

The Long View on Media Plurality: we need market reviews

With the referral of the BSkyB merger to the Competition Commission, thoughts turn to the question of how we got into this mess in the first place, and how, with reform of legislation and self regulation we might get out.

It is worth recalling that were it not for an intervention by a committee led by Lord Puttnam almost a decade ago, the Sky merger would have been waved through some time ago. The Draft Communications Bill of 2002 proposed a framework on media mergers without a public interest test. Were that framework in place today, News Corporation would already have bought BSkyB. It was only after an intervention by the Joint Scrutiny Committee – a committee of MPs and peers chaired by Puttnam– that the public interest and plurality test was inserted in the legislation, leaving Ofcom to work out **how to measure 'plurality'**.

So the **2003 framework** at least had a **plurality test**. As we have found out to our cost, this was, however, an inadequate fudge. As Ofcom pointed out in their **report** on the plurality test for News International's purchase of BSkyB, the problem with the legislation is that it bites only when there is a merger. Plurality problems (one company having too much control over public opinion) can also arise when a company grows, as Sky has, steadily in the last decade, whilst their competitors do not.

Another key part of the UK media plurality framework are the limits on media ownership in the **Communications Act Schedule 14**. These so called '20-20 rules', are a complex system of thresholds which as a rule disqualify holders of more than 20% of newspaper markets from holding more than 20% of some television and radio licences. These bite when there is a change in a broadcasting licence.

These interventions are all very well, but as Ofcom has **acknowledged loud and clear** they do not actually offer the public any guarantee that plurality will be safeguarded, because they only come into play if a merger or a change in a broadcast license results in a lessening of plurality. If, as in the case of the News International BskyB merger there is a strong case that a lessening of plurality occurred before the merger situation arises, the merger test may return the answer that the merger itself does not result in a lessening of plurality.

As Peggy Valcke described in a **recent LSE seminar**, many other countries, and in particular Belgium and the Netherlands, have put in place systems of annual reviews of media concentration and plurality which enable monitoring also of endogenous growth of media companies, and procedures for undertakings to deal with plurality threats that arise.

The Government is fortunate that Jeremy Hunt announced recently – and before the furore of recent weeks – that he is conducting a full review of the policy framework on the media. This offers an excellent opportunity for a full debate of the framework for media pluralism, and he should show his resolve by leading the debate on these issues yet understanding that the executive should stand back from detailed prescription of the outcome.

Parliament should be given the opportunity to discuss an appropriate framework of market reviews, and other safeguards of plurality and standards, such as independent production quotas, self- and co-regulation of journalism ethics (more on this shortly) and the role of independent civil society boards on the German model, but this can only be made to work if there is a system of regular market reviews which deal with the root of the problem. It is clear that media power has not been subject to sufficient checks and balances in the UK. Stronger safeguards should be enforced when media organisations grow beyond a certain threshold in terms of their size and market power.

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