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## Article

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# Between the cracks: Blind spots in regulating media concentration and platform dependence in the EU

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**Abstract:** Alongside the recent regulations addressing platforms and digital markets – the Digital Services Act (DSA) and the Digital Markets Act (DMA) – the European Union’s (EU) European Media Freedom Act (EMFA) aims to safeguard media freedom and pluralism, two essential pillars of democracy. The EMFA introduces several provisions, including rules specifically focused on assessing media concentration in “the online environment”. While these initiatives are commendable, there are noticeable blind spots in how EU regulations tackle the issues of dependence on, and the power of, platforms amidst the rising trend of media concentration. An essential aspect that needs attention is the technological power of these platforms, underpinned by their economic and political power. We find that neither the infrastructural power of platforms – transforming them from “gatekeepers” to “digital infrastructure and AI providers” – nor their relational power – creating imbalances and dependencies while posing sustainability challenges for (local) journalism – are effectively addressed in the current EU regulatory frameworks, despite both forms of power driving digital media concentration. The article then concludes with recommendations for a way forward capable of preserving values such as media pluralism and editorial independence.

## Introduction

The European Union (EU) is venturing into uncharted waters when it comes to media regulation. In addition to a series of regulatory measures aimed at curbing the economic and gatekeeping power of platforms through the Digital Services Act (DSA) and ensuring fair competition in digital markets with the Digital Markets Act (DMA), as well as pioneering the first comprehensive AI legislation with the EU AI Act, the EU has now focused on an issue that had previously sailed under the radar of the Commission: the protection of media freedom and pluralism, as outlined in the proposed European Media Freedom Act (EMFA). This is a noteworthy manoeuvre considering the EU’s limited competences to regulate matters related to media pluralism and culture (Irion & Valcke, 2015).<sup>1</sup> The EMFA comes as a response to the increasing threats to media freedom and pluralism in Europe, proposing new rules aimed at safeguarding editorial independence, media pluralism, ensuring transparency and fairness, and enhancing cooperation. The legal basis to regulate in this realm is derived from concerns about the negative impacts of diminishing media freedom and pluralism on the functioning of the EU internal market (Article 114 of the Treaty on the Functioning of the European Union (TFEU)). The DSA and DMA also find their legal basis in Article 114 TFEU and focus on regulating “digital services”, including online intermediaries, platforms, and gatekeeper online plat-

1. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance) OJ L 277, 27.10.2022; Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (Text with EEA relevance), OJ L 265, 12.10.2022; Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act) (“EMFA”)

forms, and preventing anti-competitive and dominant positions of power that would harm the functioning of the internal market. Among the various provisions, the DMA includes *ex-ante* obligations aimed at preventing certain behaviours before any evidence of actual harm in the digital market emerges, reflecting a similar approach to controlling media concentration (Neuberger, 2018). For the purposes of this article, building on Gorwa's (2019) and Simon's (2022) definitions of "digital platform companies" and "platforms", we broadly define "platforms" as encompassing both (1) the services, platforms, and infrastructures of large platform companies, and (2) the corporate and business strategies of these firms. This includes major platforms such as Alphabet (Google), Meta (Facebook and Instagram), Microsoft, Amazon (AWS Cloud), ByteDance (TikTok), and Apple (iOS) (Seipp et al., 2023).

Today, platforms hold significant opinion and political power within the media, stemming from their economic, algorithmic, technological, and infrastructural capabilities, positioning them as key systemic players (Dolata, 2018; Helberger, 2020). Despite increased power concentrations and the growing dependence of the news media on platforms, previous reform attempts demonstrate the difficulties in adopting media concentration rules to the digital realities (KEK, 2018; Ofcom, 2021). This is evident, with media concentration increasing despite existing ownership regulations, and threats to editorial independence from political and commercial pressures not diminishing but growing, especially amid the media's economic crisis (Brogi et al., 2023, p. 68). This is likely due to evolving media market structures that disrupt traditional journalism business models and further bolster platforms' economic and technological power. Neither traditional media laws, nor the evolving EU regulatory framework, has (yet) been able to *adequately* address these facets of media concentration (Centre for Media Pluralism and Media Freedom et al., 2022; Just, 2018; Lobigs & Neuberger, 2018; Schneiders et al., 2024; Seipp, 2023). In response to this critical issue, the EU's 2020 Democracy Action Plan called for effective action against media concentration and for safeguarding media pluralism, proposing strategies for addressing media concentration "in the online environment" (European Commission, 2020). The EMFA serves as a complementary legal instrument, or *lex specialis*, to the broader DSA and DMA, offering more targeted rules specifically designed for the media sector (Cantero Gamito, 2023). The EU's acknowledgement of the detrimental effects of media (market) concentration on both the internal market and public values, including democracy, is significant. Through the EMFA, the EU is making a concerted effort to tackle this issue of media concentration, a long-standing concern for scholars and industry professionals alike. The question remains, however: does the EU regu-

latory framework, especially the DSA, DMA, and the complementary EMFA, effectively address platform dependence and digital media concentration? This article sets out to explore this very question.

Through the conceptual lens of opinion power and media concentration in the platform context and building on the work of Helberger (2020) and Seipp et al. (2023), this study employs a normative legal research method to examine how the DSA, the DMA, and the specialised rules of the EMFA address digital media concentration. Positioning the EMFA rules, particularly Article 22 EMFA, in a broader regulatory context with the DSA and DMA, the aim is to pinpoint the key blind spots in effectively tackling media concentration in the context of dependence on platforms. First drawing on a literature review that identifies key blind spots in addressing digital media concentration, we employed doctrinal and normative methods to analyse how the current EU regulatory framework – specifically the DSA, DMA, and EMFA – aim to address these shortcomings, ultimately assessing their effectiveness in doing so. This research contributes to the ongoing scholarly discourse on European media law and policy by examining the regulatory challenges in addressing digital media concentration, particularly as news media become increasingly reliant on platforms, and by highlighting key areas of focus for future efforts.

## **Section 1: Platform opinion power and digital media concentration**

Addressing the complexity of media concentration is not simple. Many scholars, most notably Baker (2006), have previously highlighted the necessity of curbing media concentration to safeguard democracy, a viewpoint not only reinforced by traditional national media law and constitutional frameworks, but is also embraced at the broader EU level. For instance, in 1991 the Court of Justice of the European Union (CJEU) underlined that a monopoly is unacceptable not only in the context of the freedom to provide services, but also to ensure a range of voices are available to the public (Case C-260/89). The term “media concentration” refers to both “economic market power and media influence over the public process of opinion formation” (Paal, 2017, p. 610). This represents the dual nature of media concentration: both, economic and opinion power concentration entail substantial risks for media pluralism (Just, 2022; Paal, 2017; Schulz, 2017; Evens & Donders, 2020). The dispersal of “opinion power”, which refers to the power of the media to influence public and individual opinion formation, involving a political dimension, is central in developing laws to preventing media concentration (Baker, 2006; Hel-

berger, 2020; Neuberger, 2018). This is because economic, journalistic, and political power are deeply intertwined, with journalistic power often originating from the economic power of media corporations, allowing for “the shaping of information, opinions, legitimization, and ideologies” (Knoche, 2021, pp. 374-375). Consequently, laws targeting media concentration strive to disperse “opinion power” by overseeing the economic impacts of media market concentration and promoting core public values, particularly media pluralism. However, the challenge in regulating opinion power and media concentration today lies in the inadequacy of traditional ownership limitations, such as broadcasting licences and cross-media ownership restrictions, and TV audience measurement centred tools in addressing the new power dynamics brought by platforms.

The impact of platform power and platform dependence on media concentration challenges conventional regulatory approaches. Regarding media concentration and platform dependence, we aim to emphasise two core issues that align with Nielsen's and Ganter's (2022) insights on platform power in the news media. As other research also suggested, the power of platforms in the media relates to influence over the *spaces* and *infrastructures* on which it operates as well as over the *relationships* between relevant actors (Han, 2005/2019; Hartley et al., 2023; Kristensen & Hartley, 2023; Nielsen & Ganter, 2022; Poell et al., 2022). As dependence on a powerful actor can reinforce power (Han, 2005/2019), platform dependence – both in terms of *infrastructures* and *relationships* – is a suitable lens to understand growing concentration in a platform-dominated media ecosystem. Addressing these dynamics would be indispensable in any legal efforts designed to offer structural remedies to media concentration.

First, platforms' *infrastructural power*, underpinned by their technological and data power (Ferrer-Conill et al., 2023; Flensburg & Lai, 2023), turns them into “leaders and opinion-makers in public discourse” (Dolata, 2018). Moreover, Plantin et al. (2018) define infrastructural power as power manifested through ownership and management of “sociotechnical systems that are centrally designed and controlled, typically in the invention and development phases of new technologies” (Kristensen & Hartley, 2023). The dimension of infrastructural power, bolstered by platforms' resources, capital, wealth, and capacity for innovation, fundamentally and continuously reinforces both economic and political strength (Corneo, 2006; Gerbrandy & Phoa, 2022). These existing dynamics, as well as the manifestation and expansion thereof, are further strengthened as digital technologies and AI are changing the entire news reporting value chain, from the gathering of information through to the production, distribution, and consumption of news (Helberger,

2024). In this context, platforms, formally reduced to their “gatekeeping” role, are increasingly fulfilling the function of digital infrastructure and AI providers on which the media sector operates (Cohen, 2023). Their impact thus penetrates the fundamental structure of the media, fostering greater dependencies through structural and systemic power. This leads to the danger of “infrastructural capture”, which is defined as “circumstances in which an overseeing institution becomes incapable of operating sustainably without the physical or digital resources provided by the organizations it formally oversees” (Nechushtai, 2018). In a nutshell, infrastructural power, related dependencies, and potential risks of capture, lead to hard-to-dismantle vertical power concentrations, granting platforms the ability to shape public and individual opinion. They may do so not only through the control over algorithms and content consumption, but most notably in their powerful role controlling the “underlying and habituated” arrangements that shape the spaces on which the media industry operates (Cohen, 2023; Dolata, 2018; Gillespie, 2010). Although research on digital infrastructures and infrastructural power and dependence is growing, questions about how to achieve effective regulation and governance thereof, especially within the media dealing with its effects on pluralism and democracy, remain.

The concentration of infrastructural power in the media poses a significant obstacle to the fulfilment of core (normative and constitutional) objectives of media concentration law, which are to foster structural power dispersion in the media – a prerequisite for democracy, equality, and (structural) media pluralism. This echoes Schulz’s (1998) notion of “Kommunikative Chancengleichheit”, translated to “equal opportunities to communicate”, highlighting the importance of individual participation in political processes through free and independent public opinion formation (Baker, 2006; Karppinen, 2013; Schulz, 1998; Seipp et al., 2023; Tambini, 2021a). “Media pluralism”, though complex to define uniformly (Centre for Media Pluralism and Media Freedom et al., 2022; Tambini, 2021), is safeguarded by Article 10 of the European Convention on Human Rights (ECHR) and Article 11 of the EU Charter of Fundamental Rights and focuses on regulating the democratic distribution of underlying power structures within the media (Karppinen, 2013). The described dynamics demand *ex-ante* rules to prevent a concentration of power *proactively* and *preliminarily*, thereby avoiding the risk of creating irreversibly harmful conditions while ensuring the opportunity to participate in the (digital) public sphere and to form opinions freely and independently (e.g. BVerfGE 73, 118, 159-160).

Expanding upon that, platforms exert significant *relational power* within the media



ecosystem. They serve as mediators between media entities and their audiences as well as with other stakeholders. The relationship is deeply asymmetrical, for instance in terms of knowledge, skill, data access, and negotiation capacity, while “even large, digitally developed news media organizations [feel] they have very little leverage with platforms” (Nielsen & Ganter, 2022, p. 93). One can only imagine the tenuous situation that leaves small, local, and regional news organisations in, particularly concerning leveraging their interests vis-à-vis-platforms. This asymmetrical power relationship triggers dependencies that further shift resources away from legacy media and other entities towards platforms, leading to greater concentration of resources and destabilising traditional business models (Meese, 2023; Sjøvaag, 2024). In connection to platforms’ infrastructural power, media concentration may further exacerbate as small, local, and regional news media lack own resources and skill to develop tools, not only deepening dependencies but also jeopardising the development of long-term sustainability in the sector (Bell & Owen, 2017; Bell, 2018; Helberger, 2024; Pickard, 2020; Simon, 2024). This becomes increasingly pertinent as fostering media pluralism entails establishing an environment that supports the development and sustainability of alternative and local journalism (e.g., Pickard, 2020). Under the current conditions, though, these organisations find themselves in a precarious position, struggling with dwindling resources and declining (economic) sustainability driving them into ever-growing dependencies on platforms, triggering increased media concentration (Noam, 2016). These trends are also putting the constitutional and normative objectives of media concentration law to the test, specifically the aim to cultivate pluralism, which necessitates sustainable journalism as critical countervailing and scrutinising forces in democratic societies (Pickard, 2020; Seipp et al., 2023). As a result, the independence and long-term sustainability of journalism are closely tied to media pluralism. This is a major concern, especially considering the decline of local journalism and the increasing concentration of control over resources in the hands of a few large platforms and media organisations.

## **Section 2: Analysis: Blind spots in EU regulatory attempts to tackle media concentration in the context of growing platform dependence**

In the light of these normative reasons to counter media concentration, disperse opinion power, and promote media pluralism, the EU outlined some specific rules on media concentration in the EMFA. Questions of dealing with media concentration at EU level first arose in the 1990s. Despite significant efforts to regulate media ownership concentration, notably with the 1992 Media Concentration Green



Paper and the 1996 Media Concentration Directive, those ultimately failed (Meijers Committee, 2021). While these attempts primarily focused on legacy media and did not (yet) address the changing power dynamics and arrival of platforms, the EMFA is the first regulation at EU level directly addressing opinion power and media concentration. It thereby recognises platforms as wielders of opinion power and even compares their role to media-like functions, which represents a major leap forward in comparison to previous understandings (Recital 11). The EMFA's approach to media concentration assessments is unique as it focuses not only on the economic implications, but also emphasises the risks posed to media pluralism and editorial independence. Article 22 of the EMFA mandates that member states and relevant national authorities – particularly those that currently focus only on competition-related issues and do not assess the impact of concentration on media pluralism and editorial independence (as is the case in some countries, according to Afilipoaie & Ranaivoson, 2024) – must include these considerations in their national media laws and concentration assessments. Since national authorities are responsible for the practical application and enforcement of the assessments, concerns arise regarding the effectiveness and sufficiency of democratic protections, especially in light of non-democratic trends and potentially weakening autonomy of media regulators in certain EU member states. Notably, the 2011 Hungarian media law, which was decisive in limiting the independence of media authorities, exemplifies these concerns (Holtz-Bacha, 2023). Hence, the enforcement of concentration assessments remains a responsibility of member states and is contingent on the independence of national media authorities.

Beyond these political and legal concerns, we detect a number of blind spots in addressing the described concentration trends in relation to platforms. In Article 22 and Recitals 11 and 50 the EMFA highlights the role of the media and platforms in shaping public opinion, and the need for member states to provide rules to “ensure assessment of media market concentrations that could have a significant impact on media pluralism or editorial independence”, underscoring a significant normative evolution – what Brogi et al. (2023) call a soft harmonisation of the “media pluralism test”. While the EMFA serves as a *lex specialis* to the DSA and DMA, not focusing on regulating platforms but rather attempting to fill the gaps regarding the media, the power dynamics of platforms, as outlined in this article, significantly drive media concentration. Therefore, we discuss these efforts in offering long-term remedies to media concentration, making a deeper analysis worthwhile.

## 2a. Infrastructural power – Platforms changing role from “gatekeepers” to “digital infrastructure and AI providers”

### Blind spots: The DSA and DMA

While the EMFA was not explicitly crafted to tackle infrastructural or vertical power of platforms, the DSA and DMA cover aspects of platform power as *lex generalis*, with the EMFA acting as a complementary measure where needed (Brogi et al., 2023; Cantero Gamito, 2023). Therefore, it is critical to examine the DSA and DMA as indirect approaches affecting media pluralism and editorial independence, despite them not offering a tailored solution for the media (Dreyer et al., 2020). The DSA and DMA mark a significant change in digital market regulation, combining traditional (*ex-post*) competition law with *ex-ante* responsibilities (Bietti, 2023). Digital markets are prone to monopolistic structures as price factors are less determinative than access, infrastructure, and network power (Bietti, 2023), highlighting the need to consider infrastructural power in any attempts to regulate digital media markets or media concentration.

The function of platforms within the digital media ecosystem extends well beyond that as “gatekeepers”, as they control the digital infrastructure on which large parts of the public sphere – and the media sector – operate (Dolata, 2018). Let us note here that the DSA categorises platforms as “very large online platforms (VLOPs) and very large online search engines (VLOSEs) to address societal risks associated with their operations” and the DMA as “gatekeepers”, namely companies with a significant influence and impact on the market. Cohen (2023, pp. 27-28) emphasises, while the gatekeeper terminology signals the concerns of “structural domination of multiple, interlocking domains of economic and social activity” (...) “the infrastructure work done by dominant platforms” is broader as they “are structured arrangements in the ordering of human activity that burrow deep into the fabric of economic, social, and political life”. The consequences of such infrastructural power of platforms for the public sphere and opinion formation are well described by Dolata (2018) and Hoffmann-Riem (2020). Accordingly, the provision of the digital infrastructure leads to economic, technological, and political power in their ability to define business models and influence markets, control technological and social infrastructures, as well as significantly influence the relationships with other actors in the media ecosystem (Dolata, 2018; Hoffmann-Riem, 2020). As a result, the functions of platforms keep expanding, beyond their hosting, gatekeeper, and distributor role, while growing in relevance as digital infrastructure, technology, and AI providers, and hypothetically future (news) producers (Helberger, 2024).

The question of how to address platforms and other non-media actors and their

role within the media sector is a contentious issue, particularly considering that their role extends beyond distribution and access services to encompass production, infrastructure, and technological support for news processes (Jungherr & Schroeder, 2023). Although there is good reason to recognise the role of platforms in media concentration law (see for example Nemitz & Pfeffer, 2021), such proposals should be carefully evaluated. Defining platforms as media actors in the context of concentration assessments would “risk making the new rules [under the EMFA] very difficult to implement” and may trigger overlaps with other regulations, such as under the DMA (Brogi et al., 2023). Platforms differ fundamentally from legacy media and, thus, warrant distinct treatment under media law. At the same time, current definitions within media law do not fully account for the existing and emerging dependencies in the media ecosystem, especially on digital infrastructures.

Nevertheless, the DSA and DMA may have the potential to somewhat address platform dependence and digital media concentration by fostering fair(er) and (more) competitive digital markets and ensuring safe(er) digital services by enhancing accountability measures. For instance, the DSA addresses media pluralism in Articles 34 and 35, where systemic risks for “freedom and pluralism of the media, enshrined in Article 11 of the Charter” should be considered in cases of risk assessment and risk mitigation by VLOPs (Brogi et al., 2023). These risk mitigation measures are noteworthy as they reach down into the deeper technological and infrastructural levels. Additionally, the DSA mandates transparency for platform recommender systems, promoting user choice and control (Article 27). Still, the DSA does not directly address journalism’s dependence on platform infrastructures and the associated vertical concentrations. Furthermore, the DMA imposes new rules on “gatekeepers”, like fair access to data and services for third-party businesses, potentially lowering market entry barriers for European competitors and fostering fairer conditions. Despite the noteworthy shift of the DMA in providing *ex-ante* rules for enabling fairer markets, it is driven by consumer protection goals and is thereby not able to effectively address and protect the normative objectives of media concentration law – most notably, media pluralism. Additionally, it stops short of fully tackling the role of platforms as providers of digital infrastructure and AI, which the media sector increasingly relies upon.

### **Blind spots: The EMFA**

The EMFA complements the DSA and DMA in highlighting platforms as critical access points for media services, organisers, and curators of online content, as well as significant players in online advertising, impactings the economic sustainability

of news media (Recitals 4, 11, and 50 EMFA). While this is true, the EMFA seems to equally neglect the growing dependence in journalism production and the essential infrastructures for journalism, particularly related to AI. As Simon (2023, p. 2) describes, "AI reshapes the dependency of publishers on platform companies by exacerbating existing dependencies on the distribution side and introducing new dependencies on the production side, providing platform companies with greater infrastructural control over news organisations". Therefore, in relation to AI, we must note that platforms are evolving beyond their traditional roles as mere "hosting services", driven by their vast access to data, talent, capital, and users. They are increasingly taking on a new role as technology providers. Prime examples of this transformation can be seen in companies like Google and Meta, both of which are actively developing their own AI models while taking steps back as funders of journalism and innovation projects. Their evolving role – from hosts, curators, and gatekeepers to key players in AI innovation and one-stop shops for audiences, advertising revenue, and cutting-edge technology – impacts journalistic values and media pluralism. This shift further entrenches their concentrated power and dominance in the media sector.

Simply factoring in "platforms" in concentration assessments making the scope much broader, as suggested in the European Parliament's proposed amendments, may be equally inadequate, though (Committee on Culture and Education, 2023). Accordingly, the EMFA reignites the question of how to deal with the growing power of non-legacy actors – notably platforms and AI companies – and the corresponding consequences. As Brogi et al. (2023) note, "the role of large online platforms and their impact on the media market must be taken into consideration in evaluating the power of the resulting media on public opinion, but the concentrations involving the online platform themselves are not included in the scope of [Article 22 EMFA] (unless a media provider is involved)". According to the definition under Article 2(15) of the EMFA, at least one "media service provider" must be involved and concentrations primarily involving platform companies and/or non-media entities are excluded, despite their potential impact on media pluralism and editorial independence. Although this limitation suggests a continued focus on legacy media, the EMFA adds further confusion in this regard. Recital 11 of the EMFA acknowledges the role of platforms in digitalised media markets, recognising that some "providers of video-sharing platforms or very large online platforms may exercise editorial control" and "may fall under the definition of 'media service provider'". Finally, the EMFA's reference to "the online environment" in assessing opinion power makes one wonder how it attempts to address the above-described dynamics. While these frameworks take steps towards harmonisation with a "me-

dia pluralism test” (EMFA) and regulation of platform (DSA) and digital market power (DMA), the infrastructural power dimension of platforms remains an unresolved issue. Without clear guidance on how to interpret the scope of application of the EMFA in terms of concentration assessments as well as how to understand factoring in “the online environment”, the rules at this point merely lead to additional uncertainty.

In a nutshell, the EMFA falls short in fulfilling its goal in two regards: first, by making a vague mention of “the online environment” without providing detailed insights into its implications. This omission leaves the risks associated with infrastructural power and capture to media pluralism and editorial independence in the dark, raising questions about the extent to which the EMFA considers the complexities of the online landscape. Secondly, and possibly as a clarification to the first point, the applicability of media concentration assessments under the EMFA seems limited to traditional “media service providers”, thereby excluding a broader range of actors active in the media ecosystem. This limitation further restricts the EMFA's effectiveness in addressing the full spectrum of (f)actors influencing media concentration (Brogi et al., 2023; Cantero Gamito, 2023; Seipp et al., 2023).

### Way forward

To move forward, it is essential to acknowledge that this concentrated – horizontal as well as vertical – power of platforms gradually encroaches into the deep foundations of media structures and that this infiltration poses a risk of platforms gaining an overwhelming amount of economic, technological, and political power, thereby reshaping the media landscape in potentially irreversible ways. Platforms have become powerful actors in (almost) every facet of the media supply chain, resulting in heightened vertical consolidation. They are relevant in the creation, dissemination, and consumption of news. More and more, platforms' overarching power shapes a range of decisions within media organisations, from commercial and strategic to editorial and economic (Chua & Westlund, 2022; Poell et al., 2022). This power is compounded and maintained through control over the digital infrastructures essential to the media sectors' functioning.

The problem is, in Busch's (2021, p. 9) words, that “the current regulatory approach which focuses on market power and opinion power is too narrow and needs to be complemented with a third pillar that addresses the infrastructure power of digital platforms”. To fill the gaps in the DSA, DMA, and EMFA regarding the regulation of infrastructural power in digital markets, as well as in digital media ecosystems, Busch (2021) proposes regulating platforms as digital infrastructure providers,

with (*ex-ante*) public interest responsibilities. He correctly stresses that, despite rules to promote media pluralism – under the EMFA, but also the AVMSD before – specific regulation of the infrastructural power of platforms has been lacking so far (Busch, 2021; Van Dijck et al., 2019, p. 9). Our assessment confirms Busch's (2021, p. 20) that “there is a glaring gap in the emerging regulatory framework for the platform society that needs to be closed. Competition and media law need to be complemented by a new type of “platform infrastructure law” that covers digital platforms as societal infrastructures and increasingly important actors in the area of services of general interest”. This might be an essential complementary step – in addition to the DSA, DMA, and EMFA – not just for the media industry, but also for the diversity of infrastructure providers that support the public sphere and digital markets. While vertical concentrations could be more directly tackled through such a platform infrastructure law, more research – going beyond the scope of this article – will be needed concerning the potentialities and realities of such a proposal. A potential path forward might involve acknowledging that current views on power concentration are primarily of economic and political nature, while there is an emerging necessity to consider technological power as a key factor in vertical concentration. This would entail a closer examination of the influence of technological and infrastructural power on innovation and the accessibility of essential resources needed to develop (alternative) technological infrastructures, like data, computing power, and expertise. Implementing measures such as mandatory fair negotiations, similar to traditional telecommunications regulations, along with a review of procurement and contractual terms, could serve as initial measures to dismantle the vertical concentrations that arise from the growing dominance in technology, innovation, and infrastructure.

## **2b. Relational power and dependence – sustainability challenges for (local) journalism**

### **Blind spots: The DSA and DMA**

Anyone carefully reviewing the DSA or DMA would likely agree that the effectiveness of their provisions in enabling journalism to properly tackle the challenges facing the sector is somewhat questionable. Their objectives are primarily economically driven, lacking a clear focus on addressing the structural sustainability challenges that journalism faces. Additionally, the scope of the DSA and DMA focuses on online services and gatekeepers, but, as previously discussed, it fails to consider their role in a relational sense – as wielders of systemic opinion power. The destabilisation of journalism's business models, along with the asymmetrical power dynamics and negotiation capacities between platforms and media actors,

is not adequately addressed in either the DSA or DMA. As a result, journalism is inadequately protected as a public good and is instead treated more like a consumer good, overlooking journalism's fundamental public value, which exists "even if not consumed" (Sjøvaag, 2024). Beyond the DSA and DMA, other regulatory efforts to address the sustainability challenges faced by (local) journalism can be found in legal areas such as copyright law. However, these other efforts to correct the power imbalances that endanger local journalism may, in fact, inadvertently deepen these dependencies to the detriment of local news.

The EMFA (to which we will get in more detail) cites the EU Copyright Directive as a tool for ensuring the financial sustainability of the media (EMFA, Explanatory Memorandum, p. 4). As argued by several authors, such copyright reforms and remuneration of publishers fees – as seen in Spain and France – could, however, worsen power imbalances and increase dependencies that disproportionately harm small, local, and regional news media (Meese, 2023; Radsch, 2023; Keller, 2017; Leali & Scott, 2022). Initiatives outside of Europe aimed at addressing the asymmetrical relationship between platforms and media have faced criticism for being ineffective and potentially harmful. While mandatory payments, like enacted under Australia's News Media Bargaining Code (NMBC), might alleviate immediate financial issues, they fail to tackle the underlying structural sustainability challenges facing the journalism sector (Meese, 2023; De Lima-Santos et al., 2023). As stated by Meese (2023, p. 88), "It can appear impossible to ensure the long-term sustainability of sectors that are increasingly reliant on platforms like Google and Meta. As technology companies start functioning as infrastructure, other sectors depend upon them to run their businesses". The requirement for platforms to share revenue with news organisations falls short of addressing the core sustainability issues, nor does it present a long-term structural policy solution. It appears to reinforce the dominant market positions of both the platforms and large publishers, leading to a more consolidated media landscape (Feld, 2021). The trend of major publishers like Associated Press (AP) and Springer entering into agreements with AI firms, including Open AI, highlights the significance of the issue in the context of AI, as the largest platforms and the largest publishers may further entrench their power (see for example, Thomas & Murgia, 2023). This situation could not only create further obstacles for local journalism to prosper and leverage advancements in technology and AI, but it might also prioritise short-term, opportunistic policies above sustainable, long-term solutions, thereby exacerbating the issue of media concentration.



### Blind spots: The EMFA

The EMFA, on the other hand, specifically aims to safeguard media pluralism and editorial independence as part of concentration assessments. It further mandates that member states conduct a “media pluralism test” (Brogi et al., 2023), taking into account the element of “economic sustainability” as envisaged in Article 22(2)(c). However, there still are notable blind spots regarding the relational power of platforms and the long-term sustainability challenges confronting local journalism. Firstly, it overlooks the consequences of structural dependence, which can lead to concentration through declining autonomy and the threat of infrastructural power, concepts that are inadequately captured by the term “online environment”. Secondly, while Article 22 acknowledges *economic* sustainability, it fails to address the broader impact on journalism as a public good. For example, economically speaking, mergers may be beneficial and pass the assessment test. However, they could still further facilitate the creation of monopolistic structures, in particular through resource concentration and infrastructural dependence. Furthermore, one could question the extent to which other provisions, like Article 24 of the EMFA, requiring audience measurement system providers to make their data transparent to media organisations, truly contribute to a fairer allocation of economic resources. This is because it not only highlights the knowledge gap in handling the provided data but also likely increases news organisations’ reliance on platforms for data essential to their operations and financial stability. These scenarios could further trigger local news desertification (Blagojev et al., 2023) as particularly small, local, and regional news organisations are in a weak position regarding resource allocation. Economically, their only option might be to merge, which overlooks the intrinsic value of (local and independent) journalism as a public good, transcending consumer demand (Baker, 2006). While changes brought by platforms are not the sole factor in journalism’s sustainability issues, one must question how the EMFA plans to actually protect media pluralism and editorial independence without also defending the independence of local and regional journalism. A recent study further verifies that the economic and market difficulties confronting local and regional journalism result in commercial and political dependencies, which are not adequately offset by existing legal or policy initiatives, nor are they fully addressed by public support measures (Blagojev et al., 2023).

The EMFA appears to adopt a narrow approach that emphasises professional service and economic activity in its scope of defining “media service providers”, potentially excluding other democratic actors such as independent journalists, bloggers, and NGOs from its protective measures (Seipp et al., 2023). With the requirement in Article 22 of the EMFA that at least one “media service provider” needs to be in-

volved for media concentration assessments to apply, the EMFA may overlook various entities contributing media concentration without meeting this narrow definition. Making things even more complicated, Article 18 of the EMFA seems to delegate responsibility to VLOPs to assess whether a “self-declared” media service provider fulfils the criteria of “editorial independence”, which places an unrealistic responsibility (but also power) on them and could further skew the power dynamic between news media and platforms. This risks leaving some journalistic actors outside the scope of EMFA’s benefits, like structured dialogues with platforms. As noted by Helberger et al. (2023), the success of such structured dialogues in addressing the platform-media relationship hinges on the negotiation power, or “who will join the dialogue”. While large media organisations wield greater leverage in this regard, small, local, and regional media, which may actually be more impacted by interventions from platforms, could be at a disadvantage due to their lesser negotiation power. This could further deepen dependence and negatively affect “media pluralism, journalistic resilience and independence and fair distribution of economic and opinion power” (Helberger et al., 2023). Excluding some media from the EMFA scope is described by Tambini (2021) as “the paradox of privilege,” where defining “the media” for the purpose of granting protections can inadvertently lead to media control and the establishment of an “authorised” media with special status (Tambini, 2023). It seems paradoxical that legislation aimed at safeguarding media pluralism and editorial independence neglects to explicitly safeguard the most vulnerable entities. Finally, the EMFA’s concentration criteria and media definitions prioritise economic and professional dimensions over a rights-based framework that could protect independent journalism as a public good (Cantero Gamito, 2023; Seipp et al., 2023). This appears to be a regrettable missed opportunity.

### Way forward

One may argue that it is hardly surprising that the EMFA faces certain restrictions given its legal basis in establishing a functional internal market. However, the dual role of the media deserves emphasis. Brogi et al. (2023) underline the significance of media services both in the internal market and for democratic discourse, suggesting that recognising this dual importance is crucial for rethinking the balance between media and digital platforms. This includes advocating for special protections and privileges for journalism. To effectively address media concentration and protect pluralism, (local) journalism needs to be assigned a higher level of protection, to avoid vulnerabilities of market-driven and consumer logics (Baker, 2006). That requires acknowledging that the journalism sector operates differently from typical markets, holding “value even if not consumed” (Sjøvaag, 2024). Journalism’s societal value extends beyond competitiveness or revenue, benefiting society

through well-informed citizens and scrutiny of power. In this context, Van Dijck et al. (2019) propose a shift from *consumer welfare* to *citizen wellbeing* in tackling platform power, because “in addition to being consumers and producers, users are also citizens who for their democratic and civic duties have come to depend on services offered by platform companies”. The conditions to allow local journalism to build long-term, independent, and sustainable business models need to be created in order for journalism to function as a public good, serving not consumers but citizens and democratic interest. A variety of alternative business models are already developing, including membership and subscription models, community-funded approaches, publicly funded media, and cooperative ownership (Brogi & Sjøvaag, 2023). Initiatives such as the Public Interest News Foundation in the UK are relevant examples in promoting such models and supporting local organisations.<sup>2</sup>

Therefore, the apparent blind spot within the EMFA could further incentivise member states to better meet their positive obligations towards safeguarding media pluralism and improve national media policy to meet the demands (Tambini, 2021a). This could involve more precise delineation of supportive and incentive-based policies aimed at bolstering local journalism, such as through subsidies or various forms of privileges and protections (Pickard, 2020; Tambini, 2021a). While policies aimed at enhancing media pluralism and public subsidies generally fall under the responsibilities of individual member states, this doesn’t imply the EU should remain passive. Brogi et al. (2023) advocate for an increase in funding within the “Creative Europe” programme allocated to news media. They suggest designing programmes that encourage innovation in newsrooms, support new journalistic collaborations, investigative journalism, and local and community media initiatives. Specifically, they propose the establishment of a “European Fund for Journalism” to ensure the long-term sustainability and independence of the journalism sector, funded for instance through a digital tax (Brogi et al., 2023). Policy measures aimed at bolstering local journalism should also be linked to commitments to the public interest, like transparency and diversity standards, to guarantee that financing is both effective and supports democratic principles. Specifically, strategies such as requiring platforms to make payments to the news industry – through copyright reforms or mandated contributions, or digital taxes, – require some form of obligations to guarantee equitable distribution of revenue within the media sector and not leaving this to the media actors with the highest leveraging power. This could include ensuring that the funds are genuinely invested in jour-

2. Public Interest News Foundation, <https://www.publicinterestnews.org.uk>

nalism – supporting a pluralistic media landscape – or mandating publishers to “provide transparency on how they intend to allocate these funds” (Kruimel, 2021).

In essence, to tackle the relational power aspect and dependencies within the media ecosystem that lead to increased concentration, individual partners in their relationships with platforms need to be empowered, thereby creating a counterbalance. This *could* be done, for instance, by balancing negotiation powers for *all* journalistic actors. However, future regulatory strategies must examine the legal frameworks governing these relationships, including IP and copyright law, contract law, and competition law, from a novel perspective aimed at ensuring the principle of equal opportunities to communicate (Schulz, 1998). Consequently, upcoming EU impact assessments might need to more thoroughly evaluate the impact of proposed legal frameworks on the power dynamics among stakeholders and their effects on communication equality, as currently those aspects seem to be addressed incoherently (Dreyer et al., 2020). This includes considering protective measures for the more vulnerable entities, such as small, local, and regional news outlets. Finally, policies and initiatives protecting (local) journalism are especially relevant in an era of increasing dependence triggered by AI, posing risks of skill and resource concentration that could further render small, local, and regional news organisations less independent than their larger counterparts (Bell et al., 2017; Helberger, 2024; Simon, 2023). Emphasising the protection of public interest and local journalism is particularly vital in times of democratic regression. Without it, there is a risk of ending up with a highly concentrated media landscape dominated by very few platforms and media companies, which could significantly influence political opinion formation. Such a scenario could have dire, perhaps even irreversible, consequences for democracy, leaving it in a fragile state.

## Key conclusions and outlook

In summary, the growing trend of concentration in the media landscape exacerbates the dependence of news media on platforms, primarily due to the consolidation of power over essential resources, data, skills, and knowledge. As platforms amass greater infrastructural power, their role evolves from mere gatekeepers to providers of digital infrastructure and AI, thereby extending their economic, technological, and political influence. In this context, technological power emerges as a new form of political power in the digital economy, further deepening both horizontal and vertical power concentrations. This growing dependence on platforms, coupled with media concentration, is particularly detrimental to small, local, and regional journalism. It undermines their long-term independence and sustainabili-

ty, both of which are crucial for fostering media pluralism and serving as a counterbalance to media concentration ("counterpower"). While arguably vertical and horizontal power dynamics are addressed by the DSA and DMA, designed to regulate digital services and digital markets, prevent anti-competitive and dominant positions of power that would harm the EU internal market, in the context of media concentration assessments under the EMFA, there is a clear failure to address the implications of infrastructural and vertical power dynamics for media pluralism and editorial independence. Arguably, the development of specific rules to address "digital infrastructure concentration" could complement and contribute to the development of more equitable and pluralistic media ecosystems.

Although the DSA, designed to address platform power in online services, and the DMA, aimed at fostering a more competitive platform economy through competition law, appear more suitable for tackling platform power, they fall short in addressing the power imbalance between platforms and news media, and they do not adequately protect local journalism, which is vital for the long-term sustainability and independence of the media sector – essential for media pluralism. This limitation also extends to other regulatory efforts, such as copyright reforms, including the neighbouring rights for press publishers, and mandated payments (as seen for instance in Australia), which aim to redirect revenue to news media. These measures, however, risk intensifying platform dependence and disproportionately affecting small, local, and regional news outlets. The EMFA does not explicitly address or safeguard local journalism, which should be seen as a call for member states to increase public subsidies, funding, incentives, and support for local journalism, recognising it as a public good. Although this responsibility lies with member states, it does not mean the EU should remain passive. Any funding or reallocation of revenue in the media sector should be accompanied by public interest obligations to ensure equality and diversity. Lastly, the implications of legal frameworks for the relational power balance in the media need to be more thoroughly examined. In the evolving media landscape, special caution is required regarding the growing concentration trends and the transformative role of platforms, particularly with the advent of AI. Simon (2023) envisions the possibility of large platforms deploying AI-driven news services, generating their own contents by using their extensive infrastructures, thereby potentially bypassing traditional publishers. This potential scenario is underscored by the concentration of infrastructural and relational power, with AI developments intensifying this concentration. Growing concentration trends are driven by the need for substantial data and computational resources, which are largely controlled by platforms like Google, Microsoft, and Amazon, as noted by Murgia (2023). Höppner and Streatfeild, (2023) highlight

the significant barriers to entry in computing, data creation, and foundational AI modelling, suggesting that the rise of AI could further entrench the power of established big tech giants, making them more dominant and less open to competition. Additionally, AI start-ups, similar to OpenAI's early stages, often depend on venture capital or require integration into larger tech firms to gain substantial influence. Accordingly, a key aspect of big tech's dominance is their capacity to acquire competing businesses and start-ups. Economic and technological power is thereby translated into the capability to drive innovation, enabling them to define and structure the rules and norms of the media market and of business models (Dolata, 2018; Hoffmann-Riem, 2020). Professionals in media and journalism are actively investigating the potentials that digital technologies, including AI, can offer, in a need to develop new business models and achieve efficiencies and value-added services in a fiercely competitive digital market (Helberger 2024). In this context, Helberger (2024) and Simon (2023) also warn that market forces, dependencies, and managerial strategies could amplify the push towards market-driven optimisation, potentially diminishing professional autonomy. Understanding the implications of platforms as digital infrastructure and AI providers is critical in developing future-proof concentration assessments and digital media policies capable of limiting power concentrations while putting in place specific protections for public interest and local journalism. Failing to prevent power concentrations from emerging *before* they can trigger potentially irreversible consequences and turning a blind eye on those entities most vulnerable, while being distracted by seemingly attractive, short-term fixes accomplishes nothing. At best, it might foster a false sense of security that these matters are being taken care of, while in the background the issue only exacerbates.

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