

House of Lords Select Committee on Communications Media Ownership and the News Evidence from Campaign for Press & Broadcasting Freedom (CPBF)

The CPBF was established in 1979. It is the leading independent membership-based organisation dealing with questions of freedom, diversity and accountability in the UK media. The organisation draws its support from individuals, trades unions, academics and community-based organisations.

The CPBF welcomes the important initiative by the Select Committee to hold this inquiry. Recent debates concerning media ownership policies have been predicated on a limited number of technological, economic and political arguments, for example that current ownership rules are inhibiting competition, squeezing profits and undermining the future of free-to-air broadcast news or quality newspapers. These arguments are, in our view, most often asserted by corporate interests to pursue a strategy of ownership liberalisation and content deregulation.

Major changes in media ownership are also taking place as a result of convergence. The new information providers – search engine and telecom companies, internet service providers, and the like – play an important role in the selection, organisation and flow of information and therefore need to be brought into a revised analysis of media ownership and regulation in the age of convergence. The CPBF is currently involved in its own research on these issues, and looks forward with interest to the conclusions and recommendations which emerge from the Select Committee's deliberations. Below we respond to the questions in the second call for evidence.

1. Are the requirements in the Communications Act 2003 relating to the quality, quantity, scheduling and impartiality of national and regional broadcast news appropriate? Are they sufficient? Will they be appropriate and sufficient after digital switchover?

The 2003 Communications Act set specific quotas for both national/international and, in the case of ITV1, nations/regions news 'as appropriate' and requires Channel 3 news programmes to be 'able to compete effectively with other television news programmes broadcast nationwide', particularly the BBC. The Act also requires that news included in television and radio services is presented with 'due impartiality' and accuracy. However the clauses in the Act (see section 270) relating to the continuing provision of quality national and regional news are insufficiently robust because there is an acceptance that a channel's public service remit may be relaxed because of 'economic or market conditions'. In other words, a crucial service to the public, such as broadcast news, should be provided only as long as it is economically viable, not necessarily because of purposeful and decisive regulation in the public interest. This is likely to place industry interests in conflict with citizen's interests in areas such as broadcast news, children's programmes and regional output.

ITN

A number of factors have weakened ITN which supplies news to ITV and Channel 4. The Broadcasting Act of 1990 created instability in the ITV system and the impact on ITN News was considerable. Richard Lindley provides the detail in *And Finally...* chapters 34-39. (1) The varied fortunes of *News at Ten* are well known but one issue is worth highlighting. In May 2001 the Independent Television Commission (ITC) gave nominated news provider status to a consortium led by Sky Television, and ITV used Sky to drive down the price of the ITV news contract to £35 million (it had previously budgeted for twice this figure). It now seems like ITN will have some

stability, with its contract renewed up to the end of 2012, but the damage done to its news operation through a combination of the 1990 Broadcasting Act and subsequent dire decisions by ITV management will be difficult to repair. It certainly is not able to compete with the BBC's news provision in the same way as it did from its inception in September 1955, when as Andrew Marr points out in the foreword to Lindley's book, it 'ruthlessly exposed the BBC's stuffy and picture-scared traditionalism'.

ITV Regional News

ITV has announced plans which would lead to drastic cuts of £35-40 million in its local and regional news service to viewers. The company argues the reduction is from 17 programmes to 9, but in reality ITV currently broadcasts more than 25 local news opt outs. The 9 regional programmes will cover wide and inappropriate geographical areas, such as Tyne Tees with Border and the East with West Midlands.

The plans need Ofcom's approval. In its July 2007 consultation document *New News, Future News* (2007) Ofcom argues that digital switch-over (DSO) alongside other technological and commercial developments, 'make it much less likely that commercial broadcasters would choose to carry news for the UK nations and regions at anything like the current level, in the absence of effective regulatory intervention'.

The CPBF believes that this is a crucial public policy issue. Policies driven by purely commercial, market-led priorities will marginalise and weaken public service content, of which news is an essential component. It is vital in the converged media world that citizens have the choice of a diverse range of high-quality, impartial news programming on both free-to-air and other platforms. We support 'effective regulatory intervention' to ensure this.

Impartiality

Ofcom's July 2007 consultation document concluded (page 71) '...the requirement for the BBC and Channel 4 to be impartial should continue; and there appear to be no reasons for any relaxation on other channels with PSB status' (ibid). However, it also raises the question of whether, 'for channels other than the main PSBs, is impartiality still important, or is it a barrier to diversity in an era with a wide range of services available to viewers?' (ibid) and asks whether, 'subject to changes in legislation, should other channels be allowed to offer partial news in the same way that newspapers and some websites do at present?' (ibid)

In the CPBF response to Ofcom we pointed to the merits of the BBC's June 2007 report *From Seesaw to Wagon Wheel: Safeguarding Impartiality in the 21st Century*. We by no means agree with everything in the BBC Report, but nonetheless believe that parts of it point to useful new ways of thinking about how the impartiality regulations might best be interpreted, developed and applied in the current and future media environment. These ideas, in our view, are a great deal more sound than allowing certain broadcasters to operate outside the impartiality regulations whilst requiring others to abide by them. First of all, because we believe that fair competition requires that all broadcasters offering news and current affairs programmes should be subject to the same regulations. Second, because we fear that the impartial broadcasters would inevitably be pushed towards opinion-mongering and partiality by the de-regulated ones. And third, and most important, in the interests of social cohesion. To quote from Peter Horrocks in the BBC report: 'the question that these extraordinarily rapid changes in audiences, technology and mass media consumption inspires is one that is wider than the BBC or public service broadcasting. The question is whether we are a society in which there can be common ground. Common ground in information, views and a shared understanding of how to interpret the world. That common ground is rapidly shrinking and it is hard

ground to stake out. That ground cannot now be based on a single set of views about the world. It has to be a shared set of approaches to understanding the world – a willingness to receive information that challenges assumptions, of hearing views with which one disagrees and the ability to debate and interact to form a variety of views about a diverse society. In that very diversity there needs to be a common purpose – a common approach to understanding’.

2. Are the public interest considerations for media mergers set down in section 58 of the Enterprise Act 2002 strong and clear enough to protect a diverse and high quality news media? Are the conditions under which the Secretary of State can order a public interest investigation appropriate?

The Competition Commission ruling in October 2007 about BSkyB’s purchase of 17.9 per cent of ITV is very limited and reinforces a concern that regulators are increasingly conceptualizing media pluralism in largely economic terms. The ruling focuses on the likely ‘loss of rivalry’ in the media market in that Sky’s stake would impinge on ITV’s business model as a result of the conflict between Sky’s dependence on pay-TV and ITV’s on free-to-air broadcasting. The CC, however, rejected the idea that the acquisition would raise pluralism issues in the crucial areas of advertising and TV news.

According to CC chairman Peter Freeman: ‘As far as the media public interest consideration is concerned, we do not think there is sufficient evidence that the acquisition will have an adverse effect.’ This suggests both that regulators are operating with a restricted understanding of the nature of the public interest – that it can be measured exclusively in terms of degrees of market competition – and, as a result of this, that instruments such as the public interest test are unreliable guarantors of a robust and diverse media environment. For example, section 375 of the Communications Act 2003 makes it clear that the existence and regulation of press pluralism depends on ‘the extent that it is reasonable and practicable’. As it stands, the decision about what can be considered ‘reasonable and practicable’ rests almost exclusively with the secretary of state, leading to an opacity and potential conflict of interest that is not healthy in a democracy.

There is an overriding need to revise the 2003 Communications Act and Part 3 of the 2002 Enterprise Act so that the secretary of state is not the sole figure who can initiate and rule on a merger review. An alternative independent structure, with a broader brief which transcends purely economic criteria, and places the issues of media diversity and plurality at the centre of its concerns, should be considered.

We also agree with the points (sections 21-24) made in the Goldsmiths Media Research Programme submission, in the first round of evidence, on public interest issues.

Ofcom and the Triennial Review of Media Ownership

Ofcom’s review of media ownership (MO) rules, published on 14 November 2006 recommended that no changes be made. Many of the functions of Ofcom are modelled on the US regulatory body, the Federal Communications Commission, including reviewing MO rules. In the 2006 Ofcom report (2.39) there is the astonishing statement: ‘Some modest proposals for liberalisation were suggested by the FCC in the United States in 2003, for example to remove the ban on newspapers owning broadcast stations in larger markets and relax the rules on local television

ownership. However, most were blocked on procedural grounds'. As members of the Select Committee will be aware from their American visit, the FCC proposals were certainly not 'modest' and spurred widespread protest and opposition. (2)

Sylvia Harvey, in her forensic analysis of Ofcom points out, '...Ofcom has appointed few senior staff with experience of making or regulating television programmes. Its leading figures – drawn largely from the worlds of advertising, cable, consultancy and politics – appear to have little interest in the qualitative dimensions of an audiovisual culture. Its ethos is predominantly neoliberal, and its language and organizing concepts are suitable for an analysis of markets and of competition, but not of social significance and cultural value. (3) This last point about 'its language and organizing concepts (which) are suitable for an analysis of markets and of competition, but not of social significance and cultural value' can be extended to the work of the Office of Fair Trading (OFT) and the Competition Commission (CC).

It was only three days after the MO rules review was published that BSkyB announced that it had paid £940 million to acquire a 17.9 per cent share in ITV. The move by BSkyB provoked an intense and continuing debate about media ownership (of which this Committee's work is one example) and in particular the role and influence of Rupert Murdoch's global media group. It was this concern which prompted Alistair Darling, then Trade and Industry Secretary, to call for a review of BSkyB's ITV stake on 26 February 2007 and set in train the CC inquiry which reported on 20 December 2007 and recommended BSkyB's holding in ITV be cut to 7.5 per cent. This recommendation with some added stipulations was upheld by Business Secretary John Hutton on 29 January 2008. We still do not know whether BSkyB will appeal but the whole episode reveals some basic flaws in the MO rules in the 2003 Communications Act and the way public interest considerations are dealt with. As Roy Greenslade points out, the BSkyB share raid did not breach the Communications Act and if BSkyB does appeal 'it will surely hinge on definitions of public interest and the way the regulator and the Secretary of State have, to all intents and purposes, ignored the Act's specific provisions'. (4) The CPBF thinks the Communications Act needs to be revised to specifically and unambiguously exclude powerful media groups from acquiring media holdings rather than rely on subjective public interest tests. Such a revision also needs to incorporate a broader analysis of media ownership and regulation as a result of new converged communication structures based around the internet, telecoms and computers. The importance of this is underlined by Microsoft's \$44.6 billion bid for Yahoo.

3. Do current national and local cross-media and single sector media ownership rules set out in UK legislation do enough to ensure a high quality and diverse news media? Or now that most news organizations are moving towards multi-platform operations, have these rules outlived their usefulness and relevance? In this context are there effective actions that can be adopted by news organizations to protect the public interest?

Long-standing concerns about media consolidation will certainly not disappear with convergence. In an internet-dominated future, there will still be the need for special regulatory controls to promote both pluralism and diversity. According to the economist Chris Marsden, the internet shares the characteristics of all information markets, that in contrast to 'broadcast public goods which are non-excludable and non-rivalrous, the privatisation of information flows offers possibilities for private monopoly and sub-optimal exclusion of social groups and individuals'. (5) In other words, a broadband internet future is certain to produce new types of monopoly and new forms of exclusion that can only be tackled with purposeful and positive intervention into media markets. It seems rather obvious that if we are still committed

to policy objectives concerning, for example, media pluralism and diversity, then there is little point in junking or diminishing the traditional mechanisms for achieving these outcomes simply because we are faced with *different* technologies. As Thomas Gibbons points out: 'the public interest in media activity is not rendered less relevant by the media's form'. (6)

The CPBF believes that this is a crucial public policy issue. Policies driven by purely commercial, market-led priorities will marginalise and weaken public service content, including news. It is vital in the converged media world that citizens have access to a range of high quality impartial news channels.

4. Do any problems arise from having four bodies involved in the regulation of media markets (the OFT, Ofcom, the Competition Commission and the Secretary of State)? Are there any desirable reforms that would improve the effectiveness of the regulatory regime?

We think the problem is not necessarily with the number of bodies involved, but the principles by which they operate. As previously stated, economic arguments dominate the thoughts of all four participants. There is also an overriding need to rethink the role of the secretary of state as the sole figure who can initiate and rule on a merger review.

5. Has the lifting of all restrictions on foreign ownership of UK media affected the quality and independence of the UK news media, or will it affect it in the future? Has the UK industry benefited, or does it stand to benefit in the future?

We think the key issue here is the potential takeover of UK media by powerful US-based global media groups, and the lack of reciprocity in terms of rules on media ownership. The US specifically excludes foreign ownership of US television networks on grounds of national security. It is unlikely however that any UK media group would have the financial resources to acquire a US television network

One area of CPBF concern would be if the general requirement of 'due impartiality' was lifted from certain new channels in the future. Rupert Murdoch has referred to Sky News as 'BBC lite' and if BSkyB had regulatory approval to shift to a more partial news approach the adoption of a Fox News format might follow.

Notes

(1) Richard Lindley. *And Finally...? The News From ITN*. (2005)

(2) Robert McChesney. 'The Uprising of 2003' in *The Problem of the Media*. (2004)

(3) Sylvia Harvey. 'Ofcom's first year and neoliberalism's blind spot: attacking the culture of production,' *Screen* 2006 47(1)

(4) Roy Greenslade. 'Everyone loses after Hutton orders BSkyB to sell ITV stake,' *Evening Standard*, 30 January 2008

(5) Chris Marsden. 'Introduction: information and communications technologies, globalisation and regulation'. In C. Marsden (ed.), *Regulating the Global Information Society*. (2000)

(6) Thomas Gibbons. 'Pluralism, guidance and the new media'. In C. Marsden (ed.), *Regulating the Global Information Society*. (2000)

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