

The Business of Ethics, the Ethics of Business

Croatia

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I. Executive summary

The transparency of the media industry in Croatia has improved in the past few years, primarily because of new legislation. However, it still does not meet the standards set by the new laws. The main problems include confusing regulations and the government's failure to apply the rules, including sanctions for outlets that break them.

One example is Europapress Holdings' (EPH) acquisition from the state of a majority stake in *Slobodna Dalmacija*, a regional daily newspaper. EPH is the largest media conglomerate in Croatia. It also publishes *Jutarnji list*, one of the best-selling papers, a sports daily and a financial daily. Despite so many holdings, the state Agency for the Protection of Competition found no undue concentration by EPH in the general daily newspaper market. Its main justification is indicative of the situation in Croatia: the agency could not get circulation figures from the sources designated by law to compile them. Instead, it was forced to rely on information from various unofficial sources, which were highly inconsistent.

So the *Slobodna Dalmacija* acquisition, one of the most controversial in recent years, took place without objection from the antitrust watchdog agency. At the same time, several regulations have been created regarding consolidation in other areas, such as distribution.

The rather lenient stance of the authorities is accompanied by publishers' dubious employment policies and the failure of many to publish information on their ownership, income and other information required by law.

II. Context

Television is still the dominant media in Croatia, and there are three TV stations with national coverage: the public *Croatian Radio Television* (HRT), *NOVA TV* (whose majority shareholder is the US-based Central European Media Enterprises) and *RTL Televizija* (65 per cent owned by Paris-based CLT-UFA, and a member of the RTL Group). There are about ten regional TV stations and some 130 radio stations in Croatia.

The highest-circulation daily newspaper, *Večernji list*, is 99.5 per cent owned by the Austrian media group Styria. Styria, in turn, is 98.33 percent held by the *Katholischer Medien Verein Privatstiftung* (Private Foundation of the Catholic Media Association) and 1.67 percent by the *Katholische Medien Vereins* (Catholic Media Association). Styria also publishes the tabloid *24 Sata* (launched in March 2005) and two periodicals for women. *Jutarnji list* has the country's second-highest circulation. Publisher EPH is 50 per cent owned by Ost Holding GmbH, registered in Vienna, and a member of the German *Wesdeutsche Allgemeine Zeitungsverlag*. The domestic company Com.Com. Ltd, registered in Zagreb, holds the remaining shares. It was established by Croatian media tycoon Ninoslav Pavić.

EPH also publishes or holds a majority of shares in various other periodicals, including the political weekly *Globus*. It is the majority owner of the sports daily *Sportske novosti*, and owns 50 percent of the financial daily *Poslovni dnevnik*. Recently it took over the state's majority stake in the regional daily *Slobodna Dalmacija*. *Globus*' main competitor is the weekly *Nacional*.

Novi list, a daily based in Rijeka, is of importance in Croatia. It also owns another regional daily, *Karlovački list*. Rijeka-based *Riječki list Ltd* (Zdenko Mance is believed to be the majority owner) has slightly more than a 50 percent stake in *Novi list*, and the New York-based Media Development Equity Fund holds 30.3 percent.

Eleven outlets were asked to participate in this study. They were the daily newspapers

Večernji list, *Jutarnji list* and *Novi list*; weeklies *Globus* and *Naciona*; TV stations RTL televizija, NOVA TV, Nezavisna televizija and Televizija Slavonije i Baranje; and radio stations Otvoreni radio and Radio Dalmacija. Only one, however, the local Radio Dalmacija, agreed. Even then Davor Marić, the manager and one of the shareholders, responded only by citing various laws and regulations.

III. Competition framework

Competition in the media industry is regulated by the Antitrust Law,¹ which defines horizontal market concentration. Concentration that creates a dominant market position or intensifies existing dominance is prohibited.

A dominant market position, as defined by law, is a market share of more than 40 percent. Two or three owners are considered to be in a dominant position if they jointly hold more than 60 percent of the market, and four or five if they hold more than 80 percent.²

Mergers and acquisitions must be reported to the Agency for the Protection of Competition if the total annual revenue of two or more participants is over HRK 1 billion (about €140 million), or if each participant's annual revenue is over HRK 100 million (about €14 million). On the other hand, the Law on the Media³ states that any concentration, regardless of the annual revenue of the participants, must be reported to the agency.

The Law on the Media bases its criteria for print media concentration on the nationwide combined circulation of all dailies and weeklies, a standard that has prompted some objections.

The Antitrust Law also forbids collusion or any kind of agreement that compromises competition.

The *Agencija za zaštitu tržišnog natjecanja* (Agency for the Protection of Competition) has not been very active. One of its most prominent cases was the EPH acquisition of *Slobodna Dalmacija*. In July 2004, the agency gave its approval of the acquisition conditional on EPH's sale of its minority stake in the wholesale and retail distributing firm Tisak, since EPH also owns a 50 percent stake in Distri-press, a wholesale distributor.

In viewing the acquisition, the agency found no undue market consolidation among general-information dailies since its market data were compiled from different sources and were inconsistent. (EPH's financial daily *Poslovni dnevnik* and sports daily *Sportske novosti* are considered specialist dailies.) The Croatian Chamber of Economy did not or could not provide the data, although it is officially supposed to compile them from information given by the publishers.

Furthermore, the agency pointed out that *Osječki dom* is published three times a week, and that *Vjesnik* differs considerably from *Večernji list* and *Jutarnji list*, and could be characterised as a specialist political daily. The agency also noted the local character of *Zadarski list*, *Osječki dom* and *Karlovački list*, and the regional character of *Novi list*, *Slobodna Dalmacija*, *Glas Istre* and *Glas Slavonije*.

¹ Law 01-081-03-2640/2 /2003 on the Protection of Competition, *Narodne novine* (the Official Gazette) 122, 30 July 2003, Art. 7, para. 1.

² Law 01-081-03-2640/2 /2003 on the Protection of Competition, as cited, Art. 15.

³ The Law 01-081-04-1625/2 /2004 on the Media, *Narodne novine* 59, 10 May 2005, Art. 36, para. 2.

Table 1. The print market – dailies' market shares

DAILY	PUBLISHER	2003 market shares (%)
<i>Večernji list</i>	Večernji list d.d., Zagreb	30 – 35
<i>Jutarnji list</i>	EPH d.o.o., Zagreb	25 – 30
<i>Novi list</i>	Novi list Novinsko-nakladničko d.d., Rijeka	10 – 15
<i>Slobodna Dalmacija</i>	Slobodna Dalmacija d.d., Split	10 – 15
<i>Glas Istre</i>	Glas Istre d.o.o., Pula	Less than 5
<i>Glas Slavonije</i>	M. C. Glas Slavonije d.d., Osijek	Less than 5
<i>Vjesnik</i>	Vjesnik d.d., Zagreb	Less than 5
<i>Zadarski list</i>	RTD d.o.o., Zadar	Less than 5
<i>Osječki dom</i>	Datapress d.o.o., Osijek	Less than 5
<i>La voce del popolo</i>	Edit Rijeka nov.-izd. ustanova, Rijeka	Less than 5
<i>Karlovački list</i>	Karlovački list d.o.o., Karlovac	Less than 5
<i>Foreign general-information dailies</i>	Distributed by Tisak d.d., Distri-press d.o.o., Gen. Grafik d.o.o.	Less than 5
		100

Table: Compiled and published by the Agency for the Protection of Competition (AZTN)⁴

Concerning limits on vertical concentration, the Law on Electronic Media⁵ lists several cases.

- the “publisher” of an electronic media outlet with a concession for national coverage cannot own more than 25 percent of another electronic media outlet with regional or local coverage, and vice versa;
- the “publisher” of an electronic media outlet with a concession for national coverage cannot own more than 10 percent of a publisher of a daily newspaper with a circulation of more than 3,000 copies, and vice versa;
- the “publisher” of an electronic media outlet with a concession for national coverage cannot own more than 10 percent of news agency, and vice versa;
- the “publisher” of an electronic media outlet with a concession for regional or local coverage cannot own more than 30 percent in another with regional or local coverage;
- the “publisher” of an electronic media outlet with a concession for regional or local coverage cannot publish a local or regional newspaper in the same or neighbouring area.

These limitations are also applied in cases where the founder and family members of one media publisher are shareholders in another.

⁴ Rješenje Agencije za zaštitu tržišnog natjecanja klasa UP-I 030-02-2004-01-33 od 27. srpnja 2004, Narodne novine 111, 12 August 2004, Article 2130

⁵ Law 01-081-03-2639/2 / 2003 on the Electronic Media, Narodne novine 122, 30 July 2003, Art. 46.

IV. Ownership and its impact on media professionalism and independence

Although the Law on Media and the Law on Electronic Media require that all media report their ownership structure annually to the Croatian Chamber of Economy (in the case of print media) and Ministry of Culture (in the case of electronic media) and publish the data in the official gazette *Narodne novine*, not all media outlets do. In 2005, fewer than 80 outlets – less than half the total in Croatia – had published their ownership structure in *Narodne novine* by the end of February, the date required by law. Another 13 outlets did so after the deadline.

The foreign-owned *Večernji list* and NOVA TV and the local member of the Sanoma group were among those that failed to provide the information.

As of early September, only 23 electronic media outlets had reported their information to the Ministry of Culture.

The Law on the Media defines such failures as misdemeanours subject to fines of up to 1 million kunas (some €140,000).⁶ Although it is clear that most of the media do not comply with these requirements, the Ministry of Culture has not taken any steps to sanction them.

Sunčana Glavak, a spokeswoman for the ministry, said on 12 September that these cases have not been followed up because the outlets' ownership information "is available in the court registry of the commercial courts of the Republic of Croatia". In fact, the information is not available in the court registry. Some of the publishers, registered as joint stock companies, do have their ownership structures registered in the Croatian Central Depository Agency. Limited liability companies, however, do not.

Glavak referred questions on print media to the Croatian Chamber of Commerce, even though the chamber does not have enforcement authority. Its role is to compile and publish data sent by the media.

The Law on Media requires every publisher, together with a journalists' representative, to compose a statute for his or her media outlet.⁷ This is supposed to be a self-regulatory document that defines the relationship between the owner, editor-in-chief and the journalists, and their rights and obligations. If a publisher does not comply within six months of the outlet's founding date, a panel formed of an equal number of representatives of a publishers' association and journalists' association are to do so within three months of a request by a representative of the journalists at the outlet in question.

All media recognise the Code of Ethics of the Croatian Journalists' Association.

V. The funding of media business

Media outlets are not required to publish financial results other than their total yearly revenue. They are obliged to report their financial results to the Croatian Chamber of Economy, and must also divulge the identity of any advertiser from whom they make more than ten percent of their advertising revenue.

Hidden advertising is forbidden, and the prohibition is generally respected in practice. Some publications, however, tend to graphically camouflage advertising as editorial content. Many cases, such as reporting on new products, are unclear. By law, free advertising must be clearly labeled.

⁶ The Law 01-081-04-1625/2 /2004 on the Media, as cited, Art. 59-62.

⁷ The Law 01-081-04-1625/2 /2004 on the Media, as cited, 10 May 2005, Art. 26, para. 1 and 2.

The law requires all beneficiaries of the state budget to spend at least 15 percent of their advertising money on local and regional electronic media.

One revenue source for local and regional electronic media in Croatia is the Fund for the Encouragement of Pluralism and Diversity of the Electronic Media. The media apply for financing from the fund on the basis of content that is in the public interest, with entertainment excluded. The fund also finances the employment of educated professionals in the local and regional electronic media.

VI. Conclusions

The media business in Croatia still lacks transparency, and, in many respects, publishers simply do not obey applicable laws.

Media outlets in Croatia find survival very difficult, given a weak advertising market centred on television. Much of the available revenue comes from the two telecommunications companies and banks. The public has relatively little purchasing power. The two top-selling newspapers try to maintain their revenue through circulation, sometimes using lotteries and other gimmicks rather than aggressively pursuing advertisers. They also engage in questionable employment practices. Payment through writer's fees is widespread and often results in large fines when it is detected by authorities.

Why should publishers obey transparency regulations when authorities do not enforce them? It appears that they feel the advantages of openness do not outweigh those of cheating.

The most effective solution may be to raise public awareness of these inadequacies. Poll results presented a few years ago at an advertising convention put journalists at the bottom of a list of roughly ten other professions in terms of trustworthiness. The other professions included doctors, teachers and politicians. At the same time, participants considered the media more trustworthy than half the other institutions listed.

VII. Recommendations

The Agency for the Protection of Competition must improve its capacity of monitoring and analysing cases of competition, in order to match the dynamic of the media markets.

An independent measurement system should be implemented in order to provide reliable circulation/audience data as a basis for the Agency for the Protection of Competition's investigations in the competition field.

The Croatian Chamber of Economy (in the case of print media) and the Ministry of Culture (in the case of electronic media) should punish the media outlets which do not comply with the obligation of making transparent their ownership. Eventually, the law must be amended to impose higher penalties for infringements.

Publishers and broadcasters should improve the transparency on their business practices by cooperating with the public authorities, media NGOs and academic institutions to improve professional and ethical standards.

Appendix: Relevant legislation

Law 01-081-03-2639/2 / 2003 on the Electronic Media, *Narodne novine* 122, 30 July 2003.

Law 01-081-04-1625/2 /2004 on the Media, *Narodne novine* 59, 10 May 2005.

Law 01-081-03-2640/2 /2003 on the Protection of Competition, *Narodne novine* (the Official Gazette) 122, 30 July 2003.

Rješenje Agencije za zaštitu tržišnog natjecanja klasa UP-I 030-02-2004-01-33 od 27. srpnja 2004, Narodne novine 111, 12 August 2004.