Of Markets and Supply

Public Broadcasting in Germany

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Germany is one of the countries in Western Europe where public broadcasting had a monopoly for a long time before private channels appeared on the scene during the 1980s. The dual market with public broadcasting on the one side and private broadcasting on the other has created a fierce competition, bringing the public system and channels under considerable pressure. What at first glance appears to be a competition for ratings, and thus an economic question above all, has more crucially become a political discussion about the role of public broadcasting in general and its place in society.

This chapter analyzes the public broadcasting situation in Germany. Treatment first describes the legal background which, compared to other West European countries, is specific because the German Federal Constitutional Court has assigned public broadcasting a special role in the broadcasting market. Afterwards the author presents data demonstrating how public and private channels fare in the advertising and audience markets. Because a crucial question now hinges on whether private and public programs are comparatively distinct or not, findings from content analyses will be presented in the third step. Finally discussion focuses on what these developments mean for the position and the future of public broadcasting in Germany.

The chapter will show that, due to several rulings of the Federal Constitutional Court, public service broadcasting in Germany has been confirmed not only as an idea but also in its institutional arrangements. This link makes the German case different from other countries. The internal organization of the public corporations here is conceived to provide for a high standard of pluralism and has thus become part and parcel of the guarantee for the further existence of public service broadcasting in Germany.

The broadcasting market and its legal background

A cursory examination seems to indicate that Germany’s public service broadcasters are in a comfortable and secure position. During the 1980s, the Fed-
eral Constitutional Court, which has always played an important role in defining broadcasting policy in Germany, developed a specific model for the emerging dual broadcasting market. The model’s most important feature is the co-existence of public and commercial broadcasting in a system of communicating vessels. In this system, public service broadcasting was assigned the task of **basic supply** (*Grundversorgung*).

Basic supply, although only defined gradually, refers mainly to programming but also includes technical and financial prerogatives (c.f., Bethge, 1996). Basic supply was conceived as a comprehensive and varied selection of all formats and content. From the beginning, the Constitutional Court made it clear that basic supply does not at all mean ‘minimum supply’, but instead encompasses the classical public broadcasting mandate to offer information, education and entertainment. Moreover, basic supply also includes programming for minority groups. In the mid-1980s, when the Constitutional Court designed this specific model for the dual broadcasting system, almost all households could receive the public service channels, whereas the private channels could only be received by some parts of the population. This was another reason for making the public broadcasters responsible for basic supply.

It’s important to understand that basic supply does not mean a division of labor with public service channels restricted to cultural and public-interest programming, which would marginalize them, while commercial broadcasters offer mass appeal fare. The basic supply mandate was assigned to the public service networks *ARD* and *ZDF* because they have a guaranteed income through the public broadcasting fee that must be paid by everyone who owns a radio and/or TV set. The fee is exclusively for funding the public service channels. Thus, their (near) independence from advertising revenues should theoretically relieve public broadcasters from having to base programming decisions on a program’s ratings. The public channels are therefore regarded as essentially independent of the advertising industry.

High demands for diversity go hand in hand with the notion of basic supply. In addition, the internal structures of the public service broadcasting system, particularly the Broadcasting Council, in which the so-called relevant social groups are represented, seemed to be the best guarantor of this prescribed diversity. Thus, the Constitutional Court ruled that as long as the public channels guarantee a high degree of diversity, such requirements could be lowered (though not completely abandoned) for commercial channels. As a consequence, it is in the interest of the commercial channels that public service broadcasting remain capable of fulfilling its mandate because otherwise they would have to compensate for any deficiency should the public channels no longer be able to deliver the basic supply. Were the commercial channels required to cater to all interests they would obviously lose their freedom and independence in programming decisions which are guided mainly by the profit motive. Having to ensure comprehensive and diverse programming would therefore run counter to their ratings orientation.
But in order to play the role assigned in the mandate, public service broadcasting requires guarantees for its existence and further development (*Bestands- und Entwicklungsgarantie*), in particular this means adequate financial provisions. The existence of public service broadcasting and its share in future technological developments was confirmed in the Interstate Broadcasting Treaty, negotiated on the basis of the specific model for the dual broadcasting market outlined by the Constitutional Court in its 1986 ruling and another ruling in 1987. This Broadcasting Treaty (*Rundfunkstaatsvertrag*), concluded for the first time in 1987, was signed by the (then) 11 German *Länder* (federal states, now totaling 16 since German unification in 1990), which have legislative competence for broadcasting.

However, the existence guarantee for public service broadcasting is only meant to be a guarantee of the public service model, not necessarily a guarantee for the current structure. The structure consists of two institutions. ARD is an association of 9 regional broadcasting corporations (and the foreign broadcasting service *Deutsche Welle*), and the centralized ZDF. In addition to running radio channels in each state, the ARD operates a national TV service through its 10 broadcasting corporations. They also offer 8 more regionally oriented, but nevertheless generalist, programs. ARD and ZDF cooperate in 3SAT, a satellite channel produced in cooperation with the Swiss *SRG* and the Austrian *ORF*, and in *Arte*, a French-German joint enterprise. Together, ARD and ZDF also started the *Kinderkanal* (children’s channel) and *Phoenix*, which is mainly a documentary channel. Thus, the existence guarantee is a safeguard of the public service idea which includes the organizationel model based on internal pluralism but it does not guarantee the further existence of the two networks and the multitude of channels they run.

The position of the public service channels on the advertising and audience markets

The German broadcasting market today is extremely competitive. This is due to the size of the population and the potential of the advertising market. Germany’s current total population is 82 million (38 million households). The actual TV market is even larger because of two neighboring German-speaking countries, Austria and the German-speaking part of Switzerland. Total advertising revenue on the media market in 2000 was 18,166 million Euro, with 43.9% going to television and 5.7% to radio (all figures: IP, 2001).

Today, in addition to the traditional terrestrial distribution of television, a majority of German households can be reached either via cable or satellite. At present, about 54% of the more than 33 million TV households have cable. Another 38% have a private satellite dish or access to an SMATV system. All TV households receive terrestrial television (IP, 2001). The average TV household, independent of technical equipment, receives 36 channels
The public broadcasters’ overall share of the adult audience (14 years+) is 44.1%. The commercial sector has been dominated by the Kirch Group at 24% and the RTL Group at 23%. Each group operates four channels (IP, 2001). Recently, however, the Kirch Group went bankrupt and is in the process of being sold at the time of this writing. It’s as yet unclear what the impact will be.

Audience fragmentation is characteristic of the German TV market. This is due to the high number of channels competing on the market and the fact that the programming volume is growing more rapidly than individual TV viewing time. Individual channels achieve comparatively low overall audience shares. The most popular channel, which in 2000 was the public station ARD, only has a share of about 15%.

The dominant share of revenue from TV advertising goes to the commercial broadcasting sector. Advertising on public channels is restricted to a maximum of 20 minutes per weekday, and can only be aired before 8 pm. Advertising regulations for commercial channels in Germany correspond to the limits set by the EC Directive *Television Without Frontiers*, allowing for a maximum of 12 minutes of advertising per hour throughout the day. As a result, advertising revenues at public TV channels today only account for about 17% of their overall income. Although a small percentage of their total revenue is derived from other sources, the broadcasting fee accounts for more than 75% of the income of both public networks. Since the introduction of commercial broadcasting, the percentage of the public channels’ income from advertising diminished to about one-half or even less of what ARD and ZDF once had.

Because the public channels have reached their advertising limits and are not allowed to extend the time devoted to advertising, any rise in the amount of overall expenditure for TV advertising goes to the commercial channels. Between 1993 and 2000 absolute spending on TV advertising in Germany has more than doubled (1993: €3,736 million; 2000: €7,978) and the share of advertising that goes to television has risen by more than 10% (1993: 33.9%, 2001: 44.4%). However, for the first time in 2001 advertising income decreased (Engländer, 2001; 2002) for all media (TV 2001: €7,566 million).

The audience’s images of public and commercial TV, and thus the functions of both systems for the viewers, are quite different. Overall, the public channels are regarded as being more objective, more believable, more competent, more ambitious, and more critical. The commercial channels are described as being more casual, more modern, more entertaining, more daring, and more versatile (Ridder & Engel, 2001: 115). Beyond these general images, public TV is assigned greater competence with regard to informational content, whereas commercial channels are regarded as better in catering to entertainment interests. When it comes to news and information shows, audiences accord 69% of their viewing time to the public channels. In contrast, 59% of the time spent with entertainment and fiction go to the commercial channels. The appeal of respective offerings indicate a clear relation to political interest. Viewers with an interest in politics show a stronger
attachment to public TV while viewers less interested in politics turn rather to the commercial channels (Darschin & Gerhard, 2002).

**Convergence of content?**

With the establishment of commercial television and its rapid success, it was expected that the offerings of public and commercial channels would become increasingly similar. This gave rise to the *convergence hypothesis*, whichever the direction of assimilation. But in general, there are still considerable differences between public and commercial channels when comparing overall programming. The public channels devote more time to news and current affairs programs, whereas the commercial channels concentrate on entertainment, particularly fiction programs (Krüger, 2001).

In terms of content structure, particular interest has been shown in the way politics is presented on public and commercial systems. Several studies (e.g., Bruns & Marcinkowski, 1997; Greger, 1998; Krüger, 1996, 2000; Wegener, 2001) compared the presentation of politics on public and commercial TV, some over time, in an attempt to assess the validity of the convergence hypothesis. Although the results were heterogeneous, the findings generally confirm differences in the way public and commercial television present politics. Commercial channels tend to present political matters to a greater extent as infotainment, packaging the political subjects in an entertaining manner.

However, findings also indicate a turn in German public television towards infotainment. A study by Krüger (1996), undertaken in the middle of the 1990s, analyzed the public affairs programming of two public and three commercial channels. With regard to the ‘issue agenda’ and the ‘structure of the actors’, both systems at that time presented clearly distinct content. Compared to the public channels, the commercial competitors concentrated more on issues from everyday life, events in the entertainment and media industry, as well as sensationalism which are the categories that were used as indicators for infotainment in this study. By condensing the issues in two categories, with politics/economy/culture on the one side and human interest issues on the other, a clear difference in the journalism at the commercial and the public channels was obvious (Krüger, 1996; 2001).

The same is true for the structure of actors. Political actors have a better chance of appearing on the public programs while private actors are seen more frequently on commercial programs (Krüger, 1996; cf. also Greger, 1998). Not surprisingly, there is also a contrast between systems in terms of the level of reference of the issues: Public channels prefer events and issues that affect society as a whole or refer to a particular level of reference, meaning institutions or problems with effects for particular groups of society. Commercial channels deal preferably with issues referring to the individual, private level.
Finally, the dramaturgical presentation of issues on public and commercial TV differs. Again, the emotional mood components appeared more often in the commercial than in the public programs (Krüger, 1996). In general, the programs on both systems were dominantly characterized by objectivity and matter-of-factness. However, where emotions could be detected, negative emotions like fear and sorrow were more frequently found than positive emotions like joy and compassion. These findings for the issues, the structure of actors and the dramaturgical presentation led the author to conclude that the commercials channels offer a more infotainment oriented program than the public channels.

Public service broadcasting under pressure

The position of public service broadcasting in Germany seems to be secure. Ideally, it could be pursuing its basic supply mandate free from market constraints. Nevertheless, the public channels have been drawn into competition with the commercial channels and this can be attributed to two reasons: the characteristics of the German broadcasting market and the delicate relationship between politicians and public service broadcasting. Both have forced the public channels to constantly try to legitimize their existence and financing through the broadcasting fee.

The convergence hypothesis, although allowing for bi-directional assimilation, has in practice brought up two questions: On the one hand, whether public service broadcasting still fulfills its task of providing the audience with a basic supply of programming if it adopts the logic of the commercial channels, and on the other whether commercial broadcasting might at some point also be able to deliver the basic supply. Thus, public service broadcasting today faces a vicious circle: If it does not provide what the ratings indicate people want to see, which is part of the idea of basic supply, it has difficulties proving the necessity of its existence and thus justifying that everyone must pay the broadcasting fee even if they do not use the public channels. But if it tries to attract mass audiences the difference between public and private broadcasting disappears, and the existence of public service broadcasting is also called into question. Public service broadcasting therefore has to balance on a tightrope walk between making offers for a broader public and catering for special interest and minority audiences. Since public service broadcasting has always been related to quality programming, even in its attempts to attract high ratings it is expected to distinguish itself from its commercial competitors.

By having a guaranteed income from the broadcasting fee and binding it to offer a comprehensive and diverse program and catering to minority audiences as well, the public service broadcasting could (and in part has to) act independently of audience ratings. However, for the public channels too, ratings become the decisive measure of success.
Even if public channels could act independent of ratings in their decisions concerning the contents, they still have to compete with commercial channels on the market for TV programs. With the rapid growth of the commercial broadcasting sector and the ensuing rise in the demand for content, the prices have increased as well. While the commercial channels can hope to compensate for high purchase prices with advertising, public channels have less leeway in purchase decisions. Sports, and particularly football, is the best example. The cost of acquiring the broadcast rights for German Football League matches, or the European and World Championships, have been driven to formerly unimaginable levels. The public channels – with their revenues being more or less fixed – do not have much financial latitude to compete on the market. If they give in to the competition and pay the going price, the necessary consequence would be cuts in the production budgets for other programs. On the other hand, if they leave the field to their commercial competitors, their capability to offer comprehensive programming is also called into question.

In order to gain more freedom for program decisions and to strengthen their position on the market, the public channels have repeatedly asked for a relaxation of advertising regulations. In particular, the advertising ban after 8 p.m. means no advertising during prime time when the highest ad prices can be obtained. Thus, even if the amount of advertising – a maximum of 20 minutes per day – remained the same, the income from advertising could be increased by allowing for advertising later in the evening. However, such demands by public channels have always stirred protests from commercial competitors who point at the public channels’ guaranteed fee income. The politicians, who would have to change the respective broadcasting laws, have also almost unequivocally rejected the idea.

The public service broadcasting system in Germany was built immediately after the war by the occupying powers and based on the model of the BBC, was conceived to be independent of the state (c.f., Tracey, 1998). The public channels are corporations under public law. However, German politicians searched for, and quickly discovered, loopholes to gain a certain influence. The broadcasting corporations have a three-tiered structure. Their chief representative is the Director General. s/he is responsible for the functioning of the corporation and is supervised by an Administrative Council and a Broadcasting Council. Among the members of the Broadcasting Council, which controls the programming and also elects the Director General, are members of the state parliaments and governments. Since the groups who are allowed to elect members to the Broadcasting Councils are determined in the broadcasting laws, the selection of these groups is also in the hands of politicians and can thus be instrumentalized. Although in 1991 the Constitutional Court clarified that members of the Broadcasting Councils are to be representatives of the public in general and not representatives of particular group interests, the council members nevertheless have allegiances. They are commonly classified according to their “color”: red and black for
the two big parties (Social Democrats, Christian Democrats), and gray for interest group representatives, even though they usually can also be assigned to one political side or the other.

Thus, by way of their legislative competence in broadcasting, politicians can influence the composition of the Broadcasting Council and, as members of the Council, can subsequently influence programming and personnel decisions. First and foremost, they can influence the appointment of the Director General and other leading posts. Broadcasting Councils exist within each corporation. Because the 9 regional corporations contribute to ARD’s national/joint programming, the Councils’ influence reaches beyond the individual corporation and can affect cooperation at ARD. In addition, there exist numerous other possibilities for direct personal intervention of politicians.

Of no less importance is the decision about the broadcasting fee. The fee amount is fixed by the state prime ministers and must be ratified by the state parliaments. Since all Germans are supposed to pay the same amount, all 16 states have to reach agreement. This is done in an Interstate Treaty on Broadcast Financing (Rundfunkfinanzierungsstaatsvertrag) effective for approximately three years. Several reasons make the negotiations about the broadcasting fee a delicate question.

The fee has to be paid by everybody who owns a TV set, even if they do not watch public television. This gives the fee the character of a tax, and any increases must be well justified. In addition, party politics also play a role. The state premiers represent not only one of the big parties but, more often than not, a coalition government. This means that decisions in the state parliament need the agreement of at least two parties to get a majority. Because the two big parties differ in their stance on broadcasting politics, with the Social Democrats being closer to public service broadcasting and the Christian Democrats somewhat more in favor of the commercial broadcasters, decisions on broadcasting policy always take the character of a difficult compromise. Both sides use the negotiations to advance other interests. This usually boils down to a bit of horse trading, with both sides expecting the other to make concessions on some other issue in exchange for their consent to a higher broadcast fee. For example, in the mid-1990s, when new media concentration rules were being discussed for the private broadcasting sector, the Christian Democrats made their agreement to the broadcasting fee contingent on the Social Democrats’ accepting a low threshold for concentration rules that were switched to a model based on audience shares.

There is a special commission, the KEF (Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten = Commission for ascertaining the financial needs of the public service broadcasting corporations), which makes a recommendation on how to adjust the broadcasting fee. The Commission is composed of 16 experts (one from each state) who are supposed to be independent. They are, however, nominated by the premiers of each state. Based on financial needs calculated by the public corporations, the KEF examines whether program decisions are being made within the framework
of the public service broadcasting mandate and whether or not the corpora-
tions are managing their budgets economically. The Commission then sub-
mits a proposal to the state governments on how much the broadcasting fee
should be increased.

A ruling by the Constitutional Court in 1994, dealing with the way the
broadcasting fee is fixed, stressed that this decision can neither be left to the
state nor to the broadcasting corporations themselves. However, the Court
ruled that the calculation of the financial needs (and thus the proposal for
the fee increase) is to be based on the programming decisions of the chan-
nels themselves. Freedom of broadcasting as guaranteed in the Constitution
prohibits the legislators’ decision on the broadcasting fee from being used
as a means of program control or for the purposes of media policy. As a
consequence, the practice of the KEF and the way the Commission deals
with the financial requirements of the public corporations had to be regu-
lated by a law.

With this decision the Court explicitly acknowledged the fact that the
broadcasting fee can be an effective means for indirect influence on public
service broadcasting, and its role in the dual broadcasting market in particu-
lar. Nevertheless, even though the procedure has been given a legal basis in
the meantime, politicians still use their approval of broadcasting fee increases,
and thus of the financial allocations to public service broadcasting, to ad-
vance their respective media policy interests. Recently, the system of equali-
ization payments among the ARD corporations came up for discussion. Within
this system, a certain percentage of money flows from financially stronger
to weaker corporations, thus enabling all of them to contribute to the joint
ARD TV program. If this system were abandoned, smaller corporations would
be forced to make severe cuts in production, personnel and long-term co-
operation programs. For some politicians, this offers an opportunity to pun-
ish certain corporations that have been a thorn in their side. Alternative models
for deciding on the broadcasting fee increase that could provide for a more
independent procedure, for example binding the fee to an index such as
the cost-of-living index, have always been rejected.

Since the legislative competence for broadcasting matters generally lies
with the 16 states, the same politicians who set the conditions for public
service broadcasters, in particular their level of financing via the broadcast-
ing fee and advertising restrictions, also make the rules for commercial broad-
casters. This can place them in a difficult position when the interests of the
two sides are in conflict. While being urged to shore up the legal framework
that allows the public channels to fulfill the basic supply requirement, the
politicians are also being pushed to create conditions to allow for the devel-
opment of private broadcasting. In addition, the media sector is regarded as
an industry with a bright future. As a result, state governments often court
the (private) media owners to attract them and their channels to their own
state. It is therefore in their interest to provide the most favorable conditions
possible.
Conclusion: Doing the Splits

Public service broadcasting is expected to compete with commercial broadcasting. Even the Constitutional Court has repeatedly stressed that public service broadcasting must be able to compete on the market. However, with the basic supply requirement having been defined as providing comprehensive and diverse programming while also serving minority interests, public service broadcasting has been forced to do the “splits” (Das Normziel Freiheit, 1999: 7). It has been caught up in a “justification dilemma” (Eifert, 2000: 6): On the one hand, public broadcasters have to deliver basic programming because this is the justification for having a guaranteed income from the broadcasting fee. On the other hand, being financed by the broadcasting fee that has to be paid by everyone also requires a broad acceptance by the viewing audience, which creates a certain pressure to cater for the interests of the mass audience. Moreover, political actors need audience acceptance to legitimize their support of public broadcast financing by the fee.

As a result, public broadcasters are expected to compete by market rules but have not been given the “tools” to meet this expectation since they lack financing autonomy, the basis for market-oriented behavior. Programming decisions, the creation of new specialized channels like Kinderkanal or Phoenix, or activities in the online sector, are eyed closely by the private station operators and raise the question of whether such ventures comply with the mandate of basic supply.

To free public service broadcasting from this dilemma, two solutions are possible. Either public service broadcasting must be regarded as providing a meritorious good and, as such, removed from competition completely. This would require some effort to legitimize its role. Or public service broadcasting could be granted independence from politicians following their individual interests and, with regard to their concurrent regulatory competence for public and private broadcasting, conflicting interests. Public broadcasters could thus act freely on the market.

Public service broadcasting is here to stay if basic supply be regarded as a necessity because that is the only system to guarantee its steady delivery. Even if commercial channels were able to meet the basic supply requirement, there would be no guarantee they could do this permanently since they would likely give it up quickly if fulfillment endangered their widespread attractiveness, and thus threatened ratings and correlated advertising revenue.

The Constitutional Courts’ decision to assign basic supply to the public companies can be interpreted as an institutional guarantee. The high demands on diversity that go along with this mandate can only be met by an adequate organizational structure that comprises a pluralistic element as the public channels have in the form of the Broadcasting Council. This indeed secures the public broadcasting model as a combination of a certain idea and a certain organizational arrangement. However, it cannot be regarded as a guar-
antee for the current ARD/ZDF structure with better than one dozen chan-
nels. Particularly ARD, being an association of (presently) 10 regional cor-
porations, is under financial pressure and thus the subject of discussion. In
1998, two formerly separate corporations in the Southwest of Germany were
merged into one. Another merger for Berlin and Brandenburg has been put
into effect in May 2003. Thus, the number of channels may be further re-
duced in the future, but the basic model of public service broadcasting seems
unlikely to change for the near future.

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