**Media pluralism and (EU) competition law: the urgency to revisit the potential of EU competition law to protect and to reinforce media pluralism in the Member States**

**Background note**

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## 1. Introduction

Media pluralism has generally been recognized as a core component of well-functioning democracies, free and open societies. Media pluralism contributes significantly to the formation of public opinion allowing citizens to make informed choices in their political decisions. Media must be free and independent, but also pluralistic, as well as inclusive offering a wide range of different views and opinions and reflecting the diversity of society.

Theoretically, media pluralism can be analyzed at various dimensions, e.g. a *macro* level related to media ownership, service structures, entry costs etc., *a meso* dimension related to media performance, professional conduct etc. and *a micro* level of contents.[3] As a concept, media pluralism embraces a number of facets such as issues related to ownership,[4] non-transparent economic connections with politics, how political activities related to public media could influence informed choice of citizens or the growing impact of digital/social media on various aspects of the political systems.

Even though media freedom and pluralism have been generally accepted as fundamental to the common values prevailing within the EU, the legal instruments of EU law remain limited in this area. The EU, in fact, "has very little "hard" law on media pluralism."[5] Nevertheless, one of the potential instruments of EU law in relation to government activities in the media is EU competition and State aid law. Competition law is primarily an instrument to address the economic aspects related to media markets, however, its control mechanisms could be used in

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[3] Andrea Czepek and Melanie Hellwig. *Press Freedom and Pluralism in Europe : Concepts and Conditions*, Eva Nowak (ed.), Intellect Books Ltd, 2009. ProQuest Ebook Central, 47.

[4] Judit Bayer, 'Media freedom and pluralism: legislation and enforcement at the European level' (2018) 19 ERA Forum 101; Discussion notes from 2016 Annual Colloquium on Fundamental Rights, 'Session Ia: Media pluralism and independence from financial pressures and constraints' (*European Commission,* 18 November 2016) <https://ec.europa.eu/information_society/newsroom/image/document/2016-45/20161031-134004_session_i_a_docx_19247.pdf> accessed 28 July 2020.

[5] Armando J. Garcia Pires 'Media pluralism and competition' (2017) 43 European Journal of Law and Economics 255.

order to ensure that citizens' right to free and plural media is not undermined[6] by the manipulation of public opinion and the concentration of power or political influence over public and private media.
The urgency of these issues is intertwined with enforcement of the existing EU competition rules. Media pluralism and competition law related issues have never been more present than today when various market and political developments in Poland and Hungary clearly undermine the pluralism of media in these countries and clearly violate the fundamental right of these countries' citizens to freedom of expression.

Accordingly, this short background paper focuses on the question of how EU law can address the developments taking place in media markets in Hungary and Poland. After a short introduction into the EU law aspects of media regulation, the paper also sets out briefly its interaction with EU competition law and ten moves on to give an overview of the major developments in Hungarian and Polish media markets the past years.

## 2. Media pluralism and EU law

The concept of media freedom has evolved in parallel to the fundamental human rights of freedom of conscience and of expression enshrined in Article 10 of the European Convention on Human Rights and Fundamental Freedoms to which all Member States of the EU are party. This principle is now explicitly recognized by Article 11 (2) of the Charter on Fundamental Rights (CFR) which reads: 'the freedoms and pluralism of the media shall be respected.' Since the Lisbon Treaty, the Charter has the same legal value as the Treaties, but it shall not extend in any way the competences of the Union as defined in the Treaties.[7] The Charter is binding on the Member States only when they are 'implementing' Union law.[8] Even though the scope of application of the Charter has been interpreted broadly, it cannot in principle encompass the situations when the Member States act outside the scope of EU law.

The Court of Justice has long held that safeguarding media pluralism is 'one of the fundamental principles guaranteed by the [EU] legal order',[9] the observance of which the Court ensures.

[6] Konstantina Bania 'The role of media pluralism in the enforcement of EU competition law' (2015) 25.
[7] Art. 6 (1) TEU and art. 51(2) CFR.
[8] Art. 51(1) CFR.
[9] Case C-288/89 *Stichting Collectieve Antennevoorziening Gouda v Commissariaat voor de Media* [1991] ECR I-04007 para 23.

Maintenance of media pluralism has, therefore, been recognized as an overriding public interest requirement justifying Member State's restrictions on the free-movement rules, provided of its non-discriminatory character.[10]

The media sector is a multi-layered field that can be approached from different perspectives taking into account the general EU principle of conferral i.e. that the European Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties,[11] As far as non-economic interests are concerned, media pluralism forms an integral part of Member States' cultural policies. In that regard, the Union can only encourage cooperation between Member States, supports and supplements their action in the area of artistic and literary creation, including in the audiovisual sector. To that aim, it can adopt incentive measures and recommendations, excluding any harmonization measures.[12] Due to the different legal traditions on media pluralism in the different Member States, it has been difficult to find a compromise at the EU level in what concerns media pluralism and set up a coherent policy in this field. This view is also endorsed in Protocol No 29 according to which the system of public broadcasting in the Member States 'is directly related to the democratic, social and cultural *needs of each society* and to *the need to preserve media pluralism*' and therefore the Member States should in principle remain competent to provide for the funding thereof.[13] Importantly, however, the Union shall take cultural aspects into account in its action also under its other policies, in particular, to respect and to promote the diversity of its cultures.[14]

As for the economic aspects of the media sector, the EU has a shared competence in the field of the internal market[15] enabling the Union to adopt harmonizing measures and an exclusive competence to lay down competition rules necessary for the functioning of the internal market[16] that apply between undertakings including those operating in the media sector. A legal basis for regulatory action of the EU in the field of media pluralism remains therefore rather weak and consequently the EU 'has very little "hard" law on media pluralism.'[17]

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[10] ibid. See also e.g. Case C-148/91 *Veronica Omroep* [1993] ECR I-487, paras 13 and 14. Case 250/06 *United Pan-Europe Communications Belgium* [2007] ECR I-11135 para 48.
[11] Art. 5(1) and (2) TEU.
[12] Art. 167 (2) and (5) TFEU.
[13] Protocol (No 29) on the system of public broadcasting in the Member States.
[14] Art. 167 (4) TFEU.
[15] Art. 4(2)(a) TFEU.
[16] Art. 3(1)(b) TFEU.
[17] Garcia Pires (2017) 255.

One way to address the threats to media pluralism by the EU in its Member States is to rely on Article 7 TEU, which provides for procedures safeguarding the EU values laid down in Article 2 TEU. Those values include democracy and 'are common to the Member States in a society in which *pluralism*, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'[18] Article 7 TEU enables either the Council acting by a majority of four-fifths of its members to determine that there is a 'clear risk' of a breach of media pluralism or the European Council acting by unanimity to determine that a Member State has already committed a 'serious and persistent breach' thereof. Only in the latter case, the Council may suspend certain of the rights deriving from the application of the Treaties to the Member State in question. Due to the high voting threshold required and political sensitivity, Article 7 has had nonetheless no practical significance.[19]

## 3. The potential of competition law in safeguarding media pluralism

Competition law has primarily been an instrument in the hands of the EU Commission to address the economic aspects related to media market.[20] It is usually argued that media pluralism can affect the internal market in different ways. While the most obvious examples of applying competition law is in cases of concentration of ownership and abuse of dominant positions, the application of the EU state aid rules concerning public services is equally important.

The application of competition law in the media sector is to prevent anti-competitive practices and to reduce concentration in the media sector by focusing on mainly the price dimension of the competitive process. However, the application of competition law could contribute to enhance media pluralism, by making use of its control mechanisms that could safeguard not only a narrowly defined consumer welfare standard but a more inclusive "citizen welfare" standard.[21] The citizen welfare standard would include broader consumer interests than just

[18] Art. 2 TEU (emphasis added)
[19] Bania (2015) 19
[20] Bania (2015) 117-134.
[21] Bania (2015) 121-122. Citizen welfare as a standard of enforcement in competition law has been introduced by Cengiz in her article, F. Cengiz 'Legitimacy and Multi-Level Governance in European Union Competition Law: A Deliberative Discursive Approach' (2016) 54 JCMS: Journal of Common Market Studies 826.
and further analyzed in her article. F. Cengiz ' The conflict between market competition and worker solidaity: Moving from consumer to citizen welfare in competition law' (2021) 41 (1) Legal Studies 73. Cengiz suggests a citizen (rather than consumer) welfare standard that takes into consideration the economic effects of anti-competitive behaviour on consumers as well as workers but also in other capacities including citizens. Where competition rules and principles come into conflict with public interest or other policy objectives, such as media

price, for example quality of products and services such as diversity of media outlets. Enforcement of competition law and decisional practice could be based on this welfare standard.

In 2013, the High Level Group of Media Freedom and Pluralism recommended in its report[22] that EU and national competition authorities should take account of the specific value of media pluralism in the enforcement of competition rules. In addition, the High Level Group called upon the EU and national competition authorities to monitor with particular attention, under competition policy, new developments in the online access to information. National competition authorities need to make (or commission) pro-active regular assessments of individual countries' media environments and markets, highlighting potential threats to pluralism. At the EU level, there should be pro-active market assessment under competition policy in the form of a sectoral inquiry. [23]

Concerning state aid to public service broadcasters, such aid is generally provided in the form of compensation for the fulfilment of the public service mandate that is assessed under Article 106(2) TFEU[24], on the basis of the criteria set out in the State Aid Communication[25]. In its resolution of 25 September 2008 on concentration and pluralism in the media in the European Union the European Parliament considered 'that competition law must be interlinked with media law, in order to guarantee access, competition and quality and avoid conflicts of interests between media ownership concentration and political power, which are detrimental to free competition, a level playing field and pluralism (…) that a balance must always be sought, in

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pluralism in which competition authorities and courts are yet to produce a consistent approach. She argues that as a result, in these cases, competition authorities and courts would be able to look at how the specific behaviour in question affects citizens in their entirety as a holistic group, rather than focusing on the interests of the narrow category of consumers. This approach does not require a change in the law, only a change in the approach and the legal tests employed by courts and competition authorities.

[22] https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/hlg/hlg_final_report.pdf

[23] The dominant position held by some network access providers or internet information providers should not be allowed to restrict media freedom and pluralism. An open and non-discriminatory access to information by all citizens must be protected in the online sphere, if necessary, by making use of competition law and/or enforcing a principle of network and net neutrality.

[24] Article 107 (3)(d) TFEU allows the Commission to regard aid to promote culture as compatible with the common market where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest, and thus allow it. According to Article 167 (4) TFEU cultural aspects should be taken into account. However, the State Aid Communication underlines that the exemption has to be applied strictly and the educational and democratic needs of a Member State have to be regarded as distinct from the promotion of culture under Article 107 (3)(d). Therefore, as state aid to public service broadcasters usually does not differentiate between cultural, democratic and educational needs of society, Article 107 (3)(d) TFEU would not be relevant, unless a funding measure is specifically aimed at promoting cultural objectives.

[25] Communication from the Commission on the application of State aid rules to public service broadcasting, [2009] OJ C257/1, para 14.

the decisions of the national regulatory authorities, between their duties and freedom of expression, the protection of which is ultimately the responsibility of the courts'[26]

Finally, the preamble of the Audiovisual Media Services Directive (AMSD) stresses the need for Member States to prevent any actions which create dominant positions or restrict pluralism, and to enable independent regulatory bodies to carry out their work transparently and impartially.[27] In the 2016 amendments to the AMSD[28] the Commission proposed to strengthen the role of audiovisual regulators by ensuring that they are legally distinct from their government and functionally independent from the government and any other public or private body.[29]

## 4. Situation in Hungary

In Hungary freedom of the press enjoys constitutional protection and value. However, the complex and extensive media legislation adopted by the governments over the past 11 years has politicized media regulation and fundamentally undermined this guarantee. The Hungarian media market has been dramatically transformed since 2010.[30] Even though private, opposition-aligned media outlets do exist, national, regional, and local media are dominated by pro-government outlets. Moreover, government advertising and sponsorships favor pro-government media outlets, leaving independent and critical outlets in a financially precarious position.

### 4.1.Media laws

When the Fidesz government came into power in 2010, one of the first measures of the new government was to adopt a new media package.[31] The package consisted of two laws regulating the media sphere: the Media Act (Act CLXXXV of 2010 on Media Services and Mass Media,

[26] <https://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0459&language=EN&ring=A6-2008-0303> paras 5 and 6.
[27] Recitals 8, 94, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, OJ L 95, 15.4.2010, p. 1–24.
[28] The proposal is based on the EU's powers to coordinate Member States laws to bring about the freedom to provide services in the internal market (Article 53(1) TFEU in conjunction with Article 62 TFEU).
[29] Art. 30, Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, OJ L 303, 28.11.2018, p. 69–92.
[30] For English articles on Hungarian media market developments visit: https://english.atlatszo.hu
[31] Act CLXXXV. of 2010. on Mass Communication and Media Services.

restructuring the media regulatory system, and the Press Act (Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules on Media Content) concerning media content and press regulation.

First, in July 2010, the government amended the constitution, removing the provision on the government's obligation to prevent media monopolies. [32] It then consolidated media regulation under the supervision of a single authority, the National Media and Infocommunications Authority (NMHH), whose members are elected by a two-thirds majority in parliament and whose leader also chairs a five- person Media Council charged with content regulation. The new media law gave the head of the NMHH the right to nominate the executive directors of all public media. The first president of the NMHH, a former Fidesz politician, was appointed by Viktor Orbán for a nine-year term without limits on reelection.[33] The Media Council has been given draconian powers to levy bankrupting fines based on a review of the content of both public and private media, including broadcast, print and internet media.

These developments and especially the new composition of the NMHH and Media Council raised significant concerns both in Hungary and across the EU.[34] In 2011 the Commissioner for Human Rights of the Council of Europe expressed serious concerns about the effects of the media package on media pluralism and free speech[35] and in 2012 the Council of Europe issued an expert opinion suggesting various substantial changes to the package.[36] Moreover, the European Parliament and the European Commission raised concerns regarding the conformity of the Hungarian media laws with the Audiovisual Media Services Directive and the acquis communautaire.[37] The criticism pointed to the alleged lack of political independence of the Media Council, the concentration of powers in the hands of the Media Council, unjustifiably high fines for journalists and media outlets, unclear requirements for content regulation, inadequate protection of journalists' sources, and the government's control over the public service media.[38] The Media Council can also, as an expert administrative authority participate

[32] https://freedomhouse.org/sites/default/files/Hungary%20draft.pdf
[33] The structure and broadly defined competencies of the new regulation bodies were outlined in subsequent legislation, including the Press and Media Act of November 2010 and the so-called Hungarian Media Law, which was adopted in December 2010 and came into effect on January 1, 2011.
[34] Concerns were raised among others by the Council of Europe, the European Parliament, the Media Representative of the OSCE, the United Nations Special Rapporteur on Freedom of Expression, and various press freedom and human rights organizations.
[35]CommDH(2011)10, https://wcd.coe.int/ViewDoc.jsp?id=1751289
[36]http://www.coe.int/t/dghl/cooperation/media/publications/Hungary/Hungary%20Media%20Acts%20Analysis%20- %20Final%2014-05-2012%20(2).pdf
[37] https://www.europarl.europa.eu/doceo/document/TA-7-2013-0315_EN.html?redirect#ref_1_2
[38] https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282015%29015-e p.4-5.

in procedures of the Hungarian Competition Authority, in case any of the merging parties have editorial liability, and if their primary object is to transmit media content through a telecommunication network or by a press product. This indeed has been the case in 2011 in the Axel Springer-Ringier case.[39]

Even though the Hungarian authorities responded to the criticism and first, as a result of the Hungarian Constitutional Court judgment declaring certain norms in the "media package" as anti-constitutional and requiring the Government to make changes to these provisions,[40] in particular, to the regulation of media content and protection of journalists' sources and second a revision of the media package in 2011-2012, the amendments remained fragmentary without addressing the core problems criticized earlier.[41]

### 4.2.State advertising and state aid

In period 2010-2015 several media outlets have been sustained to a large extent by direct state financing and by significant state advertisements or advertisements placed by state-owned companies. These practices have drastically distorted competition in the Hungarian media market. These are practices that finance public service media either directly through the central budget of the Hungarian state by way of Act C of 2015 and without any periodical review of the contributions or by way of a wide variety of tax reliefs.[42] Such practices are financed by state resources and give unjustified and selective economic advantage to certain undertakings, media outlets in Hungary and thus allegedly amount to unlawful state aid. Moreover, private sector advertising largely follows advertisings by the government, and is, thus, particularly distortive to the Hungarian media market. [43] In 2015, the National Communication Authority was established, which became a sign for various commentators arguing that state advertising has been used strategically to influence and even distort the media the market.[44]

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[39] Decision of the Hungarian Competititon Authority Vj-42-307/2010. Decision of the Media Council, *Nemzeti Média- és Hírközlési Hatóság [NMHH] (2011): Szakhatósági állásfoglalás. 2011. április 18. – ügyiratszám MP-1671-13/2011.*

[40] https://hunmedialaw.org/dokumentum/94/08_1652011_Abh_final.pdf

[41] https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282015%29015-e p.4-5.

[42] https://mertek.eu/wp-content/uploads/2020/09/EC_state-aid_PSM-2016_v1.pdf

[43] P.Bárd, J.Bayer, S. Carrera, *Study for the EU Parliament, A comparative analysis of media freedom and pluralism in the EU Member States* (2016) 121

[44] NKH coordinates the distribution of state advertisements through three PR agencies, which were selected in public procurement for long-term. It disposes of over 25-40 billion HUF (€80-130 million) per year, and two of the three PR agencies have obvious close ties to the government P.Bárd, J.Bayer, S. Carrera, (2016) 121

These developments were brought to the attention of the EU Commission in 2016 in the form of a state aid complaint. The complaint was submitted to the EU Commission concerning the alleged excessive funding of public broadcast media in Hungary.[45] The Commission has, until today, not reacted to this complaint.

### 4.3.Merger exceptions

A 2016 OECD Report shows that merger exemptions on public interest ground are common in various OECD countries. However, these exceptions are implemented only after full merger reviews by competition authorities and they are based on clear and explicit public interest grounds.[46] These exemptions are also quite rare. However, the present Hungarian rules on exempting mergers is unprecedented. These exemptions are issued through government decrees and thus cannot be challenged in court and be submitted to a legal review.

In 2013 a new provision, Article 24/A was introduced in the Hungarian Competition Act. The provision states that the Hungarian Government "may, in the public interest, in particular to preserve jobs and to assure the security of supply, declare a concentration of undertakings to be of strategic importance at the national level." For these types of concentrations, no authorization of the GVH is required. Moreover, the decision can be taken in a government regulation which is not subject to judicial review. Since2013, 29 merger cases, in the area of energy, financial, telecommunications, IT and transport sectors were approved by government without having the Competition Authority authorizing them on the basis of their impact on competition.[47] For comparison, in Germany since the ministerial authorization procedure was inserted in the German competition law in 1970, there has been 23 applications for ministerial approval, and only nine of those were positively granted.

It has been argued that the frequent application of this wide and *ex ante* public interest exception for example in the energy sector has the particular risk of isolating the Hungarian energy market from the rest of the internal market one step at a time. [48] The risk of such

[45] https://mertek.eu/wp-content/uploads/2020/09/EC_state-aid_PSM-2016_v1.pdf
[46] In many jurisdictions (FR, GER, IT, NL,UK) the government (usually the minister of the economy) has the power to intervene in merger control. Such intervention is often ex post as it follows the competition authority's own assessment and is based on public interest clauses which allow the competition authorities' decision to be overruled. OECD, Public interest considerations in merger control, DAF/COMP/WP3(2016)3,p.
[47] Á.Sipiczki, Protecting Against Protectionism - The Case of Merger Control (July 21, 2020). Available at SSRN: https://ssrn.com/abstract=3706661 or http://dx.doi.org/10.2139/ssrn.3706661
[48] Even though the liberalisation agenda pursued by the EU in the energy sector is not primarily concerned with state ownership, the re-nationalisation of the Hungarian energy sector made the market less integrated with the rest of the internal market. Sipiczki (2020).

exceptions is especially tangible concerning a merger case in 2018 that relates to media pluralism.

In November 2018 the government has declared the creation of a media conglomerate with Government Decree 229/2018 [49] of "national strategic importance in the public interest," and with the decree it called for exempting the merger affecting hundreds of broadcast, online and print publications from competition rules. In its B/961/2018 Decision the GVH declared that it has no competence to conduct a merger control review.[50] The merger conglomerate was thus not scrutinized by the GVH due to Article 24/A. The merger comprised a foundation to which 10 companies donated media outlets. Through the concentration the foundation controls nearly 480 publications and their operations are run by a publisher known for his loyalty to the Hungarian prime minister. The foundation resembles a massive advertising and readership center which until now market rules did not allow to be formed. The merger of the media companies into the foundation and its exemption from competition rules reflects a largescale concentration of government power.

In 2019 a new and separate complaint was filed concerning state aid being offered to media organizations in the form of public advertising.[51] While pro-government media hugely benefit from the majority of state aid, independent media is being silenced, media market is distorted and citizens' right to independent information is undermined.
The European Commission has not yet responded to any of these complaints.

## 5. Situation in Poland

The Polish Constitution explicitly recognizes freedom of the press and other means of social communication and the right to information.[52] Those freedoms shall be safeguarded by the National Council of Radio Broadcasting and Television (KRRiT).[53] The KRRiT has been long entrusted with exclusive competence to appoint and dismiss the members of the governing bodies of the public media, the aim of which was to separate radio and television from the

[49] 229/2018. (XII. 5.) Korm. rendelet
[50] http://www.gvh.hu//data/cms1039707/Osszefoglalo_B961_2018.pdf
[51] Complaint was filed with concerns raised by former MEP Benedek Jávor, the news platform Klubrádió, and the Budapest media policy think tank Mérték. https://mertek.eu/en/2019/01/09/funding-for-public-service-media-in-hungary-a-form-of-unlawful-state-aid/; see also https://mertek.atlatszo.hu/state-advertising-spending-in-hungary-an-unlawful-form-of-state-aid/
[52] The Constitution of the Republic of Poland of 1997, Dz. U. No. 78, item 483, art. 14 and 54(1).
[53] ibid. art. 213(1).

government and its parliamentary majority so that these media could not be used as a political instrument of governance.

After the PiS came to power in 2015, it introduced a legislative act that deprived the KRRiT of its competence to appoint and dismiss the members of the governing bodies of the public media and transferred this task to a newly created and politically appointed National Media Council.[54] This law had been challenged by the Polish Commissioner for Human Rights before the Constitutional Tribunal which declared it incompatible with the Constitution.[55] The judgment has nonetheless not been enforced to date.

In this way, the state television network (TVP), the national news agency (PAP) and Polish Radio are controlled by the government. Besides, following the Hungarian example, state-owned companies advertise only in some government-friendly media. The above change raised a series of international criticism including the ERGA Statement on the necessity of independent media[56] and the World Press Freedom Index for Poland decreased from 18th place in 2015 when PiS came to power, to 62nd in 2020.[57]

In February 2021, the Polish Competition Authority (UOKiK) has approved the takeover of Polska Press, a capital group publishing 20 regional dailies, 120 weeklies and press available for free by PKN Orlen which is a state-owned oil refiner and petrol retailer. The decision had been challenged by the Commissioner for Human Rights who pleaded *inter alia* that the press services are also carriers of ideas and information and not only of advertising. According to the Ombudsman, the national enforcer did not adequately examine whether competition on the market of free speech, the right to reliable information, and social control and criticism would not be significantly restricted. The case is now pending before the Polish competent court. On 8 April 2021 the Court for the Consumer and Competition Protection in Warsaw following the

[54] The Act on the National Media Council Dz. U. of 29 June 2016, no 929. The English text of the act can be found via <https://www.epra.org/news_items/poland-act-on-the-national-media-council> accessed 7 April 2021. The proposal for this law was a part of the 'Big Media Law Package' which was strongly criticised by the Council of Europe expert group and subsequently its adoption was postponed except for the Act on the National Media Council (with some changes). See Council of Europe, 'Conclusions of an expert dialogue between the Polish Government and the Council of Europe' (6 June 2016) <https://www.coe.int/en/web/freedom-expression/home/-/asset_publisher/RAupmF2S6voG/content/communique-on-conclusions-of-an-expert-dialogue-between-the-polish-government-and-the-council-of-europe?inheritRedirect=false&redirect=http%3A%2F%2Fwww.coe.int%2F> accessed 7 April 2021.

[55] Constitutional Tribunal, Judgment of 13 December 2016, Case K13/16.

[56] ERGA, 'Statement of the European Regulators Group for Audiovisual Media Services (ERGA) on the necessity of independent media' (11 January 2016) <https://ec.europa.eu/digital-single-market/news/statement-european-regulators-group-audiovisual-media-services-erga-necessity-independent-media> accessed 7 April 2021.

[57] Reporters without Borders, World Press Freedom Index, <https://rsf.org/en/poland> accessed 7 April 2021.

application of the Ombudsman suspended the UOKIK decision granting consent for this merger.