

Conclusions of the high-level conference on “Shaping the Future of EU Media Policy” Brussels, 3 December 2019

The conference was an opportunity for press, commercial and public service radio and television broadcasters to jointly reflect on **shared EU values** in light of the new EU policy cycle.

The conference was moderated by **Professor Mark D. Cole from the University of Luxembourg and the Institute of European Media Law in Saarbrücken and Brussels** and was organised around three panels.

European Commission Vice-President for Values and Transparency Věra Jourová opened the conference by presenting her agenda affecting the media sector. She announced several initiatives to strengthen democracy and transparency spanning from a European Democracy Action Plan to the funding of media freedom and pluralism projects. Vice-President Jourová also emphasised that while digitisation has opened up a world of opportunities for media, the EU needs a reinforced Digital Single Market with more clarity for all players. Platform responsibility will therefore be addressed to complement recent audiovisual, copyright, and disinformation initiatives. In addition, she announced that the protection of journalists will also figure more prominently in the European Commission agenda.

VISION STATEMENTS

Victoria Svanberg, NME Vice-President and Board Member of the NWT Group, recalled the key role of producers of professional journalistic content as watchdogs of democracy and the need to stem fake news that damages democracy and trust in the media. She called for a EU media policy built on media freedom, sustainability and fair competition.

Guillaume de Posch, ACT President and Board Member of RTL Group, stressed the importance for Europe to foster the 3Rs: a Robust industrial vision for media policy, a Responsible Platforms legal framework and better transposition and enforcement to deliver Reliable rights and commercial freedoms.

Corinna Drumm, AER Vice-President and Managing Director of the Association of Commercial Broadcasters in Austria, stated that in order for quality media to survive, radio needs to be supported and treated fairly in specific media rules, taxation, copyright, data and consumer protection. It is important to have a level playing field in all fields of regulation which are relevant for competition. Radios are unanimous in their plea for more fairness and transparency in their relationship with the online platforms, as well as for better support against discriminatory behaviour. Special attention must be given on guaranteeing a beneficial environment and a reasonable legal framework for European media companies, to effectively safeguard their business models and their services, and to ensure fair competition and a robust media market.

Richard Burnley, EBU Legal and Policy Director, called for EU policies to promote a fair race for European broadcasters to compete, to perform their vital role for society and to reach citizens. This means effective rules to ensure public service media prominence and access to data, the robust and forward-looking application of competition law to safeguard European media ecosystems, and the new Digital Services Act to target a fair and transparent online platform environment. More specifically, platform providers’ responsibilities should be in line with their ability to influence public opinion.

1. FOSTERING AND PRESERVING QUALITY JOURNALISM

Giuseppe Abbamonte (European Commission Director for Media Policy) explained that more be done on disinformation by way of demonetising advertising revenues and empowering consumers. When it comes to platforms, he stressed the need to assess the effects of the revised AVMS Directive before taking further steps. He also expected media literacy of key importance for the new Commission. Giuseppe Abbamonte added that the Disinformation Code of Practice (CoP) has helped structuring a dialogue with platforms and that an evaluation is ongoing. By mid-2020, the Commission would come to a conclusion, a potential option being co-regulation.

Mogens Bjerregård (President of the European Federation of Journalists) emphasised the importance of creating safe conditions for journalists to work in the interests of citizens and free from any external pressure to safeguard media freedom. He also stressed the need for journalism to continue to rely on self-regulation to avoid censorship risks and suggested to refer to “professional journalism” instead of “quality journalism” to avoid undesirable narratives. He emphasised the importance of ensuring credible self-regulatory bodies and ethical standards as means of both countering disinformation and avoiding self-censorship for journalistic media.

MEP Irena Joveva (Renew Europe, Slovenia) explained that having worked as a journalist, she agrees with the need to preserve professional standards to counter disinformation. She added that the CULT Committee will soon work on a resolution on media freedom, protection of journalists, disinformation and platforms, and conveyed high expectations regarding the Digital Services Act and possible ePrivacy legislation. She argued that self-regulation of platforms is not enough, as illustrated by live-streamed shootings, and that hard law should be envisaged. She added that while legislation can help the media, it will not solve all problems, and that self-regulation will be required.

Ravi Vatraru (CoP Sounding Board spokesperson and Research Chair at Ryerson University) was critical about the CoP’s lack of precise metrics to assess platforms’ commitments. He also took the view that the GDPR cannot be used by platforms as an excuse not to share data for academic, policy and regulatory purposes and suggested that social media could be approached like other industries operating with sensitive data (e.g. pharmaceutical). He concluded that better policy making in this area would require greater data access, in particular by independent researchers that are free from outside interference.

2. CONDITIONS FOR A THRIVING MEDIA SECTOR

Christophe Roy (Director of European Affairs, Canal+ Group) stressed the importance for broadcasters to produce original content and secure a strong distribution network to remain relevant in a market dominated by tech giants. Competition policy should therefore adapt to the need for media companies to partner up, build scale and invest in innovation. For that, territoriality and exclusiveness need to be preserved. When it comes to platforms, ex-ante rules also need to be introduced. Overall, the EU should elaborate a wider media strategy based on a coordinated approach involving Commission services in charge of industrial, competition, innovation, and digital policies.

Petra Wikström (Director of Public Policy, Schibsted) explained that as quality journalism is very expensive to produce, businesses must stay financially robust. She stressed the importance for competition authorities to look into digital advertising markets, the ability for data pooling and media industry collaboration, and relations with online platforms. She added another area of key importance for trust in journalism, which requires further work in the area of social networks. She argued that a future Digital Services Act should create of a separate regulatory category for “social networks” with a specific type of secondary liability (as distribution networks), recognising the difference between social networks and publishers who have editorial responsibility (as content producers).

Anna Herold (European Commission, Head of Unit for Media Services Policy) welcomed the associations’ joint initiative in light of the upcoming “media action plan” announced by Commissioner Breton. She said that now is the moment to provide feedback on horizontal and specific issues, and to address new topics such as the findability of general interest content, funding and cross-border cooperation. As the Commission relies on ERGA to be advised on a broad range of issues, e.g. platform regulation, AVMS Directive implementation, online disinformation, Anna Herold underlined the value of greater involvement of Member State regulators through a strengthened coordination mechanism.

Irena Ostrouška (Senior Advisor in the Ministry of Culture of Slovenia) pointed out that when it comes to ensuring a thriving media landscape, the work at Member State level remains essential to safeguard the interests of consumers. She stressed the precarious situation of traditional media and journalists as a key policy concern. Irena Ostrouška argued that the combination of diversity in the structure of national markets, changing technological landscape and financial structures, makes it clear that Member States need to continue to have autonomy in conducting their own media policy. At the same time, she emphasised the importance of cooperation at EU level in areas such as competition and ensuring responsible platforms (eg. social media) that currently do not have any editorial responsibilities.

Ľuboš Kukliš (Chairman of the European Audiovisual Regulators Group) explained that ERGA is looking to adapt to the new scope of competence and challenges ahead, such as the ability to gather accurate and complete data from platforms and sharing experiences about challenges in the implementation of AVMS. He further highlighted the importance of looking at dynamics in editorial control and allocation of rights and responsibilities between media, regulators and users going forward. On disinformation, he noted a growing remit of competence for media regulators across Europe, which he argued is important to recognise given their distinct potential for constructive contributions.

3. FAIR COMPETITION IN DIGITAL MARKETS

Wenzel Bulst (European Commission, Deputy Head of Unit for Antitrust in the Media) presented the findings of the special advisers to Commissioner Vestager's report. He underlined the need to stay open to complementary solutions to the transparency rules in the recently adopted Platform-to-Business Regulation (P2B). Considering the important role data may play in defining an undertaking's market power, he reflected ongoing discussions as to whether data could or should be considered as an essential facility. As a whole, Wenzel Bulst explained that the European Commission's reflection process on the modernisation of anti-trust rules is ongoing.

Christine Gerlach (ARD, Senior Advisor EU Legal and Public Affairs) presented the public service media's three main concerns from a competition perspective: i) any preferential treatment of platforms' own services which lead to problems of fulfilling the public service remit and reaching all citizens; ii) access to data about the performance of broadcasters' own services on third party platforms ; iii) the need to better take into account global competition when assessing cooperation between public and private broadcasters. Christine Gerlach noted that while the P2B Regulation introduced stricter transparency rules, it falls short on key issues such as access to data and preferential treatment.

Corinna Drumm (AER Vice-President & Managing Director of the Association of Commercial Broadcasters in Austria) pointed out that platforms have immense market power through concentration of market, data and personalised advertising powers in relation to commercial radios. Corinna Drumm outlined that as a result, there is a clear unbalance for a heavily regulated radio sector which has to compete with largely unregulated platforms who also have very little responsibility for the content they distributed. Going forward, she argued that the radio sector needs fair conditions for competition in their business relationship with platforms. In particular, there is a problem related to discriminatory behaviour of platforms who control entire ecosystems, including hardware, software and e-commerce.

Vlad Dan Roman (Competition and Digital Economy Attaché at the Permanent Representation of Romania to the EU) took the view that fairness in competition has mostly been defined on a case-by-case basis in competition law enforcement. He argued that competition and regulation are complementary instruments working towards the same objective and that adjustments on both fronts might be necessary going forward, including regarding the recently adopted P2B Regulation. He noted that even the most powerful instruments would remain ineffective if Member States fail to enforce them, and therefore emphasised the importance of enforcement powers and EU coordination, notably through networks of institutions and instruments such as the ECN+ Directive.

CONCLUDING REMARKS

The conference moderator **Professor Mark Cole** concluded by emphasising the importance of building upon the existing foundations of media policy when taking it to the next stage in order to help shaping a bright future for media in the digital world. He stressed the diversity of challenges faced by industry players as illustrated by the various panels and suggested that the European Commission may as a result want to approach media policy horizontally and value-based as well as considering in parallel an industrial strategy looking forward.

Anna Herold concluded the conference by saluting a timely discussion as the European Commission is working on a media action plan. She called on stakeholders to further share ideas on i) how to ensure European quality and diverse content reaches citizens; ii) how to build up a European industrial vision for the media; and iii) to present all the competition issues that need to be addressed at EU level going forward to ensure a healthy European media landscape.