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Or. Eng.

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CROSS-OWNERSHIP AND CONVERGENCE: POLICY ISSUES

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Or. Eng.

FOREWORD

In March 1998 this report was presented to the Working Party on Telecommunications and Information Services Policy (TISP) and was recommended to be made public by the Committee for Information, Computer and Communications Policy (ICCP).

The report was prepared by Ms. Kyoko Sato of the OECD's Directorate for Science, Technology and Industry. It is published on the responsibility of the Secretary-General of the OECD.

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MAIN POINTS

The clear cut boundaries that separated the different communication markets, such as telecommunication and broadcasting, are blurring as convergence pushed by rapid technological development is impacting both infrastructures and services. Demand by consumers for integrated services provided through broadband infrastructures and at reasonable prices is also expanding as multimedia applications and electronic commerce services diffuse more rapidly. The convergence process is leading enterprises in the different communication markets to push for market entry into other communication markets, either as network operators and/or service providers.

The pressure of convergence brings into sharp focus the restrictions many OECD countries have placed in terms of cross-ownership and joint provision regulations imposed on the traditionally separate communication markets. Restricting incumbent PTOs from providing cable television services over their telecom infrastructure, or limiting cable television operators from holding shares in broadcasting companies are examples of these regulations.

Many of these regulations on cross-ownership and joint provision between traditionally separate markets were put in place to avoid dominance in a specific market -- for example, to prevent monopolies from leveraging their existing power to gain dominance in other markets. Such restrictions were also viewed as a means of ensuring greater pluralism in audio-visual service markets.

Such cross-ownership and joint provision regulations have not always been effective as regulatory safeguards in limiting market power, since many former monopoly firms managed to expand their power to other markets e.g. incumbent PTOs in cable television networks. However, in view of the rapid development in technology, service and markets emerging mainly from the convergence process, it is now necessary to reconsider whether the current regulations on cross-ownership and joint provision should continue as best practice regulation to meet certain policy goals. Many current regulations are increasingly viewed as barriers to competition and the development of new services and applications.

The aim of this paper is to begin a review of some of the current cross-ownership and joint provision regulations, including their rationale, and examine the necessity for their continuation or reform. Although there are a number of forms of regulations relating to this issue, this paper will focus on the following points:

- regulations between fixed and mobile communications;
- regulations between the telecommunication and cable television sector;
- regulations between the telecommunication and broadcasting sector;
- regulations between cable television and broadcasting sector;
- regulations within television services.

CROSS-OWNERSHIP AND CONVERGENCE: POLICY ISSUES

Introduction

For a number of economic, regulatory and political reasons, governments in many OECD countries have placed various restrictions on cross-ownership and/or joint provision of infrastructure and service between different markets of the communications sector.

The aim of this paper is to begin a review of some of these regulations, their rationale and examine the necessity for their continuation or reform. The circumstances surrounding these restrictions are changing as a result of technological development and advance of convergence. In addition, as international markets are becoming increasingly open, these restrictions can result in market access impediments.

Many of the cross-ownership or joint provision restrictions were in place because of the traditional monopoly market structures, or limited market access, which existed in the telecommunication and broadcasting sectors of most countries. In a number of countries the telecommunication and broadcasting monopolies were traditionally both State-owned entities so that the question of formal restrictions against entry in other communication markets did not arise. Limited market opening in terrestrial broadcasting markets also raised concerns for dominance in media markets which led to a number of restrictions being imposed with respect to entry in adjacent markets. Cross-ownership or joint provision restrictions were also viewed as a tool to address issues of bottleneck power which characterised networked-based industries. With corporatisation, market opening, and the advance of convergence in the technology and service aspect, however, there has been much more interest by enterprises in entering other communication markets as network operators or service providers.

The concepts of “cross-ownership” or “joint provision” are not simple to define since there are a number of means to prevent an actor in one market from participating in another market. However, these restrictions may be separated broadly into two categories. First, an enterprise in a specific market may be prevented from owning shares or establishing and operating another legally separate enterprise in an adjacent market. Second, an enterprise in a specific market may be prevented from expanding its business by using existing assets such as infrastructure, services, technology or business knowledge as a means to undertake commercial activities in an adjacent market within its existing enterprise. For the purposes of this paper, the former formulation would be referred to as “cross-ownership” regulation and the latter formulation as “joint provision” regulation.

The general impact of cross-ownership and joint provision regulations is that they limit the freedom of business activities. Nevertheless, such regulations may be justified in certain cases as a means to prevent market distortion by restricting monopolies or firms with dominant positions in one market from leveraging their power in another market.

Table 1. Types of cross-ownership and joint provision regulations in the communication sector

	Within the telecommunications sector: between PSTN and mobile communications(1)	**Between telecommunications and cable television sector**	**Between telecommunications and broadcasting sector(2)**	**Between cable television and broadcasting sector**	**Within the television service sector(3)**
Cross-ownership regulations	- Restrictions on PSTN operators (especially incumbents) from operating a legally separate enterprise in the mobile market. - Share limitations on PSTN operators (especially incumbents) in mobile operators.	- Restrictions on telecom operators (especially incumbents) from operating a legally separate enterprise in the cable television market. - Share limitations on telecom operators (especially incumbents) in cable television operators.	- Restrictions on telecom operators from operating a legally separate enterprise in the broadcasting market. - Share limitations on telecom operators in broadcasting companies. - Restrictions on broadcasting companies from operating a legally separate enterprise in the telecommunications market. - Share limitations on broadcasting companies in telecom operators.	- Restrictions on cable television operators from operating a legally separate enterprise in the broadcasting market. - Share limitations on cable television operators in broadcasting companies. - Restrictions on broadcasting companies from operating a legally separate enterprise in the cable television market. - Share limitations on broadcasting companies in cable television operators.	- Restrictions on the number of television licenses allowed to be owned by a single entity. - Share limitations of a single entity in television enterprises.
Joint provision regulations					

Table 1. Types of cross-ownership and joint provision regulations in the communication sector *(continued)*

	Within the telecommunications sector: between PSTN and mobile communications(1)	Between telecommunications and cable television sector	Between telecommunications and broadcasting sector(2)	Between cable television and broadcasting sector	Within the television service sector (3)
Infrastructure provision	- Restrictions on PSTN operators (especially incumbents) from providing mobile networks with no legal separation.	- Restrictions on telecom operators (especially incumbents) from providing cable television networks with no legal separation. - Restrictions on cable television operators from providing telecom infrastructures with no legal separation.	- Restrictions on telecom operators from obtaining a broadcasting license. - Restrictions on broadcasting companies from providing telecom infrastructures.	- Restrictions on cable television operators from obtaining a broadcasting license. - Restrictions on broadcasting companies from providing cable television networks.	
Service provision	- Restrictions on PSTN operators (especially incumbents) from providing mobile services with no legal separation.	- Restrictions on PSTN operators (especially incumbents) from providing cable television services with no legal separation. - Restrictions on cable television operators from providing telecom services with no legal separation.	- Restrictions on telecom operators from obtaining a broadcasting license. - Restrictions on broadcasting companies from providing telecom services.	- Restrictions on cable television operators from obtaining broadcasting license. - Restrictions on broadcasting companies from providing cable television service.	

1. Since the telecommunications sector is generally regarded as a single segment of the communications sector, the terms “cross-ownership” or “joint provision” would not be used on this issue.
2. The term “broadcasting television” refers to the traditional over-the-air television broadcasting using terrestrial transmitters.
3. Since the television service sector is generally regarded as a single segment of the communications sector, the terms “cross-ownership” or “joint provision” would not be used on this issue.

Source: OECD.

In the communications sector, there are a number of types of cross-ownership and joint provision regulations (see **Table 1**). These regulations not only affect infrastructure and service providers in the communications market, but also impact the related media and cultural sectors including newspapers. In the following section, this paper examines several of these existing regulations in the communications sector, reviewing their rationale, the current situation referring to changes in circumstances, necessity for their continuation or reform, and provides an overview of trends in some Member countries.

1. Regulations between fixed and mobile communications

Competition in the cellular mobile communications market has developed rapidly in the last decade with currently more than 25 Member countries having introduced competition and only a few countries left retaining monopoly for digital mobile service. In most OECD countries the incumbent Public Telecommunication Operator (PTO) is the major player in the mobile market. Furthermore, in some cases, such incumbents are providing mobile services directly, that is as part of their existing fixed-link organisational structure with no legal separation (see **Table 2**). Normally a clear accounting separation should exist between the Public Switched Telecommunications Network (PSTN) operation and mobile operation in such cases. In other cases, the incumbents own certain shares in a mobile company which has been established as a legally separated corporate body. Table 2 indicates that in more than half of the OECD countries there exists a legal separation between the incumbent’s PSTN operation and mobile operation.

In those countries where mobile operation is legally separated from the incumbent's PSTN operation, the incumbent's degree of control on the mobile company varies. In Germany, Mexico, New Zealand, Norway, Portugal, Spain and Sweden, the incumbent has a 100 per cent ownership so that the mobile operator is a complete subsidiary of the incumbent. In Austria, Belgium, Czech Republic, Greece, Italy, Japan, Poland and the United Kingdom, although the incumbent holds a majority ownership in the mobile company it is shared with third parties. There is also the third case where the incumbent’s share does not reach a majority such as in Hungary and Korea.

The rationale for establishing legal separation between the PSTN and mobile operations is often quite different across countries. In some countries, the incumbent is required by the regulatory authority to establish legal separation. The aim is to safeguard against anti-competitive practices such as cross-subsidising mobile activities from monopoly PSTN operations, and to ensure fair competition in the mobile communication market. A legal separation can, in particular, ensure non-discriminatory treatment for purposes of interconnection between mobile and PSTN operations.

In Japan, in 1990, with the aim to ensure fair competition between new entrants in the mobile communications market, the regulatory authority required NTT to establish a legal separation for its mobile operation. Consequently, NTT DoCoMo was created as a legally separate corporation in 1992. Similarly, when mobile communication licenses were first granted in 1983 in the United Kingdom, the regulatory authority required British Telecom (BT) to legally separate its mobile operations. Furthermore, BT was also limited for its share in Cellnet - the separated mobile company - to 60 per cent. Also in Italy, in 1994, a government directive requested Telecom Italia to provide for a legal and structural separation between the fixed and mobile communication operations. Following this directive, a separate mobile company, Telecom Italia Mobile (TIM), was established. On the other hand, some incumbents have voluntarily separated their mobile communication operation. The aim of such action was either to increase operating efficiency and strengthen market competitiveness, which was the case of Deutsche Telekom, or to enter into strategic alliances with foreign companies as in the case of Belgacom and OTE.

Table 2. Cellular mobile communications provided by incumbent PTOs

Australia	Telstra	direct operation
Austria	Mobilkom Austria	Post und Telekom Austria (PTA): 75 per cent ownership
Belgium	Belgacom Mobile	Belgacom: 75 per cent ownership
Canada	Mobility Canada	direct operation by Stentor
Czech Republic	EuroTel Praha	SPT Telecom: 51 per cent
Denmark	Tele Danmark Mobile	direct operation
Finland	Sonera Ltd. (Telecom Finland)	direct operation
France	France Télécom	direct operation
Germany	Deutsche Telekom MobilNet GmbH	Deutsche Telekom: 100 per cent ownership
Greece	Cosmote	OTE: 70 per cent ownership
Hungary	Westel 900	Matav: 46.6 per cent ownership
Iceland	Iceland Telecom	direct operation
Ireland	Telecom Eireann	direct operation
Italy	Telecom Italia Mobile (TIM)	Telecom Italia: 63 per cent(1)
Japan	NTT DoCoMo	NTT: 94.7 per cent ownership(2)
Korea	SK Telecom	Korea Telecom: 20 per cent ownership
Luxembourg	P&T Luxembourg	direct operation
Mexico	Radio Móvil DISPA	Telemex: 100 per cent ownership
Netherlands	KPN Telecom	direct operation
New Zealand	Telecom Mobile	Telecom NZ: 100 per cent ownership
Norway	Telenor Mobile	Telenor AS: 100 per cent ownership
Poland	Polska Telefonia Komórkowa (PTK)	TPSA: 66 per cent ownership
Portugal	Telecommunicações Móveis Nacionais S.A. (TMN)	Portugal Telecom: 100 per cent ownership
Spain	Telefónica Moviles	Telefonica: 100 per cent ownership
Sweden	Telia Mobitel	Telia AB: 100 per cent ownership
Switzerland	Swiss PTT	direct operation
Turkey	Türk Telecom	direct operation
United Kingdom	Cellnet	BT: 60 per cent ownership
United States	--(3)	

1. Previously, Telecom Italia Mobile was 63 per cent owned by the STET Group, which also owned 63 per cent of Telecom Italia, the incumbent PTO. However, in March 1997, STET and Telecom Italia announced their merger with the new company to be called ‘Telecom Italia’.
2. NTT is expected to reduce its shares in NTT DoCoMo to 67.1 per cent in October 1998 when DoCoMo’s stocks are planned to be listed on the stock exchange.
3. LECs provide service through subsidiaries (no incumbents).

Source: OECD, Annual Reports, ISPO (http://www.ispo.cec.be/esis/), Wireless Data Services Ltd. (http://www.wds.org)

In many of those countries where the incumbent PTOs provide the mobile communication network and service as part of their general business with no legal separation, regulatory authorities have come to require that the incumbent separate the accounting between the PSTN and its mobile operations, although incumbents in some countries still have no specific obligation to do so.

Customer demands and competition in mobile cellular markets and the beginning of competition in voice telephony services is generating interest among telecommunication operators to offer products that integrate PSTN and mobile communication networks, the so-called Personal Communications Systems (PCS). Such an integrated product will benefit customers with a single and cheaper subscription, a single bill and a single telephone number for both services. A pioneer in this integrated telecommunication market is the Danish operator TeleDanmark, with already more than 50 000 subscribers to its bundled service launched in September 1997. Other operators such as Belgacom and Deutsche Telekom also intend to follow suite. However, some rival mobile operators are strongly objecting to such a convergence between services, viewing the move as an abuse of dominant position on the basis that the incumbents are capitalising on their PSTN subscriber base.

There is a fairly clear customer demand for such services, which needs to be taken into account when deciding on whether to allow joint provision and convergence between two similar but separate services. The advantage that incumbents would have with such integration is evident. Once such integration takes place at the production level, as opposed to the marketing level, it would be difficult to practice separate cost accounting between mobile and fixed services (this would also contradict the rationale for such convergence). One policy strategy could be through asymmetric regulation, to allow mobile cellular service operators without fixed link operations to invest in fixed networks (in many cases this is already allowed) while preventing dominant carriers from doing so. Such a strategy would, however, considerably slow down integration between fixed and mobile services. Allowing integration may require a review of existing regulatory safeguards.

2. Regulations between the telecommunication and cable television sector

In the past, when cable television networks were being developed, a number of the monopoly PTOs in OECD countries, especially in European countries, argued successfully that cable television networks should be treated on a similar basis to the telecommunication infrastructure. As a result, these monopoly PTOs extended their local loop monopoly control to cover cable television infrastructures. In some countries this took place without having any legal separation between the different infrastructure operations (see **Table 3**).

This "joint provision" of telecommunication and cable television infrastructure by the former monopoly operators has resulted in a situation where for a number of countries the incumbent has maintained significant market power in the local loop. With liberalisation of infrastructure and service across OECD countries and technological development, however, it has become broadly recognised that cable television networks can offer a serious challenge to incumbents as an alternative infrastructure for the provision of telecommunication services including voice telephony.

Table 3. Cable television infrastructure provision by incumbent PTOs

	Legal allowance	Infrastructure provider	Additional comments
Australia	allowed	Telstra	
Austria	allowed	--	PTA does not provide cable television infrastructure, although legally possible.
Belgium	allowed	--	Belgacom does not provide cable television infrastructure, although legally possible.
Canada	allowed	Stentor	
Czech Republic	allowed	SPT Telecom	
Denmark	allowed	Tele Danmark	
Finland	allowed	Sonera Ltd. (Telecom Finland)	
France	allowed	France Telecom Cable	France Telecom: 100 per cent ownership
Germany	allowed	Deutsche Telekom(1)	
Greece	allowed	OTE	
Hungary	allowed	Matav	
Ireland	allowed	Cablelink	Telecom Eireann: 75 per cent ownership
Italy	allowed	Telecom Italia(2)	
Japan	restricted(3)		
Korea	allowed	Korea Telecom(4)	
Luxembourg	allowed	P&T Luxembourg	
Mexico	allowed		
Netherlands	restricted(5)	Casema	KPN is not allowed direct provision of cable television infrastructure. Additionally, KPN's ownership in Casema is limited to 20 per cent.
New Zealand	allowed	Telecom NZ	
Norway	allowed	Telenor Avidi AS	Telenor AS: 100 per cent ownership
Portugal	allowed	Telecom Portugal	
Spain	allowed	Telefonica	
Sweden	allowed	Telia AB	
Switzerland	allowed	Swiss PTT	
United Kingdom	allowed	BT Cable Services	BT: 100 per cent ownership
United States	allowed	--(6)	

1. Deutsche Telekom plans to spin off its cable television business in January 1999.
2. Telecom Italia retains a monopoly over the provision of national cable networks.
3. To be allowed partially from 1999 and nationwide from 2001.
4. Korea Telecom leases cable network to cable television operators.
5. Casema has been sold to France Telecom. Following this action, KPN will be allowed direct provision in cable networks in the new Telecommunications Act.
6. LECs are allowed to provide cable television networks in their local service area due to the Telecommunications Act 1996 (no incumbents).

Source: OECD, Annual Reports, Inside Cable and Telecoms Europe (http://www.inside-cable.co.uk)

In order to stimulate local loop competition, a few OECD countries regulate the joint provision of telecommunication and cable television infrastructures, prohibiting incumbent PTOs from providing cable television networks. The aim of such regulation, which is asymmetric in that it is applied only to incumbents, is to avoid the emergence of a monopoly operator in the infrastructure market especially in a situation where the incumbents would expand their dominance in the local loop, as well as to encourage the establishment of new alternative networks. Cable television infrastructures are recognised as a highly potential alternative infrastructure for the evolution of competition in the local loop. In a situation where joint provision of the two infrastructures by an incumbent exists, however, there will be little incentive for a new entrant to construct this alternative infrastructure.

Restricting joint provision between the two infrastructures would also prevent anti-competitive practices by incumbents, such as cross-subsidisation from PSTN operations to cable network operations. Moreover and significantly, incumbents allowed to provide both infrastructures would have little incentive to upgrade their public narrowband telecommunication infrastructure or cable television infrastructures into an integrated broadband network which is an essential element in terms of offering various services such as voice telephony, data transmission and audio-visual services at high bandwidth.

For the above reasons it had been recommended by the OECD in a previous report[1] that regulators require incumbents to divest their cable television network. The only regulator that has taken effective action has been in the Netherlands. Previously, the Dutch government had required KPN - the holding company of the incumbent PTT Telecom - to implement a legal separation between its joint provision of telecommunication infrastructure and cable television infrastructure. Furthermore, limitations were also placed on cross-ownership. Namely, KPN was required to reduce its shareholding of the subsidiary company’s Dutch cable network to 20 per cent to ensure that control over the legally separated cable network operator was limited to a certain extent. Corresponding to this regulatory requirement, KPN decided to divest all of its cable holdings, selling them to France Telecom (France Telecom plans to provide digital television, voice telephony and high speed Internet access through their new subsidiary).

Recognising the serious impact on the development of competition and multi-media markets that allowing joint provision of both the telecommunication and cable television infrastructure in the local loop could raise, the European Commission took a step forward on this issue, proposing a draft directive in December 1997[2]. The draft directive rejects the incumbent’s joint provision of the two networks and requires an effective separation between the telecommunication and cable television network operation, by establishing a legally separate entity as a minimum step. It is anticipated that this measure will increase the transparency of assets and costs, and facilitate the monitoring of profitability and management of cable network operations. Previously, the Commission’s Cable Directive 95/51/EC had required a clear accounting separation between the two operations as a minimum requirement in the case of joint provision by a single operator in order to ensure accounting transparency and prevent cross-subsidisation between the two operations (although legal separation was considered to be preferable already at that point). However, in its draft directive proposal of December 1997, the Commission concluded that accounting separation was not sufficient to stimulate infrastructure competition.

Recognising the Commission’s proposed draft directive as a notable step, attention should also be brought to the point that it still does allow the cross-ownership of separate legal entities operating telecommunication and cable infrastructures. This means there is no limitation on cross-ownership by the incumbent and the requirement of legal separation under the draft would be satisfied even if the incumbent’s cable network operation were simply transferred to a 100 per cent-owned subsidiary. The draft also indicates that the Commission will examine on a case-by-case basis whether it would be appropriate to require EU member states to take further measures, such as the opening of the cable television operator to participation by third parties, or the requirement to fully divest the separate entity. Some new entrants into the cable television market believe that cross-ownership of the incumbents should be limited, allowing them only a minority stake in the separated cable network operator, and view the provisions of the draft directive as weak in this sense. The possibility for the Commission to undertake reviews on a case-by-case basis will be viewed as crucial in this context.

The concerns of the European Commission have been somewhat reflected in recent initiatives being taken by some regulators in European countries. Deutsche Telekom, Germany's incumbent PTO and dominant cable network operator has announced that it will separate its cable television network from the core telecommunications business into a legally separate corporation. It plans to put its cable assets into a wholly-owned subsidiary on 1 January 1999. This will be followed by talks with potential investors with the aim of creating six regional cable companies by the year 2000 where the majority stake in these companies would be held by external investors. Currently, Deutsche Telekom has around six million cable television subscribers under contract which equals nearly one third of the nation's cable television market, although its substantial position in the cable television market is much stronger than this as it also provides the backbone cable infrastructure. The Irish government has also announced plans for the country's largest cable operator Cablelink - 75 per cent owned by the incumbent Telecom Eireann - to be separately privatised through a tender process in September 1998, with the sale to be completed by the end of the year. In the United Kingdom, BT Cable Services - the broadband and narrowband cable company owned by BT - has agreed to sell its two cable franchises, although the sell-off may not be easy because the cable networks run alongside BT's telecom infrastructure and separating the two networks may not be possible.

However, the attitude among OECD countries on this issue seems to vary. In February 1998, the Ministry of Posts and Telecommunications in Japan announced that they will lift the restrictions which currently prohibit NTT from leasing capacity on its optical-fibre networks to cable television operators. Permitting this access to NTT networks is foreseen to reduce initial investment costs for cable operators. This is expected to reduce subscription fees and lead to the further development of the cable television market. Taking into consideration the significant effect this would impose on existing cable operators who have already invested in their own cable networks, the ban is planned to initially be lifted in fiscal 1999 in areas where no cable operation is offered, and be expanded nationwide from 2001.

Furthermore, the United States provides an example of limiting cross-ownership. The Telecommunication Act of 1996 places limits on a local telephone company (LEC) and a cable television operator serving the same market to enter into joint ventures and acquire ownership or management interests in each other. The requirements are as follows: LECs and cable operators providing service in the same area may not mutually purchase or acquire directly or indirectly more than 10 per cent of financial interest or any management interest in each other; nor may they enter into any joint venture or partnership to provide telecommunications or video progamming services within that same area. The Telecommunications Act of 1996, however, repealed the former provision of the Communications Act of 1934, as amended, that had precluded a LEC from entering *de novo* into cable service within their telephone market.

a) Regulations on telecommunication operators providing cable television services

Apart from providing cable television networks as mentioned in the previous section, the incumbents also provide cable television services in many OECD countries utilising their cable networks. In many OECD countries, the incumbents have been allowed to provide cable television service, either with no legal separation i.e. joint provision, or through a legally separated subsidiary i.e. cross-ownership (see **Table 4**). With their advantage in the provision of distribution infrastructure such as the PSTN or parallel co-axial cable networks, many incumbents have attained a major position in the cable television market.

Table 4. Cable television service provision by incumbent PTOs

	Legal allowance	**Service provider**	**Additional comments**
Australia	allowed	Foxtel	subsidiary of Telstra and News Corp.
Austria	allowed	--	
Belgium	allowed	--	
Canada	allowed	--	allowed since 1 January 1998
Czech Republic	allowed	--	
Denmark	allowed	Tele Danmark	direct provision
Finland	allowed	Sonera Ltd. (Telecom Finland)	direct provision
France	allowed	France Telecom Cable	France Telecom: 100 per cent ownership
Germany	allowed	Deutsche Telekom(1)	direct provision
Greece	allowed	OTE	direct provision(2)
Hungary	restricted	--	
Ireland	allowed	Cablelink	Telecom Eireann: 75 per cent ownership
Italy	allowed	--	according to the Communications Act 1997.
Japan	restricted	--	
Korea	restricted	--	
Mexico	allowed	--	
Netherlands	restricted(3)	Casema	KPN is not allowed direct provision of cable television services. Additionally, KPN’s ownership in Casema is limited to 20 per cent. (5)
New Zealand	allowed	Telecom NZ	direct provision
Norway	allowed	Telenor Avidi AS	Telenor AS: 100 per cent ownership
Poland	allowed	Polska Telewizja Kablowa	subsidiary of Poland PTT and ChaseEnterprise
Portugal	allowed	TV Cabo Portugal	subsidiary of Portugal Telecom
Spain	allowed	Telefonica	direct provision
Sweden	allowed	Svenska Kable-TV	Telia AB: 100 per cent ownership
Switzerland	allowed	Cablecom, Rediffusion	Swiss PTT: 32 per cent ownership of Cablecom Holding (holding company of Cablecom and Rediffusion)(4)
Turkey	allowed		
United Kingdom	restricted(5)	--	BT is free to apply for licences for provision of regional services and video on demand at present.
United States	allowed	--(6)	according to the Telecommunications Act 1996.

1. Deutsche Telekom plans to spin off its cable television business in January 1999.
2. OTE is granted an exclusive privilege to provide cable television service in co-operation with the national television broadcasters.
3. Casema has been sold to France Telecom. Following this action, KPN will be allowed direct provision in cable networks in the new Telecommunications Act.
4. Divestment of shares in Cablecom Holding is being required by the competition authority.
5. The UK government has announced that it will lift the restrictions on BT and Mercury to broadcast entertainment services over their networks immediately for areas with no cable franchises and nationwide from 1 January 2001.
6. LECs can provide cable television services in their local service area according to the Telecommunications Act 1996 (there are no incumbents).

Source: OECD, Annual Reports, ISPO (http://www.ispo.cec.be/), Inside Cable and Telecoms Europe (http://www.inside-cable.co.uk)

However, some OECD countries restrict telecommunication operators, specifically the incumbents, from providing cable television services over their networks through cross-ownership and/or joint provision. The main aim is to prevent incumbents from easily obtaining a dominant status in the cable television market also. In this context, the regulation has the same rationale as the regulations imposed on infrastructures as indicated in the previous section. The restriction also aims to encourage the establishment of new alternative networks by potential entrants in the cable television market, thus stimulating competition in the local loop. Such a policy can be especially important in areas where cable networks have not yet been fully rolled out.

Regulations prohibiting the incumbents from providing cable television services have been placed in Hungary, Japan, Korea, the Netherlands (although following its spin-off of Casema, limitations on KPN Telecom will be lifted in the new Telecommunications Act expected to come in force at the end of 1998) and the United Kingdom (see **Table 4**). In Japan, the NTT Law restricts NTT from providing cable television service. In the United Kingdom, as a result of the White Paper 'Competition and Choice: Telecommunication Policy for the 1990s' published by the DTI in 1991, BT and Mercury are prohibited from delivering broadcast entertainment services over their networks on a national basis to retail customers (they are free to apply for licenses for the provision of regional services and video-on-demand services). The initial decision was that this restriction would be retained up to 2001, indicating a possible revision in 1998[3]. Additionally, in Spain the dominant operator Telefónica is empowered with a licence for providing cable television in every franchise area, but it must wait for 18 months from the granting of a licence to the second competitor before providing service.

These regulations which prohibit or limit incumbents from providing cable television services, are expected to have an impact on stimulating infrastructure competition in the local loop by encouraging investment in alternate networks by potential entrants to the cable television market. The anticipation is especially high in areas where the incumbents maintain a substantial monopoly in the fixed network of the local loop, and the development of alternate networks is still at an immature stage.

However, such restrictions could also have an adverse effect on competition in the cable television market if they were to be maintained for too long, creating new dominant positions. These policies could also reduce the incentive of incumbents to invest in broadband infrastructure, thus slowing down both the diffusion of infrastructure and the development of new multimedia applications and electronic commerce. Policies which set a time limit on restrictions, such as was the case in the UK policy, provide a certain balance between the need to develop infrastructure competition in the local loop and to ensure that there will be incentives to move toward broadband infrastructures.

Taking the adverse effect into consideration, there have been some moves in OECD countries to relax restrictions on joint provision. In the United States, the 1996 Telecommunication Act repealed the regulation, allowing local telephone companies (LECs) to provide cable television services in the same market area. Such joint provision had previously been banned by the 1984 Cable Act. The intention then was to develop a cable television market independent from the LECs and promote infrastructure competition in the local loop. Notwithstanding the rapid development of the cable television market, the cable operators started to increase prices in their franchise areas. However, due to the elimination of the restriction, LECs can now provide video programming service as an "open video system (OVS)", subject to reduced regulations on FCC approval; as a cable television service subject to the same regulation as cable television operators; or as a radio-based video service not subject to the Cable Act. Some LECs have started taking advantage of these new possibilities: for example, Ameritech has obtained more than 50 cable television franchises in its telephone service area. These initiatives have led to consumer benefits, with falling prices and increasing service quality in many of these areas.

There have been similar initiatives in Canada. Previously, telephone companies were prohibited from providing cable television service. But in its "Convergence Report" of May 1995, the regulatory authority CRTC endorsed increased competition in the cable television market to provide consumers with increased choice. It was strongly recommended, however, that applications from telephone companies to enter cable television service should not be implemented until safeguard rules - frameworks for interconnection, unbundling, co-location, rate restructuring and interim number portability - which would ensure open and fair competition in local telephony markets had been established. Following the implementation of such safeguards, the CRTC decided that telephone companies would be allowed to provide cable television services from 1 January 1998. Responding to this change, New Brunswick Telephone, a regional Stentor telecommunication operator, has applied for a license to offer cable television services over its telecommunication networks in 1998 as the first entrant, while Bell Canada and Telus are presently carrying out pilot projects.

It should be noted that although the dominant telecom operators have been allowed to provide cable television services in the United States and Canada, these regulations were eliminated subject to certain conditions. Either there was already a ubiquitous ‘non-telecom’ cable network as was the case in the United States with more than 90 per cent of homes passed by cable and Direct-to-Home (DHS) services also available, or sufficient safeguards had been adopted to ensure full competition in the local loop as was the case in Canada.

In the context of developing electronic commerce and new multimedia services, it has become increasingly important to ensure that broadband networks are in place. There is therefore a need to carefully consider allowing incumbents to provide content services and, at the same time, ensure that adequate regulatory safeguards are in place.

b) Regulations on cable television operators from providing telecommunication service

In 1996, there were only eight Member countries in the OECD area which allowed cable television operators to provide full PSTN service including voice telephony i.e. Canada, Finland, Japan, Korea, New Zealand, Sweden, the United Kingdom and the United States. Many European countries still maintained a monopoly for voice services at that time. Since then, however, market liberalisation has allowed cross-provision of full PSTN services in 12 more OECD countries (see **Table 5**): Australia, Austria, Belgium, Denmark, France, Germany, Italy, Luxembourg, Mexico, the Netherlands, Norway and Switzerland.

In Europe, the 1995 Cable Directive of the European Commission, which required Member states to allow the use of cable networks for providing all liberalised telecom services, did not have substantial impact since it only referred to services already open to competition which did not include voice telephony at that time. However, the 1996 Full Competition Directive led to full liberalisation in EU Member states as of 1 January 1998 (with a number of derogations), thus allowing cable operators to provide voice telephony. Austria, Belgium, France, Germany, and Italy implemented full liberalisation from this date, with Norway accompanying the move, while Denmark and the Netherlands had adopted full competition in advance of this deadline.

Table 5. PSTN service provision by cable television operators

	Legal allowance	Additional comments
Australia	allowed	from 1 July 1997
Austria	allowed	from 1 January 1998
Belgium	allowed	from 1 January 1998
Canada	allowed	
Czech Republic	restricted	restrictions to be terminated by end of 2000
Denmark	allowed	fully allowed from 1 July 1996 with liberalisation much later
Finland	allowed	
France	allowed	from 1 January 1998
Germany	allowed	from 1 January 1998
Greece	restricted	restrictions to be terminated by end of 2000
Hungary	restricted	restrictions to be terminated by end of 2001
Iceland	restricted	
Ireland	restricted	restrictions to be terminated by end of 1999
Italy	allowed	from 1 January 1998
Japan	allowed	
Korea	allowed	
Luxembourg	allowed	from 1 July 1998
Mexico	allowed	fully allowed from Aug 1996 with liberalisation much later
Netherlands	allowed	from 1 July 1997
New Zealand	allowed	
Norway	allowed	from 1 January 1998
Poland	restricted	
Portugal	restricted	restrictions to be terminated by end of 1999
Spain	restricted	restrictions to be terminated by end of Nov 1998
Sweden	allowed	
Switzerland	allowed	from 1 January 1998
Turkey	restricted	
United Kingdom	allowed	
United States	allowed	

: countries liberalised before March 1996 (8 countries)

: countries liberalised since March 1996 (12 countries)

: countries still restricted or not fully liberalised (9 countries)

Source: OECD, ISPO (http://www.ispo.cec.be/)

In these newly liberalised countries the industry is already taking initiatives to adjust to the new circumstances. For example, in France the parent company of the largest cable television operator “Compagnie Générale des Vidéocommunications” intends to dispose of its cable operations in order to concentrate primarily on the business telephony market in a newly formed company called Cégétel. Another major cable television operator, Suez-Lyonnaise des Eaux, has also announced its intention to invest in telecom services to provide their subscribers a large choice of new services such as digital television, voice telephony and high-speed Internet access.

Allowing joint provision of the whole range of PSTN services, in particular voice telephony, by “non-telecom” cable television operators will expand competition in the local loop from both the infrastructure and service aspect. The case in the United Kingdom provides a good example in this context. The elimination of foreign ownership restrictions in 1990 and the full liberalisation of telecommunication services in 1991 which allowed cable television operators to provide voice telephony over their own networks, has led to many North American telecommunication operators investing in cable networks and providing voice telephony over their networks. Now a number of cable operators rely for more than half of their revenue on telecom services, and cable television operators have developed to account for a 4.9 per cent share in the total telecommunication market in five years[4]. Although this figure may still seem small, its significance is evident when compared to Mercury’s approximate 1 per cent share in the telecommunication market[5] during the long duopoly period in the UK.

Restricting cable television operators from providing full PSTN services over their networks could significantly reduce the potential for competition in the local loop, and countries still maintaining such restrictions are strongly recommended to lift them as soon as possible.

3. Regulations between the telecommunication and broadcasting sector

The two sectors of telecommunication and the traditional television broadcasting services using terrestrial transmitters (referred to here as 'terrestrial broadcasting' or simply 'broadcasting') have traditionally been recognised as separate markets with few common characteristics in terms of infrastructure and service. Most countries do not impose specific restrictions on the cross-ownership or joint provision between the two sectors apart from the general competition law.

There may be several reasons why many countries do not place specific restrictions on this issue:

Firstly, the telecommunication and broadcasting sector have long been recognised as separate markets with no common characteristic in both the infrastructure and service aspect. This feature may have kept back both sectors from entering into each others’ market as a business strategy, comparing the little benefit they could achieve and the large cost they would need to assume for such business expansion.

Secondly, because a monopoly market structure existed in both sectors of many OECD countries and the telecom and broadcasting monopoly were traditionally both state-owned, no question of cross-ownership or joint provision could arise in such circumstances. Even after the monopolies were incorporated or privatised, they were expected to focus mainly on their core business. Furthermore, in most countries it is expected that given the licensing requirements to enter broadcast markets no specific restrictions have been deemed as necessary.

Thirdly, it may also have been considered that cross-ownership and/or joint provision between the two sectors should not be excepted, subject to the fact that some broadcasting operators utilise the telecom operator's transmission network for service provision. This is the case in Denmark, France, Germany, Hungary, Norway, Portugal, Switzerland and Turkey. Specifically, the incumbent PTO itself or its subsidiary provides the transmission network for broadcasting services exclusively in most of these cases. One example is France, where all television signals are transmitted by Télédiffusion de France (TDF) - a public operator which is more than 50 per cent owned by France Telecom. In these cases, it may be anticipated that free cross-ownership or joint provision between the two sectors would allow telecom operators to discriminate against the non-affiliated broadcasting operators by abusing their dominant power in the infrastructure aspect.

These reasons, however, remain no more than speculation at this stage. More information on the position of each country would be needed for a substantial analysis. Such analysis may be useful in changing circumstances, where liberalisation in the telecommunication sector is advancing and the trend towards digitalisation in broadcasting television is forthcoming.

4. Regulations between the cable television and broadcasting sector

Cable television has become a major platform for providing television services, and is now a competitor with traditional over-the-air television broadcasting using terrestrial transmitters (or ‘terrestrial broadcasting’) which had dominated the broadcasting market for a long time.

In recognising the role cable television could perform in stimulating competition in the television market, some OECD countries have intentionally regulated cross-ownership or joint provision between the cable television and broadcasting television sectors (see **Table 6**). For example, in France and Korea, regulations are symmetric, restricting both the cable television and broadcasting television operators from owning shares or entering into each other's market. In other countries, such as Belgium, Hungary, Japan, Norway, Spain and the United Kingdom, regulations are imposed either on cable television operators or on terrestrial broadcasters, restricting ownership and service provision in the other party.

These two types of regulation on cross-ownership or joint provision have the same policy goals. First, they aim to ensure that links between the broadcasting television operator and cable television operators are weak. In other words, one major purpose of these regulations is to prevent broadcasting television operators from leveraging market power on the affiliated cable television operators, specifically in the context where the service package is being offered by cable television operators. Secondly, the regulations have the additional intention to ensure diversity and pluralism in the provision of television services.

The rationale of regulation is that if unrestricted cross-ownership or joint provision were to be allowed between the two sectors, it would be possible for the cable television operator to discriminate against the non-affiliated broadcasting operators and content providers by rejecting their access to the cable network and/or giving preference to the affiliated broadcasters. Since cable television operators generally have a monopoly in their service areas, such discrimination against non-affiliates would have a crucial effect, leaving them with no possibility of entry into the local market through the cable network.

Although such discrimination by affiliated broadcasters and cable television operators would be viewed as anti-competitive behaviour abusing the cable television operator's dominance in the distribution infrastructure, regulations have been put into place to enforce non-discriminatory treatment.

Table 6. Cross-ownership and joint provision between cable television operators and broadcasters

	Legal allowance	Additional comments
Australia	allowed	
Austria	restricted	- ORF(1) is not allowed to invest in cable television operators.
Belgium	restricted	- Federal: Cable television operators are not allowed to own more than 24 per cent of shares or of voting rights of a television broadcaster. They are also not allowed to take part in the management of a broadcaster. - Flemish Community: Cable television operators are not allowed to own more than 20 per cent of shares of a private television broadcaster. - French Community: Cable television operators are not allowed to own more than 24 per cent of shares or a third of the managing body of a private, local or community television broadcaster(1). They are also not allowed to hold a broadcasting license. Additionally, terrestrial television companies are not allowed to provide cable television networks and services.
Canada	allowed(2)	
Czech Republic	allowed	
Denmark	allowed	
Finland	allowed	
France	restricted	- Terrestrial television companies licensed to provide services to an area having a population of 4 million or more are not allowed to provide cable television networks. - Cable television operators licenced to provide services to an area having a population of 6 million or more are not allowed to provide terrestrial television services.
Hungary	restricted	- Cable television operators are not allowed to provide or invest in terrestrial television companies.
Ireland	allowed	
Italy	allowed	- However, cable television operators and broadcasters are not allowed to collect more than 30 per cent of the resources of the integrated market.
Japan	restricted	- However, terrestrial television companies may be permitted to establish cable television networks in special cases.
Korea	restricted	- Terrestrial television companies are not allowed to invest in or provide cable television networks and services. - Cable television operators are not allowed to invest in or provide terrestrial television services.
Luxembourg	allowed	
Mexico	allowed	
Netherlands	allowed	
New Zealand	allowed	

Table 6. Cross-ownership and joint provision between cable television operators and broadcasters *(continued)*

	Legal allowance	Additional comments
Norway	restricted	- Cable television operators in a licence area are not allowed to possess their own licence to operate local television services or possess more than 49 per cent of shares in a local television company, or possess a share that represents more than 49 per cent of the votes in a local television company.(3)
Portugal	allowed	
Spain	restricted	- Private terrestrial television companies are not allowed to provide cable television networks. - Private terrestrial television companies also providing cable television services are not allowed to hold more than one licence.
Sweden	allowed	
Switzerland	allowed	
United Kingdom	restricted	- BBC is specifically prevented from holding a licence to provide cable television services. - The broadcasting regulatory authority is required to fully ensure that commercial television licensees do not obtain licences for cable television services.
United States	allowed(4)	

1. ORF is a public organisation providing national terrestrial television broadcasting. There is no private company.
2. CRTC examines the issue on a case-by-case basis. Additionally, a telecommunication carrier wishing to provide cable television services must hold a structurally separate entity.
3. These restrictions are scheduled to be reviewed.
4. The 1996 Act eliminates the broadcast network-cable cross ownership rule and the statutory broadcast station-cable system cross ownership restriction (FCC rules restricting cross ownership of broadcast station-cable system have been retained).

Source: OECD, KPMG

On the other hand, however, the economic benefit such integration could bring should also be recognised as the cable television industry develops and becomes a competitor to broadcasting television service. Such integration would allow redistribution of the same television progammes to a larger potential audience providing economies of scale. Scale economies are important factors in terms of efficiency and product innovation, especially in circumstances where the television market is evolving at rapid speed with the emergence of new market opportunities and strong competition led by the appearance of innovative and expensive technologies.

In recognising the structural and technological changes in the industry sector, some countries have begun to make modifications in their regulatory treatment of cross-ownership and joint provision in these two sectors. In the United Kingdom, the former act prohibited more than 20 per cent cross-ownership between cable television operators and broadcasters. Taking into consideration the necessity to reflect the needs and aspirations of the industry against a background of accelerating technological change, the Broadcasting Act 1996 revoked this rule, allowing cross-ownership between the two sectors. The 15 per cent total television audience share limit, which is a method based on audience time, is excepted to function as a new safeguard measure.

There have been changes in the United States as well. Previously, cross-ownership between broadcasting networks and cable television operators was prohibited in order to avoid the influence of broadcasting networks on cable television operators. But in view of the significant development of the cable television industry since then and the intensity of competition between the two sectors, the 1996 Telecommunications Act has eliminated this prohibition (the FCC has decided not to develop specific rules on carriage, channel positioning and non-discriminatory treatment of other non-affiliated broadcasters). Additionally, the new act also repeals the statutory ban on cross-ownership between cable television operators and broadcasting television stations serving the same area.

Observing the changing circumstances and policy adjustments in some countries, it might become necessary in those countries where regulations on either cross-ownership or joint provision are currently applied to reconsider whether these current regulations would maintain their validity as an optimal measure of balancing the economic benefits arising from such integration and the risk of anti-competitive practices as mentioned above: other regulatory safeguards such as "must-carry" obligations or *ex-post* competition law may prove to be sufficient. The optimal measure to be taken would depend on the degree to which competition between the broadcasting television and cable television sectors has developed.

5. Regulations within television services

Until the 1970s, over-the-air transmission using terrestrial transmitters had been the only distribution platform for television services. However, the emergence of alternative distribution platforms i.e. cable television infrastructures and satellite has dramatically changed the structure of the television market in many countries. In this section, “television services” will refer to all television progamme services regardless of the distribution platform, thus including the traditional terrestrial broadcasting, cable and satellite television.

In the case of regulations imposed upon ownership of these television services, most OECD countries place specific regulations over and above the safeguards provided through general competition law (see **Table 7**). Regulations on ownership mainly take two forms: limiting shares of a single entity in a television enterprise and/or limiting the number of licenses a single enterprise can own.

The regulations have two aims. First, restrictions intend to limit market power and concentration in the television market thus avoiding economic distortion. Second, they also aim to promote diversity in service provisions and ensure pluralism. This second factor is a distinctive feature of the television market (and the general media industry at large). Considering the powerful influence television services have on the audience, ensuring pluralism is considered to be a crucial rationale, since dominance in the television market could be viewed as a threat towards ‘free expression’ of ideas, opinions and cultural development in each country.

However, in view of the rapid changes impacting the television market, the validity of present regulation on ownership of television services may need to be reconsidered. Technological changes are occurring at rapid speed with the development of digitalisation and convergence, and the market is rapidly becoming globalised. Digital broadcasting is viewed as the key factor for the future television market, and intense competition among major market players in this area is already well under way. In such a situation, the need for a strong financial basis is becoming significantly important for market players to keep up with competition. In this context, the demand for reviewing ownership regulations may arise from the industry, to achieve economies of scale through expansion of business or strategic mergers and develop new revenue streams.

Table 7. Ownership restrictions for television service in OECD countries(1)

	Terrestrial television broadcasting	Cable television	Satellite television
Australia	- A single entity is not allowed to exercise control(2) of commercial terrestrial television broadcasting licences whose combined licence area population exceeds 75 per cent of the whole population of Australia.	none	none
Austria	none(3)	none	none
Belgium(1)	- Flemish Community: A single entity is not allowed to own more than one local television station. Additionally, a Dutch language press company must have more than 50 per cent of shares in a private television station covering the entire community. - French Community: A single entity holding more than 24 per cent of the shares in a private television station either directly or indirectly, is not allowed to own more than 24 per cent of the shares in another private television station of the French Community either directly or indirectly.		
	- Pay television stations of the French Community must reserve at least 26 per cent of their share capital for the RTBF, either alone or in combination with one of its majority-owned subsidiaries, or their statutes must guarantee RTBF veto power.		
Canada	- A single entity is not allowed to own more than one television station offering service with the same official language in the same market.	none	none
Czech Republic	none	none	none
Denmark	- For local television, the same individual may not be a member of the board of more than one local station.	none	none
Finland	none	none	none
France	- A single entity is not allowed to own more than 49 per cent of the shares in a national broadcasting company(4). - A broadcasting company already licensed to provide television services to an area having a population of 4 million or more, is not allowed to own an additional license.	- a cable television operator already licensed to cover an area with a population of 6 million or more, is not allowed to own an additional license.	
Germany	- A single entity is not allowed to control more than 30 per cent of the total audience time share of the total television market including terrestrial, cable and satellite television.		

Table 7. Ownership restrictions for television service in OECD countries(1) *(continued)*

Greece	- A single entity is not allowed to own shares or voting rights in more than one broadcasting company. - A single entity is not allowed to own more than 25 per cent of the shares of a broadcasting company.		
Hungary	- A single entity holding a licence for national television broadcasting or holding a controlling share in such an entity is not allowed to acquire a controlling share in another television company.	none	none
Ireland	none	none	
Italy	- A single entity is not allowed to own more than 20 per cent of the number of nationwide terrestrial networks.	- A single entity is not allowed to control more than 30 per cent of sector resources.	- A single entity is not allowed to control more than 30 per cent of sector resources.
Japan	- A single entity is not allowed to own or control more than one broadcasting station(5).	none	- A single entity is not allowed to own or control more than one broadcasting station.
Korea	- A single entity is not allowed to own more than 30 per cent of the shares in a broadcasting company. - Major industrial groups are not allowed to acquire shares of a broadcasting company.	- Cable operators, progamme providers and network operators are not allowed to own each other. - MSO is not allowed. - A single entity is not allowed to own more than 30 per cent of a news channel.(6)	none
Luxembourg	- A single entity is not allowed to own shares in more than one broadcasting company. - A single entity is not allowed to own more than 25 per cent of the shares or votes of a broadcasting company.		
Netherlands	none(7)	none	none
New Zealand	none	none	none
Norway(8)	- A single entity is not allowed to hold more than one third of the total local broadcasting market. - A single entity is not allowed to own a share in more than one licence in one and the same licence area for local television.	none	none
Portugal	none	none	none

Table 7. Ownership restrictions for television service in OECD countries(1)*(continued)*

Spain	- A single entity is not allowed to hold more than one licence. - A single entity is not allowed to hold direct or indirect control of more than 25 per cent on capital. - A single entity is not allowed to hold shares in more than one licence.	- Maximum number of subscribers to a single entity is limited to 1.5 million.	- A single entity is not allowed to hold direct or indirect control of more than 25 per cent on capital.
Sweden	none	none	none
Switzerland	- Applicants are required to declare names of major shareholders to the licensing authority. The authority checks the application to see whether it poses a threat to the diversity of opinion or supply.		
United Kingdom	- For analogue television: A single entity is not allowed to hold or control licences for more than 15 per cent of the total television audience. - For digital television: 1. Utilising the point scheme and depending on the total number of points allocated, the maximum permitted number of points that a single entity is allowed to hold varies between 20 per cent to 25 per cent of the total digital progamme services. 2. Holding of multiplex licences is restricted. No more than 3 licences may be held by any one person or corporate body.		
United States	- No single broadcasting company is allowed to cover more than 35 per cent of the national audience reach. - A single entity is not allowed to own more than one television station in the same market.(9)	none	none

1. This table refers to commercial television services. Public television services are not included. For regulations between cable television and terrestrial broadcasting, refer to Table 6.
2. During 1994/95, the Australian Federal Parliament imposed a 15 per cent limit on the control provision of the Act. This removed the regulatory authority's discretion in the Act and stipulated that ownership of shares beyond 15 per cent does not constitute control.
3. There are no specific regulations due to ORF's monopoly.
4. A new broadcasting bill is planned to be presented in autumn 1998. Although the bill does not propose any change to the existing 49 per cent upper limit on shareholds, it would additionally require entities with media interests to group them together in separate holding companies.
5. In general, a single entity owning more than 10 per cent of voting rights would be defined as having 'control' of the broadcasting company.
6. The draft legislation proposes that a single entity is not allowed to own more than 30 per cent of general or news channels. Additionally, it proposes that industry groups are not allowed to own general or news channels.
7. There are no specific restrictions due to the monopoly of public broadcasters.
8. Current restrictions are to be reviewed.
9. The Telecommunications Act 1996 requires the FCC to determine whether to retain, modify or eliminate this restriction.

Source: OECD, KPMG

The substantial effect of ownership regulation is also being brought into question given the possibilities of circumventing these restrictions. A number of devices have been developed in this context. ‘Warehousing’ or ‘parking’ excess licenses of shareholdings in a ‘deadlocked’ company is a typical case. For example, in Germany a high degree of media concentration had emerged under the previous ownership rules via complex cross-ownership schemes, leading to the two giant media conglomerates - the Bertelsmann/CLT group and Kirsch/Springer group - obtaining dominant positions in the television market. This case shows that ownership regulations do not necessarily prove to be a sufficient or effective measure in limiting concentration and ensuring pluralism.

Therefore, it may become necessary to review the current ownership restrictions to achieve an optimal balance between the requirement for economic efficiency and the need for diversity and pluralism. It should be noted however that, given the emphasis placed in most countries on pluralism, relying solely on general competition law may not be a sufficient measure at the present stage of market development.

Looking back to the ownership regulations in place in Member countries, it can also be observed that many countries impose a more strict restriction on the ownership of the traditional terrestrial broadcasting services than other television services which utilise cable networks or satellite as distribution platforms (see **Table 7**), although some countries have not yet stipulated any specific legislation for cable and satellite television. This type of discriminatory restriction on terrestrial broadcasting distribution platforms has its basis in the “spectrum constraint” problem; that is the scarce availability of frequencies on the radio spectrum for delivering the signals, which arguably justifies the need for regulation.

The “spectrum constraint” problem is being overcome, however, due to the emergence of alternative distribution platforms i.e. cable networks and satellite. Also the development of digital broadcasting will enable the compression of a very high number of signals in the radio spectrum. All these trends lead to reducing the applicability of arguments of spectrum shortage as a reason to impose market restrictions.

As spectrum constraints diminish, service providers will be competing more intensely across distribution systems for the future television markets. Consumers will make choices based on their evaluation of content rather than on the basis of technological platforms. In this context it becomes necessary to view all television service providers as equivalent competitors in a single market irrespective of platforms used for distribution of content. Regulatory segmentation of markets may tend to discriminate in favour of certain technologies and place some distribution platforms at a relative disadvantage.

Some countries have begun to address some of these issues. For example, in Germany, although earlier regulations already did not differentiate between services provided via terrestrial, cable or satellite, the rules stipulated in the National Convention on Broadcasting (NBC) - a treaty among the 16 Landers - limited the ownership of shares and number of licenses to a single entity. Although a single entity was allowed to own up to two national television channels it was allowed to own only one “full progamme” channel. Additionally, the stake of every shareholder was limited to less than 50 per cent in a ‘full progamme’ channel.

However, despite these restrictions on ownership, a high degree of media concentration emerged through complex cross-ownership mechanisms with the creation of media conglomerates in the German television market. New regulations were set up in 1996. In these circumstances, new regulations eliminate the previous ownership regulations, replacing them by an audience time share model measure.

This new measure limits a single entity's control of television services to 30 per cent of the total audience time, regardless of the distribution platform.

There have been similar regulatory adjustments in the United Kingdom. The Broadcasting Act 1996 revised regulations on media ownership including the provision of television services, also adopting the audience time share model as a new rule. Former restrictions limited the share-holding and number of licenses in the terrestrial broadcasting sector, whereas, there were no limitations on the number of cable and satellite television services that could be owned. There was also a 20 per cent limitation on share-holdings among the terrestrial broadcasting, cable television and satellite television operators.

The new act eliminates these ownership restrictions with the minimum necessary exceptions, and adopts a new 15 per cent audience time share model measure. It allows a single entity to own an unlimited stake in two or more television enterprises as long as its audience share does not exceed 15 per cent of the total audience time. Under this new scheme, a share-holder viewed as having "control" of a specific television service is attributed the full audience time for that service, while a share-holder viewed as having a "qualifying interest" e.g. a share of more than 20 per cent in the body, is attributed half the audience time.

Audience time is calculated over a rolling 12 month period ending with the last day of the previous month. It should be noted that the audience time is attributable to each television service and not to the distributor of the service. For example, if a cable television operator carries television programmes provided by the BBC, ITV or BSkyB, the audience time for these services would be attributed to those programme providers and not to the cable television operator.

The new framework in the UK case was an attempt at achieving a balance between the needs and aspirations of the industry against a background of accelerating technological change, and the need to protect diversity and plurality of the media. The other characteristic point of this new framework is that it eliminates the previous ownership regulations which segmented markets and now allows all television services to compete at the same level regardless of their distribution platform.

There have also been initiatives by the European Commission on this issue. The Commission has proposed a draft directive suggesting that member states regulate media concentration and ensure pluralism on the basis of audience time share instead of ownership restrictions. However, the future of the draft is still uncertain at this stage and will require further discussion.

The new audience time share model adopted in Germany and the United Kingdom and being considered at the European Commission, has the advantage of measuring and limiting the substantial effect each television service will have upon the audience. On the other hand, there is the difficulty of determining the optimum level of share limitation, since the validity of this framework will solely depend on this calculation. It is, however, becoming evident that in a rapidly evolving environment other OECD countries also need to bring into question the validity of their current ownership restrictions.

NOTES

[1] Current Status of Communication Infrastructure Regulation: Cable Television, (OCDE/GD(96)101), Paris 1996.

[2] Draft Commission Directive amending Directive 90/338/EEC in order to ensure that telecommunications networks and cable television networks owned by a single entity are separate legal entities.

[3] In April 1998, the UK government published its consultative document '*Broadband Britain*' announcing the plans for lifting the restrictions on BT and Cable & Wireless Communications from providing broadcast entertainment to the home over their telecom networks. The principles are to lift restrictions immediately in areas where there are no cable franchises; and by 1 January 2001 nationwide.

[4] Data for April 1996. The market share was built up during the April 1992 to April 1996 period *(Source: The Cable and Telecom Yearbook 1996).*

[5] The 1 per cent figure was for April 1996 *(Source: The Cable and Telecom Yearbook 1996).*