Update on the House of Lords Communications Committee's Inquiry on Media Plurality

The House of Lords Communications Committee has begun its inquiry into media plurality. This is significant: as MPP pointed out previously the Leveson Report directly passed to Parliament several questions on media plurality and ownership, and this starts the process for picking up the neglected 'structural' agenda of Leveson. After reviewing the evidence, two particular sticking points stand out. The first involves determining a workable method for measuring whether there is an insufficiency of of media plurality within the market. The second involves the proposed solutions to be used to address plurality concerns when an organisation under review has been found to constitute an undue concentration.

Measuring "Sufficient Plurality"

In the latest round of questioning, the Committee called on witnesses to address the measurement scheme submitted in evidence by Enders Analysis, which proposes setting a cap of 15% on any one media organisation's control of the overall media market. That 15% is based on total market revenue across all platforms. The advantages, as stated by Lord Parekh in a recent debate, are that a revenue-based cap is easy to administer and can comprehensively measure across print, broadcast, and digital platforms. Other stakeholders have also come out in favour of this or similar caps, including Avaaz, The Campaign for Press and Broadcasting Freedom, the Media Standards Trust, Professor Steven Barnet, Chris Mullin, and Lord Puttnam.

Rachael Craufurd Smith, whilst presenting evidence to the Committee, acknowledged the appeal of a revenue cap's administerability. She however cautioned that such a measurement would be imperfect because revenues are not always directly proportional to media influence. For example, an organisation may dominate the entire newspaper industry but still generate few revenues due to the nature of the platform. Craufurd Smith and Damian Tambini suggested that the Committee also consider a hybrid approach: audience based measures could determine a lower threshold (say, 20%) of news audience which could then trigger plurality obligations, and a revenue measure could be used as a market cap at a higher level. Similarly, the umbrella group Media Reform Coaltion, which represents the views of a large number of civil society organisations and academics has also developed a hybrid approach based on a threshold combined with a 'bright line' cap based on revenue measures.

Most stakeholders[1] favoured hybrid or nuanced approaches that would use both quantitative and qualitative measurements of diversity. Although a commonly cited advantage to a single clear-cut cap is that it would provide greater certainty for businesses and organisations facing a review, not one business entity expressed support for the idea, and most supported nuanced or hybrid approaches.

Remedies to Increase Plurality

Regardless of which system of measurement is accepted, based on the evidence submitted so far it seems there are also very different positions among stakeholders on what measures should be taken to address plurality concerns when concentration has been identified. The submissions include oft-suggested structural remedies, such as mandating shareholder dilution. The Media Reform Coalition has suggested requiring a dominant media organisation to "carve out" or divest one or more of its titles in order to increase the number of players in the market.

Several stakeholders note that the current state of the economy may justify a more lenient approach in permitting media mergers, but with more rigorous behavioural or internal plurality obligations. One theory being considered in the U.S. is that allowing organisations to pool resources may enable those organisations to produce more diverse content. Behavioural obligations would therefore help ensure that that diversity will materialise even in a situation of concentration of ownership. Accordingly, Robin Foster has proposed remedies such as requiring dominant organisations to create independent editorial boards or to allocate more space for alternative viewpoints. Similar measures have also been proposed by Craufurd Smith, Tambini and the Media Reform Coalition. Several submissions have also suggested obligating dominant organisations to establish procedures such as a 'right of reply' or to agree to rules on impartiality. Ofcom, in its contribution to the Inquiry, emphasised that the effectiveness of these behavioural remedies "depends on there being incentives for the regulated entity to comply". In that vein, several submissions from news organisations, including News Corp., suggest that the substance of those behavioural obligations should therefore be proposed by the particular entity or entities under review.

The Committee aims to release a report to the House, with its recommendations, in the late Autumn. The Government's position on media plurality remains unclear, but the Department for Culture, Media and Sport in its own submission to the Inquiry "noted" the Committee's proposed timing of publication, and stated that "this will form a valuable input into the Government's consultation". That's an ambiguous statement — on one hand, could it be a sign that any forthcoming Communications White Paper will not be released by the Government until after the Committee makes its recommendations? Or on the other hand, since previous mentions of the White Paper have not included media plurality issues, could the Government be planning to deal with media plurality outside of the context of the Communications Review?

Note: This article gives the views of the author, and does not represent the position of the LSE Media Policy Project blog, nor of the London School of Economics.

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[1] A nuanced quantitative and qualitative approach was supported by BFI, Commercial Broadcasters Association, Professor Martin Cave, Competition Comm'n, David Elstein, Robin Foster, Guardian Media Group, International Broadcasting Trust, ITV, Robert Kenny, News Corporation, Ofcom, Professor Robert G. Picard, Suzanne Rab & Dr Alison Sprague, This Is Global, and Voice of the Listener.

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