in public service media, they must demonstrate that their work is competent, that they are independent and acting as watchdogs on the public interest, and that they will actively defend those interests. It is essential to oppose the culture of political secretiveness and control with a culture of openness, transparency and accountability – as the BBC exemplarily does. It is time to revitalise the tradition of the public in media as optimistically envisioned by Hans Bredow at the dawn of German broadcasting.



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Manfred Kops\*

Adjusting the Remits and Resources  
of Public Service Broadcasting  
within the German Dual Media Order

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Manfred Kops

Adjusting the Remits and Resources  
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**1. State Distance and Market Distance as Constitutive Criteria  
for the Provision of Broadcasting Programs in Post-War Germany**

In Germany the functions of the market, the state, and the voluntary sector have been discussed for the provision of goods in general, and they also have been discussed for the provision of broadcasting programs in particular.<sup>1</sup> With regard to the classical linear radio and television programs, this debate started immediately after the end of World War II, when a new media order had to be developed for Post-War Germany. The debate was strongly influenced by two factors: firstly by the bad experiences Germany had had with the propaganda radio of the Nazi regime, and secondly by the policy of the Allied Forces (Great Britain, France, and the USA in the western part of Germany, and Russia in the eastern part), which assisted Germany in re-establishing a public administration and which preferred a decentralized administration with local and regional levels in general, and also with a decentralized and state-distant broadcasting system. The idea was to prevent a new authoritarian central government in Germany, which once more could abuse broadcasting for political, or even imperialistic, targets.<sup>2</sup>

These influences explain the federal structure of Germany in general, and the federal and state-distant structure of the German broadcasting order in particular: The German states ("Länder") obtained broad legal competences and public revenues, as they should serve as a counterpart to the central level ("Bund"). And broadcasting – as a cultural matter – became a subject of the legal competences of the Länder. In line with this constitutional base decision, public service broadcasters then were established successively (see part 3, below).

After the end of World War II in Germany, the market was also not considered as a proper provider for broadcasting programs. As the economic purchasing power was low, revenues from broadcasting advertisements would not have been sufficient to cover the high investments for the reconstruction of broadcasting stations and of terrestrial networks. And the scarcity of terrestrial fre-

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\* Extended and updated version of a presentation that was given at the international conference of Konrad-Adenauer-Stiftung, Deutsche Welle, and Guangdong University of Foreign Studies "Developments of the Electronic Media in the Age of Globalisation", March 20, 2008 in Guangzhou, China.

<sup>1</sup> See KOPS 2011b, in this volume, pp. 25 - 52; also see KOPS 2007.

<sup>2</sup> See LIBERTUS 2004; DÖRR 2011.



quencies, by which only three or four TV-programs could be broadcasted, was also a strong argument against private provision: For technical reasons it would have caused an oligopolistic supply structure, which would not have allowed economic competition between a sufficiently large number of stations.

In addition, there were journalistic objections against a commercial provision of broadcasting programs. Notably, the German Federal Constitutional Court argued rather early on that the economic targets of commercial broadcasters would negatively affect the journalistic quality and diversity of programs – with negative consequences for broadcasting as a central institution for public opinion making and public communication. In addition, the high suggestive power, the markets' failures to consider external effects for other viewers and listeners (and for the society), and the asymmetry of information between the "suppliers" (the broadcasters) and the "customers" (the viewers and listeners) was mentioned by the German Constitutional Court as arguments against the commercial provision of broadcasting programs and in favour of a non-market provision in the German form of state-distant public service broadcasting, although the Court did not explicitly refer to the economic theory (especially the economic theory of market failure that only later was elaborated about the pros and cons of a commercial versus non-commercial provision).<sup>1</sup>

Other objections against a commercial provision of broadcasting programs were related to distributive arguments. They criticized that the access to and the relevance of commercial broadcasting programs would depend either on the interests of the advertising industry (in the case of advertising funded programs) or on the purchasing power of the viewers and listeners (in the case of pay-broadcasting), and that both of these factors would countervail a broad and fair participation in public communication. Also from that perspective public service broadcasting as a public service for all citizens was regarded as a better alternative.

## **2. Public Service Broadcasting as State-Distant and Market-Distant Provision**

### **2.1. Decentralized Regional Competences**

For these reasons the Allied Forces, and also many of the academic experts in Post-War Germany, preferred a broadcasting system that was both state-distant and market-distant. In fact such a system then was installed as a special form of public broadcasting, which was called "öffentlich-rechtlicher Rundfunk" ("public-legal" or "public judicial" broadcasting"). This term expresses the public character of this institution, but also that it is not run or controlled by the state or by the government.<sup>2</sup>

After 1945 the first regional stations of the German ARD ("Arbeitsgemeinschaft öffentlich-rechtlicher Rundfunkanstalten") were established, based of the geo-

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<sup>1</sup> See *ibid.*

<sup>2</sup> See SCHIWY 2011, in this volume, pp. 19-24.

graphic borders of the reinstated German Länder, but also influenced by the regional responsibilities of the different Allied Forces (see figure 1):

- in the *Northern part* of Germany, Schleswig-Holstein, Niedersachsen (Lower Saxony), and Nordrhein-Westfalen (Northrhine-Westphalia) were occupied by the British Forces (“Britische Zone”),
- in the *South-Western part* of Germany Rheinland-Pfalz (Rhineland-Palatinate) and a part of Baden-Württemberg were occupied by the French Forces (“Französische Zone”),
- in the *South Eastern part* of Germany, another part of Baden-Württemberg, Hessen (Hesse), and Bayern (Bavaria) were occupied by the US Forces (“Amerikanische Zone”), and
- in the *Eastern part* of Germany, Mecklenburg, Brandenburg, Sachsen-Anhalt (Saxony-Anhalt), Thüringen (Thuringia) and Sachsen (Saxony) were occupied by the Russian Forces (“Sowjetische Zone”).

Figure 1:  
The German Länder, Occupied by the Allied Forces after World War II



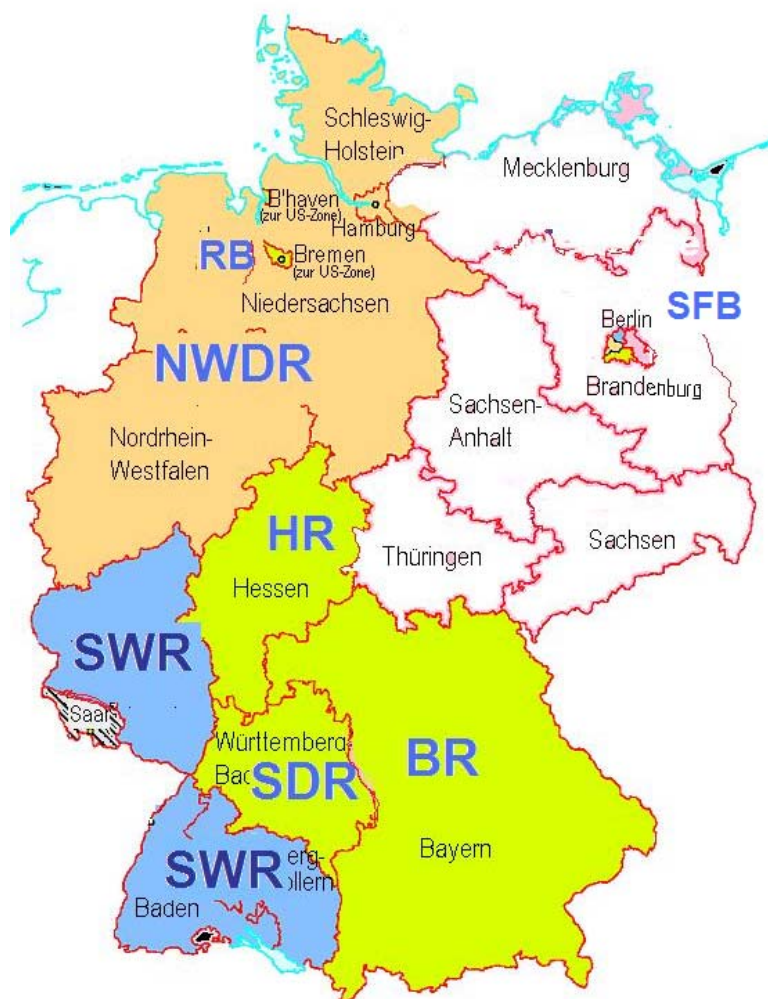
Source:  
[www.geschichtsatlas.de/~gf5/besatzungszonen2.gif](http://www.geschichtsatlas.de/~gf5/besatzungszonen2.gif)



Within these zones, several public service broadcasting stations were founded, being responsible for the territory of just one (large) Land, or for the territories of two or even three of the (small) Länder (see figure 2):

- in the *British Zone* in the North of Germany, the “Nordwestdeutscher Rundfunk” (NWDR) was founded in 1945; and in addition in Bremen, which was occupied by the US, “Radio Bremen” (RB) was founded the same year;
- in the *French Zone* in the South West of Germany, the “Südwestfunk” (SWF) was founded in 1946;
- in the *US Zone* in the South West of Germany, the “Hessischer Rundfunk” (HR) was founded for Hessen in 1948, the “Süddeutscher Rundfunk” (SDR) was founded for the eastern part of Baden-Württemberg in 1949, and the “Bayerischer Rundfunk” (BR) was founded for Bayern in 1949;
- in the *Russian Zone* in the East of Germany no public service broadcasters were founded, with the exception of “Sender Freies Berlin” (SFB), which was founded for the free part of Berlin (which had been occupied by the Western Allied Forces) in 1954.

Figure 2:  
The Regional Structure of the ARD, in 1950

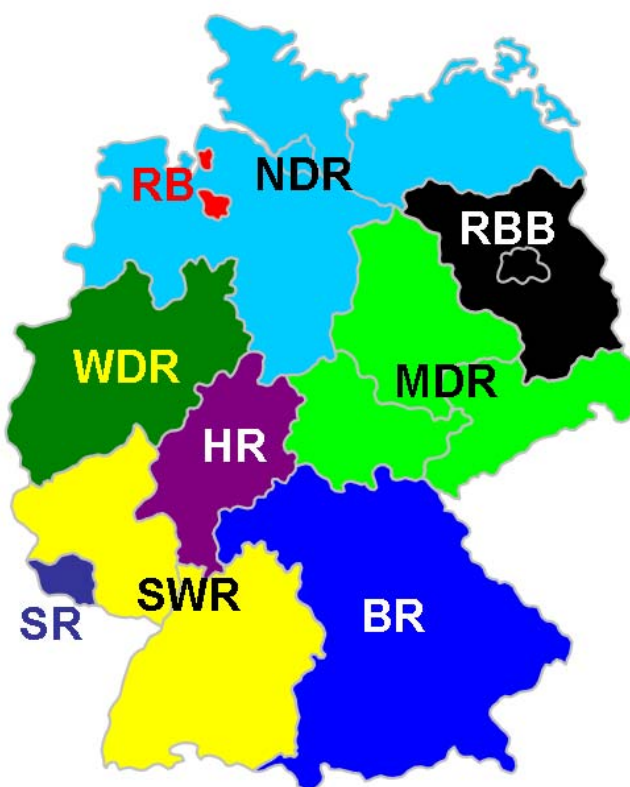


Source:  
www.geschichtsatlas.de/  
~gf5/besatzungszonen2.gif; own completions

This original regional structure of public service broadcasting was later on modified successively, due to different reasons:

- In 1956 the *NWDR*, which was considered too large, was split into the “Norddeutscher Rundfunk” (*NDR*), which remained responsible for the northern Länder, and the “Westdeutscher Rundfunk” (*WDR*), which became responsible for Nordrhein-Westfalen.
- In 1957, after the Saarland was given back to Germany by the French, the “Saarländischer Rundfunk” (*SR*) was established there.
- In 1989/90, after the reunification of Germany, regionally structured public service broadcasters were established for Eastern Germany. For Mecklenburg-Vorpommern, the *NDR* became responsible; for Sachsen, Sachsen-Anhalt and Thüringen, the “Mitteldeutscher Rundfunk” (*MDR*) was founded in 1991, and in the same year the “Ostdeutscher Rundfunk” (*ORB*) was founded for Brandenburg. (In 2003 the *ORB* merged with the *SFB*, to become the “Rundfunk Berlin-Brandenburg”, *RBB*).
- In 1998 the *SWR* and the *SDR* merged to “Südwestdeutscher Rundfunk” (*SWR*), as the territories of both stations extended to the same Land (Baden-Württemberg).

Figure 3:  
The Regional Structure of the ARD, in 2011



Source:  
<http://commons.wikimedia.org/wiki/File:ARD.png>

Today (2011) there are nine local public service broadcasters, some being responsible for one Land only (*SR*, *WDR*, *RB*, *SWR*, *HR*, *BR*), others being responsible for two Länder (*RBB*), for three Länder (*MDR*) or even for four Länder (*NDR*) (see figure 3).



Beside the regional mission, the ARD stations provide programs for a nation wide service (“ARD-Gemeinschaftsprogramm”). The contributions for this nation wide service depend on the stations’ financial capacities. Large stations with high revenues, like the WDR, have to provide more program time than small stations (the WDR as the largest station provides more than 20 %, RB as the smallest station provides only 1 %).

A second nation wide broadcasting program went on air in 1963. It is run by the “Zweite Deutsche Fernsehen” (ZDF), which was – as a reaction to the growing demand for nation wide TV-content, but inconsistently with the idea of a decentralized structure of broadcasting, mentioned above – established as a joint station of all German Länder. Similarly, “Deutschlandfunk” (DLF) was founded in 1962 as the nation wide radio station. When DLF merged with RIAS Berlin in 1992, it was named “DeutschlandRadio” (DLR).

Besides, ARD and ZDF established additional special interest channels, like Phoenix, KI.KA (Der Kinderkanal), ARTE (as a joint venture with the French public service broadcaster) and 3.SAT (with the Austrian and Swiss public service broadcasters). They also provide digital programs (ARD digital, ZDFvision) with three special interest channels each, and audiovisual online-services (Telemedien).<sup>1</sup>

## 2.2. State-Distant Public Control by “Socially Relevant Groups” of Society

For all public service broadcasters, special boards or councils (“Rundfunkräte”) were implemented.<sup>2</sup> They consist of 30 to 90 persons (depending on the size of the broadcasters); and they are sent in by “socially relevant groups of society”. Which groups of society are considered as “socially relevant” depends on the laws of the Länder. For some groups, like the catholic church, labour unions, employer organizations, sport organizations, and consumer organizations, there is a consensus about its social relevance, for other organizations this is disputed; and therefore over time some new groups have gained the right to send delegates to the councils, and other groups have lost it.<sup>3</sup>

The governments from the Bund and the Länder, the political parties, and other institutions that belong to the state sector, also send delegates (depending on the definition of the “state sector”, its proportion varies between about 20 % and

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<sup>1</sup> With regard to this broad offer, German public service broadcasting has been criticized as being too expensive. According to these views, an almost equal degree of competition and plurality could be achieved by a less complex broadcasting system consisting of a smaller number of public service broadcasters. Some politicians have therefore suggested reducing the number of regional broadcasters of the ARD, especially to merge the stations of the small Länder (like Saarland and Bremen); others have suggested abolishing either the common (nationwide) programs of the ARD or the ZDF.

<sup>2</sup> See KLEINSTEUBER 2011, in this volume, pp. 71-86, and SCHIWY 2011, in this volume, pp. 19-24.

<sup>3</sup> See *ibid.*



50 % for the different broadcasters). This has often been criticized, as it conflicts with the request of state distance of broadcasting, and presently there are attempts to limit this proportion and to secure that the majority of the members of the broadcasting councils is delegated by state-distant groups.

The broadcasting councils have to observe and control the public service broadcasters; mainly they have to secure that the broadcasters fulfil its public program remits. They possess several competences, e.g. for the general strategic program decisions, for the engagement of the leading personnel, and for financial matters.<sup>1</sup> To secure the journalistic freedom of the broadcasters, operative program decisions are none of the business of the program councils, though. The councils may intervene under certain circumstances only if there are official complains from the public. From that regard public service broadcasting in Germany is strongly influenced by the third sector – or here better: by the civil society – and less influenced by the state sector; and also the journalists who work for public service broadcasters have a considerable freedom of opinion making.

Another important characteristic of the German public service broadcasters is its state-distant funding. As a main resource for this, the German legislation allowed the public service broadcasters to collect a license fee from every household that possesses a receiving radio and/or TV-set. I. e. the duty to pay is not connected with the actual use of the receiving set, but only with the possibility to do so.<sup>2</sup> The revenues from this license fee go to the public service broadcasters of the ARD, which are responsible for the region in which the household is located. For instance, they go to the WDR if the household is located in Nordrhein-Westfalen, or to the HR if the household is located in Hessen.<sup>3</sup> The ZDF, in contrast, receives a portion of the overall revenues from the license fee, as its programs are distributed nation-wide.<sup>4</sup>

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<sup>1</sup> See *ibid*, also see LIBERTUS 2004.

<sup>2</sup> See *ibid*, also see HOLZNAGEL/NÜSSING 2010. As in the course of digitalization it has become more complicated to determine the receiving devices for broadcasting programs (which in Germany also include audiovisual services, see above), in Germany in 2013 the license fee will be substituted by a general household levy which has to be paid by each private household and company, regardless if there is a receiving device or not.

<sup>3</sup> For this reason, the large regional broadcasters of the ARD, like the WDR, the NDR, the SWR, and the BR, which are responsible for territories with a high number of households, receive much higher revenues than the small regional broadcasters, like RB, or the SR, which are only responsible for small territories with a small number of households. As these differences in fiscal capacity are reduced only inconsiderably by the existing fiscal equalization system of the ARD, the large stations have to provide a higher portion of programs for the central, nation-wide ARD-program (see above).

<sup>4</sup> For the details see the 15. German Interstate Broadcasting Funding Treaty (“Rundfunkfinanzierungsstaatsvertrag”).



As the Governments of the Länder have to agree about the amount of the license fee, they also have a certain influence on public service broadcasting – in contrast to the request of state distance, mentioned above. On the other hand, the political influence is rather low, as the broadcasters themselves are allowed to provide all programs that are compatible with the public service program remit, and as the financial resources that are necessary to cover its program expenses are only checked for their formal correctness by a state-independent commission (the "Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten", KEF). If this commission accepts the broadcasters' funding requests, there are only very few cases in which the Länder can cut these requests, and they have to substantiate these cuttings carefully. This ensures that the states cannot influence the broadcasters by a "golden chain" (i.e. by reducing revenues for broadcasters that are too critical or negative with the states' governments or the central government, or by increasing revenues for broadcasters that support the governments).<sup>1</sup>

### 2.3. Public Service Broadcasting as a Hybrid Order

If we put these attributes together, we can see that public service broadcasting in Germany is a *hybrid system*. It is influenced by the voluntary sector (civil society) and by the state, and even the market has a certain influence, as revenues from advertising and sponsoring are allowed to a certain extent (in Germany at present about 5 % of the total budget).<sup>2</sup> Referring to Figure 4, which has been developed before,<sup>3</sup> public service broadcasters thus should be codified to the blue parts of the triangle: They could be classified as "NGO-influenced (or 'civil society' influenced) state broadcasters", if the influences from the state are considered stronger (L), or as "State-influenced voluntary broadcasters", if influences from the state are considered lower (J); broadcasters which are partly influenced (but not dominated) by the market (N, S, R) would also be classified as public service broadcasters.

As mentioned already, it is difficult to quantify the relative influence of the three sectors in practice. Even for the influence of the market, for which the market revenues are a rather good indicator, forms of hidden influences exist, which hardly can be detected and quantified (like a "self commercialization" of public service broadcasters and an inappropriate domination of market shares as criteria for its quality and success). Even more complicated is the identification and quantification of the relative influence of the state and the civil society, especially as these influences not only are exerted by the broadcasting councils, but also by external forces which are directed towards the councils and the broadcasters' directorates and journalists.

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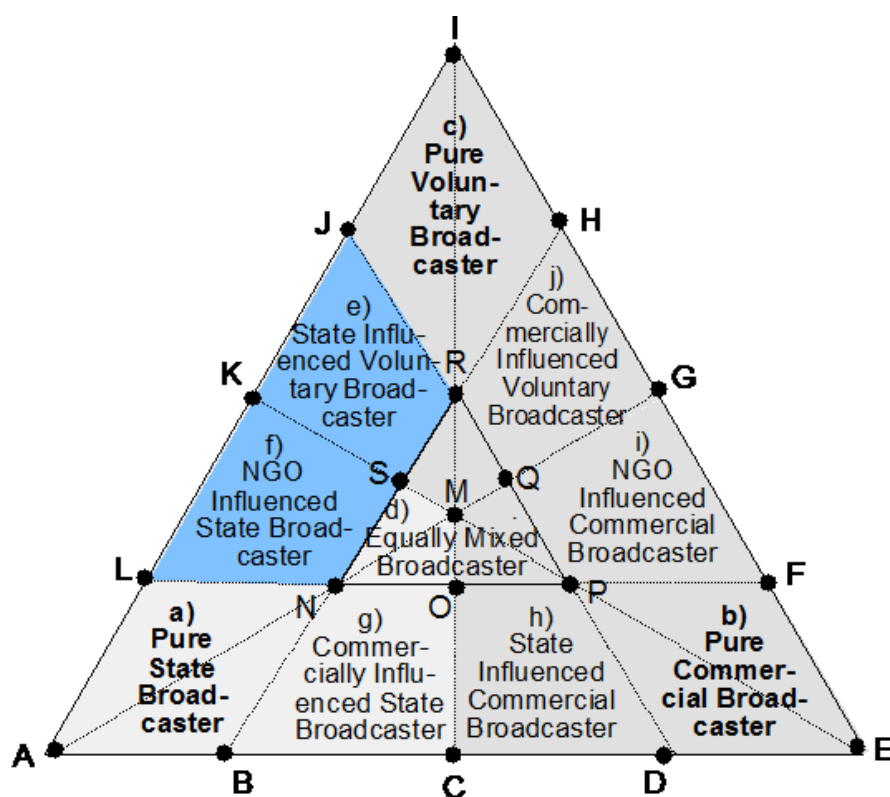
<sup>1</sup> See KHABYUK 2011, in this volume, pp. 61 - 70.

<sup>2</sup> See table 1, p. 101.

<sup>3</sup> For the analytical derivation of this typology see KOPS 2011b, in this volume, pp. 25 - 52, pp. 39 et seq.



Figure 4:  
Public Service Broadcasting  
as a Hybrid System between the State and the Voluntary Sector



#### 2.4. Revenue Structures as Criteria for the Empirical Classification of Broadcasting Orders

Because of these methodological difficulties, economists often limit themselves to the consideration of revenue structures when they classify broadcasting orders empirically.<sup>1</sup> These approaches assume that revenues generate certain incentives for the broadcasters' staffs, and that these incentives in turn generate certain actions and program output:

1. If a broadcaster is completely financed by *market revenues*, he will act according to the rules of the market only. He will attempt to maximize his private profits. The programs are a means for that purpose. The content, the artistic and journalistic style of working, the target audience and the audience flow are deemed to maximize the market revenues: For a commercial broadcaster financed by commercials and sponsoring, for instance, the programs address audiences that are likely to buy the advertised products; for a commercial broadcaster financed by subscriptions, the programs address

<sup>1</sup> See KOPS 2007, pp. 19 et seq. There the revenues from the license fee, which are the dominant funding resource for public service broadcasters, have been allocated by one third to the state sector, and by two thirds to the civil society sector. For details see *ibid.* pp 42 et seq.



audiences that are willing and able to pay for the programs. For these broadcasters, the public effects – the public value – of program output is not a target in itself, but will only be created to the extent to which public value is a by-product of private profit making.

2. If a broadcaster is financed completely by *state revenues*, he will act according to the rules of the political system. If the state directly finances and controls them, the programs will focus on content that supports the state.<sup>1</sup> Similarly to commercial broadcasters, also for state broadcasters the public effects of the program output are not the target as such, but they will be created only to the extent to which public value is a result of the political decision-making process. Thus it depends on the political system whether the broadcasters simply maximize the politicians' power and chances to stay in power, or if the public succeeds in only keeping those politicians and broadcasters in office who serve the public interest (as a side product once again).<sup>2</sup>
3. If a broadcaster is financed completely by the *voluntary sector*, it will act according to the expectations and requests of the donors. The program content and the artistic and journalistic style of work are closely related to these expectations. Public value is created here to the extent to which it is a side-effect of the donors' special interests. Therefore, little can be said about the output of a third sector broadcaster in general. It can be as small as the public value of commercial broadcasters (e.g. if only a few private companies donate): it can be as small as the public value of state broadcasters (e.g. if only a few political parties or pressure groups donate). But it can also be large if many parts of civil society feel strongly involved and strongly champion broadcasting.

The causality between funding structure, incentives and program output, which is assumed by this approach (see figure 5), oversimplifies reality. In fact, the funding structure of broadcasters (as input) does not determine the program output in the direct and mono-causal manner that is suggested in figure 5. Instead, there are other factors besides the revenue structure that influence the incentives for the broadcasters' staffs – and hence also the program output (see figure 6): The importance of these intervening factors depends on the peculiarities of the respective broadcasting order and on organizational peculiarities of the broad-

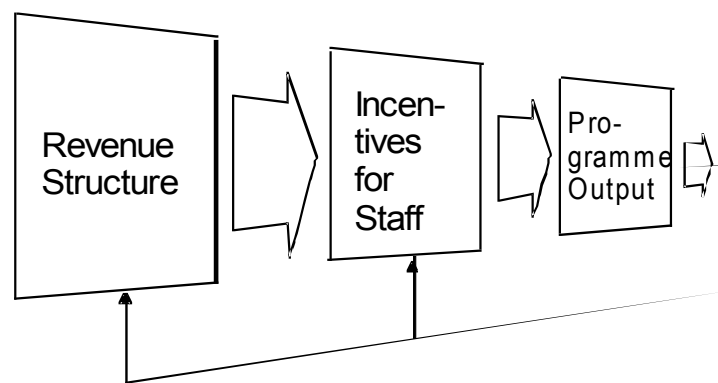
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<sup>1</sup> "State" may mean either the Government or the Parliament. If the Government has the legal responsibilities for the broadcasters, the promotion is restricted to the interests of the parties and politicians that are in power (and thus exclude the political opposition); if the Parliament has the legal responsibilities, the promotion may include the interests of all parliamentarian parties and politicians (but still exclude the non-parliamentarian parties and politicians).

<sup>2</sup> The economic principal-agent-theory illustrate the means to make sure that the politicians act as the agents of the citizens (in democracies: of the voters), e.g. by way of duties that reveal the political decisions and by instruments that facilitate the selection of politicians who pursue the citizens' interests and the de-selection of politicians who pursue their own interests. See BLANKART 1994.

casters. Thus the internal gratification rules of two commercial broadcasters that are both completely funded by advertising, for instance, may differ considerably. If the management of the broadcaster feels obliged to adhere to certain journalistic codes of conduct and thus awards journalistic contributions that deal with public matters, the program output may attach more importance to public values than a management that has been drilled by a commercial broadcaster, or even crossed the lines from a non-media industry, and thus gratifies journalistic contributions that maximize audiences or revenues, disregarding the public effects of the programs.

Figure 5:  
Causality between the Structure of the Revenues, the Incentives for the Staff, and the Broadcasters' Program Output



The incentives for the staff can diverge considerably from the incentives that are set by the revenue structure, especially if these "official" internal gratification rules are not controlled and enforced. The factual gratification rules and the program output may then even contradict the incentives that are set by the revenue structure.<sup>1</sup> In some cases such contradictions can be explained by the fact that the management simply does not understand the donors' intentions; in other cases the management might follow the right targets, but it may have chosen the wrong internal gratifications, and therefore unintentionally may generate faulty program output.

Another fact that makes it difficult to steer the program output of broadcasters by means of incentives for the staff is the mixture of different types of revenues. Most broadcasters are not funded only by market revenues or state revenues or voluntary revenues, but they combine all three types of revenues. Therefore different incentives interfere with each other, and the causalities between the type of the revenues, the internal gratifications and incentives they create, and the program output cannot be determined unambiguously. This problem becomes

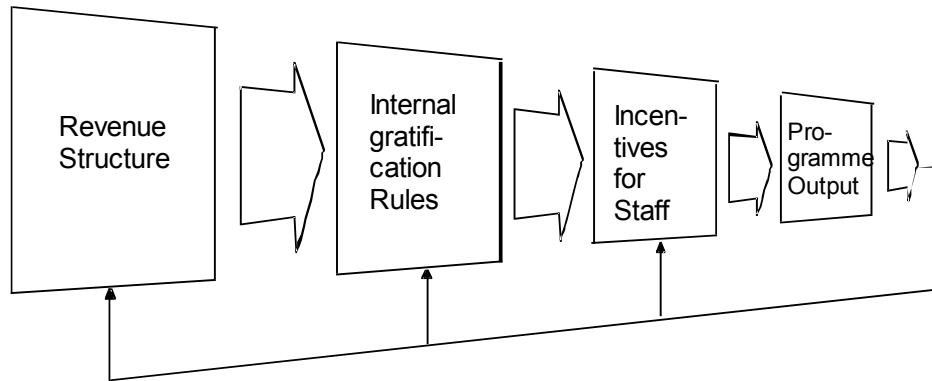
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<sup>1</sup> If the management of a broadcaster which is affiliated with and financed by a religious group, for instance, is not controlled by the donating community, the program output may diverge significantly from the donors' targets and expectations, e.g. if it takes in revenues from advertisement for products that are in opposition to the religious principles of this group or if it takes revenues from sponsors who do not obey these principles.



even more complicated when the influence of the different revenues is not proportional to its shares in the overall budget.<sup>1</sup>

Figure 6:  
Causality between the Structure of the Revenues, the Incentives for the Staff, and the Broadcasters' Program Output, with Internal Gratification Rules as an Intermediate Factor



## 2.5. An Empirical Classification of the German Public Service Broadcasters, Based on the Broadcasters' Revenue Structures

Such intermediate internal and external incentives are neglected by approaches that are restricted to the funding structures of broadcasters. On the other hand, such a restriction has its advantages as it is based on relatively "hard" data, which are available for almost all broadcasters worldwide; and as it does not need (with the exception of the license fee, see below) any subjective judgments about more or less hidden influences.

Table 1 shows the results of such an approach for the sum (average) of the local public service broadcasters of the ARD, for the ZDF as the national public service TV broadcaster, for DW as the foreign broadcaster, and for DLR as the national public radio broadcaster:<sup>2</sup> The upper part of table 1 contains original, uncorrected data for the year 2004:

<sup>1</sup> For German public service broadcasters, for instance, the incentives that are created by revenues from commercials are very high, although this type of market revenue contributes less than five percent to the broadcasters' total revenues, as the broadcasters' management can influence the revenues from commercials by internal decisions, whereas the revenues from the license fee (that contribute more than 80% to the broadcasters' total revenues) are determined externally (by the KEF and the Broadcasting Councils, see above, part 2.2.).

<sup>2</sup> In addition, table 1 includes data for the Deutsche Welle, the German Foreign Broadcaster, and for the German "Community Broadcasting" (like local community radio stations, university broadcasting and the like). In addition it includes the values for the commercial broadcasters, which are discussed in part 3.3. below.



- Column 2 shows the revenues from the third sector/civil society sector. None of the public service broadcasters but only the German citizen broadcasters receive original revenues of this kind (an estimated amount of 60 Mill. €), mainly as donations in kind, i.e. as contributions of journalists and technicians, who work voluntarily for such broadcasters.<sup>1</sup>
- Column 4 shows the revenues from the state, which are not relevant for the public service broadcasters, too (with the exception of DW which is funded from tax revenues of the federal government).
- Column 6 lists the market revenues. They are relevant for ARD and ZDF, which are allowed to receive revenues from commercials and sponsoring within certain limits, and they are minor for DLR and DW, which are not allowed to do so, but only receive nameable market revenues from program sales.

Table 1:  
Revenue Vectors of German Broadcasters, for 2004

|                  | CS Donations 1 |       | State Rev. 2 |       | Market Rev. 3 |        | License Fee |       | Total Revenues |      | Revenue Vector           |       |       |       |
|------------------|----------------|-------|--------------|-------|---------------|--------|-------------|-------|----------------|------|--------------------------|-------|-------|-------|
|                  | Mill. €        | %     | Mill. €      | %     | Mill. €       | %      | Mill. €     | %     | Mill. €        | %    | Civil Soc./Gov.mt/Market |       |       |       |
| (1)              | (2)            | (3)   | (4)          | (5)   | (6)           | (7)    | (8)         | (9)   | (10)           | (11) | (12a)                    | (12b) | (12c) | (12d) |
| ARD              | 0.0            | 0.0%  | 0.0          | 0.0%  | 955.1         | 15.8%  | 5.093.7     | 84.2% | 6.048.8        | 100% | 0%                       | 0%    | 100%  | 100%  |
| ZDF              | 0.0            | 0.0%  | 0.0          | 0.0%  | 272.8         | 14.8%  | 1.575.5     | 85.2% | 1.848.3        | 100% | 0%                       | 0%    | 100%  | 100%  |
| DLR              | 0.0            | 0.0%  | 4.4          | 2.1%  | 16.0          | 7.5%   | 192.8       | 90.4% | 213.2          | 100% | 0%                       | 22%   | 78%   | 100%  |
| DW               | 0.0            | 0.0%  | 301.9        | 96.3% | 11.7          | 3.7%   | 0.0         | 0.0%  | 313.6          | 100% | 0%                       | 96%   | 4%    | 100%  |
| total PSB        | 0.0            | 0.0%  | 306.3        | 3.6%  | 1.255.6       | 14.9%  | 6.862.0     | 81.5% | 8.423.9        | 100% | 0%                       | 20%   | 80%   | 100%  |
| Citiz. Broadc. 4 | 60.0           | 66.7% | 5.0          | 5.6%  | 10.0          | 11.1%  | 15.0        | 16.7% | 90.0           | 100% | 80%                      | 7%    | 13%   | 100%  |
| RTL-Group 5      | 0.0            | 0.0%  | 0.0          | 0.0%  | 3.249.5       | 100.0% | 0.0         | 0.0%  | 3.249.5        | 100% | 0%                       | 0%    | 100%  | 100%  |
| Pro7Sat.1-Gr. 6  | 0.0            | 0.0%  | 0.0          | 0.0%  | 2.593.2       | 100.0% | 0.0         | 0.0%  | 2.593.2        | 100% | 0%                       | 0%    | 100%  | 100%  |
| other Comm. 7    | 0.0            | 0.0%  | 0.0          | 0.0%  | 897.9         | 100.0% | 0.0         | 0.0%  | 897.9          | 100% | 0%                       | 0%    | 100%  | 100%  |
| total Comm.      | 0.0            | 0.0%  | 0.0          | 0.0%  | 6.740.6       | 100.0% | 0.0         | 0.0%  | 6.740.6        | 100% | 0%                       | 0%    | 100%  | 100%  |
| Sum              | 60.0           | 0.4%  | 311.3        | 2.0%  | 8.006.2       | 52.5%  | 6.877.0     | 45.1% | 15.254.5       | 100% | 1%                       | 4%    | 96%   | 100%  |

|                  | CS Donations 1 |       | State Rev. 2 |       | Market Rev. 3 |        | License Fee |       | Total Revenues |      | Revenue Vector           |       |       |       |
|------------------|----------------|-------|--------------|-------|---------------|--------|-------------|-------|----------------|------|--------------------------|-------|-------|-------|
|                  | Mill. €        | %     | Mill. €      | %     | Mill. €       | %      | Mill. €     | %     | Mill. €        | %    | Civil Soc./Gov.mt/Market |       |       |       |
| (1)              | (2)            | (3)   | (4)          | (5)   | (6)           | (7)    | (8)         | (9)   | (10)           | (11) | (12a)                    | (12b) | (12c) | (12d) |
| ARD              | 3.395.8        | 56.1% | 1.697.9      | 28.1% | 955.1         | 15.8%  | 5.093.7     | 0.0%  | 6.048.8        | 100% | 56%                      | 28%   | 16%   | 100%  |
| ZDF              | 1.050.3        | 56.8% | 525.2        | 28.4% | 272.8         | 14.8%  | 1.575.5     | 0.0%  | 1.848.3        | 100% | 57%                      | 28%   | 15%   | 100%  |
| DLR              | 128.5          | 60.3% | 68.7         | 32.2% | 16.0          | 7.5%   | 192.8       | 0.0%  | 213.2          | 100% | 60%                      | 32%   | 8%    | 100%  |
| DW               | 120.8          | 38.5% | 181.1        | 57.8% | 11.7          | 3.7%   | 0.0         | 0.0%  | 313.6          | 100% | 39%                      | 58%   | 4%    | 100%  |
| total PSB        | 4.695.4        | 55.7% | 2.472.9      | 29.4% | 1.255.6       | 14.9%  | 6.862.0     | 0.0%  | 8.423.9        | 100% | 56%                      | 29%   | 15%   | 100%  |
| Citiz. Broadc. 4 | 70.0           | 77.8% | 10.0         | 11.1% | 10.0          | 11.1%  | 15.0        | 0.0%  | 90.0           | 100% | 78%                      | 11%   | 11%   | 100%  |
| RTL-Group 5      | 0.0            | 0.0%  | 0.0          | 0.0%  | 3.249.5       | 100.0% | 0.0         | 0.0%  | 3.249.5        | 100% | 0%                       | 0%    | 100%  | 100%  |
| Pro7Sat.1-Gr. 6  | 0.0            | 0.0%  | 0.0          | 0.0%  | 2.593.2       | 100.0% | 0.0         | 0.0%  | 2.593.2        | 100% | 0%                       | 0%    | 100%  | 100%  |
| other Comm. 7    | 0.0            | 0.0%  | 0.0          | 0.0%  | 897.9         | 100.0% | 0.0         | 0.0%  | 897.9          | 100% | 0%                       | 0%    | 100%  | 100%  |
| total Comm.      | 0.0            | 0.0%  | 0.0          | 0.0%  | 6.740.6       | 100.0% | 0.0         | 0.0%  | 6.740.6        | 100% | 0%                       | 0%    | 100%  | 100%  |
| Sum              | 4.765.4        | 0.4%  | 2.482.9      | 16.3% | 8.006.2       | 52.5%  | 6.877.0     | 45.1% | 15.254.5       | 100% | 31%                      | 16%   | 52%   | 100%  |

1 Donations in cash and kind from individuals and NGO-organisations

2 Financial grants; from the central Government (to Deutsche Welle) and from State and Local Governments

3 Revenues from commercials, sponsoring, programme sales and programme rights etc.

4 Revenues from the Civil Society Sector mainly as donations in kind; revenues from the license fee via Landesmedienanstalten

5 RTL, RTL II, VOX, Super RTL, N-TV, RTL-Shop, Traumpartner TV; advertising rev. plus 50 % of adv. rev. as other market rev.

6 SAT.1, ProSieben, Kabel eins, N24, NeunLive; advertising revenues plus 50 % of advert. rev. as other market rev.

7 Includes Commercial radio stations; advertising Revenues plus 50 % of advertising rev. as other market rev.

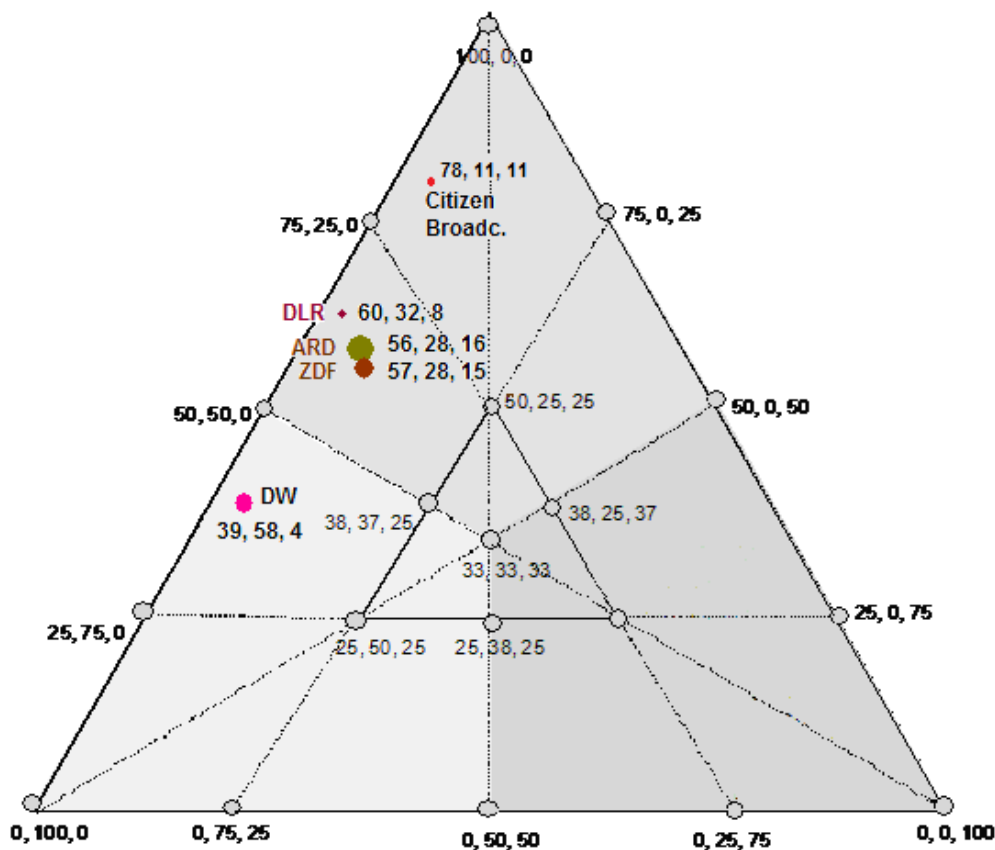
Sources: ARD-Jahrbuch 2005, ZDF-Jahrbuch 2005, ZAW 2006, MP-BASISDATEN 2005, EUROPEAN AUDIOVISUAL OBSERVATORY 2005a

<sup>1</sup> The estimation is based on the number of volunteers and on average working hours per year. It also considers financial aid from the Landesmedienanstalten which stem from the license fee. See for details KOPS 2007, pp. 44 et seq.



- Most important for the public service broadcasters (with the exception of DW) are the revenues from the license fee, listed in column 8. As these revenues cannot be allocated clearly to one of the three basic forms of revenues listed in rows 2, 4, and 6, the revenue vectors for the broadcasters that are listed in columns 12a, 12b, and 12c of the upper part of table 1 are incomplete.
- For this reason a recalculation is necessary, in which the license fee is considered as a mixed revenue which contains both influences from the state sector and the civil society sector: Taking into account that the broadcasting councils have a strong influence on the broadcasters and that the amount of the license fee is determined in a state distant procedure, we have allocated two thirds of the license fee to the civil society sector, and one third to the state sector (see the columns 2 and 4 in the lower part of table 1) – admitting that this is somewhat arbitrary. The “final” or “corrected” revenue vectors of the broadcasters are calculated on this base (see columns 12a, 12b, and 12c in the lower part of table 1).

Figure 7:  
The Structure of Public Service Broadcasting in Germany, in 2004



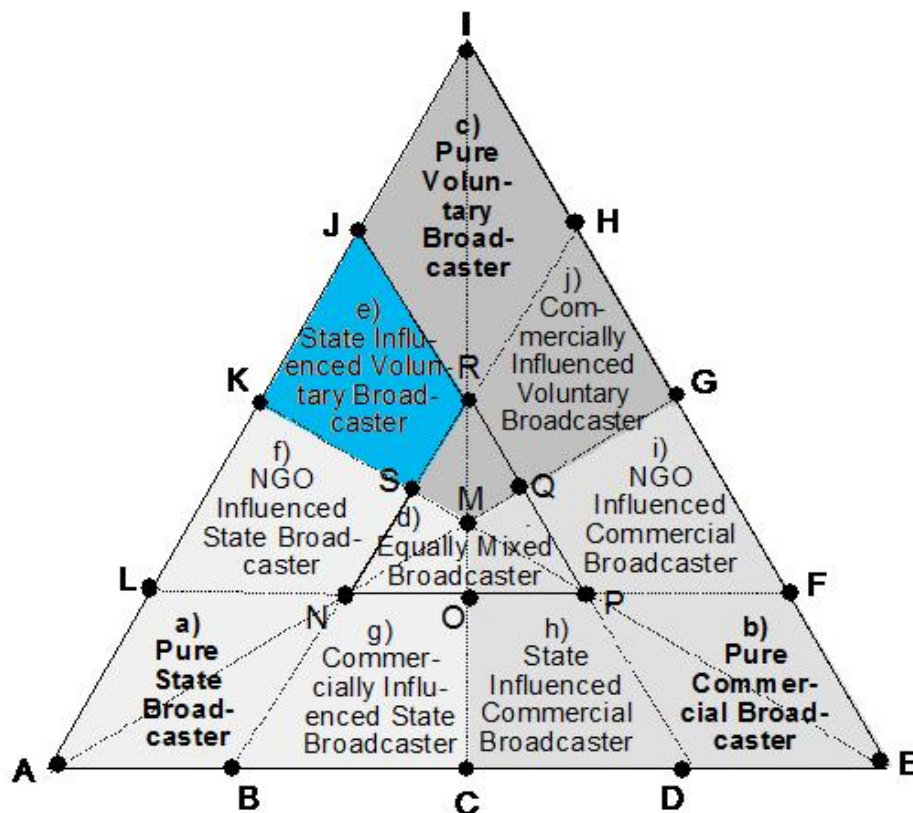
If these revenue vectors are used to plot the public service broadcasters into the triangle, it becomes obvious that ARD (60,32,8), ZDF (57,28,15), and DLR (60,32,8) are located far away from the market pole, and they also are sufficiently far away from the state pole; thus being near the civil society pole. This corresponds with the mentioned strong influence the socially relevant groups of



society have within the broadcasting councils, and with the limited influence the state has for the determination of the broadcasters' revenues and programming. If we compare the locations with the general typology introduced above, these three broadcasters would all have to be classified as "state influenced voluntary broadcasters" (see the blue section in figure 8).

With a revenue vector of 78,11,11, the German "Bürgerfunk" (Community Broadcasting) is located nearest to the civil society pole (see figure 6) – and this type of broadcasters indeed most resembles the ideal of the pure voluntary broadcaster (see figure 8). DW (39,58,4), in contrast, is located nearer to the state pole, due to its funding by the federal government (see once more figure 6). A classification as "NGO (civil society) influenced state broadcaster" would be appropriate here (see figure 8).

Figure 8:  
The German Public Service Broadcasters, in 2004,  
as State Influenced Voluntary Broadcasters





### **3. From the Monistic Public Service Broadcasting Order in Post-War Germany to the Present Dual Broadcasting Order**

#### **3.1. Installing the Dual Broadcasting Order – Primal Aspirations and Reservations**

Before the 1980s broadcasting programs in Germany were provided exclusively by public service broadcasters. As since the 1950s the number of households had expanded strongly and steadily, the revenues from the license fee increased considerably, much more than the GNP, and much more than the revenues from other public resources, e. g. from the sales tax or the income tax. An additional expansion occurred at the beginning of the 1990s, when 16 million additional households from East Germany started to pay the license fee for the – then unified – German public service broadcasters. Due to this expansion, German public service broadcasting was able to provide a large and expensive scope of radio and TV-programs, which hardly can be found in any other country of the world.

In addition, the German Constitutional Court had consistently argued and requested a dominant role for public service broadcasting, enabling and promoting its expansion intellectually and politically. One of the key arguments of the Court was that broadcasting programs not only were a “media” but also a “factor” of public opinion making. In economic terms this means that broadcasting programs not only satisfy private needs according to the demand (the preferences) of the viewers and listeners, but that there are feedback effects, as the program supply also shapes and alters the program preferences (the demand). According to the Court, broadcasting (and the media in general) therefore is an institution that in the long run can affect society substantially – for the good (“race to the top”) or for the bad (“race to the bottom”). For this reason it should not be left to the influence of partial groups of society, nor to the state or to the market only.

In the 1970s, however, the Court’s scepticism against the market was challenged by some lawyers and economists. They pointed out that one central argument against a private provision of broadcasting programs, the scarcity of frequencies, would become less important, as more and more were starting to receive broadcasting programs via cable nets (and later: via satellites). They also argued that the potential of the German economy to buy commercials had increased dramatically in the course of the German “Wirtschaftswunder”, and that therefore, in contrast to the first years after World War II, it would become possible to fund broadcasters privately.

With reference to the general allocative potentials of the market,<sup>1</sup> these voices expressed hopes that commercial broadcasters would be capable to explore the program needs of the viewers and listeners (the market as a mechanism for the detection of consumer preferences), and that the commercial broadcasters would be capable to develop new, innovative programs and program formats to meet these program needs. As a result, a higher variety and a higher quality of

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<sup>1</sup> See KOPS 2011b, in this volume, pp. 25 - 52, especially chapter 2.1., pp. 30 et seq.





the overall program output was expected, also as a result of a competition between the existing public service broadcasters and the commercial broadcasters, to be installed as a new, second pillar of the then coming “dual” order.

Other predictions were even more optimistic. They argued that the admission of commercial broadcasters would not only increase the benefit for the viewers and listeners (the “consumer benefit” of broadcasting programs),<sup>1</sup> but also the benefit for all members of society: As the competition between the two pillars of a dual broadcasting order would increase the scope and scale of public opinion making and public communication, the functionality and efficiency of the public sphere would also increase, and in the end this also would be to the individual benefit of each member of society (the “citizen benefit” of broadcasting programs).<sup>2</sup>

The German Constitutional Court was less optimistic. In 1975 it argued that commercial broadcasters would not provide much content with public value because of its profit orientation and its high dependency on revenues from the advertising industry. Therefore commercial broadcasters could only be permitted if the public service broadcasters would sustain a broad and qualified program supply.<sup>3</sup> However, the Court did not explicitly treat the question under what conditions of a dual broadcasting order the feedback effects between the broadcasters’ program supply and the viewers’ and listeners’ program demand would be positive (“race to the top”), or negative (“race to the bottom”). Pessimistic predictions that the admission of commercial broadcasters would reduce the variety and quality of the overall supply were hard to find: They did not fit into the academic and political mainstream at that time. Only a few academics, mainly from the jurisprudence, predicted that the economic logic or temptations of the market would increase new contents and new formats which would be attractive for the viewers and listeners (and profitable for the commercial providers), but at the same time could be harmful for the public.

### 3.2. The History of Revenues and Audience Shares of the German Dual Broadcasting Order

At the end of the debates the Constitutional Court allowed commercial broadcasting. In 1984 RTL and SAT.1 went on air as the first commercial TV-broadcasters, and subsequently other broadcasters followed: MTV in 1987, Tele5 in 1988, ProSieben and EUROSPORT in 1989, and Premiere as the first German Pay-TV-Broadcaster in 1991 (see table 2). By 2000 the number of commercial broadcasters had increased to 17, and by 2010 it had further increased to 22. At the same time the number of public service broadcasters only increased from 4 in 1985 to 7 (see figure 9).

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<sup>1</sup> For the “consumer benefit” of broadcasting programs see KOPS 2011a; and KOPS/SOKOLL/BENSINGER 2009, pp. 40 et seq.

<sup>2</sup> For the “citizen benefit” of broadcasters see *ibid.*

<sup>3</sup> BVerfGE (Constitutional Court) 119, 181, 217f.



Table 2:  
Audience Shares of German TV-Broadcasters, 1985 - 2010, in %

| TV Broadcaster                         | Program Start        | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 |
|--|----------------------|------|------|------|------|------|------|------|------|------|------|
| ARD                                    | 11/1954              | 43,4 | 44,9 | 42,2 | 37,9 | 31,7 | 30,8 | 27,5 | 22,0 | 17,0 | 16,3 |
| ZDF                                    | 04/1963              | 42,6 | 40,2 | 40,7 | 36,2 | 32,4 | 28,8 | 25,6 | 22,0 | 18,0 | 17,0 |
| ARD III                                | Sixties, and 1992    | 10,2 | 10,1 | 10,5 | 10,7 | 10,4 | 9,0  | 8,8  | 8,3  | 7,9  | 8,9  |
| RTL                                    | 01/1984              | 0,4  | 0,7  | 1,2  | 4,1  | 10,0 | 11,5 | 14,4 | 16,7 | 18,9 | 17,5 |
| SAT.1                                  | 01/1984              | -    | -    | 1,5  | 5,8  | 8,5  | 9,0  | 10,6 | 13,1 | 14,4 | 14,9 |
| 3sat                                   | 12/1984              | -    | -    | -    | -    | -    | -    | -    | -    | 0,8  | 1,0  |
| MTV                                    | 08/1987              |      |      |      |      |      |      |      |      |      |      |
| DSF/Tele5/Sport 1                      | 01/88; 01/93; 4/2010 |      |      |      |      |      | 0,6  | 1,9  | 3,0  | 1,3  | 1,2  |
| ProSieben                              | 01/1989              |      |      |      |      |      | 1,3  | 3,8  | 6,5  | 9,2  | 9,4  |
| Eurosport                              | 02/1989              |      |      |      |      |      |      |      |      |      | 1,2  |
| Premiere alt                           | 02/91 - 09/99        |      |      |      |      |      |      |      |      |      |      |
| DF1                                    | 07/96 - 09/99        |      |      |      |      |      |      |      |      |      |      |
| Sky                                    | 9/99; 07/2009        |      |      |      |      |      |      |      |      |      |      |
| Kabel eins                             | 02/1992              |      |      |      |      |      |      |      |      | 1,6  | 2,0  |
| arte                                   | 05/1992              |      |      |      |      |      |      |      |      | 0,1  | 0,2  |
| n-tv                                   | 11/1992              |      |      |      |      |      |      |      |      |      | 0,3  |
| VOX                                    | 01/1993              |      |      |      |      |      |      |      |      | 1,3  | 2,0  |
| Euronews                               | 01/1993              |      |      |      |      |      |      |      |      |      |      |
| RTL II                                 | 03/1993              |      |      |      |      |      |      |      |      | 2,6  | 3,8  |
| VIVA                                   | 12/1993              |      |      |      |      |      |      |      |      |      |      |
| Super RTL                              | 04/1995              |      |      |      |      |      |      |      |      |      |      |
| tm3/9Live                              | 08/1995; 09/2001     |      |      |      |      |      |      |      |      |      |      |
| VIVA Plus; Comedy                      | 03/1995; 01/2007     |      |      |      |      |      |      |      |      |      |      |
| KI.KA                                  | 01/1997              |      |      |      |      |      |      |      |      |      |      |
| Phoenix                                | 04/1997              |      |      |      |      |      |      |      |      |      |      |
| N24                                    | 1/2000               |      |      |      |      |      |      |      |      |      |      |
| MTV2 Pop                               | 05/2001              |      |      |      |      |      |      |      |      |      |      |
| XXP/DMAX                               | 05/2001; 09/2006     |      |      |      |      |      |      |      |      |      |      |
| Tele 5                                 | 04/2002              |      |      |      |      |      |      |      |      |      |      |
| Nick/Nickelodeon                       | 09/2005; 04/2010     |      |      |      |      |      |      |      |      |      |      |
| Das Vierte                             | 10/2005              |      |      |      |      |      |      |      |      |      |      |
| Number of Public Service Broadcasters  |                      | 4    | 4    | 4    | 4    | 4    | 4    | 4    | 5    | 5    | 5    |
| Number of Commercial Broadcasters      |                      | 2    | 2    | 2    | 4    | 6    | 6    | 7    | 9    | 13   | 13   |
| Number of all PSB and Comm. Broadc.    |                      | 6    | 6    | 6    | 8    | 10   | 10   | 11   | 14   | 18   | 18   |
| Audience Shares of PSB.                |                      | 96,2 | 95,2 | 93,4 | 84,8 | 74,5 | 68,6 | 61,9 | 52,3 | 43,8 | 43,4 |
| Audience Shares of Commerc. Broadc.    |                      | 0,4  | 0,7  | 2,7  | 9,9  | 18,5 | 22,4 | 30,7 | 39,3 | 49,3 | 52,3 |
| Total Recorded Audience Shares         |                      | 96,6 | 95,9 | 96,1 | 94,7 | 93,0 | 91,0 | 92,6 | 91,6 | 93,1 | 95,7 |
| Average Audience Share per PSB         |                      | 24,1 | 23,8 | 23,4 | 21,2 | 18,6 | 17,2 | 15,5 | 10,5 | 8,8  | 8,7  |
| Average Audience Share per Comm Br.    |                      | 0,1  | 0,1  | 0,5  | 1,2  | 1,9  | 2,2  | 2,8  | 2,8  | 2,7  | 2,9  |
| Average Audience Share per all Broadc. |                      | 16,1 | 16,0 | 16,0 | 11,8 | 9,3  | 9,1  | 8,4  | 6,5  | 5,2  | 5,3  |

Source: <http://www.kek-online.de/Inhalte/jahr.pdf>; own compilations

Similarly, the audience shares of the commercial broadcasters exploded. In 1985, the first year after the admission of commercial broadcasters, the audience share was only 0,4%; but only one decade later it was more than 55% (see figure 10). Correspondingly, the market shares of the public service broadcasters shrank to just 40%.<sup>1</sup> Most observers regarded this as a backlog demand; they believed that the new commercial programs were able to satisfy needs which had not been detected and served during the public service broadcasters' monopoly.

<sup>1</sup> See the exact figures in table 2. The sum of the audience shares of the public service broadcasters and the commercial broadcasters is less than 100 % because of some small broadcasters for which the audience shares have not been recorded.

Table 2 (cont.):  
Audience Shares of German TV-Broadcasters, 1985 - 2010, in %

| 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| 14,6 | 14,8 | 14,7 | 15,4 | 14,2 | 14,3 | 13,7 | 14,2 | 14,0 | 13,9 | 13,5 | 14,2 | 13,4 | 13,4 | 12,7 | 13,2 |
| 14,7 | 14,4 | 13,4 | 13,6 | 13,2 | 13,3 | 13,0 | 13,8 | 13,2 | 13,6 | 13,5 | 13,6 | 12,9 | 13,1 | 12,5 | 12,7 |
| 9,7  | 10,1 | 11,6 | 12,3 | 12,5 | 12,7 | 13,0 | 13,1 | 13,4 | 13,7 | 13,6 | 13,5 | 13,5 | 13,2 | 13,5 | 13,0 |
| 17,6 | 17,0 | 16,1 | 15,1 | 14,3 | 14,8 | 14,8 | 14,6 | 14,9 | 13,8 | 13,2 | 12,8 | 12,4 | 11,7 | 12,5 | 13,6 |
| 14,7 | 13,2 | 12,8 | 11,8 | 10,8 | 10,2 | 10,1 | 9,9  | 10,2 | 10,3 | 10,9 | 9,8  | 9,6  | 10,3 | 10,4 | 10,1 |
| 0,9  | 0,9  | 0,9  | 0,9  | 0,9  | 0,9  | 0,9  | 0,9  | 1,0  | 1,0  | 1,0  | 1,0  | 1,0  | 1,1  | 1,1  | 1,0  |
| -    | -    | -    | -    | -    | -    | -    | -    | 0,5  | 0,4  | 0,4  | 0,4  | 0,5  | 0,5  | 0,4  | 0,4  |
| 1,3  | 1,1  | 1,2  | 1,1  | 1,3  | 1,2  | 1,0  | 0,9  | 1,1  | 1,1  | 1,2  | 1,0  | 1,1  | 0,9  | 0,9  | 0,8  |
| 9,9  | 9,5  | 9,4  | 8,7  | 8,4  | 8,2  | 8,0  | 7,1  | 7,1  | 7,0  | 6,7  | 6,6  | 6,5  | 6,6  | 6,6  | 6,3  |
| 1,2  | 1,2  | 1,1  | 1,1  | 1,1  | 1,0  | 0,9  | 0,8  | 0,9  | 0,9  | 0,9  | 0,9  | 1,0  | 0,9  | 0,9  | 0,7  |
| -    | ~0,7 | ~0,7 | ~0,7 | ~0,5 | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    |
| -    | -    | -    | -    | ~0,2 | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    |
| -    | -    | -    | -    | ~0,3 | ~1,1 | ~1,2 | ~1,2 | ~2,6 | 2,4  | 2,3  | 2,1  | 1,8  | 1,5  | ~1,5 | ~1,5 |
| 3,0  | 3,6  | 3,8  | 4,4  | 5,4  | 5,5  | 5,0  | 4,5  | 4,2  | 4,0  | 3,8  | 3,6  | 3,6  | 3,6  | 3,9  | 3,9  |
| 0,2  | 0,3  | 0,3  | 0,3  | 0,3  | 0,3  | 0,4  | 0,4  | 0,3  | 0,4  | 0,5  | 0,5  | 0,7  | 0,6  | 0,7  | 0,8  |
| 0,3  | 0,3  | 0,5  | 0,6  | 0,7  | 0,7  | 0,7  | 0,6  | 0,6  | 0,5  | 0,6  | 0,6  | 0,7  | 0,8  | 0,9  | 0,9  |
| 2,6  | 3,0  | 3,0  | 2,8  | 2,8  | 2,8  | 3,1  | 3,3  | 3,5  | 3,7  | 4,2  | 4,8  | 5,7  | 5,4  | 5,4  | 5,6  |
| -    | -    | -    | -    | -    | -    | -    | 0,1  | 0,1  | 0,1  | 0,0  | 0,0  | 0,0  | 0,0  | 0,0  | 0,0  |
| 4,6  | 4,5  | 4,0  | 3,8  | 4,0  | 4,8  | 4,0  | 3,9  | 4,7  | 4,9  | 4,2  | 3,8  | 3,9  | 3,8  | 3,9  | 3,8  |
| -    | -    | -    | -    | -    | -    | -    | -    | -    | 0,4  | 0,5  | 0,6  | 0,6  | 0,6  | 0,6  | 0,5  |
| -    | 2,1  | 2,3  | 2,9  | 2,8  | 2,8  | 2,8  | 2,4  | 2,7  | 2,7  | 2,8  | 2,6  | 2,6  | 2,4  | 2,5  | 2,2  |
| -    | -    | 0,3  | 0,6  | 1,0  | 1,0  | 0,5  | 0,4  | 0,3  | 0,2  | 0,2  | 0,2  | 0,2  | 0,1  | 0,1  | 0,1  |
| -    | -    | -    | -    | -    | -    | -    | -    | -    | 0,3  | 0,3  | 0,2  | ~0,2 | 0,3  | 0,3  | 0,3  |
| -    | -    | 0,6  | 0,9  | 1,3  | 1,2  | 1,2  | 1,2  | 1,2  | 1,2  | 1,2  | 1,1  | 1,2  | 1,3  | 1,4  | 1,4  |
| -    | -    | -    | 0,3  | 0,4  | 0,4  | 0,5  | 0,5  | 0,5  | 0,5  | 0,6  | 0,7  | 0,9  | 0,9  | 1,0  | 1,0  |
| -    | -    | -    | -    | -    | -    | -    | -    | 0,4  | 0,4  | 0,6  | 0,8  | 0,9  | 1,0  | 1,0  | 1,0  |
| -    | -    | -    | -    | -    | -    | -    | -    | 0,3  | 0,3  | -    | -    | -    | -    | -    | -    |
| -    | -    | -    | -    | -    | -    | -    | 0,0  | 0,1  | 0,1  | 0,2  | 0,3  | 0,5  | 0,6  | 0,7  | 0,7  |
| -    | -    | -    | -    | -    | -    | -    | -    | -    | 0,3  | 0,4  | 0,6  | 0,7  | 0,9  | 1,0  | 0,9  |
| -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | 0,5  | 0,7  | 0,8  | 0,9  | 0,8  | 0,8  |
| -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | 0,6  | 0,8  | 0,8  | 0,6  | 0,2  |
| 5    | 5    | 7    | 7    | 7    | 7    | 7    | 7    | 7    | 7    | 7    | 7    | 7    | 7    | 7    | 7    |
| 16   | 17   | 17   | 17   | 18   | 17   | 19   | 20   | 20   | 20   | 22   | 22   | 22   | 22   | 22   | 22   |
| 21   | 22   | 24   | 24   | 25   | 24   | 26   | 27   | 27   | 27   | 29   | 29   | 29   | 29   | 29   | 29   |
| 40,1 | 40,5 | 41,5 | 43,7 | 42,8 | 43,1 | 42,7 | 44,1 | 43,6 | 44,3 | 43,9 | 44,6 | 43,6 | 43,6 | 42,9 | 43,1 |
| 55,2 | 56,2 | 55,2 | 53,6 | 53,6 | 55,2 | 53,3 | 50,9 | 54,1 | 53,8 | 53,4 | 52,8 | 54,2 | 53,5 | 55,0 | 54,3 |
| 95,3 | 96,7 | 96,7 | 97,3 | 96,4 | 98,3 | 96,0 | 95,0 | 97,7 | 98,1 | 97,3 | 97,4 | 97,8 | 97,1 | 97,9 | 97,4 |
| 8,0  | 8,1  | 5,9  | 6,2  | 6,1  | 6,2  | 6,1  | 6,3  | 6,2  | 6,3  | 6,3  | 6,4  | 6,2  | 6,2  | 6,1  | 6,2  |
| 2,6  | 2,6  | 2,3  | 2,2  | 2,1  | 2,3  | 2,1  | 1,9  | 2,0  | 2,0  | 1,8  | 1,8  | 1,9  | 1,8  | 1,9  | 1,9  |
| 4,5  | 4,4  | 4,0  | 4,1  | 3,9  | 4,1  | 3,7  | 3,5  | 3,6  | 3,6  | 3,4  | 3,4  | 3,4  | 3,3  | 3,4  | 3,4  |

Source: <http://www.kek-online.de/Inhalte/jahr.pdf>; own compilations

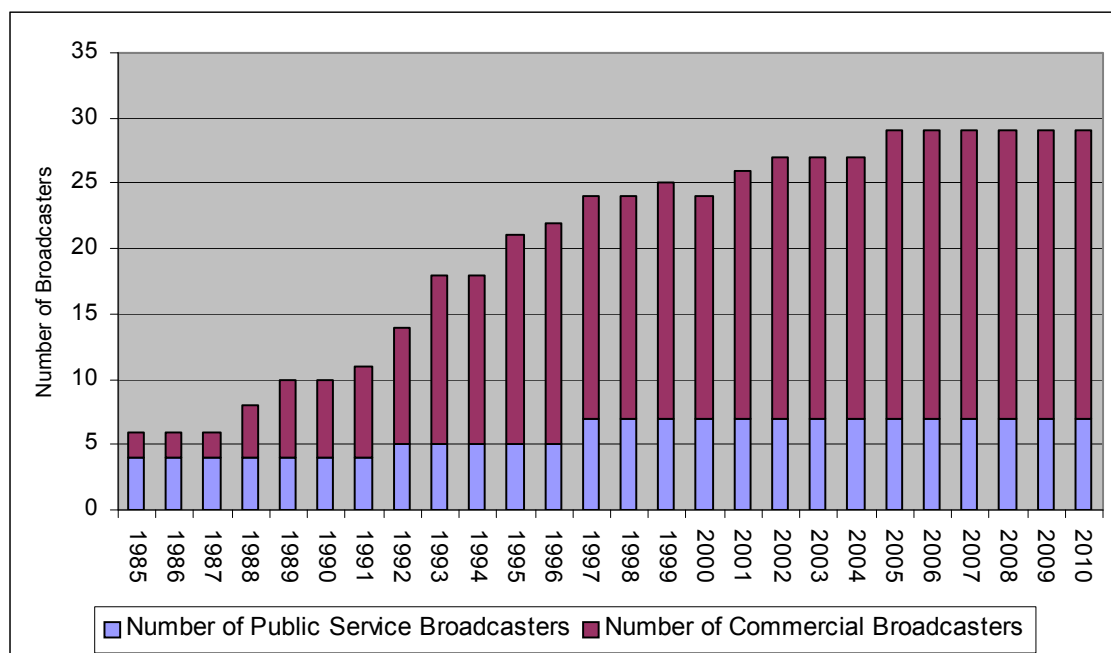
Interestingly, after 1995 this decline ended; and during the next decade there was even a small recovery of the public service broadcasters audience shares (up to 44,6 % in 2006, see figure 10 again). For some observers this was a confirmation for the optimistic expectations that the dual system would lead to stronger competition, also to the advantage of the public service broadcasters' program supply ("race to the top"). For others it confirmed the pessimistic apprehensions that the dual system would force the public service broadcasters to adjust to the commercial broadcasters' mainstream programming, to the disadvantage of quality and variety of the overall output ("race to the bottom").



Since 2006 the audience shares of both pillars of the German dual broadcasting order have not changed much: The shares of the public service broadcasters oscillate around 43%, and the shares of the commercial broadcasters oscillate around 54% (see figure 10). The number of broadcasters has also remained stable during this time: There are 22 commercial TV-broadcasters and 7 public service broadcasters (see figure 9).<sup>1</sup>

Also the average audience shares per TV-channel have meanwhile stabilized (see figure 11): While before 1985 the total audience was dispersed between only four public service broadcasters (which means that for each of them there was an average audience share of 25%), the average audience share diminished rapidly after the entrance of the commercial broadcasters in 1985: In 1988 it had already decreased to 12% for the then 8 broadcasters (4 public service broadcasters and 4 commercial broadcasters), and in 1993 it had further decreased to 5,2% for the then 18 broadcasters (5 public service broadcasters and 13 commercial broadcasters). Since then, there has been only a minor increase of the number of broadcasters, and a small further decrease of the average audience share, comparable to other saturating markets.

Figure 9:  
Number of TV-Broadcasters in Germany, 1985 - 2010

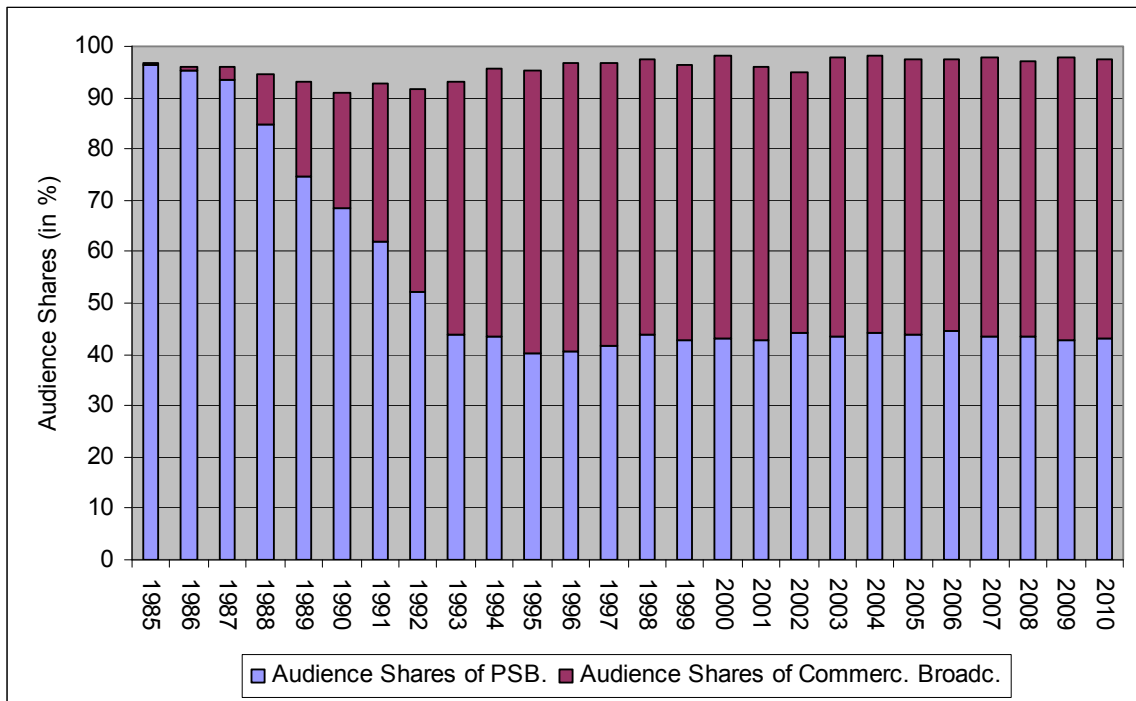


Source: <http://www.kek-online.de/Inhalte/jahr.pdf>; own compilations

<sup>1</sup> However, new digital TV channels and audiovisual online services of the broadcasters have gained importance, and for the future they will become even more important. The audience shares of linear TV-broadcasters will therefore not remain the central attribute for the audiences' attention and power of opinion making as before.

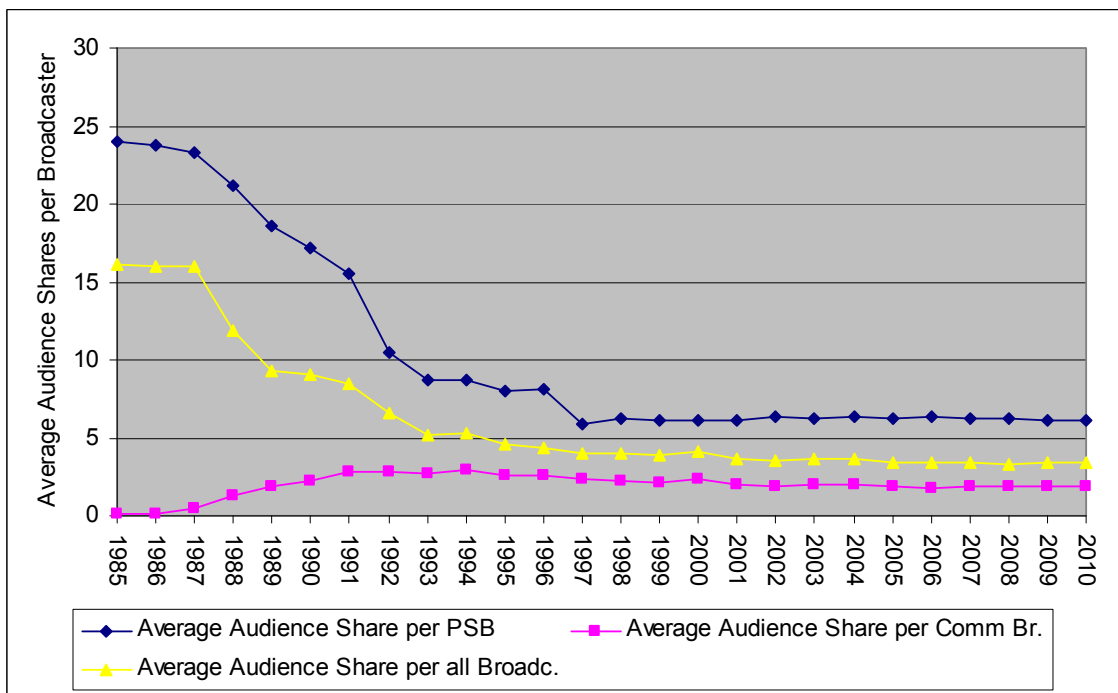


Figure 10:  
Audience Shares of Public Service TV-Broadcasters  
and Commercial TV-Broadcasters in Germany, 1985 - 2010



Source: <http://www.kek-online.de/Inhalte/jahr.pdf>; own compilations

Figure 11:  
Average Audience Shares of Public Service TV-Broadcasters  
and Commercial TV-Broadcasters in Germany, 1985 - 2010

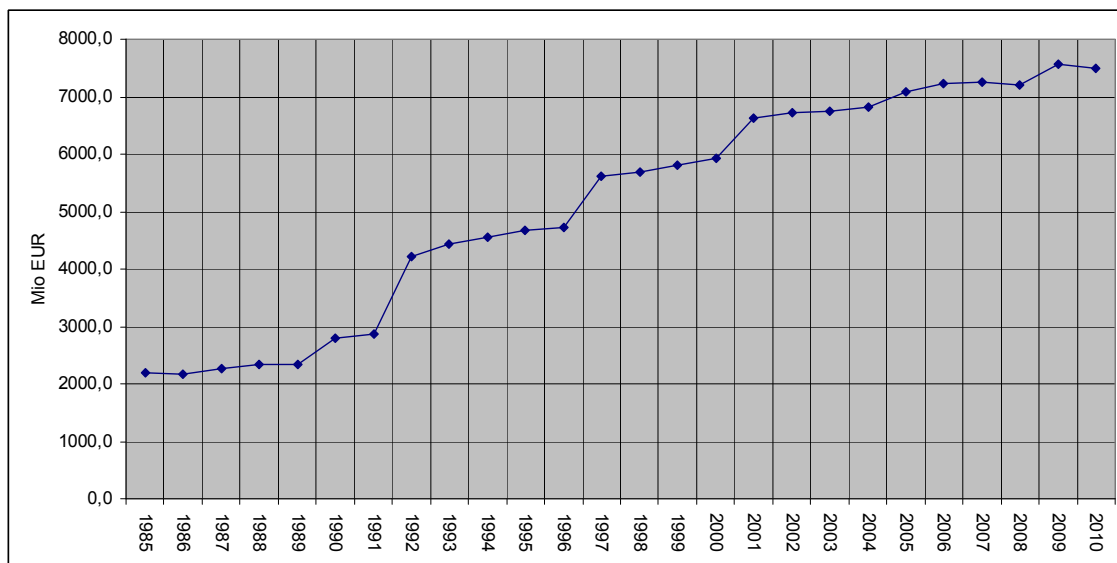


Source: <http://www.kek-online.de/Inhalte/jahr.pdf>; own compilations



To complete the picture of the transformation from a monopolistic public service broadcasting order into a dual broadcasting order, we finally look at the revenues of the two pillars: For the *public service broadcasters* the most important revenues are from the license fee.<sup>1</sup> Figure 12 shows the development for these revenues from 1985 till 2010. When the dual system started in 1985, the golden era of the public service broadcasters' monopoly, during which the revenues from the license fee exploded, had already ended: Whereas the number of households and also the number of households that started to possess a broadcasting receiving set (and therefore started to pay the license fee) grew strongly during the fifties and sixties, even during the seventies, it grew much weaker during the eighties and the nineties. Also during these decades the revenue sum still increased though<sup>2</sup> as the amount of the license fee was raised several times (in 1988, 1990, 1992, and 1997). During the first decade of this century, the license fee has been raised, again (in 2001/02, 2005, and 2009), but the increases became smaller, and there has been almost no further growth of the revenue base. Since about 2005/2006, the real value of the revenues from the license fee (i.e. after considering inflation) has even started to deteriorate.

Figure 12:  
Revenues from the German License Fee, 1985 - 2010



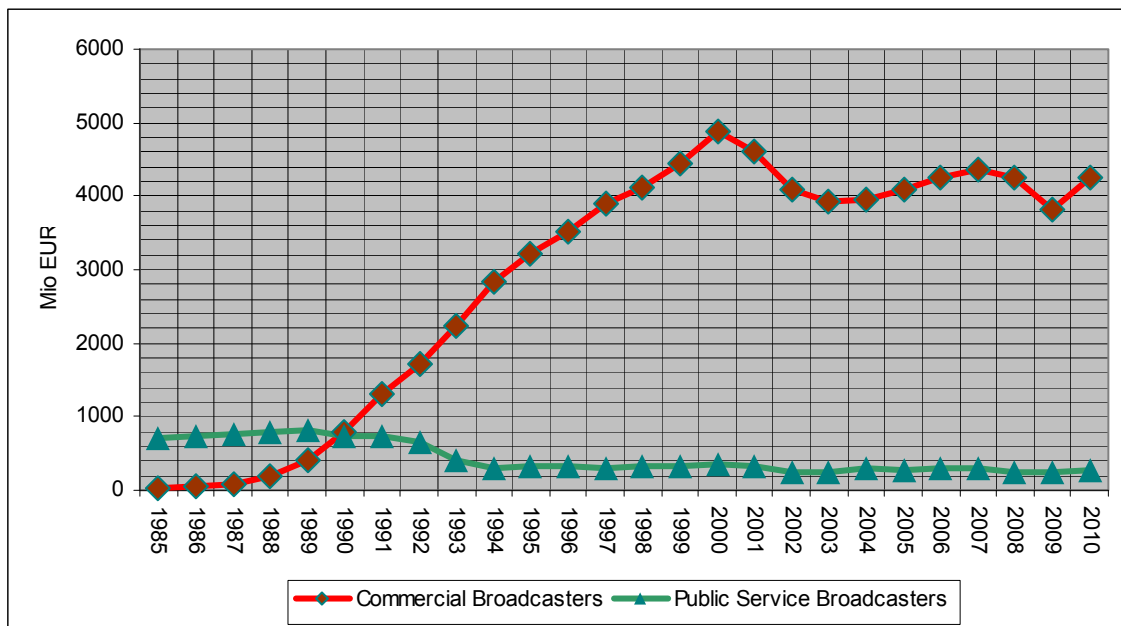
Source: MP-Basisdaten, different years (value for 2010 estimated)

For the public service broadcasters' revenues from advertising the long term trend looks even worse (see figure 13 and table 1). The public service broadcasters' revenues from advertising increased (to a high of 1.15 billion Euro in 1989) only during the seventies and the eighties (even during the second half of the eighties, when commercial broadcasters were already permitted). But from then on these revenues have started to shrink continuously – to 586 billion Euro in 2000 and to 518 billion Euro in 2010.

<sup>1</sup> See above, chapter 2.4., pp. 97 et seq.

<sup>2</sup> In addition, many fee payers from East Germany were included in 1991/1992, after Germany unified in 1989.

Figure 13:  
TV Broadcasters' Revenues from Advertising, 1985 - 2010



Sources: ZAW; MP-Basisdaten, different years (value for 2010 estimated)

For the *commercial broadcasters* the revenues from advertising developed inversely (see figure 13 again) They increased continuously at the beginning of the nineties, when the number of commercial broadcasters and its audience shares started to explode: from 1990 (0,791 billion Euro) until 1993 (2,239 billion Euro) by almost 300%, and from 1990 until 2000 (4,870 billion Euro) by more than 600%. Since then these revenues have deteriorated, however: In 2003 and 2004 there was a serious cutback to about 3,950 billion Euro; and in 2009 there was another cutback to about 3,832 billion Euro. For 2010 a certain recovery can be seen from the preliminary data.

In sum, the introduction of the dual broadcasting order in Germany in general followed the lines that had been expected and aspired: The revenues for the commercial broadcasters increased gradually, maybe with an initial pace that was unusually high (and a backlash that corrected this); and the revenues for the public service broadcasters increased much less than during the monopolistic times. Today the two pillars of the dual order are almost equally strong with regard to audience shares and financial resources. The program supply of this dual order in total is rather varied with regard to content, format, and making; with the commercial side focusing on mainstream (and here especially on entertainment and fiction); and with the public service side also offering content for smaller audiences and special interest groups (like health and consumer advice, news, political reporting and political comments), but also with a mainstream that serves all audiences like sports, entertainment, and even tabloid-like, sensational content.



Table 3:  
German TV Broadcasters' Revenues from Advertising, 1985 - 2010

| Year | Television |       |        | Radio    |       |       | Television + Radio |        |        |
|------|------------|-------|--------|----------|-------|-------|--------------------|--------|--------|
|      | PSB+Comm   | PSB   | Comm   | PSB+Comm | PSB   | Comm  | PSB+Comm           | PSB    | Comm   |
|      | EUR        | EUR   | EUR    | EUR      | EUR   | EUR   | EUR                | EUR    | EUR    |
| (1)  | (2)        | (3)   | (4)    | (5)      | (6)   | (7)   | (8)                | (9)    | (10)   |
| 1985 | 732,0      | 721,4 | 10,6   | 260,5    | 231,8 | 28,8  | 992,6              | 953,2  | 39,4   |
| 1986 | 749,5      | 731,6 | 17,8   | 278,1    | 253,9 | 24,2  | 1027,5             | 985,6  | 42,0   |
| 1987 | 810,6      | 767,7 | 42,9   | 325,7    | 278,3 | 47,3  | 1136,3             | 1046,0 | 90,2   |
| 1988 | 919,0      | 789,6 | 129,3  | 397,2    | 339,5 | 57,8  | 1316,2             | 1129,1 | 187,1  |
| 1989 | 1130,8     | 808,9 | 321,8  | 423,3    | 342,2 | 81,1  | 1554,0             | 1151,1 | 402,9  |
| 1990 | 1385,0     | 723,6 | 661,4  | 455,3    | 325,3 | 130,0 | 1840,3             | 1048,8 | 791,5  |
| 1991 | 1856,2     | 741,5 | 1114,6 | 475,1    | 286,4 | 188,7 | 2331,3             | 1027,9 | 1303,4 |
| 1992 | 2168,6     | 650,3 | 1518,4 | 491,5    | 303,5 | 188,0 | 2660,1             | 953,8  | 1706,4 |
| 1993 | 2418,7     | 408,5 | 2010,2 | 503,7    | 275,0 | 228,7 | 2922,4             | 683,5  | 2238,9 |
| 1994 | 2821,1     | 296,4 | 2524,7 | 568,7    | 246,5 | 322,2 | 3389,8             | 542,9  | 2846,8 |
| 1995 | 3177,6     | 324,1 | 2853,5 | 582,7    | 214,9 | 367,7 | 3760,3             | 539,1  | 3221,2 |
| 1996 | 3455,7     | 324,9 | 3130,8 | 577,8    | 199,8 | 378,0 | 4033,5             | 524,6  | 3508,8 |
| 1997 | 3803,1     | 308,7 | 3494,4 | 601,3    | 207,9 | 393,4 | 4404,4             | 516,6  | 3887,8 |
| 1998 | 4041,7     | 332,8 | 3708,9 | 604,7    | 207,9 | 396,8 | 4646,4             | 540,7  | 4105,7 |
| 1999 | 4317,6     | 337,6 | 3980,0 | 690,7    | 212,2 | 478,5 | 5008,3             | 549,8  | 4458,5 |
| 2000 | 4709,1     | 364,1 | 4345,0 | 746,2    | 221,6 | 524,6 | 5455,3             | 585,7  | 4869,6 |
| 2001 | 4469,0     | 314,5 | 4154,5 | 678,0    | 224,2 | 453,8 | 5147,0             | 538,7  | 4608,3 |
| 2002 | 3956,4     | 252,8 | 3703,6 | 595,1    | 212,5 | 382,6 | 4551,5             | 465,3  | 4086,2 |
| 2003 | 3811,3     | 252,2 | 3559,1 | 579,2    | 204,9 | 374,3 | 4390,5             | 457,1  | 3933,4 |
| 2004 | 3860,4     | 293,8 | 3566,6 | 619,4    | 236,6 | 382,8 | 4479,8             | 530,4  | 3949,4 |
| 2005 | 3929,6     | 260,0 | 3669,6 | 663,7    | 244,8 | 418,9 | 4593,3             | 504,8  | 4088,5 |
| 2006 | 4114,3     | 302,1 | 3812,2 | 680,5    | 245,2 | 435,3 | 4794,8             | 547,3  | 4247,5 |
| 2007 | 4155,8     | 294,3 | 3861,5 | 743,3    | 238,6 | 504,7 | 4899,1             | 532,9  | 4366,2 |
| 2008 | 4035,5     | 253,3 | 3782,2 | 711,2    | 238,6 | 472,6 | 4746,7             | 491,9  | 4254,8 |
| 2009 | 3639,6     | 253,3 | 3386,3 | 678,5    | 233,1 | 445,4 | 4318,1             | 486,4  | 3831,7 |
| 2010 | 4050,0     | 280,0 | 3770,0 | 720,0    | 238,0 | 482,0 | 4770,0             | 518,0  | 4252,0 |

Sources: ZAW; MP-Basisdaten, different years (value for 2010 estimated)

### 3.3. The Present German Dual Broadcasting Order

This evaluation is confirmed if we take a closer look at the pattern of the present constellation, as illustrated by our triangle model. For this purpose we once more refer to Table 1 (p. 101), which, besides the figures for the public service broadcasters also contains the figures for the commercial broadcasters. For them the revenue vector is 0,0,100, if we ignore some negligible elements of funding by the state and by the voluntary sector; and if we also ignore non-financial influences.<sup>1</sup> The diametric positions of the two pillars of the German dual order then become obvious (see figure 14). If they are aggregated in total for the German dual order, the vector is 31,61,52), and in the triangle this aggregate is located in the middle between the commercial part and the public service part of this dual order (the large brown dot in figure 14).

With reference to the typology of broadcasting orders developed above, the two pillars of the German dual broadcasting order would then have to be classified as 1. "State Influenced Voluntary Broadcasting Order" (i.e. Public Service Broadcasting Order, the blue part in figure 15) and as 2. "Pure Commercial Broadcasting Order" (the yellow part in figure 15). And the German dual broadcasting order in total would have to be classified as a "NGO Influenced (or 'Voluntary Sector Influenced') Commercial Broadcasting Order" (the green part in figure 16), located very near to an "Equally Mixed Broadcasting Order" (the olive-green part in figure 16).

<sup>1</sup> See for these influences chapter 2.4., pp. 97 et seq.





Figure 14:  
The German Dual Broadcasting Order:  
Balance between Public Service Broadcasting and Commercial Broadcasting

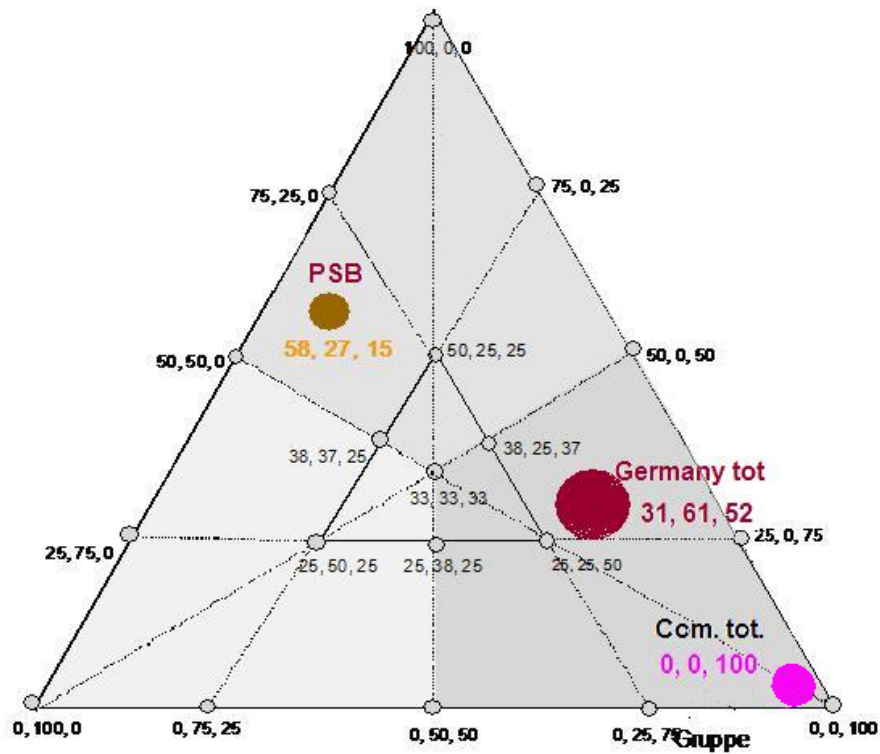


Figure 15:  
The German Dual Broadcasting Order with “State Influenced Voluntary Broadcasters” (Public Service Broadcasters) and “Pure Commercial Broadcasters”

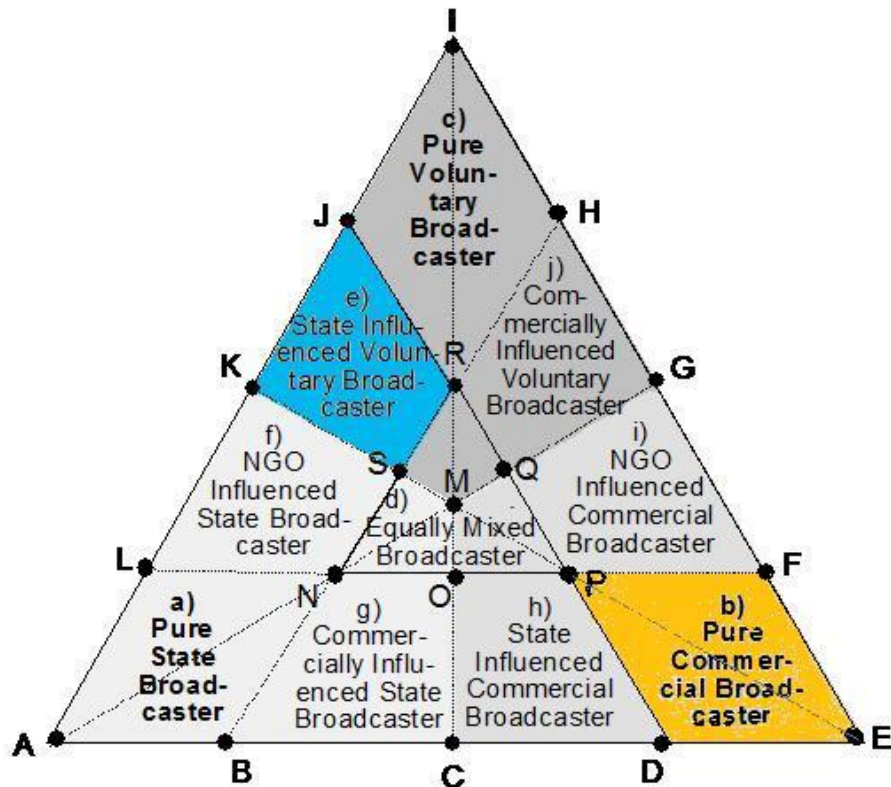
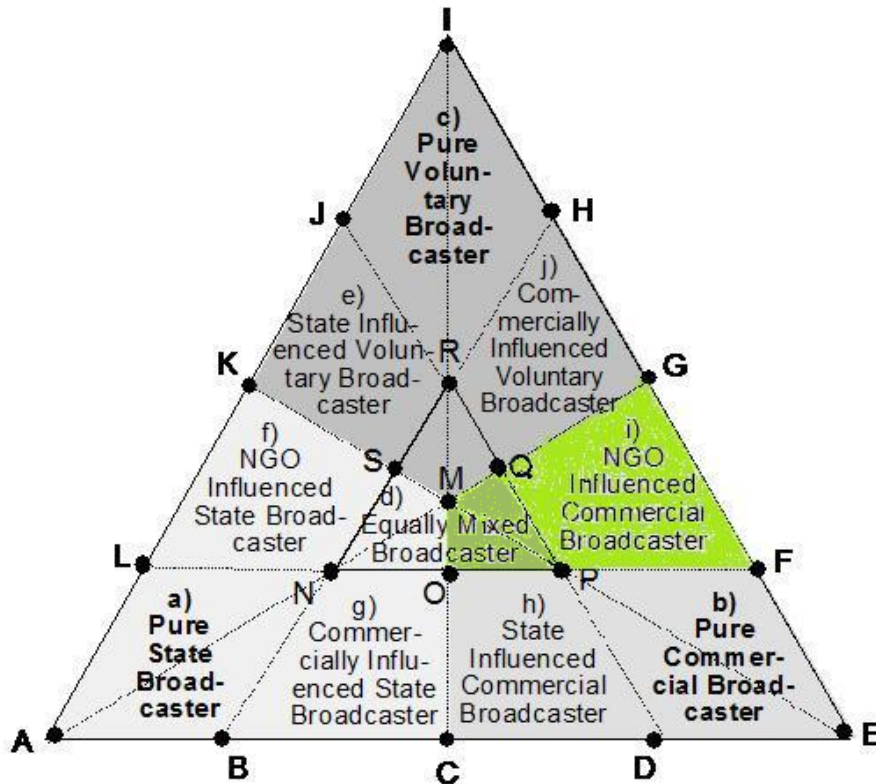




Figure 16:  
The German Dual Broadcasting Order in Total:  
Between an “NGO-Influenced (‘Civil Society-Influenced’) Commercial Order”  
and an “Equally Mixed Broadcasting Order”



#### 4. Fine Tuning of the German Dual Broadcasting Order as a Permanent Challenge for Broadcasting Politics

In principle the dual broadcasting order in Germany, as it has developed during the last 25 years, is well accepted by the public. The appreciation of the two elements of this dual order differs, however. Younger people and people with lower income and education prefer the popular programs of the commercial broadcasters, whereas older people and people with higher income and education prefer the programs of the public service broadcasters.<sup>1</sup> As a consequence, there are permanent disputes about the fine tuning of the relative importance of the commercial versus public service broadcasters. On the one hand these interests are articulated by the different types of viewers and listeners (and recently also: the internet users) who support an increase of the provision (and funding) of those programs they like most – and who support a reduction of the provision (and funding) of those programs they like least. On the other side these disputes are influenced by various interest groups that promote and benefit

<sup>1</sup> See REITZE/RIDDER 2006.



from an expansion/diminishment of commercial broadcasters or public service broadcasters respectively.<sup>1</sup>

One central issue which underlies many of these debates is the evaluation of the private value (“consumer benefit”) and the public value (“citizen benefit”) of broadcasting programs, which we have already discussed above.<sup>2</sup> If broadcasting programs are primarily regarded as consumer goods that should serve the private benefits of viewers and listeners, according to their preferences, the market is of course more suitable for its provision. With regard to the triangle model this would mean that the number of the commercial broadcasters (in the diagrams: the number of dots) or/and its budgets (in the diagrams: the sizes of the dots) should be boosted, and/or that the number of public service broadcasters and/or its budgets should be reduced. If broadcasting programs, in contrast, are primarily regarded as common goods that advance public opinion making and public communication according to the societal preferences, a non-market provision (by the state or preferably by state-distant civil society institutions) is suitable. With regard to the triangle model this would mean that the number of the commercial broadcasters and/or its budgets should be downsized, and the number of public service broadcasters and/or its budgets should be increased.

Another important question is if the broadcasters all should be “pure” (and then act straight and observably according to the pure rules of the market, the state, and the voluntary sector, respectively), or if there also should be one or more “mixed” broadcasters (whose actions are determined by the combined effects of the sectors involved).<sup>3</sup> In Germany this question is debated controversially, both with regard to public service broadcasters, which – within certain limits – at present may yield market revenues; e. g. from advertising, sponsoring, and program sales, and with regard to commercial broadcasters, which claim public revenues for programs that serve public targets. Some voices argue that alternative institutions can best unfold their specific capabilities if they are funded strictly by pure revenues, and that mixed revenues dilute these capabilities. With regard to the triangle model, this would require leaving the commercial pillar in the corner position where it is today, and to pull the public service broadcasting pillar further away from the state pole (e.g. by reducing the numbers of state-near members in the broadcasting councils), and also further away from the market pole (e. g. by abolishing revenues from advertising and sponsoring, or even from program

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<sup>1</sup> For instance, the head organizations of the commercial broadcasters in Germany (VPRT), and of the commercial publishing houses (VDZ), plead for a restriction of the program remit (and the public funding) of public service broadcasting, whereas producer organizations that mainly work for public service broadcasters support its extensive program remit (and its extensive funding). Both sides also strive that their arguments are accepted and supported by the public – and by the media politicians who have to decide about the fine tuning of the dual order.

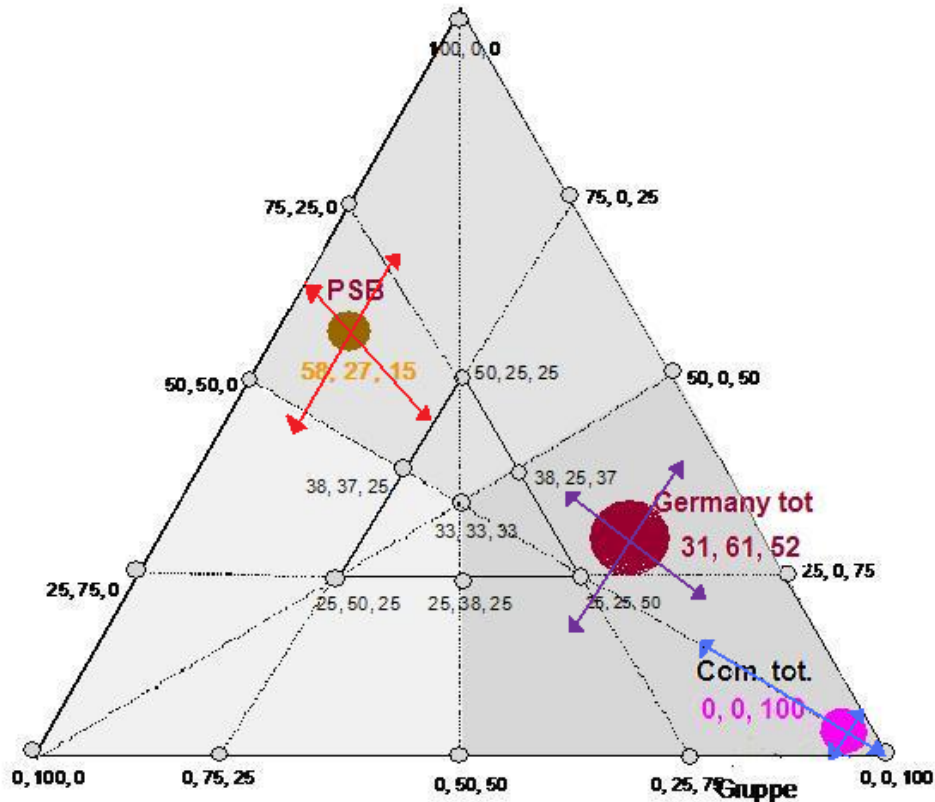
<sup>2</sup> See KOPS 2011b, in this volume, pp. 27 et seq; p. 33.

<sup>3</sup> See *ibid*, pp. 42 et seq.



sales). On the other hand, one can argue that pure revenues make the broadcasters more dependent on the state, the market or the voluntary sector, respectively, and that a mixed revenue structure reduces this dependency and protects the broadcasters from external influences.<sup>1</sup>

Figure 17:  
Ways for Fine Tuning the German Dual Broadcasting Order



From a general perspective, all these debates can be regarded as attempts to change or re-adjust the position of the German broadcasting order, once again with reference to the triangle model (figure 17): to move the (violet) dot for the overall system. The movements can either affect the systems position on the state-market dimension, or on the state-civil society dimension. These readjustments can either address the public service broadcasting sector (in figure 17 represented by the red arrows that cross the PSB dot), or the commercial broadcasting sector (in figure 17 represented by the blue arrows crossing the commercial broadcasting dot); but of course they also can address both sectors simultaneously.

Such a fine tuning is a permanent task and challenge for broadcasting politics. Similar with other fields of politics, maximizing the overall benefit for the society should be the general guideline for this task. And similar with other fields of politics, a scientific consultancy may be helpful. In this case attempts to determine the “optimal” positions of both pillars of the dual broadcasting order are appro-

<sup>1</sup> See ZDF 1994.



priate. They have to identify, quantify and set off the costs and benefits of broadcasting programs that are contributed by the alternative sectors, in line with the approach which has been drawn out here.

One must realize, however, that these evaluations will certainly differ between the parties involved. The representatives of the market, the state, and the voluntary sector, for instance, will present different views to the politicians, partly because of vested interests, and partly because of differing opinions and values on which these evaluations are based. Even within the academic sphere there is no consensus. Economists, for instance, usually evaluate the potentials of the market higher than lawyers or social scientists. In order to denominate a common set of criteria for the evaluation of broadcasting orders, and to agree on common weights the dialog, also the international and interdisciplinary dialog, should to be intensified. We hope our conference "A German-Ukrainian Exchange of Opinions" can contribute to this aim.<sup>1</sup>

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<sup>1</sup> For the details of this cooperation also see the contributions in KHABYUK/KOPS 2010, e.g. KOPS/KVIT 2010.



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ISBN 978-3-938933-82-4

ISSN 0945-8999