

Media Plurality: Game On?

The timing of Harriet Harman's **intervention on media ownership** yesterday was interesting. It came just after the House of Lords closed their **call for evidence** on media plurality (the deadline was last week) and one day before the Queens Speech which will set out the legislative programme for the next Parliamentary term.

This does raise questions in relation to the **recommendations that Leveson made** that Parliament should pronounce on whether Media Ownership rules should be reformed. We are unlikely to see communications legislation in the speech, (the Green Paper was never published and the phantom White Paper is still pending) but the opposition is clearly signalling that they are inclined to keep up the pressure on this matter. Previously they said they wanted to fix press regulation first – but they might be reaching the conclusion that media ownership rules are easier.

My evidence for the Lords Inquiry on media Plurality is two papers I submitted to Leveson with **Rachael Craufurd Smith** and **former LSE student Davide Morisi**. Since nothing has changed since Leveson, these papers remain entirely relevant to the Lords' questions, and in my submission (see below for an extract) I linked them to some of the questions that the Committee are asking. I bet if you ask nicely the Committee will accept the odd late submission.

Damian Tambini: Submission to the House of Lords Inquiry on Media Plurality (Extract).

Does a clearer objective for plurality policy need to be thought out and incorporated into statute than is currently the case? What should this be?

It is essential that the objectives of media plurality policies are more clearly set out and defined in statute. A lack of clear definition of objectives has led to crippling legal uncertainty. As both the attached publications note; the framework in the UK since the 1947 Royal Commission on the Press has centred on four distinct objectives for media plurality regulation:

- maintaining the integrity of the democratic process;
- preventing media misrepresentation and suppression of information;
- enhancing citizen's access to diverse information and opinions; and
- protecting freedom of expression.

However the objectives are not clearly set out in legislation or guidance which has resulted in disputes and uncertainty. In addition, there are no hard and fast rules, or 'apolitical formulae' that can be applied in order to ascertain how much market concentration can be tolerated according to the various methodologies examined in the attached papers if those four separate objectives are to be protected. It would provide regulators with more guidance and certainty if the aims objectives and also the detailed limits in ownership shares were set out in legislation with parliamentary scrutiny. Such rules should be set by parliament after a full public debate.

In the absence of a definition of plurality in statute, Ofcom have provided the following working formulation. Is this the best definition or should it be improved?

a)“ensuring there is a diversity of viewpoints available and consumed across and within media enterprises and;

b) preventing any one media owner or voice having too much influence over public opinion and the political process/agenda.”

This 'definition' is really a restatement of the policy objective rather than a clear indication to industry and society of what should and will be tolerated. It does not provide the necessary regulatory certainty and should be revised. It may be better to avoid the vague notion of 'media plurality' altogether. In the attached papers we discuss alternatives:

"In Germany, the concept of Media Pluralism is not mentioned in the regulations that apply to the media. Instead, control over opinion-forming power is the crucial consideration to be taken into account ("*meinungsmacht*"). Companies that attract more than 30 per cent of the television audience are presumed to exert too great an influence on public opinion. In Italy, owners are prohibited from obtaining more than 20 per-cent of revenues derived from a broadly defined media sector, including audiovisual distribution services, book publishing and advertising agencies. Fixed limits have, until recently, been the preferred means of control also in the US, which has tended to favour "bright-line regulation" to limit agency capture". (2)

What should the scope of media plurality policy be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?

From the point of view of the public policy objectives that have been gathered under the rubric of media plurality (and are discussed in paper 1) both are relevant. A controller of a distribution platform for films for example can exert unacceptably high levels of control over opinion formation 'zeitgeist' and also the general public awareness of issues (such as climate change or terrorism for example). However a pragmatic approach could be devised that address both issues without unacceptable bureaucracy. For example similar audience based methodologies for measuring media plurality should be applied, but with different thresholds for news (lower) compared to more general cultural content.

What are the appropriate triggers for a review of media plurality and with whom should discretion to trigger a review reside or indeed should reviews be periodic? Alternatively, should reviews be periodic while still retaining the possibility that a review can be triggered under certain circumstances? What should those circumstances be?

It is of paramount importance that individual decisions be removed from political control. This is the only way of avoiding the fundamental conflicts of interest that arise when politicians are involved in decisions of this nature. When clear rules and criteria have been set out, it is entirely possible for an expert commission to apply the necessary discretion as is the case in Germany. Paper 1 examines various systems of regulation and paper 2 proposes a framework for triggering reviews. Because the outcomes that media plurality regulation aims to achieve can be compromised both by endogenous growth of media companies and by mergers/ changes in control, both these should be able in principle to trigger a review. However in addition to the thresholds based reviews of transactions and periodic reviews, there should be some fixed outer limits of audience based concentration shares. Further policy consultation will be necessary to examine methodologies and to set appropriate thresholds and limits (papers 1 and 2).

For the purposes of a review of media plurality, what should 'sufficient plurality' mean as described in Sections 3 and 375 of the Communications Act 2003? How should the growing role played by digital intermediaries acting as gateways to content be taken into account?

I wholeheartedly endorse the call made by Robin Foster in his recent [report\[1\]](#) for a 'plurality dialogue' involving a range of media intermediaries about the rapidly changing role of digital intermediaries in relation to news plurality in relation to the editorial and gatekeeper roles they play. In addition it is essential that new ways that media and communications companies are involved in the wider process of opinion formation in society are taken into account, particularly as regards the intersection of privacy, freedom of expression and media plurality issues.

[1] REUTERS INSTITUTE for the STUDY of JOURNALISM REPORT News Plurality in a Digital World Robin Foster July 2012

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