
TABLE OF CONTENTS

Preface	v
----------------	---

Abbreviations	xiii
----------------------	------

PART I:
THE ECONOMIC AND POLITICAL CONTEXT

1. Introduction	3
1.1. General Remarks	3
1.2. The Significance of ‘European’ Culture and Identity	3
1.3. The Role of Competition Law	6
1.4. Industrial Policy and External Aspects	8
1.5. The European Audio-Visual Framework	10
1.6. Aim and Scope of this Book	14
2. Economic Background	17
2.1. General Remarks	17
2.2. Merit Goods	17
2.3. Market Structure	19
2.3.1. Perfect Competition	20
2.3.2. Workable Competition	21
2.3.3. Pure Monopoly	21
2.3.4. Natural Monopoly	22
2.3.5. Oligopoly	23
2.4. Market Definition	24
2.4.1. Product Market	25
2.4.2. Geographical Market	26
2.4.3. Temporal Market	27
2.5. Concluding Remarks	28
3. Audio-Visual and Broadcasting Policy	29
3.1. Policy Options	29
3.2. Public Service Broadcasting	31
3.2.1. Traditional Public Service Broadcasting	31
3.2.2. A New Role for Public Service Broadcasting	32
3.3. Self-Regulation	33
3.3.1. Self-Regulation at National Level	33
3.3.2. Self-Regulation in the EU	35

3.4.	Specific Country's Examples	35
3.4.1.	Media Regulation in the US	36
3.4.2.	Broadcasting Regulation in the UK	38
3.4.2.1.	The Legal Framework	38
3.4.2.2.	Policy Developments	39
3.4.2.3.	Current Status	41
3.4.3.	Broadcasting Regulation in Germany	42
3.4.3.1.	The Legal Framework: 'Dual Broadcasting Order' (Duale Rundfunkordnung)	42
3.4.3.2.	The German Broadcasting Discussion	44
3.4.3.3.	Current Developments	45
3.5.	Broadcasting and Audio-Visual Policy in the EU	46
3.5.1.	Different Approaches within the Commission	47
3.5.2.	Current Audio-Visual and Broadcasting Policy	48
3.5.2.1.	The dirigist Approach	48
3.5.2.2.	The MEDIA Programs	49
3.5.2.3.	The Public Interest	53
3.5.2.4.	Public Service Broadcasting	54
3.5.3.	The 'Television Without Frontiers' Directive	55
3.5.3.1.	Background and Genesis	55
3.5.3.2.	Guiding Principle	57
3.5.3.3.	Public Interest	57
3.5.3.4.	The 'European works'-Quota	58
3.5.3.5.	Amendment by Directive 97/36/EC	59
3.5.3.6.	The External Dimension	60
3.5.4.	Conclusion	61

PART II:
BROADCASTING IN THE EUROPEAN UNION –
A COMPETITION PERSPECTIVE

Television Broadcasting as a Service	65
The Relationship between Media Law and Competition Law	66
4. The 'Legitimate General Interest' and Broadcasting	67
4.1. The Concept in General	67
4.1.1. Exceptions to the Freedoms in the Treaty	67
4.1.2. Public Interest Concerns recognised as 'Mandatory Requirements'	68
4.2. Public Interest Concerns in the Case Law on Broadcasting – Free Movement of Services	73

4.2.1.	Case 52/79 Debaue	73
4.2.2.	Case 352/85 Bond van Adverteerders	74
4.2.3.	Cases C-288/89 Gouda and C-353/89 Commission v. Netherlands	76
4.2.4.	Case C-211/91 Commission v. Belgium	78
4.2.5.	Case C-11/95 Commission v. Belgium	79
4.2.6.	Joined Cases 34-36/95 De Agostini	80
4.3.	Freedom of Establishment and Exclusive Broadcasting Rights	82
4.4.	Conclusion	84
5.	Collaboration between Broadcasters	87
5.1.	Application of Art. 81 (ex-Art. 85)	87
5.1.1.	Art. 81(1) (ex-Art. 85(1))	87
5.1.2.	Art. 81(3) (ex-Art. 85(3))	90
5.2.	Joint Ventures (JVs)	91
5.2.1.	Definition	91
5.2.2.	‘Cooperative’ v. ‘Concentrative’ JVs	92
5.3.	The European Broadcasting Union and EC Competition Law	93
5.3.1.	Commission Decision 93/403/EEC, IV/32.150 EBU/Eurovision System	93
5.3.2.	Joined Cases T-528/93, T-524/93, T-543/93 and T-546/93, Metro-pole	94
5.3.3.	Commission Decision 2000/400/EC, IV/32.150 Eurovision	96
5.3.4.	Commission Decision 1999/242/EC, IV/32.524 Screensport/EBU	97
5.4.	Digital Television Platforms	99
5.4.1.	Commission Decision 1999/242/EC, IV./36.237, TPS	99
5.4.2.	Commission Decision 1999/2935/EC, IV./36.539, BIB/Open	101
5.5.	Conclusion	104
6.	Mergers in the Broadcasting Industry	107
6.1.	The EC Legal Regime on Mergers: Regulation 4064/89	107
6.1.1.	Definition of ‘Concentration’	108
6.1.2.	Appraisal of a Concentration	109
6.2.	Pay-TV in the European Union	111
6.2.1.	Pay-TV as a Separate Market: the Endemol Case	111
6.2.2.	Decision 96/177/EC, Case IV/M.490 Nordic Satellite Distribution	112
6.2.3.	Decision 94/922/EC, IV./M.469 MSG Media Service	115
6.2.4.	Decision 1999/53/EC, IV./M.993 Bertelsmann/Kirch/Premiere	118
6.3.	Non-Opposition Procedures	121
6.3.1.	The Kirch Group	123
6.3.2.	The Bertelsmann Group	124
6.4.	Specific Regulation of Media Concentration	125
6.4.1.	The Community Level	125
6.4.2.	The National Level: The Example of Germany	126
6.5.	Conclusion	127

7.	Public Service Broadcasting and Problems of State Aid	129
7.1.1.	State Monopolies	131
7.1.2.	Public Undertakings, Undertakings enjoying Special or Exclusive Rights and Services of General Economic Interest	132
7.1.2.1.	Public Undertakings and Special Rights (Art. 86(1))	134
7.1.2.2.	Services of General Economic Interest (Art. 86(2))	137
7.1.3.	Commission Powers under Art. 86(3) (ex-Art. 90(3))	139
7.1.4.	Sacchi, ERT and some lessons from the case law on Art. 86	139
7.1.5.	Art. 16 (ex-Art 7d)	141
7.1.6.	Broadcasting and State Aid	142
7.1.6.1.	Definition of 'State Aid'	143
7.1.6.2.	Distortion of Competition	144
7.1.6.3.	Illegal Aid	145
7.1.6.4.	Exemptions and Cultural Aid	145
7.1.6.5.	Public Service Broadcasting and Art. 87: The Examples of Austria and Germany.	146
7.1.6.6.	Financing of Public Service Broadcasting: Commission and Court Practice	149
7.1.7.	The Amsterdam Protocol on Public Broadcasting	152
7.1.8.	Conclusion	153
8.	Broadcasting, Sport and Competition Law	157
8.1.	Sport and EC law: The 'Bosman Revolution'	157
8.2.	Sport and the Free Movement of Persons: After Bosman	160
8.3.	Sport and EC Competition Law: The Marketing of Broadcasting Rights	163
8.3.1.	Commission Practise	163
8.3.2.	Relevant Market	164
8.3.3.	Exclusive Transmission Rights	165
8.3.3.1.	Exclusive Transmission Rights and Community Law	165
8.3.3.2.	Commission and Court Practice	166
8.3.3.3.	Conclusion	167
8.3.4.	Collective Marketing by Sports Associations	168
8.3.4.1.	General Remarks	168
8.3.4.2.	Collective Marketing in the Member States	169
8.3.4.3.	The Commission's Approach	171
8.3.4.4.	Some Tentative Conclusions on Collective Selling	173
8.4.	Summary and Results	174
9.	Results and Conclusion	177
9.1.	Community Competence in the Audio-Visual/Broadcasting Area	177
9.2.	The Significance of a General Interest	180

9.3.	State Aid	182
9.4.	A Television Broadcasting Policy for Europe?	183
	Bibliography	185