

# Excessive Media Ownership and Its Potential Threats to Democracy: A Comparative Analysis

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## I. Introduction

In modern democracies we find more and more channels of communication held in fewer hands. As evidenced by the historic development of large European media conglomerates, such as *News International*, *Bertelsmann*, *Hachette*, and *Fininvest*, the tendency for media firms to expand and diversify is not new.<sup>2</sup> This tendency has been on the rise in Europe,<sup>3</sup> Israel and North America during the 1990s when we witnessed major transactions and mergers that increased the power of a few media tycoons in the major countries of the world.

The process had started some thirty years ago. When we look at the western world we can discern a pattern that developed during the late 1960s – early 1970s, that big conglomerates buy up the media. In 1958, the three largest Canadian newspaper chains – Southam, Thomson, and the Toronto *Sun* – controlled about 25 percent of daily circulation. By 1970, this figure reached 45 %. The 1970s and 1980s saw the most astounding media buy-outs of the century, usually by highly diversified conglomerates looking to expand into “infotainment”, information, and news. In 1980, the three largest paper chains in Canada controlled about 57 % of the market. The extraordinary consolidation in media ownership continued with

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<sup>2</sup> Gillian Doyle, “Regulation of Media Ownership and Pluralism in Europe: Can the European Union Take Us Forward?” *Cardozo Arts & Entertainment Law Journal*, Vol. 16, Nos. 2–3 (1998), p. 451.

<sup>3</sup> Cf. *Serge Robillard*, “Vers une nouvelle réglementation européenne”, *La Concentration dans les médias*, Numéro 1, Quebec: Université Laval, Centre d'études sur les médias, December 1996, pp. 25–33. In Italy, Prime Minister Silvio Berlusconi owns the three commercial broadcast networks. Obviously he also has influence over the content of the three government-owned networks. The result is effective control over news programs.

even greater frenzy in the western world as the 1980s drew to a close with the merger of Warner Brothers and Time Inc. (now called Time Warner Inc.); Rupert Murdoch's \$3 billion purchase of Walter Annenberg's Triangle Publications;<sup>4</sup> the decision of Gulf & Western (now called Paramount Communications Inc.) to concentrate on planetary media ownership; and Maclean Hunter's takeover of Selkirk Communications Ltd. This rapid concentration in media ownership was aided by conservative governments that embraced the principles of deregulation and privatization, including major funding cuts to public broadcasting throughout Europe, Britain, Canada, and the United States. As the buying spree continued unabated, less media corporate conglomerates own and control most of the world's major newspapers, magazines, broadcasting stations, book publishers, movie studios, and record and videocassette industries. In August 1995, Walt Disney Co. spent \$19 billion in the second largest takeover in United States history acquiring the ABC television network. The next day it was announced that Westinghouse Electric Corp. had purchased CBS Inc., for \$5.4 billion. A month later, Time Warner Inc. took over Turner Broadcasting System in a \$7 billion stock transaction.<sup>5</sup> In 1996, the two largest radio chains owned 115 stations. In 2003, those two own more than 1,400. In effect, three companies own half the stations in America, delivering a homogenized product that neglects local news coverage and dictates music sales.<sup>6</sup>

In Canadian television, five corporations reached 62% of viewers in 1993. In the cable industry, three companies had 68% of the audience, up from 36% in 1983. In radio, with 479 stations, ten companies controlled 55% of the revenue share. In magazine publishing, the largest eight publishers controlled 52% of circulation in 1993–94. As for the press, the Southam-Hollinger chain alone controlled 43%, Thomson 12%, and the Toronto *Sun* chain 11%.<sup>7</sup> In comparison, the largest newspaper chain in the United States has about 10% of national circulation, and the top radio station owner has about 1 percent of the stations.<sup>8</sup>

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<sup>4</sup> Murdoch inherited a single newspaper in Australia 50 years ago and through fearlessness and determination built an empire. In Britain and the United States he took on unions and politicians to establish himself in print and television markets with entrenched players. The Australian-born Murdoch changed his citizenship, becoming an American to get around rules barring foreigners from owning broadcast outlets. Now his News Corp. includes an unparalleled worldwide satellite-TV operation. Cf. *Johnnie L. Roberts*, "The Rupert rules", *Newsweek* (2004) <http://msnbc.msn.com/id/3606171>.

<sup>5</sup> *Joyce Nelson*, *Sultans of Sleaze*, Monroe, Maine: Common Courage Press, 1989, pp. 63–64; *James Winter*, *Democracy's Oxygen: How Corporations Control the News*, Montreal: Black Rose Books, 1997, pp. xxiii, 3–11. For further discussion on the American scene, see *Marsha Cohen*, "Media Ownership and Conglomerization and Their Impact on A Free Press: How conglomerate-owned outlets reflect bias in their coverage of media mergers", paper presented at the National Communication Association Annual Conference, Miami Beach (19–23 November 2003); <http://www.fcc.gov/>; <http://mediaaccess.org/>.

<sup>6</sup> *William Safire*, "The great media gulp", *New York Times* (22 May 2003), p. A33; *William Safire*, "On media giantism", *New York Times* (20 January 2003), p. A19. For further deliberation, see "Is big media bad?" *Newsweek* (2004), <http://msnbc.msn.com/id/3606172>.

<sup>7</sup> *Winter* (op. cit. fn. 5), p. 3.

Freedoms of expression and of the media do not imply the freedom to own an unlimited number of communication organs. On the contrary, these freedoms contradict one another; unrestricted capitalism in the form of either cross-ownership or excessive ownership of media organizations negates free expression and free media. Excessive media ownership might hinder pluralism of ideas, creating a media market that is tightly controlled by a few decisionmakers who use their power and influence to project views that conform to their partisan interests.

The aim of this essay is to examine the issue of ownership, which is frequently mentioned as a prime concern by Canadian and Israeli critics of their media. In both countries the issue is excessive and cross ownership of the media by a small number of people who control the print press and the electronic press. Both countries are democracies with strong emphasis on free expression and freedom of the press. In both democracies the concept of the public's right to know prevails. In both we find a shrinking group of rich and influential people who control the media. Economic interests are interwoven with political interests. In both countries media scholars voice growing concern regarding the possible clash between public interests and the narrow interests of the media barons. At present, the major player in the Canadian media, CanWest, is interested to invest in the Israeli media market. I shall first review the press industry in each country and then reflect on the broadcasting industries. With regard to broadcasting, both countries have publicly owned stations as well as private stations. Both are concerned with the size of their audiences, and rating considerations constitute a major factor in program production and planning, although somewhat less so in the public sectors. It is argued that excessive media ownership undermines free journalism and the projection of diverse opinions, and it provides avenues for partisan, partial interests. Finally, I shall make some pertinent observations regarding Germany and its media market. It is noted that a former Israeli businessman, Haim Saban, is invested in the German media and presently interested in the Canadian media.

## II. The Canadian Market

### 1. *The press industry*

There is a growing concentration of media ownership in the hands of few. In 1958, the three largest Canadian newspapers controlled about 25 % of daily circulation. By 1970, this figure reached 45 %. In 1980, it was about 57 %. If we look at the number of independent dailies, we can discern a rapid decline during the past twenty years. In 1970 there were 45 independents, in 1980 there were 29, and in

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<sup>8</sup> *Robert G. Picard*, "The Experience of the United States and Its Implications for Canadian Policy", in *La Concentration dans les medias*, Numero 1 (Quebec: Universite Laval, Centre detudes sur les medias, December 1996), p. 20. For information about Hollinger, see generally <http://www.hollinger.com/>.

1996 only 14 of the 104 dailies were independent.<sup>9</sup> Through their holdings, by the late 1990s Conrad Black controlled 60%,<sup>10</sup> Thomson 12%, and the Quebecor-Sun chain more than 11% of the market.<sup>11</sup> Black published sixty newspapers out of 106 dailies, including all the newspapers in the provinces of Saskatchewan, Newfoundland, and Prince Edward Island.<sup>12</sup> The Thomson empire – one of the largest communication companies in the world – controlled the prestigious *Globe and Mail* and seven other newspapers.<sup>13</sup> Thomson was also the second largest owner of newspapers in the United States with over 140 dailies and weeklies.<sup>14</sup> In the mid-1990s, the owners of Thomson decided to shift their interests from the print to the electronic media. Other major players were Sun media with 15 dailies and Quebecor with four tabloid dailies and eight percent of national circulation. Pierre Karl Peladeau, chief executive of Quebecor Inc., was the owner of this very successful chain comprised of *Le Journal de Montreal*, *Le Journal de Quebec*, the *Sherbrooke Record*, and the *Winnipeg Sun*.<sup>15</sup>

Concentration of the print media is magnified within Canada's regions. During the mid-1990s, in eight of Canada's ten provinces, one publisher controlled at least 56 percent, and sometimes 100 percent of newspaper circulation.<sup>16</sup> With the notable exception of *Le Devoir*, all the dailies in Quebec were part of three chains owned by Conrad Black, Paul Desmarais (Power Corporation which controlled six percent of national circulation. Desmarais sold his shares in Southam Inc. to

<sup>9</sup> *Chris Cobb*, "Black's newspaper shopping spree heightens concerns", *The Ottawa Citizen* (28 May 1996), Business section, front page. Available on <http://www.ottawacitizen.com/>.

<sup>10</sup> *R. Emmett Tyrrell, Jr.*, "A coalescing new world of ideas", *The Washington Post* (4 December 1998), part A, p. A18; *David Taras*, *Power and Betrayal in the Canadian Media*, p. 18. Don Townson argues that Black's newspapers account for "over 40 percent" of Canada's total circulation. See *D. Townson*, "Toronto's Bloody Newspaper Wars", *Columbia Journalism Review* (July–August 1999), p. 52.

<sup>11</sup> *Winter* (op. cit. fn. 5), p. xxiv. Apart from the Sun network, the Quebecor also has two French-language newspapers in Montreal and Quebec City (*Le Journal de Montreal* and *Le Journal de Quebec*), four dailies in Alberta, two in Manitoba, five in Ontario, and the *Record* of Sherbrooke in Quebec. See *Anthony Wilson-Smith*, "War of words", *Maclean's* (8 February 1999).

<sup>12</sup> <http://www.media-awareness.ca/english/index.cfm>; see also *Maude Barlow/James Winter*, *The Big Black Book*, Toronto: Stoddart, 1997, pp. 4, 10; *Siegel* (op. cit. fn. 12), pp. 127–139; *Christopher Dorman*, "Newspaper Publishing", in: Michael Dorland, ed.: *The Cultural Industries in Canada*, Toronto: James Lorimer & Co., 1996, pp. 60–92.

<sup>13</sup> *Wilson-Smith* (op. cit. fn. 11). In May 2002, Osprey Media bought the Winnipeg Free Press and Brandon Sun from Thomson Corp. See *Craig Wong*, "Osprey Media files preliminary prospectus", *Ottawa Citizen* (6 March 2004), Business, p. D4.

<sup>14</sup> See *David Taras*, *The Newsmakers: The Media's Influence on Canadian Politics*, Ontario: Nelson Canada, 1990, pp. 8–16; *Rowland Lorimer/Jean McNulty*, *Mass Communication in Canada*, third edition, Ontario: Oxford University Press, 1996, pp. 216–219. See also *Barlow/Winter* (op. cit. fn. 12), p. 30.

<sup>15</sup> *Winter* (op. cit. fn. 5), p. 11.

<sup>16</sup> *Siegel* (op. cit. fn. 12), p. 133.

Black's Hollinger Inc.), described by the Davey Committee as the "lord of the dailies",<sup>17</sup> and Pierre Peladeau (Quebecor Inc.), described by Davey as the "king of the pop weeklies".<sup>18</sup> Of the 42 daily newspapers in Ontario, 30 (71%) were owned by Black. The Irving family, owners of a huge conglomerate with more than three hundred businesses, controlled all four English-language daily newspapers in New Brunswick (less than 3 percent share of national circulation), while Black owned all ten dailies in the provinces of Newfoundland, Prince Edward Island, and Saskatchewan.<sup>19</sup> Presently, all major media outlets in the Greater Vancouver area are concentrated under one roof, CanWest: the two dailies (the *Vancouver Sun* and *The Province*), several other papers (like *Burnaby Now* and the *Vancouver Courier*) and the dominant television outlet, BCTV.

In 2000 a major development took place when CanWest, owned by the Asper family, acquired Canada's largest newspaper empire from Conrad Black. This was the biggest media deal in the country's history and controversial because it gave a single corporation control of the main newspapers in nearly every Canadian city and region. Now this media conglomerate controls the newspapers in every significant Canadian city except Toronto.<sup>20</sup> In addition to its press assets, CanWest owns sixteen television stations, seven networks, and an Internet news portal.<sup>21</sup>

In 2001 we witnessed a small number of large and powerful companies that controlled the printed media. The major players were Southam Publications (CanWest Global) (27 dailies, about 30% of total daily circulation); Sun Media (Quebecor) (15 dailies, 21% of total daily circulation); Torstar (5 dailies, 14.4% of total daily circulation); Power (5 dailies, about 9% of total daily circulation), and Hollinger Canadian Newspapers (29 dailies, about 7%). Behind them were Bell Globe Media (1 daily, 5%); Thomson (2 dailies, about 4%); Brunswick news (Irving newspapers) (4 dailies, 2.4%); Horizons (5 dailies, 2.2%); Black Press (1 daily, 0.4% of total daily circulation), and Annex (2 dailies, 0.3%). There were 8 independent dailies (3.6% of the total daily circulation).<sup>22</sup>

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<sup>17</sup> Special Senate Committee on Mass Media, *The Uncertain Mirror*, Ottawa: Information Canada, 1970, Vol. I (Davey Committee), p. 97. Paul Desmarais is also the owner of Diffusion Power Broadcasting and has holdings in PBI Broadcast Investments Inc. and DirecTv Inc (USA). Industry Analysis Division, CRTC, charts 25, 25A. I am grateful to Louise Bourgeois, CRTC, for sending me the relevant information.

<sup>18</sup> Special Senate Committee on Mass Media, *The Uncertain Mirror*, Vol. I (Davey Committee), p. 97.

<sup>19</sup> Robert A. Hackett/Yuezhi Zhao, *Sustaining Democracy? Journalism and the Politics of Objectivity*, Toronto: Garamond Press, 1998, p. 62; *Winter* (op. cit. fn. 5), p. xxiii; *Barlow/Winter* (op. cit. fn. 12), pp. 4, 10; *Siegel* (op. cit. fn. 12), pp. 127–140.

<sup>20</sup> Colin Nickerson, "Publisher's ouster ignites furor over company ties to Chretien", *The Boston Globe* (19 June 2002), p. A8.

<sup>21</sup> Cheryl Leanza/Harold Feld, "More than 'a Toaster with Pictures': Defending Media Ownership Limits", *Communications Lawyer*, Vol. 21, No. 3 (Fall 2003).

<sup>22</sup> The 8 independent newspapers are: Halifax Chronicle, Halifax Mail-Star, Le Devoir [Montreal], L'Acadie Nouvelle, Stratford Beacon, Amherst Daily News, Flin Flon Reminder

Another major development took place in 2003 when CanWest did a blockbuster sale for \$193.5 million Canadian of four dailies and 26 other papers to Osprey Media Group Inc. Osprey, a company that appeared to emerge full-blown out of nowhere, was by far the biggest newspaper group in Ontario, with 22 dailies and 30-plus weeklies. By contrast, the much-better-known Quebecor Communications Inc. and Torstar Corp. publish seven and four dailies, respectively, in Canada's most populous province.<sup>23</sup>

The most updated data about media ownership in Canada was released on 1 April 2004. According to information compiled by the Senate Committee on Transportation and Communications' interim report on the Canadian news media, the media industry is still highly concentrated, and very profitable. CanWest Publications owns 137 newspapers including the majority of the metropolitan daily newspapers (among them the *National Post*, the *Montreal Gazette*, the *Ottawa Citizen*, the *Edmonton Journal*, *Calgary Herald* and the *Vancouver Sun*),<sup>24</sup> with a total weekly circulation of 9.2 million; Quebecor/Sun Media owns still 15 daily newspapers with a total weekly circulation of 6.8 million; Torstar Corp. owns five daily newspapers – including the popular daily *Toronto Star* – with a total weekly circulation of 4.5 million; Power Corp owns seven daily newspapers with a total weekly circulation of 3 million, and Bell/Globe Media owns one daily newspaper with a weekly circulation of 2 million.<sup>25</sup>

Until the year 2000, Conrad Black was the major player in the industry. Over the last thirty years he had purchased over 400 newspapers and magazines, which made Hollinger Inc. the third largest newspaper chain in the world behind Gannett Inc. and Rupert Murdoch's News Corp.<sup>26</sup> Barlow and Winter argued that, in the final analysis, through his own holdings and the Canadian press subscribers, Black reached all but four of the newspapers in Canada. In addition, Black reached 753 private and public educational broadcasting outlets across the country, plus all the CBC radio and television stations. The CBC owns 89 stations, 1,160 CBC rebroadcasters, 31 private affiliated stations, and 292 affiliated or community rebroadcasters. Through Southam, Black also partially owned Coles Bookstores, which merged with SmithBooks in March 1995 to form Chapters Inc., a megachain of 430 bookstores with about 35 percent of the national book market. It is contended that publishers really do not have any national alternative if Chapters shows little

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and the Whitehorse Star. I thank David Robinson, Coordinator of Campaign for Press and Broadcasting Freedom for his valuable assistance.

<sup>23</sup> *Mark Fitzgerald*, "The CNHI of Canada", Editor & Publisher, Vol. 136, Issue 20 (19 May 2003).

<sup>24</sup> CanWest Global also owns television interests in Australia, Ireland and New Zealand. See *Kate Jaimet*, "Can-con quotas 'wrong way to go': CanWest argues case against CRTC rules, CBC programming", *Ottawa Citizen* (2 March 2002), p. H4.

<sup>25</sup> *Graham Fraser*, "News gets half of TV budget", *The Toronto Star* (2 April 2004), p. A18.

<sup>26</sup> *Tyrrell, Jr.* (op. cit. fn. 10).

or no interest in a book.<sup>27</sup> Canada is virtually alone in the industrialized world in having no legislation to prevent the concentration of newspaper ownership or cross-media concentration.<sup>28</sup>

In November 1998 Black established a national newspaper to compete with the national and prestigious *Globe and Mail*, said to be the most influential newspaper in the country.<sup>29</sup> The *National Post* has quickly become the country's third-largest daily newspaper behind the *Toronto Star* and the *Globe*.<sup>30</sup> Yet in its first five months the paper lost \$32 million in operating and start up costs. Black said that he was prepared to spend \$102 million over five years to cover expected losses at the *Post*.<sup>31</sup> Much of the *Post*'s reporting abandons the North American tradition of neutrality in favour of the more British style of taking points of view.<sup>32</sup> Like Black's other papers in Canada and Britain the *Post* is known for its conservative opinions, aggressive political reporting and sustained examination of governmental financial dealings. Jean Chretien, the former Canadian liberal Prime Minister, had been subjected to continuous scrutiny and criticism since the launching of the paper.<sup>33</sup> Some branded the paper as anti-feminist, arguing that the *Post* has a bias against women, especially against the feminist movement.<sup>34</sup>

As mentioned, in November 2000 Black changed his plans regarding the *Post* and his involvement in the Canadian media in general. Hollinger sold the majority of its Canadian daily newspapers and 50% of *The Post* to media conglomerate CanWest Global for a sum that researchers estimate to be between \$3.2 and \$3.5 billion Canadian. Black used the occasion to take a few swipes at Prime Minister Jean Chretien, who blocked Black's bid to be elevated to the British House of Lords, precipitating Black's decision to renounce his Canadian citizenship and to

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<sup>27</sup> *Barlow/Winter* (op. cit. fn. 12), pp. 6–7.

<sup>28</sup> For discussion on countries that developed measures to confront the threat of media ownership concentration, see *Barlow/Winter* (op. cit. fn. 12), pp. 212–220. For deliberation on the British policies, see *Media Ownership, The Government's Proposals, Presented to Parliament by the Secretary of State for National Heritage by Command of Her Majesty* (May 1995), Cm. 2872.

<sup>29</sup> Many see Black's challenge to the *Globe and Mail* as very healthy. In his comments on this paper, Joe Magnet writes: "Here you've got somebody prepared to lose money in order to challenge editorial and market dominance. Isn't this a real war of ideas or of marketplaces rather?". Indeed, even *Globe* employees now admit that the arrival of the *Post* has sharpened their own focus. *Wilson-Smith* (op. cit. fn. 11).

<sup>30</sup> *Rob Ferguson*, "Paper war begins to heat up", *The Toronto Star* (27 January 1999), Business section; *Wilson-Smith* (op. cit. fn. 11); Canadian Broadcasting Corporation, *The National Show* (27 January 1999).

<sup>31</sup> *Townson* (op. cit. fn. 10).

<sup>32</sup> *Wilson-Smith* (op. cit. fn. 11).

<sup>33</sup> *David Osborne*, "The Commoner's Revenge", *The Independent* (London) (29 June 1999), p. 11.

<sup>34</sup> *Craig Babstock*, "Post comes under feminist fire", *Capitalnews* online (12 March 1999), front page. Available on <http://temagami.carleton.ca/jmc/cnews/12031999/fl.htm>.

exit the media market.<sup>35</sup> In January 2004 Black (who by now overcame the hurdles posed by his rivals and elevated to become a Lord) announced that he intended to sell the remainder of his media assets to Barclay brothers, a British conglomerate.<sup>36</sup> However, the deal failed as a result of a dispute with Hollinger International and an American court order which deemed that Black had no right to sell the papers.<sup>37</sup> I will reflect on this dispute in some more details later on.

There are genuine concerns regarding this phenomenon of media that are co-opted by a few organizations and families. These organizations represent limited interests, and access is denied by large sectors of the public. Generally speaking, concentration could harm media consumers by demanding higher prices and providing poorer services. Because the regions were dominated by one chain, there was a fear that lack of competition could produce inferior journalism. David Taras argued that papers became a bulletin board for cheap wire service copy as expenditures on local reporting are curtailed. Without the push of competition to force coverage of community events and the investigation of local abuses or breaking stories, papers can deteriorate. Taras concluded that concern for high profits replaces social responsibility.<sup>38</sup>

In the case of Conrad Black, it seemed that the drive for profits was not the sole motivator behind his conduct. Black also wanted to advance the conservative ideology and its set of values. Barbara Amiel, Conrad Black's wife who holds like-minded conservative views, was perhaps the most widely published columnist in the country, with a monthly column in *Macleans*' magazine, as well as a potential total of 59 columns in the Southam-Sterling-Hollinger chain, the 11-newspaper *Sun* chain, and the *Financial Post*.<sup>39</sup> Because Black espoused a very particular viewpoint, the plurality of opinions in his newspapers was reduced significantly.<sup>40</sup> Arch Mackenzie, a veteran journalist who has been active for many years in the Michener Award Committee on Investigative Reporting, argued that the editorial page of the Ottawa *Citizen* became right wing since Black bought Southam. He also mentioned that another proprietor named Black (no relation to Conrad), owner of some 60 weeklies in British Columbia, dictated that his editors not to write anything in

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<sup>35</sup> Jason Botchford, "Sale of Post 'painful'", The Toronto Sun (25 August 2001), p. 7.

<sup>36</sup> Richard Blackwell et al., "Black sells Hollinger, SEC could block deal", The Globe and Mail (19 January 2004), p. A1.

<sup>37</sup> "Conrad Black: Lager-heir to London lord", CBC News Online (19 January 2004); David Yelland, "You cannot win a war while lying hidden in the trenches", Times Online (6 February 2004); "The race for Conrad Black's media empire", BBC News (2 March 2004).

<sup>38</sup> Taras (op. cit. fn. 14), p. 15.

<sup>39</sup> Winter (op. cit. fn. 5), p. xviii.

<sup>40</sup> Interviews with Professor Enn Raudsepp, Department of Communication, Concordia University, Montreal (22 September 1998), and Professor Christopher Dornan, Director of School of Journalism and Communication, Carleton University (29 September 1998). See also Winter (op. cit. fn. 5); Barlow/Winter (op. cit. fn. 12).

favour of the Nishiga Treaty between the provincial government of BC and the Nishiga Indians, because he thought the agreements gave in to the Indians.<sup>41</sup>

In this regard, David Radler, president of the Canadian media giant, Hollinger Inc., part of the Conrad Black empire, said: “If editors disagree with us, they should disagree with us when they are no longer in our employ”.<sup>42</sup> Although Black claimed that no editors of his chain had ever retired because of interference, editors who disagreed with him had sought employment elsewhere. For instance, Joan Fraser of the Montreal *Gazette* and James Travers and Peter Calamai of the Ottawa *Citizen* resigned in 1996 over differences with the direction taken under Black’s ownership.<sup>43</sup>

The same phenomenon repeated itself when CanWest became the owner of *The Citizen*. Russell Mills, who joined the *Ottawa Citizen* in 1971 and became publisher in 1986, was sacked for approving an editorial calling for the ouster of Prime Minister Jean Chretien. CanWest’s owners – chairman Izzy Asper and his son, David, president and chief executive officer of the media giant – were known to be personal friends of Chretien and were significant donors to the Liberal Party. Columnists at CanWest newspapers have been silenced for taking aim at the Liberal Party; news pieces delving too deeply into the Chretien government have reportedly been censored; and journalists who have spoken against CanWest policies have been threatened with dismissal, according to newspaper unions and journalist groups. Stephen Kimber, a long time columnist for the *Halifax Daily News* resigned “because a number of columns of mine were changed to match the owner’s point of view”.<sup>44</sup> Stephanie Domet, also a *Daily News* columnist, wrote a piece in support of Kimber, then quit when it was rejected.<sup>45</sup> Peter Worthington had his column terminated in the *Windsor Star* after he was critical of the Aspers.<sup>46</sup> Even more controversially, newspapers in the mammoth chain have been put on notice that local editorials cannot contradict CanWest positions on “big” international and national issues, such as the Israeli-Palestinian conflict or Canada’s military spending.<sup>47</sup> Asper ordered all of its daily newspapers to carry the same national editorials as of December 2001 and prohibited editorials or letters to the editors that contradicted an approved editorial on Israeli-Palestinian relations.<sup>48</sup> Asper retorted

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<sup>41</sup> Interview with Mr. Arch Mackenzie, Ottawa (24 September 1998).

<sup>42</sup> *Barlow/Winter* (op. cit. fn. 12), p. 11.

<sup>43</sup> *Winter* (op. cit. fn. 5), p. xiii.

<sup>44</sup> Aaron J. Moore, “Ownership: A Chill in Canada”, *Columbia J. Rev.* (March/April 2002), p. 11.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> *Nickerson* (op. cit. fn. 20), p. A8. For further discussion, see *Lynne Van Luven*, “Can-West Undermines Journalism Students’ Faith in Future”, *Textual Studies in Canada*, Issue 16 (Fall 2002); *Robert Rabinovitch*, “Do we need CBC TV?: More necessary than ever”, *The Gazette* (Montreal) (2 March 2002), p. B5.

<sup>48</sup> *Moore* (op. cit. fn. 44), at 11. See also *Leanza/Feld* (op. cit. fn. 21).

that independent views can still be printed by local columnists. Even pundits writing anonymously as the official voices of the newspapers may pronounce as they please – as long as they do not contradict the positions taken by head office on core issues.<sup>49</sup>

Robert Cribb, president of the Canadian Association of Journalists (CAJ), voiced his disagreement to Asper's editorial policy, saying: "The importance of editorial independence to the credibility of journalism has always been universally accepted in the newsrooms of the nation". He added, quite rightly, that "weakening that independence compromises the work journalists do and the resulting public policy debates that have a direct impact on our lives".<sup>50</sup> In addition to the CAJ, the Quebec Federation of Professional Journalists (FPJQ), the Campaign for Press and Broadcasting Freedom, the Newspaper Guild of Canada, the international writers' freedom of expression group PEN Canada, and the U.S. National Conference of Editorial Writers all have condemned CanWest's editorial policy and the chill it causes in newsrooms by forcing journalists to self-censor. In January 2002, the CAJ and FPJQ jointly wrote to members of Parliament, requesting a federal inquiry into the concentration of media ownership in Canada, citing "repeated instances of censorship in CanWest-owned newspapers across the country".<sup>51</sup> They also voiced concern that CanWest has threatened to dismiss journalists who have spoken up against these abuses.

Seventy seven journalists of the prestigious *Montreal Gazette* also joined in protest against the Aspers' one rule, one voice policy. They signed an open letter protesting against the attempt to centralize opinion "to serve the corporate interests of CanWest".<sup>52</sup> They warned against vacating the power of the editorial boards of Southam newspapers "and thereby reduce the diversity of opinions and the breadth of debate".<sup>53</sup> The threat to free journalism seemed real and concrete.

Another major consequence of conglomerates is the distortion of markets by cross-subsidization. Enterprises that yield large cash flows in relation to the capital employed, such as newspapers, are used to support or promote weaker ventures, saving those from full exposure to the tests of the market. Consequently, public information is impoverished. Its quality is vital to democracy, but the effect of the financial structure is undervaluing the importance of providing information. Rev-

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<sup>49</sup> *Mike Byfield*, "Banana Republic versus Socialist Republic", Report/News magazine (BC Edition), Vol. 29, Issue 15 (22 July 2002). In a full-page ad that was rejected by CanWest Global (but ran in other papers such as the *Globe and Mail* and the *Winnipeg Free Press*), 40 former Southam publishers and editors invited Canadians to join them in a campaign to "save Canada's rich diversity of voices". See *Doug Smith*, "The War of the Windbags", *Canadian Dimension*, Vol. 36, Issue 4 (July / August 2002).

<sup>50</sup> *Saleem Khan*, "'Unapologetically Pro-Israel' CanWest Imposes National Editorials on Local Papers", *Washington Report on Middle East Affairs*, Vol. 21, Issue 3 (April 2002).

<sup>51</sup> *Ibid.*

<sup>52</sup> *Moore* (op. cit. fn. 44), p. 11.

<sup>53</sup> *Ibid.*

venues generated by the media, which could be used within them, are siphoned off as monopoly profits to be invested in other activities.<sup>54</sup>

Surprisingly, although Hollinger accounted for more than forty percent of newspaper circulation, and at present CanWest controls much of the media market, no concrete measures were taken to change the situation. Over the last few decades, Canadians have debated what checks should be put on the power of media monopolies. Two Royal Commissions – the 1970 Davey Commission and the 1980 Kent Commission – have looked into the issue. The Commissions asked questions such as: How to reconcile the media's tendency towards monopoly with society's need for diversity? Is there a connection between chain ownership and declining news coverage? How much influence do owners exert over programming? Does competition make a difference to the quality of coverage? And, should the government regulate media ownership? These questions are even more relevant today than when they were first asked.<sup>55</sup>

It is relevant to mention the circumstances that prompted the establishment of the Kent Commission. On 27 August 1980 Southam shut down the *Winnipeg Tribune* and Thomson shut down its *Ottawa Journal*, leaving each company with a monopoly in one of those two cities. The same day, Thomson sold the *Vancouver Sun* and its 30 percent interest in the *Montreal Gazette* to Southam, giving Southam two other monopoly markets. A few days later, Thomson closed down the FP News Service. The Liberal government did not remain indifferent to this, setting up the Kent Royal Commission on Newspapers. Through the Commission the government subjected the chains to public examination of their operations. The affair ended with a warning to the Thomson chain that the government would not allow it to increase its already substantial market share of newspaper holdings in Canada.<sup>56</sup>

Both Davey and Kent commissions issued recommendations to change the system of ownership. In a direct attack on conglomerate ownership, the Kent Commission proposed a number of measures to block both further newspaper concentration and further cross-media ownership. Such recommendations included prohibiting ownership of a national newspaper if a company owned other newspapers, prohibiting extreme geographic concentration (no monopolies in a province,

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<sup>54</sup> Tom Kent, "The Time and Significance of the Kent Commission", in: Helen Holmes/ David Taras, eds.: *Media, Power and Policy in Canada*, p. 31.

<sup>55</sup> Special Senate Committee on Mass Media, *The Uncertain Mirror*, Vol. I (Davey Committee); Royal Commission on Newspapers, Hull, Quebec: Ministry of Supply and Services, 1981, (Kent Commission); *Walter Tarnopolsky/Colin Wright/Gerald A. Beaudoin/Edith Cody-Rice*, *Newspapers and the Law*, Canadian Royal Commission on Newspapers, Vol. 3 (1981), see especially pp. 117–123, "conspiracy, monopoly, and merger", on the fear of lessened competition and monopoly.

<sup>56</sup> *Lorimer/McNulty* (op. cit. fn. 14), p. 83; *Arthur Siegel*, *Politics and the Media in Canada*, Toronto: McGraw-Hill Ryerson, 1983, p. 135; *Tarnopolsky/Wright/Beaudoin/Cody-Rice* (op. cit. fn. 55), see especially pp. 117–123, "conspiracy, monopoly, and merger".

for example), and, finally, the two largest chains should be made to divest some of their dailies and other media holdings.<sup>57</sup> Nothing was done in practice. The Canadian Daily Newspaper Publishers Association (CDNPA) fought back with notable success. They dismissed the Kent's recommendations as "Idiot's delight", "monstrous", "vindictive", "unacceptable and dangerous". Innumerable references were made to "Big Brother" and to the end of press freedom. Personal attacks were leveled at Tom Kent. He was said to be "authoritarian" and a dupe of the Liberal party. Often, the Commission was simply treated as a joke. In the end, the government decided Kent's recommendations were unsaleable to the Canadian public, and the report was shelved.<sup>58</sup>

Why were no substantive measures taken to prevent this excessive control over the media by a small number of conglomerates? One hypothesis is that the proprietors have strong relationships with political decision-makers. This is the prevailing explanation for the similar phenomenon that is taking place in England. Rupert Murdoch was careful to maintain a close relationship with Prime Minister Margaret Thatcher; when he felt that her term was coming to an end, Murdoch then created ties to the Opposition Leader Tony Blair, and called on the readers of his flag paper, *The Sun*, to shift their alliance to Labour after many years of having supporting the Tories.<sup>59</sup> However, this explanation, apparently, is incomplete for Canada. The Liberal Party that forms the national government espouses views that are quite remote from those of the right-wing Conrad Black, and as mentioned above, Prime Minister Chretien had been the subject of continuous attacks by the Hollinger papers. Yet nothing was done to limit Black's control over the media.

Granted that politicians are reluctant to deal with the media. This is true for probably all democracies, and Canada is no exception. But this could not provide full explanation. Another reason could be that there is no real sense of urgency. Because Canada is open to diverse channels of communication, Black was recognized as the most influential player on the scene but other channels of communication were (and are) available to the public. After Black had sold many of his assets to CanWest managers, whose political sympathies to the ruling liberal party are unquestionable, Asper decided to expand from broadcasting into newspapers and consequently bought a number of newspapers and internet assets upon the condition that Hollinger not compete in the same markets those papers oper-

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<sup>57</sup> *Richard Keshan et al.*, "'I told you so': Newspaper Ownership in Canada and the Kent Commission Twenty Years Later", *American Review of Canadian Studies*, Vol. 30, Issue 3 (Autumn 2000).

<sup>58</sup> *Ibid.*

<sup>59</sup> In 1995, Blair flew especially to Queensland, Australia to meet with Murdoch. It is suspected that they made a deal at that meeting for the *Sun* to shift its alliance to Labor. In return, Blair would not change the existing cross-ownership laws. Interview with Mr. Godfrey Hodgson, Director, The Reuters Foundation Programme for Journalists, Oxford (14 October 1997).

ated in.<sup>60</sup> At present CanWest is the leading media business in the country and as was the case with Black its power is believed to be limited. The flood of television, radio, video, magazines, and internet, as well as access in most cases to national newspapers such as *The Globe and Mail* and *The National Post*, and to international papers, ensure a variety of perspectives and mitigate the calls for alarm. Having said that, there is more concentration in the newspaper industry in Canada than in other Western nations with similar and even smaller populations and newspaper industries. Concurring with Robert Picard, I think that unless Canada acts to respond to this reality, it will be extremely difficult to undo damage caused by concentration.<sup>61</sup>

## 2. The broadcasting industry

Canada has more broadcasting stations per capita than any other country: in 1995, one station for every 5000 people. A dozen years earlier, the figure was one station for every 8000. Virtually the entire population has access to both radio and television, with plenty of choice in each medium for the most part.<sup>62</sup>

As in the press, we find increasing concentration of ownership in the broadcasting industry. The extent of ownership is so broad that Arthur Siegel argued that it made the equivalent in the newspaper industry appear almost benign.<sup>63</sup> Canada's broadcasting regulator, the CRTC, whose mandate is to look after the national and public interests, had expressed its concerns but never declined to grant its approval and, in effect, allowed the situation to continue. The CRTC encouraged consolidation as a response to competition anticipated from foreign companies and the telephone industry.<sup>64</sup>

In the public broadcasting sector, the stations are publicly owned, operated in the public interest, and financed largely by tax monies.<sup>65</sup> Part of the income of the nationally owned CBC/Radio Canada is derived from television advertising (in 1995, 22 percent). There are joint-interest operations between the CBC and privately owned affiliate stations that enable the national network to provide programming in places where it has no station. The smaller private affiliates benefit

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<sup>60</sup> *Abigail Rayner*, "Ambitious CanWest keeps it in the family", *The Times* (London) (14 February 2004), p. 54. See also *Tyler Hamilton*, "The multimedia race is on . . . line", *The Toronto Star* (2 August 2000).

<sup>61</sup> *Picard* (op. cit. fn. 8), p. 23. For further discussion, see *Dwayne Winseck*, *Reconvergence: A Political Economy of Telecommunications in Canada*, Cresskill, New Jersey: Hampton Press, 1998, pp. 66–71; *Taras* (op. cit. fn. 10), pp. 69–83, 91–92.

<sup>62</sup> *Siegel* (op. cit. fn. 12), p. 154. See also *Taras* (op. cit. fn. 10), pp. 93–104.

<sup>63</sup> *Siegel* (op. cit. fn. 12), p. 153.

<sup>64</sup> See in this regards the recommendations of *Winseck* (op. cit. fn. 61), pp. 332–333.

<sup>65</sup> For historical analysis of how the public broadcasting evolved, see *Marc Raboy*, *Missed Opportunities*, Montreal: McGill-Queen's University Press, 1990.

from the arrangement in that they have access to domestic programming that they could not afford to produce.<sup>66</sup>

In 1992, the CBC accounted for 40 percent of the total spent on radio and television in Canada, 25 percent including subscription revenues flowing through the cable industry. It received nearly \$1.1 billion from Parliament in 1994–1995, and anticipated another \$300 million in television advertising revenues. This represented one-third of all federal spending on heritage and cultural programmes and made the CBC the largest single player in the system.<sup>67</sup>

The private sector includes CTV<sup>68</sup> and Global Television,<sup>69</sup> both English-language; TVA and Quatre Saisons, both French-language; privately owned affiliates of the CBC; and a number of independent stations. Cable television is financed by subscriptions. It is linked with pay-TV and specialty channels. Rogers is the major player in this sphere.<sup>70</sup> Its revenues led all Canadian broadcasting and cable companies for 1994 at \$1.5 billion, in front of Groupe Videotron (\$646,340), and WIC Western International Communications (\$393,028).<sup>71</sup>

Indeed, in the early 1990s corporate concentration increased dramatically in the cable industry. With the blessing of the CRTC – which encouraged consolidation as a response to competition anticipated from foreign companies and the telephone industry<sup>72</sup> – Rogers Communications succeeded in a \$3.1 billion takeover of Maclean-Hunter, a diversified communications corporation with holdings in publishing (the *Sun* newspaper chain, *Maclean's* magazine), cable, and broadcasting. By 1994, Rogers controlled cable franchises covering 32 percent of all subscribers and 43 percent of English language subscribers.<sup>73</sup>

In 1995–1996, Quebec cable giant Videotron proposed an exchange of its interests in private broadcaster Tele-Metropole for the cable holdings of the Montreal-based CFCF, which also owns the third French-language network Television Quatre Saisons. Cogeco, another major Quebec broadcaster and cable operator,<sup>74</sup> slowed down this deal in the courts, but was ultimately unsuccessful.<sup>75</sup>

<sup>66</sup> *Siegel* (op. cit. fn. 12), p. 156.

<sup>67</sup> *Marc Raboy*, “Public Television”, in: Michael Dorland, ed.: *The Cultural Industries in Canada*, Toronto: James Lorimer & Co., 1996, p. 192.

<sup>68</sup> See ownership chart nos. 4, 4A of CTV, Industry Analysis Division, CRTC.

<sup>69</sup> See ownership chart no. 14 of CanWest Global, Industry Analysis Division, CRTC (updated 17 November 1997).

<sup>70</sup> *Siegel* (op. cit. fn. 12), pp. 159, 255. See ownership charts nos. 27, 27A of *Rogers*, Industry Analysis Division, CRTC (updated 22 May 1997).

<sup>71</sup> *Liss Jeffrey*, “Private Television and Cable”, in: Michael Dorland, ed.: *The Cultural Industries in Canada*, p. 234. See also ownership charts nos. 26, 26A, 26B of Videotron, and ownership charts nos. 40, 40A, 40B of WIC, Industry Analysis Division, CRTC.

<sup>72</sup> See in this regard the recommendations of *Winseck* (op. cit. fn. 61), pp. 332–333.

<sup>73</sup> *Jeffrey* (op. cit. fn. 71), pp. 233–234.

<sup>74</sup> See ownership charts nos. 43, 43A, 43B of COGECO, Industry Analysis Division, CRTC.

As for radio, the public industry consists largely of the CBC. There are four national CBC networks – one AM and one FM network in each of French and English – comprising 64 originating stations, 29 AM and 35 FM. In the private sector, there are 469 originating stations, 303 AM and 166 FM. There is also a small non-profit sector made up of numerous community and campus radio stations.<sup>76</sup>

The private stations make up by far the most important group in the radio industry: 70 percent of radio stations and 83 percent of audience share. While no recent data are available on the level of concentration or cross-ownership, private radio appears to be fragmented and composed of small businesses that often operate in small communities: among the 155 companies that operated radio stations in 1992, 66 percent operated a single or two stations, only ten companies owned ten or more stations, and no single broadcast group owned more than five percent of all radio stations in the country.<sup>77</sup>

According to the Senate Committee on Transportation and Communications' interim report, in Canada outside Quebec, CTV – conventional and specialty services – has 19.2 percent of viewers, CanWest Media (owner of Global Television Network which includes 16 television stations across Canada) has 14.7 percent, CHUM has 7.6 percent, and CBC/Radio-Canada has 7.2 percent of viewers.<sup>78</sup>

To conclude: The CRTC's approach to media ownership is highly permissive. The policy supports Canadian companies in fear of external domination. This approach is bolstered by its reliance on the weak tests of concentration included in competition law and the *Mergers Enforcement Guidelines*. The latter sets a high benchmark figure of 35 percent market control by one firm to allow mergers and acquisitions falling beneath this threshold. This benchmark figure is not only high but it also suffers from lack of clarity. Is the market defined by sector, technology, or geography? Furthermore, the figure fails to distinguish between network providers and content providers. Control of 35 percent of all online services, electronic newspapers and broadcasting by a single firm means a very permissive, some would argue unacceptable, policy.<sup>79</sup> Finally, competition law and guidelines for mergers and acquisitions omit communication policy's emphasis on pluralism, diversity, universal service, and other goals that promote democratic communication.<sup>80</sup>

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<sup>75</sup> Jeffrey (op. cit. fn. 71), p. 234.

<sup>76</sup> Siegel (op. cit. fn. 12), p. 160.

<sup>77</sup> Michel Filion, "Radio", in: Michael Dorland, ed.: *The Cultural Industries in Canada*, p. 125 – 126.

<sup>78</sup> Fraser (op. cit. fn. 25), p. A18.

<sup>79</sup> Winseck (op. cit. fn. 61), p. 25.

<sup>80</sup> Ibid.

In Israel the problem is similarly complex as the major players in the written press also control the electronic press. Like in Canada the problem is a combination of excessive ownership and cross ownership.

### III. The Israeli Market

#### 1. The press industry

The oldest newspapers are *Ha'aretz* and *Yedioth Ahronoth*. Both began publishing before Israel became a state. *Ha'aretz* was established after World War I in 1918, and in 1937 it was bought by the Schocken family. The Moses family established *Yedioth* in 1939. In 1948, *Yedioth* went through a severe crisis when its editor and some other senior staff resigned to establish *Ma'ariv*.<sup>81</sup>

The private papers offered alternatives to the party newspapers and magazines. Over the years there have been two simultaneous trends: while the popularity of the party papers was decreasing, the popularity of the private papers was growing. The private press accommodated itself to the changes taking place in society, and better addressed the various societal interests. These supplementary trends were especially noticeable during the 1960s and 1970s. There were some twenty party newspapers until the mid-1990s. The last newspaper that went bankrupt was *Davar*, traditionally associated with the Labour movement. *Davar* tried to change and to raise money from various sources. It even tried to change its image by changing its name to *Davar Rishon*. This “face lifting”, however, proved unsuccessful, and in 1996 it had to close its gates.<sup>82</sup> The only party papers that exist still are those associated with the Communist Party, *Al Itichad* (in Arabic), and with the religious parties: *Ha'zofe* of the ‘Mafdal’ (National Religious Party), and *Ha'modia* and *Yated Ne'emana* of the Ultra-Orthodox parties, ‘Agudat Israel’ and ‘Shas’. They exist because they address an urgent need of their audiences. The Israeli Arabs feel estranged to the basic values of the Jewish nation, while the religious sects feel alienated from the secular press.<sup>83</sup> The secular press covers items such as rape, murder, violence, fashion, entertainment, and sports, considered by the religious segments as either obscene or irrelevant to their life.

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<sup>81</sup> Dan Caspi/Yehiel Limor, *The Mediators*, Tel Aviv: Am Oved, 1992, pp. 54–57 (Hebrew). In his *Mass Media and Politics*, Tel Aviv: The Open University, 1997, Caspi reports that *Ha'aretz* has been in the hands of the Schocken family since 1927 (p. 19, Hebrew). See also Sam Lehman-Wilzig, “The Pendulum, Slope and Media Monarchy: Yedioth Ahronoth v. Ma'ariv – Past, Present, and Future”, *Kesher*, Vol. 25 (May 1999, Hebrew).

<sup>82</sup> This was a personal blow as I used to write columns for *Davar Rishon*. I lost a secured public forum to voice my views on current affairs.

<sup>83</sup> See Raphael Cohen-Almagor/Itzhak Yanovitzky, “Perceptions of Media Coverage among the Israeli-Jewish Public: A Reflection of Existing Social Cleavages?” in: R. Cohen-Almagor, *Speech, Media and Ethics*, Houndmills/New York: Palgrave, 2001, Appendix.

Their own press provides information about politics, business, and religious matters. This filtered coverage of news is essential for maintaining their way of life side by side with the secular life.

In 1983, a business paper named *Globes* was established. Like the London *Financial Times* it is printed in pink-orange colours. It was designed as a financial paper but increasingly expands its coverage beyond economics and financial matters. Still, it is mainly read by businessmen and stock brokers and does not provide real competition to *Yedioth* and *Ma'ariv*. The *Globes* newspaper is the flagship of the *Globes* media corporation that also publishes some periodicals and has control over a cable television operations company, Gvanim.

In 1984, the Schocken family founded a provocative tabloid named *Hadashot*. Its aim was to compete with the two evening papers, *Yedioth* and *Ma'ariv*, and its design imitated the *New York Daily News* and the *British Sun*. Because of its appearance, *Yedioth* and *Ma'ariv* became morning papers and were forced to make some editorial changes. However, *Hadashot* did not succeed to establish itself in the market. The Schocken family suffered tremendous losses and in 1993, after less than ten years of operation, the paper was declared bankrupt.

In 1988, the British media tycoon Robert Maxwell entered the scene. He initially bought about a quarter of the shares of *Ma'ariv* and by 1991 he possessed 86 percent of the shares. In 1989, the Canadian owned Hollinger network bought the English speaking newspaper, *The Jerusalem Post* for \$20 million. In 2000, following Hollinger's mega sale of 350 North American titles to CanWest Global Communications, there were talks that Conrad Black will put the *Jerusalem Post* up for auction.<sup>84</sup> However, Lord Black retained ownership over the *Post*. In November 2003 he had to step down from his role as chief executive of media publisher Hollinger International after an internal investigation found that fees had been improperly paid to Black and other senior executives.<sup>85</sup> The BBC's North America business correspondent Steve Evans said Hollinger will claim in a Chicago court that Black sold newspapers he owned to other parts of his empire, essentially to himself, and then took exorbitant multi-million dollar management and other fees for the deals. The firm, which also owns the *Chicago Sun-Times* and the London *Spectator*, is selling key titles such as the London *Daily Telegraph*. Lord Black, who remains the company's controlling shareholder, has denied any wrongdoing and has counter sued.<sup>86</sup> Hollinger remains the owner of the *Jerusalem Post* and will sell it for the right price. CanWest is mentioned as one potential buyer of the shaky newspaper that is losing money and its circulation went down from 36,000

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<sup>84</sup> "Jerusalem Post for sale", *Printing World* (18 September 2000), p. 20.

<sup>85</sup> "Jerusalem Post Owners Resign, Face Corruption Charges", *Israel News Agency* (18 November 2003), *Associated Press*. <http://www.freerepublic.com/focus/f-news/1023903/posts>; [http://www.somethingjewish.co.uk/articles/600\\_jerusalem\\_post\\_for\\_s.htm](http://www.somethingjewish.co.uk/articles/600_jerusalem_post_for_s.htm).

<sup>86</sup> "Hollinger increases damages claim", *BBC News* (8 May 2004), <http://news.bbc.co.uk/1/hi/business/3695689.stm>.

copies in 2001 to 25,000 copies in 2004.<sup>87</sup> Haim Saban, an American-Israeli media billionaire who is bidding for all of Hollinger's papers with the German media group Axel Springer AG, also inquired separately about *The Post*.<sup>88</sup>

Another international media baron, Rupert Murdoch, supported the establishment of a local newspaper in Tel Aviv that did not exist for long. An Israeli-American businessman, Aryeh Genger, bought the weekly *Ha'olam Haze*. Foreign corporations and individual investors established joint projects with Israeli corporations and competed in Cable television franchises. In three years there were fundamental changes in the Israeli mass media market. David Radler, President of Hollinger, explained in a lecture in April 1990 what brought Hollinger and other foreign companies to invest in Israel. He said that the Israeli standard of living was comparable to that of Spain, but its economic potential due to the high level of education was comparable to that of North America. Furthermore, Israel was an open state whose population were on the rise due to massive immigration. The combination was very appealing to foreign investors who were seeking new markets.<sup>89</sup>

In 1991, Robert Maxwell died in controversial circumstances. After his death, the Nimrodi family acquired control of *Ma'ariv* and became the second most influential factor in the market. In fact, at present four families and their companies dominate the entire mass media: Moses, Fishman, Nimrodi, and Schocken. The Moses and Fishman families control *Yedioth Ahronoth* that has the largest circulation in the country: 390,000 daily and 660,000 on Fridays (weekend edition. There are no newspapers on Shabbat). *Yedioth* has circulation of more than 40 percent of the press market on weekdays and 70 percent of the press circulation on weekends. This circulation exceeds the circulation of all the Hebrew dailies combined, and is more than double the circulation of its main competitor *Ma'ariv*. An impressive achievement that makes *Yedioth* a monopoly in its field.<sup>90</sup> Not many newspapers in the western world manage such an achievement. In addition, the Moses family owns 17 local papers, six periodicals, a Russian-speaking daily, a publishing house, a music company, and is a partner in the commercial channel (Channel 2) and 47.5 per cent of the cable television operations (Arutzei Zahav).

The Nimrodi family owns *Ma'ariv*, the second largest daily with a circulation of 250,000 on weekdays (more than 20 percent of the press market). The family also has one local paper, three periodicals, a music company, a publishing house, shares

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<sup>87</sup> *Joshua Mitnik*, "What is there, in the 'Jerusalem Post'", *Haaretz* (19 May 2004).

<sup>88</sup> *Joshua Mitnick*, "Canadian group is said to seek small but special Israeli daily", *New York Times* (17 May 2004). See also "The race for Conrad Black's media empire", *BBC News* (2 March 2004).

<sup>89</sup> *Caspi/Limor* (op. cit. fn. 81), pp. 26–27 (Hebrew); *Yehiel Limor*, "'The Little Prince' and 'the Big Brother', or: The Media Industry in Israel in an Era of Change", in: Dan Caspi, ed.: *Communication and Democracy in Israel*, Tel Aviv: The Van Leer Jerusalem Institute and Hakibbutz Hammeuchad, 1997, p. 39 (Hebrew).

<sup>90</sup> *Dan Caspi*, *Mass Media and Politics*, p. 20.

in the franchise of the commercial television, and 15 per cent of the cable television operations (Matav). In turn, the Schocken family owns the influential liberal-oriented *Ha'aretz* that has a weekday circulation of 73,000 and also have a publishing house, an on-line information company, partnership with the international *Herald Tribune* and control over fourteen local newspapers and some local radio stations. Together, these three press barons control 84 percent of the market.<sup>91</sup>

## 2. The broadcasting industry

Israel underwent a media revolution during the late 1980s and early 1990s. Until then the electronic media were state owned. The Broadcasting Authority had a monopoly on all radio stations and on the single television station. In effect, the state was the sole producer of all the electronic news. In November 1993, the first broadcast that was financed by commercials was started. This commercial broadcasting is subject to public monitoring of the Second Television and Radio Authority. This Authority selects through franchise the broadcasting corporations.<sup>92</sup> In addition to Channel 2, the Israeli public was connected in the early 1990s to extensive cable television systems through five major cable television operations companies, each provides services to a different geographic area. More than seventy percent of the public is connected to cable.<sup>93</sup> Within five years, most of the Israeli households were transformed from having access to one major TV station, Channel One, controlled by the Israeli government, to more than fifty cable channels. This was a drastic transformation that reshaped the mass media in Israel.

During the deliberations about the Second Television and Radio Authority Law there was a debate about the legitimacy of cross ownership. The publishers of the written press argued that because commercial budgets would be referred to television, their newspapers would suffer great losses. To compensate them, they felt they should have a share in the new medium. Furthermore, they had the experience and expertise to be involved in the project. Critics spoke of the unhealthy situation when one or more persons control the most popular information sources. Such a situation could corrupt the person/s who hold so much power, deciding the agenda and the interpretation of public concerns.<sup>94</sup>

<sup>91</sup> Ibid., p. 24; *Dan Caspi/Yehiel Limor*, "Introduction", in: Caspi/Limor, eds.: *Mass Media in Israel*, Tel Aviv: The Open University, 1998, pp. 20–21 (Hebrew); *Yehiel Limor*, "Media Barons in Israel", *The Journalists Yearbook 1998*, p. 99 (Hebrew); *T. Altshuller-Shwartz*, *Concentrated Ownership in the Printed Newspaper Market* (unpublished thesis submitted for the degree Doctor of Law), Jerusalem: The Hebrew University, 2002 (Hebrew).

<sup>92</sup> Chapter C, Second Television and Radio Authority Law (1990), in: *Ethics in Television and Radio Broadcasting*, Jerusalem: The Second Television and Radio Authority, 1997, pp. 26–29 (Hebrew).

<sup>93</sup> *Yaron Katz*, "The Development of Cable Television in Israel and Its Connection to the Social and Political System", *Patuach:- Forum for Culture and Society* (March 1996), p. 87 (Hebrew).

The Second Authority was split among three production networks: Keshet, Reshet (*Yedioth* has 24 percent of the holdings) and Telad (*Ma'ariv* has 18 percent of the holdings)<sup>95</sup> in a way that gives two of the networks control on two different days of the week, and the third controls the content of three days. Through this arrangement it was hoped that a voice would be given to various interests, and none of the networks would decide the agenda alone. A joint News Corporation was established that is in charge of the news reports throughout the seven days of the week. Some of the major national and international (Coca-Cola being one of them) economic corporations and banks have shares in the three production companies. The Law prescribes procedures for the transfer of ten percent or more of the shares from one share-holder to another without the consent of the Second Television and Radio Authority Council. It also restricts ownership to a maximum ten percent of a single franchise. The publishers opened an extensive lobby to change the situation and succeeded to increase the share to 24 percent. Then they tried to raise it again, this time to 49 percent, but this second attempt has proved unsuccessful thus far. During the time of this lobbying, when the publishers of *Yedioth* and *Ma'ariv* were active in the Knesset trying to change the law to their advantage, both newspapers did not discuss the issue and the criticism voiced against their initiative. Consequently, the majority of the public was totally unaware of the debate and its importance. It needed a prime time report of the issue by Channel 1, the public channel, to provoke a debate.<sup>96</sup>

There is room for concern when we observe the accumulative power of the *Yedioth* megachain (in Israeli terms). *Yedioth* could exploit its power to over-emphasize a certain issue or to hide another. It could take advantage of its resources to advance a specific matter and to silence another, hindering the public right to know. Moreover, the existing situation connects newsagents and economic corporations. Could the newspapers criticize their partners when such criticisms might hinder their own economic interests? To what extent could the written press publish criticisms of the commercial television of which they are part? And *vice versa*, could the television openly criticize the press? Cross ownership serves the interests of the three major families, but it directly negates the public interest.

In purely economic terms, by ensuring a large number of competitors within the media market, competition is promoted which, in turn, leads to a more efficient service, to a quality service, to better reporting, and grants the consumer more effective choice. Competition and choice enhance the market and make it develop more rapidly. Conversely, lack of competition leads to stagnation. If large chunks of the market are secured, why should a media baron invest more resources in

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<sup>94</sup> *Moshe Negbi*, *Freedom of the Press in Israel – the Legal Aspect*, Jerusalem: The Jerusalem Institute for Israel Studies, 1995, p. 177 (Hebrew).

<sup>95</sup> *Davida Lahman-Meser*, “The New Map of the Media: Structure and Ownership, Challenges and Risks”, in: Caspi/Limor, eds.: *Mass Media in Israel*, p. 185.

<sup>96</sup> *Negbi* (op. cit. fn. 94), p. 179.

providing a better service and quality reports? Indeed, in the United States an independent study from the Pew Foundation Project on Excellence in Journalism (PEJ) found that stations owned by small companies (three stations or less) were more than twice as likely than the largest owners to receive the PEJ's highest news quality score.<sup>97</sup> Public policy considerations require some degree of intervention by a regulator in order to encourage a variety of voices and views.<sup>98</sup>

Perhaps in order to restrain the influence of Channel Two, during 2001 the Second Radio and Television Authority (SRATA) added and granted concession for an additional television channel of similar framework and format. At the end of January 2002, the new commercial channel, Channel 10, came on air.<sup>99</sup> A coalition of politicians, businessmen and broadcasting industrialists was established to persuade that an additional commercial channel would gratify its current needs. They spoke of the obligation to encourage competition between the channels and communication pluralism, arguing that the competition is beneficial to the viewers and even more so to the advertisers, and that the competition will lower the rates of television commercials.<sup>100</sup>

Because this article is published in Germany, I felt obliged to provide some reflections on German media ownership. The situation in Germany is in some ways comparable to that in Canada, in others to that in Israel. However, there are significant differences as well. Since the bankruptcy of Leo Kirch's empire, Kirch-gruppe, in 2002, there is no family left in the German media market that solely owns a powerful, influential media chain. Like in Canada and Israel, the concern lies with the fact that there is very little legal limitation on cross ownership.

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<sup>97</sup> *Leanza/Feld* (op. cit. fn. 21).

<sup>98</sup> See *Hazel Fleming*, "Media Ownership: In the Public Interest? The Broadcasting Act 1996", *Modern Law Review*, Vol. 60 (May 1997), pp. 378–387. For further discussion on competition law see, *Eric Barendt*, *Broadcasting Law*, Oxford: Clarendon Press, 1995, esp. pp. 121–143. For discussion on various forms of regulation, see *David Goldberg*, *Tony Prosser/Stefaan Verhulst*, eds.: *Regulating the Changing Media*, Oxford: Clarendon Press, 1998.

<sup>99</sup> Channel Ten is also subordinated to the SRATA. However, unlike Channel Two, Channel Ten broadcasts are in the hands of one franchiser and not three. At first, the Second Authority wanted to divide the air time between the two franchisers. However, when "Eden Broadcasts" was late in realizing its concession, the Second Authority agreed to "Israel Ten's" request to broadcast in a format of seven days a week, at first for a limited period of time and later without any limitation (see the Second Radio and Television Authority Report, Jerusalem, 2001, p. 94, Hebrew).

<sup>100</sup> *Dan Caspi*, "On Media and Politics: Between Enlightened Authority and Social Responsibility", in: R. Cohen-Almagor, ed.: *Israeli Democracy at the Crossroads*, London: Routledge, forthcoming. For further deliberation, see *Amotz Asa-El*, "For a Jewish broadcasting corporation", *The Jerusalem Post* (4 April 2003), p. 8B.

## IV. The German Market<sup>101</sup>

### 1. The press industry

The German press market was privately organised after WWII. Until 1949 a publisher needed to be licensed by the Allies. After 1954, a period of massive concentration took place. The number of newspapers shrunk significantly from 225 in 1954 to 121 in 1976. The number of publishing houses shrunk from 624 in 1954 to 403 in 1976.<sup>102</sup>

As in Canada, there are many regions in Germany that are covered by only one local/regional newspaper. In 1954, 8.5 percent of the population lived in regions that had only one regional newspaper. In 1976, one third of the Germans lived in such regions, and in 1999, more than half of all Germans had no choice but the regional newspaper.<sup>103</sup>

The German daily press industry is dominated by five companies: Axel Springer-Verlag AG, Verlagsgruppe WAZ, Verlagsgruppe Stuttgarter Zeitung, Verlagsgruppe DuMont-Schauberg and Ippen-Gruppe. In 2002 they shared 42.3 % of the market.<sup>104</sup> The ten biggest companies control 56.3 % of the market. The most influential company is Springer (23.4 %), thanks to its popular tabloid *Bild*, Europe's biggest newspaper (3.97 million copies are sold daily).<sup>105</sup>

The German anti-trust-code provides that a merger of newspapers is to be prohibited by the federal supervision of cartels ("Bundeskartellamt"), when one of the involved parties has net sales of more than 25 million Euros and the merger leads to market domination. A recent example for such a prohibition concerned the planned purchase of the *Berliner Zeitung* by the Holtzbrinck Company in 2002. The purchase was denied by the Bundeskartellamt on the ground that this might lead to Holtzbrinck's domination of the market in Berlin, as the company already owned *Der Tagesspiegel*. This decision was the subject of substantive criticism, conceived as biased against Holtzbrinck; quite rightly so, considering that Springer covers a significant proportion of the Berlin newspaper market. The Springer chain owns two influential Berlin papers (*Morgenpost* and *B.Z.*) and additional two papers – *Bild* and *Welt* – that sell well in the Berlin area. It was this prohibited purchase that triggered the plans for further liberalisation.

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<sup>101</sup> All references are to German publications.

<sup>102</sup> Bundesverband deutscher Zeitungsverleger e.V., eds.: *Zeitungen 2003*, p. 434.

<sup>103</sup> 55.5 percent; see *Trappel/Meier/Schrape/Wölk*, *Die gesellschaftlichen Folgen der Medienkonzentration* (2002), p. 42.

<sup>104</sup> This figure has been quite stable over the past 13 years, cf. Bundesverband der deutschen Zeitungsverleger e.V., eds.: *Zeitungen 2003*, p. 434.

<sup>105</sup> *Horst Röper*, "Der Zeitungsmarkt in der Krise – ein Fall für die Medienregulierung", *Aus Politik und Zeitgeschichte – Beilage zur Wochenzeitung Das Parlament*, B 12–13/2004, p. 9.

On May 26 2004 the Schröder-Administration resolved upon an amendment that would alter the provisions for mergers in the press industry. Since not only the opposition parties (CDU and FDP) are against it, but also the Green Party, partner in the coalition government, it is quite unlikely that the amendment will come into force as planned.<sup>106</sup>

According to the proposed amendment,<sup>107</sup> the limit of net sales will be increased to 50 million Euros. A publishing house with net sales of less than two million Euros can be taken over without any control. Furthermore, a greater cooperation in the field of advertising would be possible. Most importantly, mergers will be permitted, where a newspaper is financially suffering, even if this leads to market domination. According to the amendment, a paper is financially suffering when its earnings in the field of advertising have been at a loss for the last three years. The merger is only to be allowed, though, as long as the original owner or an independent third party keeps more than 25 percent of the voting rights and extensive rights of determination.

Mr. Clement, German Secretary of Commerce, argues that without the liberalisation, in times of economic weakness many newspapers would go bankrupt, which would mean a process toward less plurality in the press industry. Only external capital investment could prevent such a development.<sup>108</sup>

Opposition against any liberalisation is quite strong.<sup>109</sup> Critics call the amendment a “paradigm shift”, since for the first time market domination would be permitted, and fear that doors will then be opened and “could never be closed again”.<sup>110</sup>

## 2. *The broadcasting industry*

The electronic market partly resembles in the Israeli situation. Until twenty years ago the electronic media were state-owned. In 1984, state monopoly was abandoned as the first private stations started broadcasting, and as in Israel the number of stations increased rapidly since then. In September 2003, 53 private programs had a nation-wide license.<sup>111</sup> Today, the market is shared by three big parties: the two privately owned RTL Group (mainly owned by Bertelsmann) and ProSiebenSAT1Media AG Group, each owns five TV stations.<sup>112</sup> Each of the two

<sup>106</sup> Cf. *Berliner Zeitung* (5 May 2004), p. 26.; *Süddeutsche Zeitung* (28 May 2004), p. 19.

<sup>107</sup> See <http://www.bmwa.bund.de/Redaktion/Inhalte/Downloads/siebtes-gesetz-zur-aenderung-des-gesetzes-gegen-wettbewerbsbeschaenkungen.property=pdf.pdf>

<sup>108</sup> *Süddeutsche Zeitung* (26 May 2004), p. 35.

<sup>109</sup> Cf. *Süddeutsche Zeitung* (3/4 April 2004), p. 36; *Berliner Zeitung* (6 April 2004), p. 26.

<sup>110</sup> *Berliner Zeitung* (28 May 2004), p. 26. See also *Röper* (op. cit. fn. 105), p. 11.

<sup>111</sup> *Sicherung der Meinungsvielfalt in Zeiten des Umbruchs; Bericht zur Ermittlung der Konzentration im Medienbereich (KEK) über die Entwicklung der Konzentration und über Maßnahmen zur Sicherung der Meinungsvielfalt im privaten Rundfunk* (2004), p. 16.

broadcasters has 24–28 percent of the audience. The third party consists of the two public stations (ARD and ZDF), with a share of 40 percent of the audience. They are operated in the public interest and are very well funded: every household is obliged to pay more than 15 Euros per month for the two nation-wide stations and the many regional stations. Together, the two groups and the public programs reach more than 90 percent of the audience.

Until 2002 ProSiebenSAT1Media was owned by Leo Kirch, the only important individual who ever played a significant role in the media market. Like Conrad Black, Kirch holds conservative views. His close ties to former Bundeskanzler Helmut Kohl were well known. Indeed, he was clearly in favour of the Christian-democrat position (e.g. regular interviews with Mr. Kohl before federal elections). Kirch went insolvent spectacularly, and his ProSiebenSat1Media was purchased by Saban Capital Group (owned by Haim Saban) last year. Kirch's insolvency has diminished the danger that political or other partisan interests might be promoted due to the media baron's influential position in the market.

The first attempts to prevent excessive concentration in the private television market were made in 1991 by the provisions in the German Interstate Treaty on Broadcasting ("Rundfunkstaatsvertrag"). The provisions prohibited a single group to run more than two programs. Shortly afterwards the Kirch-Gruppe and Bertelsmann/CLT were established and became the two dominating groups.

The 1995 report on concentration of the European media institute ("Europäisches Medieninstitut") stated that in Germany "the danger is that a few owners could have one-sided influence on public opinion",<sup>113</sup> as the private TV market "can be regarded as an oligopoly of a very small group that dominate the market".<sup>114</sup> The report also criticized the lack of restrictions on cross ownership.<sup>115</sup>

In 1997, significant changes were made. The share of the audience that is attributed to one group was – and still is – the crucial criteria, not the number of programs they run. According to the Third German Interstate Treaty on Broadcasting, the share must not exceed 30 percent. The existing structure of only two big private players controlling the market was officially tolerated.<sup>116</sup>

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<sup>112</sup> RTL Group: RTL, RTL II, Super RTL, VOX and now: n-tv; Sat1ProSiebenMedia: SAT1, ProSieben, Kabel 1, N 24, NEUN LIVE.

<sup>113</sup> *Europäisches Medieninstitut*, "Bericht über die Entwicklung der Meinungsvielfalt und der Konzentration im privaten Rundfunk im vereinten Deutschland", in: Die Landesmedienanstalten, eds.: Die Sicherung der Meinungsvielfalt: Berichte, Gutachten und Vorschläge zur Fortentwicklung des Rechts der Medienkonzentrationskontrolle (Berlin, 1995), p. 183.

<sup>114</sup> *Ibid.*, p. 175.

<sup>115</sup> *Victor Henle*, "Erfahrungsbericht der Landesmedienanstalten zur Sicherung der Veranstalter- und Beteiligungsvielfalt im bundesweit verbreiteten Rundfunk (DLM-Konzentrationsbericht)," in: Die Landesmedienanstalten, eds.: Die Sicherung der Meinungsvielfalt: Berichte, Gutachten und Vorschläge zur Fortentwicklung des Rechts der Medienkonzentrationskontrolle (Berlin, 1995), p. 58.

<sup>116</sup> Sicherung der Meinungsvielfalt in Zeiten des Umbruchs (op. cit. fn. 111), p. 33.

It is the German Commission on Concentration in the Media (KEK; “Kommission zur Ermittlung der Konzentration im Medienbereich”) that enforces the concentration rules. The KEK demands the creation of a concentration control that is more transparent.<sup>117</sup> It is an independent commission consisting of members of the sixteen autonomous state media authorities (“Landesmedienanstalten”). If the 30 percent limit is exceeded, domination over public opinion (“vorherrschende Meinungsmacht”) is assumed. The KEK is obliged to publish a report on media concentration every third year.<sup>118</sup>

The *sole* aim of the provisions in the German Interstate Treaty on Broadcasting is to inhibit domination over public opinion, i.e., to guarantee plurality of opinions. Competition control plays no part at all. The market is strictly supervised by the KEK. In case of domination over public opinion, the KEK is obliged to take measures. It has no discretion. The broadcaster in question will not get licenses for further programs and will have to give up either holdings of their programs or their market dominating position in other media sectors.

In 2002, the Sixth German Interstate Treaty on Broadcasting brought new changes. Prevalent power of opinion to scrutinize and to make amendments is also given where the chain has a share of more than 25 percent and market domination in other media sectors (advertising, radio, press, internet, etc.). This is the only provision on cross ownership. However, the chain can gain up to 5 “bonus percents” by giving access in its programs to regional stations (“Regionalfenster”)<sup>119</sup> and/or other independent programs (“Drittveranstalter”).<sup>120</sup>

The same year, 2002, RTL Group planned a holding of equity capital with the n-tv news station which would have meant a rise of RTL Group’s share up to 25.09 percent and thus a slight excess of the limit. The case came before the KEK that decided to grant RTL two “bonus percents” considering the Group various regional and independent programs.<sup>121</sup>

The KEK found the state of cross-ownership questionable.<sup>122</sup> The limitations imposed by the Third Interstate Treaty on Broadcasting are deemed acceptable.<sup>123</sup> Critics say that the means to prevent concentration in the electronic industry are unsatisfactory: “In the field of private television the German market shows an alarmingly high degree of concentration and it withers away from diversity more than before”.<sup>124</sup>

<sup>117</sup> Ibid., p. 34.

<sup>118</sup> § 26 s.6 Rundfunkstaatsvertrag (RStV).

<sup>119</sup> § 25 s.4 RStV; § 26 s.2 ss. 3 RStV.

<sup>120</sup> § 31 RStV.

<sup>121</sup> Sicherung der Meinungsvielfalt in Zeiten des Umbruchs (op. cit. fn. 111), pp. 372–373.

<sup>122</sup> Ibid., p. 34.

<sup>123</sup> Ibid., pp. 33–34.

<sup>124</sup> Dieter Dörr; “Die KEK – Ein taugliches Instrument zur Bekämpfung der Medienkonzentration?” in: Media Perspektiven Nr. 2, p. 55.

## V. Conclusion

In September 1997, the Public Committee that was established to investigate the legal procedures associated with the conduct of the Israeli press issued its report. The report warned against the mischief of cross-ownership that threatened the free press. But because the members of the Committee thought that this issue required looking at the entire media market, while their role was limited only to the working of the written press, the report refrained from concrete recommendations. All the report said was that there should be a symmetric regulation between limitations on press ownership and ownership over the electronic media.<sup>125</sup>

The establishment of powerful media empires in Israel, Canada and Germany feeds the debate on social responsibility. Promoting pluralism within the media industry should be regarded a priority by democracies. It is better to have a variety of conflicting views and opinions rather than a unified voice. Lord Acton, in a famous dictum, said that power tends to corrupt and absolute power corrupts absolutely. Control of the media is a major power. It should not be an asset of one person, no matter how benevolent this person might be.

Lord Acton maintained that the most certain test to judge whether a country is really free is the amount of security enjoyed by the minorities.<sup>126</sup> Minorities would find it difficult to access tightly controlled markets whose directors espouse different views and belong to a different class or culture. It can be assumed that Indians gain access to Asper's newspapers to the same extent that Palestinians gain access to *Yedioth Ahronoth*. Both probably could not say that they find the marketplace of ideas free and accessible.<sup>127</sup> These, of course, are extreme examples only to suggest that power should be diffused and representation in the media should be available to all sectors and political factions, so long as they abide by the laws of the state. The responsibility to decide which ideas should be represented in the media should not be restricted to a few media barons.

The situation of both the Canadian and Israeli markets is alarming because in both societies single individuals have accumulated far too much power. In Canada, the Conrad Black empire in the past and the Asper empire at present dictate, to a large extent, media events, whereas in Israel it is the Moses family that is playing a similar role. This is an unhealthy situation. Democratic governments should be aware of this phenomenon and should invest efforts to diffuse the power among

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<sup>125</sup> Report of the Public Committee on Press Laws, presented to the Minister of Justice and Minister of the Interior (September 1997), pp. 47–52 (Hebrew).

<sup>126</sup> *Lord Acton*, *Essays on Freedom and Power*, Cleveland/New York: Meridian Books, 1964, p. 56.

<sup>127</sup> For critique of the “free marketplace of ideas” concept, see *Jack Pole*, “Freedom of Speech: From Privilege to Right”, in: R. Cohen-Almagor, ed.: *Challenges to Democracy: Essays In Honour and Memory of Professor Sir Isaiah Berlin*, London: Ashgate, 2000, pp. 11–54; *Stanley Ingber*, “The Marketplace of Ideas: A Legitimizing Myth”, *Duke L. J.*, Vol. 1 (1984): 1.

players with different interests and worldviews. Private media companies, like all corporations, exist primarily to profit their owners. The general pattern of newspapers and broadcasting stations is to pull the maximum out of their communities, and to give back the minimum in return. The Davey Committee called this pattern “a rip-off”, discerning that the outcomes are that the companies charge too much, or/and spend too little.<sup>128</sup> When partisan interests are at stake, the companies cannot be expected to remain guardians of the social interests. As Robert Picard argues, it is up to government to ensure that the self-interest does not result in the types of harm that media concentration can produce.<sup>129</sup> The German government as well as other governments in the democratic world should prevent excessive concentration of power. Free speech entails freedom to scrutinize the market, not to buy it. Liberal governments should not allow a “free market” situation in which media barons may buy whatever they wish, thereby increasing their power and their maneuverability to promote partisan interests. Decentralizing ownership defuses potential threats to democracy.

### Zusammenfassung

Ziel dieser Abhandlung ist es, die Eigentumsstrukturen in den Medien in Kanada und Israel zu untersuchen und gleichzeitig die Situation in Deutschland zu beleuchten. In Kanada wie in Israel gibt es das Problem, daß ein kleiner Kreis von Eigentümern sowohl die Presse, als auch die elektronischen Medien beherrscht. Zunächst werde ich die Presselandschaft in beiden Ländern analysieren und mich dann dem jeweiligen Fernseh- und Rundfunkmarkt zuwenden. Es gibt Stimmen, die die Situation in Kanada und Israel für alarmierend erachten, da in beiden Ländern einzelne Personen bei weitem zuviel Macht angehäuft haben. Zu viele Medien in einer Hand bedrohen die Meinungsvielfalt und den freien Journalismus und bereiten den Weg für die Durchsetzung von Partikularinteressen. Deutschland sollte aus den Erfahrungen beider Länder Lehren ziehen. Die demokratischen Regierungen sollten alle Anstrengungen unternehmen, die Medienmacht in die Hände verschiedener Akteure mit unterschiedlichen Interessen und Weltanschauungen zu geben.

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<sup>128</sup> Special Senate Committee on Mass Media, *The Uncertain Mirror*, Vol. I (Davey Committee), pp. 63–64. See also Royal Commission on Newspapers (Kent Commission), pp. 215–233.

<sup>129</sup> *Picard* (op. cit. fn. 8), p. 23.