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New television platforms in Spain and their influence on the market

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Abstract

Introduction. The acquisition of the *Cuatro* and *La sexta* television networks by Telecinco and Antena 3, respectively, has configured a new audiovisual landscape in Spain. The two new media platforms, now known as Mediaset España and Atresmedia, have accumulated considerable power in the free-to-air television market in terms of revenue, audience configuration and advertising sales figures. The objective of this article is to analyse the causes of these mergers, their influence on the Spanish television market, and to establish whether they put at risk -in terms of “relevant markets”- the survival of other players. **Method.** The study is based on the principles of the political economy of communication, which provides an integrated theoretical framework focused on media ownership and concentration. **Results and conclusions.** The overall conclusion is that, since 2010, when the first concentration deal was closed, the conditions of competition of the Spanish audiovisual market have been modified.

Keywords

Television; media concentration; pluralism of information; media corporations.

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1. Introduction

Although the television value chain is experiencing great mutations, “television is neither dead nor dying, it is only entering, gradually, new phases without leaving behind many elements from the past” (López Villanueva, 2011: 9). Although, in the Internet era, the television business has been reduced substantially and is increasingly unstable, the broadcasting model still has sufficient weapons (large audiences and acceptable advertising revenue) to fight a fight that, after the digitisation and the emergence of the Internet, it no longer dominates.

Meanwhile, and in the mid-term, television companies recur to concentration as a strategy to adapt themselves to an increasingly fragmented market, to distribute income among a smaller number of operators and even to carry out practices that go against legal and fair competition. But the main problem is that in the future they will not be able to guarantee income on the new distribution channels (Álvarez Monzoncillo, 2011: 238).

Thus, the rapid developments in technology and the changes in consumer habits are altering the television landscape. While Internet Protocol Television (IPTV), thanks to the development of digital interactive applications, is testing new forms of communication to distribute TV content direct into individual households rather than mass audiences (Papathanassopoulos, 2002: 2), commercial television is still looking to maximise audiences and generate more value to increase advertising revenues.

On the other hand, and in a context of severe economic recession, there has been also a strong economic and financial devaluation in the media sector. As Campos Freire (2013: 23) highlights, the stock market price of the leading media groups undergoing strong oscillations of their risk premium in Europe –including Spain– has decreased 70% between 2007 and 2011. Thus, these companies have had to adopt new strategic decisions which have altered their shareholding composition, by making new partners or simply promoting –when the law of the country in which they operate allows it– business mergers or acquisitions to reduce their exposure to risk.

In this way, mergers and acquisitions (M&A) have become since the mid-1990s an integral part of the strategic initiatives of many media groups that want to expand their presence in other markets, to capitalise on technological developments or consolidate themselves in the industry in which they operate (Chan-Olmsted, 1998).

The potential benefits that result from a merger or acquisition are the elimination of inefficient operations and, therefore, the achievement of greater economies of scale. In some cases –Walt Disney Co., News Corp., Vivendi– the objective of M&A is vertical, horizontal, global, and all-around expansion, to maximise the full potential of companies by being present throughout the value chain. In other cases –especially in local markets– the focus is simply to create economies of scale and to reduce the number of players in the market.

Although in the field of economic theory there are a good number of studies which purport to explain the causes that lead to corporate vertical integration, very few of these studies have taken into account how public policies can encourage this type of integration (Mendi *et al.*, 2011): an integration that is motivated by strategic reasons, with the creation of mechanisms that allow the parent company to discipline the target companies and improve their profitability. Horizontal

integration strategies allow companies operating in the same field of activity to increase their presence in these markets and to substantially increase their market share (Peltier, 2004).

In both cases, the incentives to absorb other firms include the tax benefits derived of the integration, in addition to the creation of contents capable of generating abundant economies of scale. Alfaro *et al.* (2010) highlight the existence of a positive relationship between integrations of these characteristics and tariff protection. On the contrary, Nocke and White (2007) have proposed the idea that this type of strategies, especially the vertical type, can facilitate agreements between domestic oligopolies. In any case, several factors complicate the “fusion” of companies: asymmetries in costs, elasticity and demand fluctuations, barriers to entry, and competition in variables other than price.

The media industry has an inherent tendency to ownership concentration and vertical and horizontal integration (Vogel, 2004). But while vertical integration aims to gain business presence throughout the value chain –from the acquisition of information to distribution and marketing services–, horizontal integration essentially seeks to create economies of scale, with the consequent reduction of running costs; the achievement of a greater critical mass and an increase in the market share. Both types of integration can reduce the transaction costs that take place in the heart of the companies; and mitigate the uncertainty of demand and the consequent risk aversion.

However, the most worrying consequence of these external growth processes is that the high concentration of media companies can endanger the pluralism of information and audiences’ independent elections.

Doyle (2003: 11) points out that the definition of pluralism refers to the diversity of both ownership and contents. In other words, in more concentrated market structures there is the danger that the key players will restrict the number of voices that participate in the dissemination of information, opinions, and values (Faustino, 2010), which goes against the pluralism of ideas. Some authors, such as George (2007), have found empirical evidence between the degree of concentration and the thematic variety of the press in North America.

Likewise, it should be noted that the access to information is a right recognised in the Spanish Constitution, whereas pluralism, which must govern the media, has also obtained the recognition of the European authorities. Thus, the European Parliament has already indicated that ownership concentration in the media system complicates the entry of new players in the market and encourages greater uniformity of content. Moreover, the European Commission has developed a series of directives to standardise the legislation of the Member States to ensure economic freedom [1].

Media pluralism is not only a fundamental value of the democratic system (Tomás Olalla, 2004). It also manifests itself in the guarantee of citizens’ access to a plurality of independent media and contents, and is a concept supported by UNESCO, which adopted the Convention on the Protection and Promotion of the Diversity of Cultural Expressions in 2005. In the same way, the European Commission’s 1992 green paper supports the free flow of information. And the European Parliament has already pointed out that media concentration creates an environment that favours the monopolisation of the advertising market and brings greater uniformity in terms of content.

The protection of pluralism in this case constitutes a common reference in the communication policies of the major democratic countries and the defence of pluralism in the media is a basic principle in these democracies (Bas *et al.*, 2011).

2. Research hypotheses and objectives

The initial hypothesis is that the free-to-air TV market in Spain has gone from being an oligopoly, in which four large networks co-existed –with RTVE (the Spanish Radio y Television Corporation) and other public service regional channels– to a duopoly formed by two large television platforms that control a good part of the revenue in the television market, about 90% of advertising, and just under 50% of the audience share.

Such conjectural proposition is based on the idea that the duopoly formed by both television platforms does not only constitute a threat to pluralism in the media, but can also play an important role in the survival of free-to-air public and private TV corporations, and even in the future of radio companies, and print and online publications.

The objectives of this article are to establish, first, whether this concentration may hinder the development of commercial television in Spain by restricting competition and the entry of new competitors and, second, whether the recommendations of the CNC (Spain's National Competition Commission) are successful in their analysis of both concentrations deals, given the absence of an Audiovisual Council to judge these policies.

3. Method and approach

This study is based on the principles of the political economy of communication (PEC). According to V. Mosco (1996), the EPC provides an integrated theoretical framework to address the power relationships that determine the forms of production, distribution and consumption of resources and, therefore, focuses on media ownership and concentration. According to F. Sierra (2013), the prevailing trends in the culture industry require research studies to examine the relations between the government, the market, the media corporations, the industrial concentration, the public policies and the economic development.

The ultimate goal would be to generate sufficient knowledge to establish socially viable alternatives to the democratic control of information through the analysis of the ownership structure of the media and the producers of technology and cultural contents, and the analysis of the economic and financial logics and their influence on the creation and commercial dynamics of communication.

Instead of focusing on the main television companies operating in the Spanish market, this study is based on the analysis of two very relevant cases of M&A in Spain, involving the two major free-to-air television companies (with important participation in pay television): Telecinco and Antena 3.

The study is based on two specific methods: the case study method and the analysis of the legal-corporate aspects of the media concentration processes (Pérez Serrano, 2008) which, usually, takes

into account the following elements: the economic structure of the media group, society, and the business unit that leads the concentration process.

The difficulty to establish quantitative parameters has led us to choose the analysis of the ownership concentration and the distribution of the social capital of the communication companies as the main sources of information, without ignoring other factors such as the audience concentration derived from the reduction of media companies, advertising investment and the impact of technology in the expectations of concentration.

This study has fundamentally focused on the analysis of the concentration of revenue in the free-to-air television companies; the advertising market and audiences; as well as the control of contents, although in this last aspect pay TV companies (mainly Prisa TV) has the largest number of output-deals signed with the major American film studios and the distribution rights of sports broadcasts. In the same way, the study has taken into account the effects of the legislation and policies applied by the different executives, including the Law on the Funding of RTVE Corporation, and the strategies of the regional television corporations in a context of crisis [2].

For this research we reviewed the annual reports of the CMT (Spain's Telecommunications Market Commission); the advertising revenue figures provided by Infoadex; and the TV audience figures provided by Barlovento Comunicación, with data from Kantar Media. Also very useful for the study were the resolutions issued by the CNC on the acquisitions of Cuatro by Telecinco and La Sexta by Antena 3. Other sources of reference are the resolutions of the European Commission and the analysis of the income statements of the largest Spanish media groups (Atresmedia, Mediaset España, Prisa, Vocento and Mediapro) and RTVE.

Over the last twenty years many scholars have addressed the reasons which have provoked M&A in the cultural industries. Bagdikian's 1997 work (*The media monopoly*), which developed the intellectual framework that influenced many media scholars [3], was followed by studies focused on specific geographical areas.

Most of these studies are based on the principles of the Political Economy of Communication and industrial economics [4]. A significant part of this academic literature refers to legal issues (anti-trust policies) or the analysis of the strategies of horizontal, vertical and conglomerate integration. These studies include those carried out by Ahn and Litman (1997), Albarran (2010), Brick and Edelvod (2009), Croteau and Hoynes (2001), Cunningham and Alexander (2004), Mastrini and Becerra (2012), McChesney (2002), Noam (2009), Picard (1996) and Winseck (2008).

There are also a handful of Spanish scholars who have been addressing these subject matters since the 1990s, either from a more general or, in some cases, tangential perspective of the processes of concentration in Spain. A good part of these scholars focus on the ownership concentration processes (oligopolistic or monopolistic situations) that are capable of altering competition and the pluralism of information. However, the effects of advertising investment on pluralism and the consequences derived from the strategies of concentration on the Spanish media have not been examined in depth.

4. The Spanish television market

Following the adoption of the 1988 Private television law - in force until 1 May 2010 - the first half of the 1990s was characterised by a strong recession in advertising investment and a high increase in content price after the emergence of the new television operators. As a result, television companies have performed poorly (Artero, Herrero and Sánchez-Tabernero, 2005) [5].

However, in the second half of the 1990s, private networks became profitable thanks to the recovery of the world economy, the advent of technology companies and the reduction of their high debt. However, after the analogue switch-off of April 2010, it seemed clear that the television ecosystem would undergo profound changes: more channels and more companies participating in the free-to-air television market.

A total of 24 national private channels and eight channels owned by the RTVE Corporation and the arrival of new competitors (Vocento, Mediapro and Unedisa) faced serious problems to coexist and survive, including the five mainstream networks and Canal+, in the Spanish TV advertising market, which was previously reduced in terms of players, and in a non-expansive economic framework. In the words of Zallo (2010: 53), when the government allowed the launching of new channels it did not take into account the effects of the competition nor the resulting “television superabundance”: more than 1,200 TV channels.

At the beginning of the 21st century, the television market in Spain was characterised by the financial decline of RTVE and the good results of the main private channels (Bustamante, 2009). Up until the implementation of DTT, the analogue television business model did not seem overly complex. Advertising revenues compensated the costs of infrastructure and production. But from April 2010 [6], a series of variables jointly transformed the television model in Spain: to the high fixed costs necessary to preserve digital licenses, was joined by the progressive fragmentation of audiences; the threats of pay TV and its output deals with the major American film studios and exploitation of sports broadcasting rights.

During this period it was impossible for many networks to find viable business models in the era of audiences hyper-fragmentation (Bustamante, 2009), primarily due to the broad dominance enjoyed by the large mainstream networks and the dominance of pay TV channels in the premium content market. Thus, the principle that a significant increase in the number of free-to-air and pay TV channels also entails an increase in the price of the most desirable contents was met; and this became evident in the sports broadcasting rights which reached exorbitant prices in the 1990s (Artero, Herrero and Sanchez-Tabernero, 2005) and continued to increase throughout the first decade of the 21st century.

Thus, the Spanish television market, since the emergence of DTT and the rise of the thematic channels, moved in a seemingly insoluble contradiction: apart from the four large mainstream channels -and RTVE- the rest of the television companies only obtained enough advertising revenue to survive. Advertisers –although unhappy about the high rates imposed by the large mainstream networks– wanted to reach mass audiences, and both free DTT channels and thematic channels had small audiences and reduced coverage in most of the major autonomous communities.

The immediate consequence has been the failure of such channels as Veo TV (which was closed down in 2011 and whose three channels were put up for lease), the closure of Canal 10 and its cession to Paramount Channel, and the transformation of Marca TV in a home shopping TV channel (2013). For their part, the free thematic channels, which had a reduced advertising portfolio, generally offered little attractive contents to the audience [7].

In 2012, the evolution of the audience shares across the media groups was as follows: Mediaset España had reached 28.1% of the audience, followed by Atresmedia with 25.8%, and RTVE with 18.9%. The most important fact was that the audience share of both private groups increased in comparison to the year 2011, while that of RTVE dropped from 22.3% to 18.9%.

Table 1. Audience share evolution in the main free-to-air TV channels during the duration of the two concentration processes under analysis (2009-2012)

Channels	Duration of the concentration processes			
	2009	2010	2011	2012
Tele 5	15.00%	14.60%	14.20%	13.20%
Antena 3	14.70%	11.70%	11.50%	12.80%
TVE-1	16.30%	16.40%	14.50%	10.80%
Cuatro	8.20%	7.00%	6.10%	6.20%
La Sexta	6.90%	6.60%	5.70%	5.50%
Total TV advertising revenue (million euros)	2,377.8	2,471.9	2,322.0	1,815.3

Source: Author's own creation based on data from Infoadex, 2009-2012

In terms of advertising sales in 2012, according to Infoadex, the national free-to-air TV networks earned a total of 1,643.9 million (compared to 1,977 in 2011) and the two large platforms reached together almost 90% of the total revenue, while the regional television companies had a revenue of 126.8 billion and the pay TV channels had a revenue of 43.1 million euros. In this way, in 2012, Antena 3 and La Sexta earned 754 million euros and Mediaset España a total of 821.5 million euros; i.e. together the two groups had a revenue of 1,575.5 million euros, and attracted 86.8% of all advertising investment in television, which amounted 85.4% in the previous year [8].

That is why stock market investors bought shares of Mediaset and Atresmedia. In the case of Mediaset it was due to its healthy balance sheet, the generation of cash surpluses and good remuneration to shareholders while, in the case of Atresmedia, it was due to its absence of debt and its good prospects, although its majority shareholder, the Planeta group, had renegotiated a debt of 700 million euros with its bank lenders.

However, the medium of television attracted 60% of all the advertising investment in conventional media, excluding outdoor advertising and on the Internet, which is a trend that tends to increase in each fiscal year. This seems to suggest that there is a clear displacement of advertising in conventional media (newspapers, Sunday supplements, cinema, radio and magazines) and even in the regional TV corporations towards the large mainstream TV channels, which are capable of reaching any region in Spain. With the exception of Puerto Rico and Uruguay (Lanza and Buquet, 2011), there does not seem to exist other examples of such a clear advertising concentration. Territorial control, high audience levels and competitive rates are the reasons for this success.

Table 2. The free-to-air TV advertising market in Spain (2009-2011)

Groups	2009 (with RTVE)		2010 (without RTVE)		2011	
	Share	Power ratio	Share	Power ratio	Share	Power ratio
Tele 5	16.2%	1.57	23.3%	1.38	26.1%	1.28
Antena 3	16.6%	1.48	20.8%	1.34	22.0%	1.38
RTVE	22.7%	0.78	no data	no data	no data	no data
Cuatro	8.2%	1.29	9.4%	1.28	7.9%	1.27
Grupo La Sexta	6.9%	1.21	9.1%	1.21	9.8%	1.15
Intereconomía	0.5%	0.17	1.4%	0.42	1.8%	0.17
Disney	1.4%	0.18	2.8%	0.42	2.2%	0.59

Source: CNC, 2012

Table 3. Advertising investment in conventional media (in million euros) (2009-2012)

Media	2009	2010	2011	2012	Variation 2009-2012
Television	2,377.8	2,471.9	2,237.2	1,815.3	-23.66
Press	1,174.1	1,124.4	967.0	766.3	-34.73
Internet	654.1	798.8	899.2	880.5	34.61
Radio	537.3	548.5	524.9	435.5	-18.95
Magazines and Sunday supplements	470.8	470.0	448.2	365.7	-22.32
Others	416.8	445.2	428.6	366.7	-12.02
Total	5,630.9	5,858.8	5,505.1	4,630.0	-17.78

Source: Author's own creation based on own information and data from Infoadex

Therefore, and, apart from both platforms, currently there does not seem to exist a single viable business model of free-to-air television that is not experimenting a large concentration process. A business model must describe the way an organisation creates, provides, and captures value. It must describe the products and services, the value proposition that it offers to its customers and how it will be able to generate new revenues to remain a profitable company. But instead of talking about “business models”, in this case we should talk of “business solutions”. However, these solutions currently involve a higher degree of corporate concentration to seize control of the main source of income of the free-to-air television companies: advertising.

In any case, the structuring of duopolies and oligopolies, endorsed by the different government legislations –and thereby the reduction of the offer– seems to be a constant that many democratic countries apply in their media policies.

In the Spanish case, apart from the characteristics of its media system there exists a weak regulatory framework, based on constant and hyper-fragmented reforms and counter-reforms: the 2009 Law on Urgent Measures in Telecommunications (Ley 7/2009, of 3 July); the 2009 Law on the Funding of the RTVE Corporation (Ley 8/2009, of 28 August); the 2010 General Law on Audiovisual Communication (Ley 7/2010, of 31 March); the 2012 Royal Decree-Law amending the Management system of the RTVE Corporation (Real Decreto Ley 15/2012, of 20 April); and the 2012 Law on Management relaxation for regional public service TV channels (Ley 6/2012, of 1 August).

Many of these regulations have encouraged greater concentration, whenever possible, in the sector. In fact, the policy changes carried out in 2009 [9] immediately led to strategic actions aimed at achieving the concentration of private television channels (Alcolea and Pérez Serrano, 2013).

A final reflection on the Spanish television market would also have to consider the role played by RTVE throughout this process. After proposing a reform for public television, apparently very similar to the one approved in 2008 in France [10], but radically different in the control of management bodies, RTVE acquired a new funding framework that had more restrictive budgets and the suppression of advertising.

And, while RTVE could initially be the leader in audiences, due to the quality of its programming and the absence of advertising interruptions, after various changes in its organisational structure and the reduction of its own production and sports rights, from 2012 onwards RTVE was relegated to the third place, behind Telecinco and Antena 3. Apparently, RTVE’s executive did not consider it was essential for the public broadcaster to play a decisive balancing role in the Spanish television market.

5. Results of the concentration process

5.1. Analysis of the external growth processes

5.1.1. The absorption of Cuatro by Telecinco

The absorption of Cuatro by Telecinco was the first concentration deal between television channels in Spain after the policy changes of 2009 and 2010. In late 2009 both companies signed a term sheet to merge, which was completed the signing of an integration agreement and a framework agreement in April 2010.

In this process [11], as well as in the one agreed upon between Antena 3 and La Sexta, the involved entities and the European Commission and the CNC identified the sectors and markets that were affected and the restrictions on competition which were being produced. Table 4 highlights the most important data on the merger:

able 4. Essential data on the Telecinco/Cuatro merger

	According to the parties involved	According to the CNC	According to the European Commission
Affected markets	Pay and free-to-air television	Free-to-air TV	Production of audiovisual content
	Content acquisition (movies)	Selling of advertising space on TV	Content marketing
	Acquisition of football broadcasting rights	Production of TV programmes (series)	Editing, marketing and distribution of TV channels
	Production TV programs	Content acquisition (films)	Transport and dissemination of TV signals
	Production and marketing of films	Acquisition of football broadcasting rights	Television and advertising
Production and marketing of films		Electronic communications retail markets	
		Contact centres	
	TV advertising	Acquisition of audiovisual content	Free-to-air TV
Restrictions	<p>If the advertising space of these channels was marketed jointly, it could become a must for advertisers.</p> <p>The possibility of encouraging the tacit coordination of the resulting entity with its main competitor: Antena 3.</p>	<p>The resulting entity could strengthen its bargaining power, and could affect the competition of other free-to-air TV operators as well as smaller publishers and producers of audiovisual contents</p>	<p>The risk of the resulting entity strengthening its power in the affected market through its agreements with third party DTT Multiplex operators.</p>

Source: Author’s own creation

Based on the previous data, in October 2010, Telecinco submitted for the second time the conditions that would govern the merger, which this time were regarded as sufficient by the CNC. The

conditions finally proposed by Telecinco made reference to the offer of free-to-air channels, the advertising market and the negotiating position in the purchase of content. The CNC considered that the conditions presented by Telecinco limited its business autonomy in the management of TV advertising and the purchasing of audiovisual content, which allowed it to compensate for the competition problems generated by the concentration. Table 5 summarises the conditions that governed the merging of Telecinco and Cuatro:

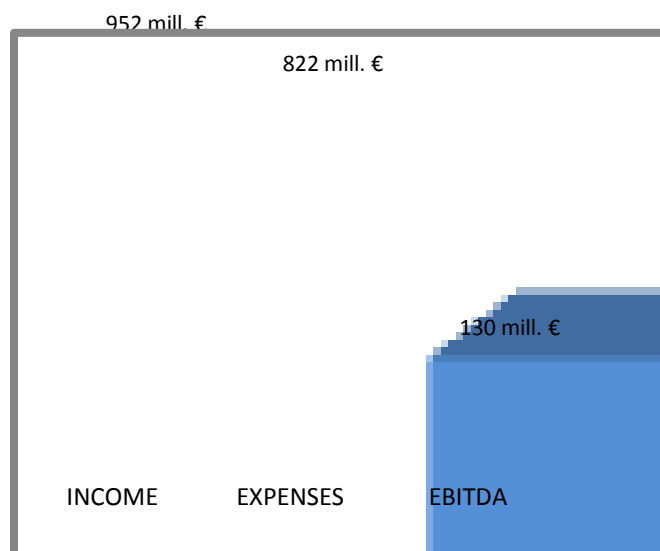
Table 5. Conditions agreed upon for the authorisation of the Telecinco/Cuatro merger

Conditions to ensure effective competition	
On television advertising	Telecinco cannot offer the advertising space of two of its most-watched free-to-air TV channels through the same commercial bundle.
	Telecinco cannot develop sales policies linked to the advertisers buying its different TV advertising commercial packages.
	Telecinco will break its agreements of joint management of advertising in free-to-air DTT channels with third parties, and not to sign new agreements of this type. In pay TV advertising, Telecinco is committed to maintain the pre-existing situation, through a separate company and differentiated trade policies.
	To avoid the structural links of Telecinco with Prisa and Telefónica in Digital + from affecting the TV advertising market, Telecinco will not sell advertising space jointly with advertising platforms managed by the other parties and to market conditions to its partners if they buy advertising spaces.
On the acquisition of audiovisual content	Telecinco will limit the duration of its exclusive content acquisition contracts to three years, without including pre-emption or extension rights. This allows that the exclusive rights on content producers that Telecinco has acquired or may acquire are put on the market in a regular basis. Likewise, this commitment limits the period to exclusively exploit a film on free-to-air TV to five years.
	Telecinco will restrict its ability to exclude the national TV producers as providers of TV programmes to free-to-air TV competitors.
	To deal with the potential effects of the structural links of Telecinco with Prisa and Telefonica in Digital+, Telecinco accepts absolute limits to its ability to purchase the most attractive audio-visual content, films and brand-new series from the main film production companies, as well as the main sports events.
On free-to-air TV	Telecinco will not extend its offer of free-to-air TV channels through the leasing of DTT channels from third party operators and to not block the quality improvements of TV channels launched by its competitors, Net and La Sexta, with which the resulting entity shares multiplex DTT channels until 2015.
	To avoid using its reinforcement in the free-to-air TV market and its presence as major shareholder of Digital +, Telecinco will maintain the current policy of free cession of its free-to-air TV channels to pay-TV platforms.

Source: Author's own creation

The CNC set the duration of these conditions to three years, extendable to two more years, if the market conditions that made them necessary persist. The agreement did not become part of the agenda of the Council of Ministers and the exclusive takeover of Cuatro by Telecinco was executed on 28 December, 2010.

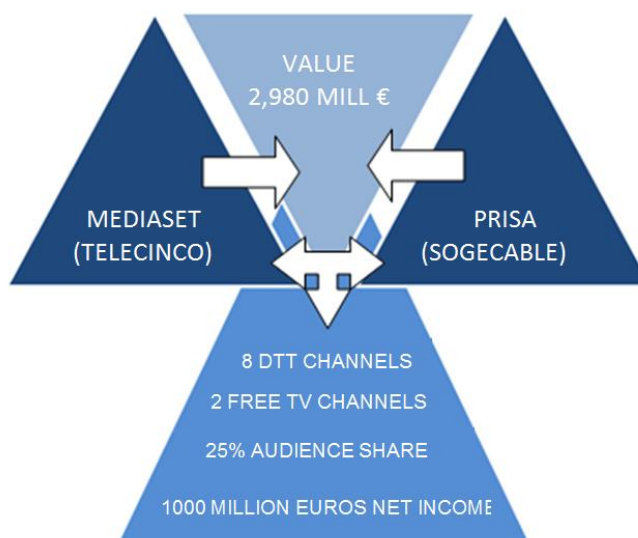
Figure 1. Result of the merger by absorption of Telecinco/Cuatro



Source: Author's own creation

As shown in Figure 1, at the time of the merger, the outcome of the process involved an income of 952 million euros, eight DTT channels (now seven), two free-to-air channels and 25% of the audience.

Figure 2. Value of the absorption (2011)



Source: Author's own creation with data from the statement of both platforms

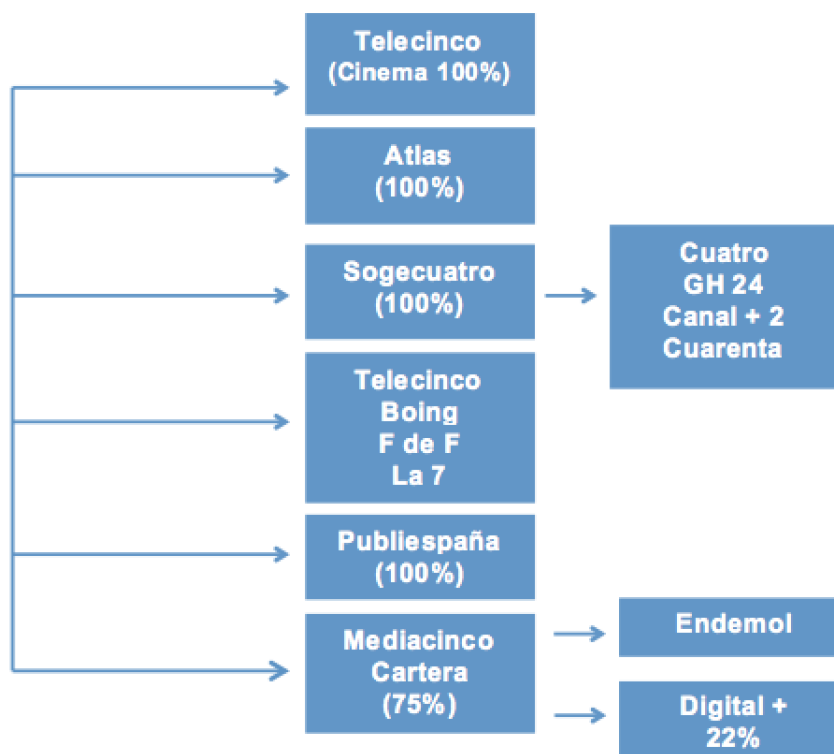
The new company, with a value of 2,980 million euros, is a share capital structure in which Mediaset owns a 41.6% share and PRISA a 18.4% share.

Figure 3. The new Telecinco (Mediaset España)



Source: Author's own creation

Figure 4. The Mediaset España Group (year 2012)



Source: Author's own creation with data from Mediaset España

The CNC continued monitoring the consequences of this process. In April 2012, the Investigation Direction sent the Council of the CNC a report on the degree of compliance with the Resolution that authorised the merging of both operators. The report concluded that Mediaset had failed to meet, in a systematic and repeated manner, the different deadlines set out in the Action Plan of 23 February, 2011. In particular, Mediaset failed to provide certain information, necessary to assess the fulfilment of the conditions relating to the TV advertising market and the audiovisual content.

The Commission eventually initiated an administrative disciplinary proceeding and imposed a penalty of 15.6 million euros to Mediaset for committing a very serious breach of various conditions, relating to the marketing of advertising spaces, contractual restrictions on the acquisition of content and the obligation to provide information to verify and ensure compliance with the conditions.

5.1.2. The absorption of La Sexta by Antena 3

Table 6. Essential data on the Antena 3/La Sexta merger

	According to the parties involved	According to the CNC	According to the European Commission
Affected markets	Pay and free-to-air TV	Free-to-air TV	Production of audiovisual content
	Production of audiovisual content	Selling of TV advertising space	Marketing of contents
		Production of audiovisual contents	Editing, marketing and distribution of TV channels
	Acquisition of audiovisual contents	Audiovisual content acquisition	Free-to-air television
	Production and supply of TV programmes	Production and supply of TV channels	Advertising on free-to-air TV
Restrictions	Television advertising	Acquisition of audiovisual contents	Free-to-air TV
	The disappearance of La Sexta as independent provider would strengthen the bargaining power of Antena 3 with advertisers	The resulting entity could strengthen its bargaining power, and could affect the competition among other free-to-air TV operators and smaller publishers and producers of audiovisual contents of smaller	Risk of the resulting entity strengthening its market power in the affected markets through its agreements with third party DTT Multiplex operators
	Mediaset and Antena 3 could act in a coordinated manner in the advertising market to the detriment of the competition		

Source: Author's own creation

This process began on 30 December when the CNC was notified that Antena 3 was absorbing La Sexta, through the acquisition of 100% of its share capital. After filing this procedure (after the European Commission highlighted the community dimension of this operation, which the parties involved had not contemplated) and opening a new one, the CNC determined, in March 2012, the beginning of the second phase of the procedure on the grounds that the operation could hinder the maintenance of effective competition at all or any of the markets under consideration.

In addition, as table 6 shows, in its analysis of the first phase, the CNC concluded that this operation affected primarily the TV advertising market, as well as the audiovisual contents of the free-to-air TV market. In the case of the TV advertising market, the disappearance of La Sexta as independent provider of advertising space (which would be managed by Antena 3) reinforced the power of the Planeta network over advertisers. This fact could allow Mediaset and Antena 3 to act in a coordinated manner to the detriment of competition. Regarding the acquisition of audiovisual content, the entity resulting from the merger of Antena 3 and La Sexta could also strengthen its bargaining power.

Regarding pluralism of information on television, a report of the SETSI noted that this concentration would have no effect on it and was compliant with article 36 of the 2012 General Law on Audiovisual communication (Ley 7/2010, of 31 March).

The concentration of Antena 3 and La Sexta was finally authorised by the CNC, with conditions, on 13 July, 2012. In this case, Antena 3 presented three successive proposals to resolve the competition problems, which the Investigation Direction deemed insufficient to compensate for the existing obstacles for the maintenance of effective competition. For this reason, the CNC's Investigation Direction itself established the conditions for the authorisation of this operation. It was determined that these conditions would have a duration of five years.

Subsequently, on 27 August 2012, the Council of Ministers amended these conditions. Antena 3 had reported as relevant fact to the Commission, the unviability to maintain the conditions imposed by the agency. The executive argued that there were circumstances of general interest, essentially related to the guarantee of a proper maintenance of the objectives of the sectoral regulation, as well as of the promotion of research and technological development.

With regards to the sectoral objectives, the executive referred to the objectives of the sectoral regulation of electronic communications (to guarantee the implementation of the Liberation Plan of the 'digital dividend') and those related to the audiovisual sector (to guarantee pluralism in the media).

The resolution of the Council of Ministers kept the points noted by the CNC on the conditions on free-to-air TV and on the acquisition of audiovisual content, but partly modified the obligations of periodic presentation of information and, substantially, the conditions on TV advertising, establishing an initial three-year (not five-year) duration, which nonetheless could be extended two years more.

Table 7. Conditions agreed upon for the authorisation of the Antena 3 / La Sexta merger

Conditions to ensure effective competition	
On television advertising	The resulting entity is obliged to act in the TV advertising market independently from other free-to-air TV operators.
	It must maintain at least two independent distributors that manage advertising in free-to-air TV channels, with a minimum level of audience, so that it ensures a minimum competition between the two.
	The resulting entity shall give advertisers and media agencies the possibility of purchasing any combination of the free-to-air TV advertising products form across its channels, giving the customer complete freedom to distribute its investment as it deems appropriate according to its communication needs, without the trade and price policies of the resulting entity forcing the buying of certain advertising products or combinations of them over others.
	(These conditions resulted in 15 obligations subsequently modified by agreement of the Council of Ministers).
On the acquisition of audiovisual content	The resulting entity may not rent or lease multiplex DTT channels which have been licensed to third parties.
	The resulting entity may not deny its authorisation to the launch of new services or broadcasting quality improvements by operators with which it shares multiplex DTT, as long as this launch does not harm the quality of its own broadcasts and it receives reciprocal treatment from the operators with which it shares multiplex.
About free-to-air TV	Among a total of ten conditions:
	The resulting entity may not terminate contracts of exclusive acquisition of audiovisual content with third parties active for more than three years from the signing of the corresponding contract.
	The periods of exclusive exploitation of audiovisual contents acquired may not exceed three years since it was made available to the resulting entity.
	The resulting entity may not terminate any contract for audiovisual content or commissioned productions with national producers not controlled by the resulting entity and that involve exclusive rights in the acquisition of the programmes that the national producer can produce in the future or pre-emption rights on the produced programs.

Source: Author's own creation

The agreement of the Council of Ministers included the opinion of Antena 3. The network had publicly expressed that the conditions imposed by the CNC –in relation to the advertising market– were discriminatory, more severe, more restrictive, and included more obligations than those imposed to Antena 3 in relation to Mediaset. Therefore, the Council concluded that the removal of the “main asymmetries” introduced between the two TV operators, as a result of the obligations included in the first and fifth conditions of the CNC, would eliminate the identified obstacles to the integration between Antena 3 and La Sexta in favour of the assurance of the sectoral objectives.

The unrest in the advertising industry, in the midst of a major crisis, was clear. In fact, in late 2012, the Spanish Advertisers Association (AEA) appealed to the Supreme Court against the decision to downgrade the conditions imposed by the CNC to the merger of Antena 3 and La Sexta.

However, in early 2013, and following an agreement with Antena 3, the appeal was retracted, after Planeta’s network pledged to accept the conditions imposed by the CNC to guarantee competition in the TV sector in Spain, provided that they did not result in distorting effects on the market. Antena 3 meant accepting the new conditions of the CNC in case this agency decided to impose more severe conditions to the merger of Telecinco and Cuatro.

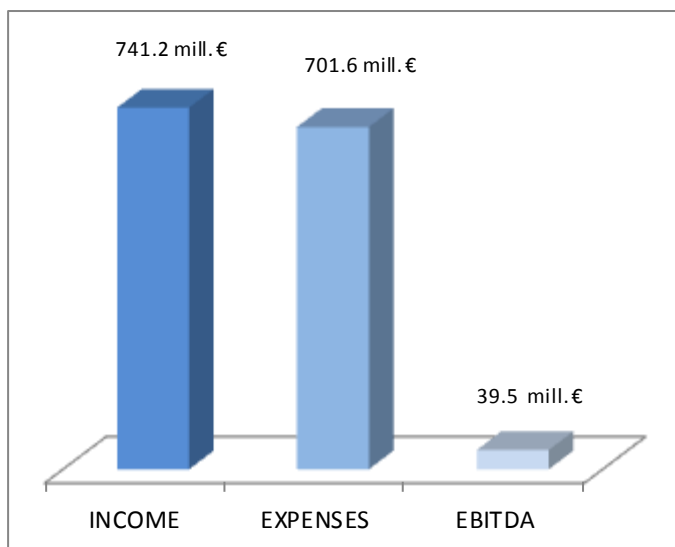
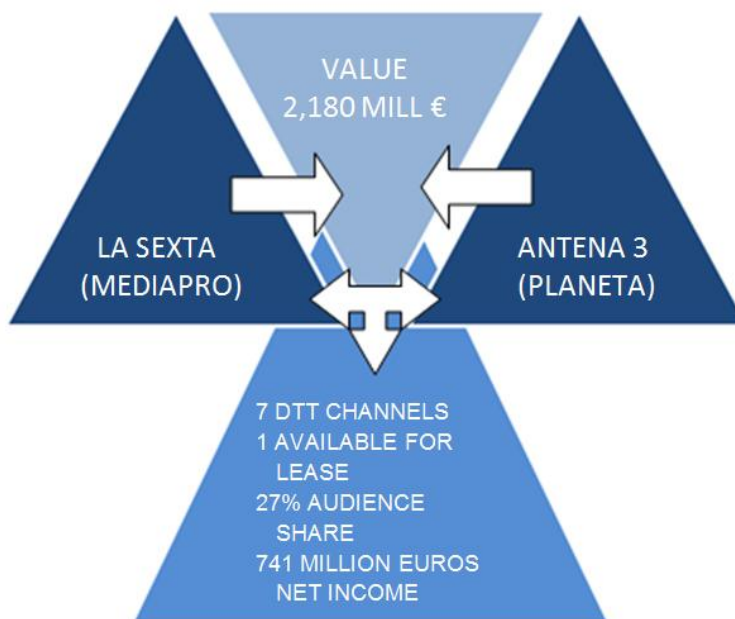


Figure 5. Result of the concentration of Antena 3 and La Sexta
Source: Author’s own creation

The process culminated formally on 1 October 2012, with the economic results shown in Figure 5. Shareholders of La Sexta received a 7% stake in the share capital of Antena 3, with the option of acquiring a larger share, according to the achievement of unspecified objectives throughout 2016. “The Antena 3 platform, then, had a market value of 2,180 million euros, according to the due diligence carried out by the banks, which valued La Sexta at 1,680 million euros and Antena 3 at 500 million euros” (García Santamaria, 2013).

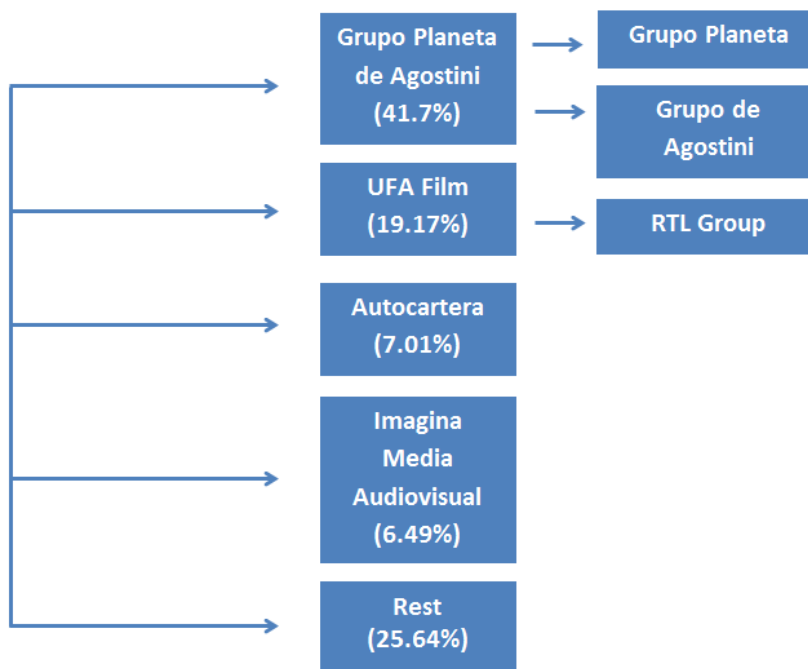
Figure 6. Value of the concentration (in 2012)



Source: Author’s own creation with data from Atresmedia’s statement

On March 6, 2013, the Antena 3 group changed its name to Atresmedia Corporation, and on 24 April it changed its corporate name to *Atresmedia Corporación de Medios de Comunicación, Sociedad Anónima*. Figure 7 shows the shareholding structure of the media group:

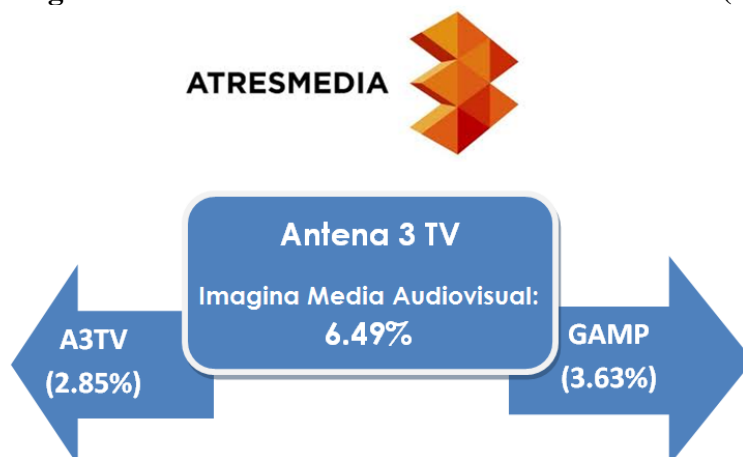
Figure 7. Atresmedia Group (2012)



Source: Author’s own creation with data from Atresmedia

In addition, the holding company linked to La Sexta is Imagina Media Audiovisual. This group was created in 2006 with the integration of the production companies Grupo Globomedia (formerly Grupo Árbol) and Mediapro, which from October 2012 has contributed to the current configuration of its direct competitor of Mediaset España.

Figure 8. Imagine Audiovisual Media within the new Antena 3 (Atresmedia)



Source: Author's own creation

6. Conclusions

Both concentration processes were, from the business point of view, clear economic motivations, which have had significant consequences for the situation of the Spanish TV industry and, more generally, for the whole media industry in Spain.

Regarding the causes that originated these takeovers, both Telecinco and Antena 3 wanted to increase their size and to create greater economies of scale to mitigate the audience decline that occurred from 2006, the decrease in revenue and profits caused by the economic recession, but also by a greater competition framework in which the number of competitors had created an oversupply in the advertising market. In other words, the creation of this new duopoly has managed to limit rivalry in the television offer, and at a time when the broadcasting model is failing to reach the audience levels it reached in the past.

The reality is that, based on advertising revenue figures and the opinion of the Spanish Advertisers Association (AEA), a better segmented market has not been achieved for the advertising targets. As all the companies involved have agreed, television production has become even more concentrated, by eliminating or damaging independent producers. Competition in the audiovisual production markets, both in the production of TV series and news programmes, has been further reduced, which puts the access to the premium content demanded by viewers on the hands of fewer providers.

On the other hand, the selling of the acquired companies (Cuatro and La Sexta), which were owned by media groups, has shown that the high indebtedness of their parent companies (Prisa and Mediapro) [12], which was part of their strategy of vertical integration and premium content

acquisition to maintain their supremacy in the free-to-air and pay TV market (Canal+ and Gol TV), has failed and they have had to be acquired by two other large hardly-indebted communication groups [13].

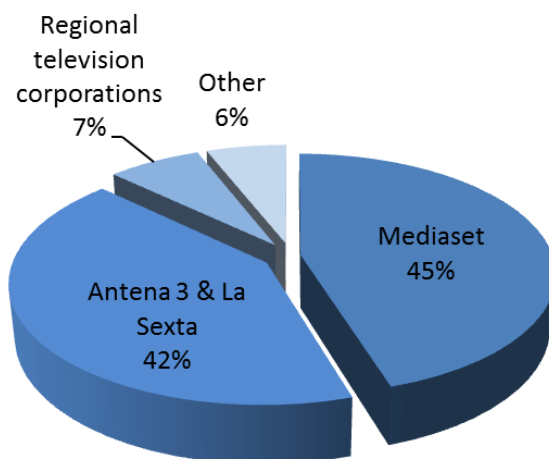
Table 8. Comparison of the concentration processes under analysis

Comparison and Results			
	Item	Mediaset España	Atresmedia
Of the process	Beginning/end	2010/2010	2011/2012
	Sector	Audiovisual	Media
	Main affected markets	Television advertising	
		Acquisition of audiovisual content Free-to-air TV	
	N° of restrictions analysed	Four	
	N° of conditions analysed	Eight	
	Duration of the conditions (years)	3 (extendable for 2 more years)	5 (Modified by C. of Ministers) 3 (extendable for 2 more years)
	Value	2,980 million €	2,180 million €
	EBITDA	130 million €	39.5 million €
	N° of channels	8 DTT chan. (now 7) 2 free-to-air channels	7 DTT channels 1 chan. for lease
In the Spanish audiovisual market	General assessment	Concentrations distort the television market	
	Market situation	Imperfect competition: duopoly	
	Advertising targets	They have not improved	
	Joint audience share	52% (approximately)	
	Joint advertising revenue	754 million € in 2012 (Infoadex)	
	Joint advertising share	87% in 2012 (Infoadex)	
	Access to premium content	Available to a smaller number of providers	
	Content production (programmes and news)	Reduction of the possibilities	
	Pluralism (impression)	It has been reduced	

Source: Author's own creation

Although there is not a clear correlation between the creation of this TV duopoly and the drift of RTVE -and there is an absence of a more detailed study about this particular case-, it can be concluded that there has been a shift between the advertising commercialised by the public national network and the two large private networks, as noted by the CNC itself (see Table 2).

Figure 9. Distribution of Spain's TV advertising market (2012)



Source: Author's own creation with data from Infoadex

The facts that RTVE was given a new funding framework and that its budgets were more restrictive from 2010 until today, has forced this public entity to decrease its own production and get rid of some of its expensive sports broadcasting rights. As a result of these and other factors, TVE has lost its audience leadership in favour of Telecinco and Antena 3. And, above all, it ceased to be a counterweight to the dominance of Mediaset España and Atresmedia.

Regarding the resolutions dictated by the CNC throughout this processes, there has been a lack of a body to regulate the market, which had been considered in the 2010 General Law on Audiovisual Communication. That is why the CNC had to assume certain powers which, elsewhere in the European Union, corresponded to the European Commission.

There are also significant differences in the way CNC resolved both operations. Once the first absorption, of Cuatro by Telecinco, was approved, it became clear for this body that the authorisation of the absorption of La Sexta by Antena 3 could seriously distort the television market in Spain.

Thus, the conditions attached to the authorisation of the concentration process were more severe than those attached to the merging of Telecinco in two areas: the one regarding the television advertising market (such as the obligation to maintain two companies to sell advertising and the limitations on joint bids exceeding 18% of total audience) and the one regarding the period of duration of the conditions (the five-year duration against three years extendable for two more imposed to Mediaset). However, the Council of Ministers, making use of powers given to it by the law in this matter, modified such conditions claiming circumstances of general interest and arguing the elimination of the main asymmetries existing between the two private TV operators were necessary.

These asymmetries had been defended as necessary by the CNC, because although the markets under analysis were the same in both cases, the market conditions were different. The CNC has pointed out, among other things, that the fact that the television advertising market could not be value in the same way because the number of providers had gone from four to two operators, which had generated major problems of competition, which had to be compensated with more strict solutions.

Finally, and from a strictly financial point of view, the merging of Antena 3 was most advantageous than that of Telecinco, because the former profited –since the negotiations stretched in time– from the deterioration of the Spanish economy, which was the biggest weakness of the advertising demand and the financial situation of Mediapro.

Thus, while the sale of 100% of the capital of Cuatro and 22% of the capital of Digital+ amounted to 488 million euros plus 18.1% of the new Mediaset España (about 550 million euros at market price), the sale of La Sexta to Antena 3 meant the acceptance of the liabilities of the network (and the corresponding tax benefits) and a transfer of 7% of the capital, but without the need to pay any money or resorting to an increase in capital which ultimately ended up reducing the value of the merger.

In the same way, Mediaset did not have to resort to any loan to carry out the purchase: it simply proceeded to extend the capital and to transfer to the Prisa group a percentage of the capital of the network which could be sold within one year. And the same thing happened with Antena 3, which has delayed the execution of the remaining 7% of the capital of the company until certain assumptions are met.

Regarding managerial style, the resolution of both operations has clearly demonstrated the mastery of the communication corporations (Mediaset and Planeta) over the Spanish broadcasters (Mediapro), which were born under the protection of the creation of the regional television corporations.

And with regards to the pluralism of information and the diversity of content, it seems necessary to carry out further investigations after a considerable number of years have passed. However, it seems evident that from 2010, the year of the first concentration deal, to this day, there has been greater concentration in terms of audience, provision of premium content and attraction of advertising contracts, as well as a very restricted market for the rest of the free-to-air TV networks, whose chances of survival have been more compromised, as evidenced by the abandonment or the freezing of the television projects of Unedisa and Vocento and the serious crisis affecting the regional networks and other mainstream television channels.

Dates:

-Start of research: May 2011

-End of research: September 2013

7. Notes

1. Including the Television Without Frontiers Directive 97/36/EC, the Access Directive 2002/19/EC and the E-Commerce Directive 2000/31/EC.
2. In any case, when the required time has passed, further research studies should determine the way in which reduction of channels has affected television programming.
3. This author has argued that a handful of moguls had been created in the communications industry, forming a new “cartel” of media companies in the United States.
4. Douglas Gomery has played a pioneering role in the economic and industrial analysis of the cultural industries based on the classical microeconomic theory. In this regard, an important study is the one he carried out with Benjamin Compaine: *Who owns the media* (2000).
5. Antena 3 obtained a negative net result of 15.400 million pesetas (92.5 thousand Euros), Telecinco of 4,760 billion pesetas (28.6 thousand Euros) and Canal Plus of 13,428 billion pesetas (80.7 thousand Euros). However, during the 1990s the television market moved more than 25,000 million euros in revenue.
6. However, 2009 is in fact the first year in which the sum of the three main television channels reached historic lows.
7. La preponderance of the platforms owned by Mediaset España and Atresmedia is such that, apart from the large national radio stations, no medium is able to guarantee a high audience level to the major advertisers in Spain.
8. It is important to mention the collapse of the regional television companies, which only obtained 126.8 million Euros in revenue, losing one third of its revenue with respect to 2011.
9. 2009 Royal Decree-Law on Urgent Measures in Telecommunications Matters (Real Decreto-Ley 1/2009, of 23 February), which was later ratified as Law in 2009 (Ley 7/2009, of 3 July).
10. To analyse in detail this reform see La Documentation Française, 2008. In Spain, the general-interest private channels were the main beneficiaries of the nearly 400 million euros that RTVE stopped receiving. In return, these channels have to provide 3% of their annual income, which accounted for a total of 44.7 million euros in 2013.
11. It is important to note that the CNC jointly took into account this operation and the acquisition of Prisa by Telefonica and Telecinco of a 22% share each in the social capital of Digital+, together with veto rights on the business plan and the annual budget of Digital+ (European Commission, 2010b: 4.17).
12. By the end of 2010, the debt of Prisa group amounted to 3.2 billion Euros, while Mediapro and subsidiaries (Mediaproducción S.L.) had a debt of around 2,500 million Euros, arising mainly from the acquisition of sports rights.

13 Mediaset España had virtually no debts, despite the losses produced by the acquisition of Endemol, while Antena 3 was in the same situation; not so its majority shareholder, the Planeta group, which had a debt of about 900 million euros after refinancing all of its debts, which included the purchase of the French publisher Editis.

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