

Chris Ellins
University of Westminster
London UK

**Preserving a Plural Media and
Media Company Ownership -
an Introduction**

Why a Plural Media ?

- **Democracy v Totalitarianism**
- **A free media / press vs. controlled media / press**

Human Rights

- Freedom of Expression as a fundamental human right – eg **Art. 10 ECHR** protected by independent judiciary assures democracy
- Qualified right – restrictions may be possible if “necessary in a democratic society” **Art 10(2) ECHR**
- States can require “licensing of broadcasting, television or cinema enterprises.” **Art 10(1) ECHR**

Can there be a truly free media?

- Yes but only if it can effectively represent diverse opinions.
- Public interest in maintaining a pluralistic media for promotion of diverse opinions on democracy, society, politics and culture.
- Should we rely on non-profit Public Broadcasting – state funded ? Eg BBC in UK –possibly part but what happens in dictatorships ?

The law is in place so why care about who owns the media ?

- **Political and Economic bodies try to influence the media to their advantage**
- **1992 UK election: Headline boast in The Sun 11/04/92: “It’s The Sun wot won it”.**
- **Some countries allow political parties to own media**

Media Concentration ?

- So if media concentrated:
- 1.Diversity of viewpoints likely reduced so less broad and balanced debate as some opinions excluded or marginalised
- 2.Abuse of political power as some viewpoints are unrepresented or repressed (no “oxygen of publicity”).

Media Concentration ?

- **Practicalities:**
- **Domination / Monopolisation of:**
- **Production of news / media content**
- **Distribution of news/ media content**
(various forms eg print media, radio, TV, Satellite, Internet)
- **Digital media = wider access to**

Media Trends ?

- **Multi-channels - more private channels as frequencies available**
- **Digital media = wider access to information (eg Arab Spring)**
- **24 / 7 Broadcasting**

- **But production often provided by few companies who also distribute themselves so not as plural as it looks.**

Legal Controls on the Media

- **Licensing** – appropriate holders
- **Ownership rules** – to ensure diversity possible:
- **Competition law** but about efficient allocation of resources not media pluralism
- **Special regulatory regimes**

How to control - Licensing

- Art 10(1) ECHR Licensing – but narrowly construed re frequencies etc
- But important eg fit and proper test for holding a broadcasting licence in UK applied on an ongoing basis by an independent regulator (Ofcom)
Broadcasting Acts 1990 & 1996

How to Control – Licensing 2

News Corporation (Rupert Murdoch- US based) in UK



BSkyB (39%)

News Group



Sat. TV / Internet

UK Newspapers x 3

How to Control - Licensing 3

- Phone hacking scandal re celebrities, politicians and missing persons eg Milly Dowler
- Leading to current Leveson Enquiry
- BSkyB Yes – not responsible for newspapers but James Murdoch Chair of BSkyB and News Group resigned first.

Media Ownership

- Ownership rules :
- Legal controls on mandate of Public Broadcasters
- Legal limits on national media concentration – specific percentages and national v local media.
- Cross-Border concentration = trans-European concern eg compare football satellite decoder cards cases (*Karen Murphy* 2010)

Media Ownership UK

- How to solve a legal problem – don't go to a lawyer – get the law changed (lobby).
- 2003 – UK abolished most specific rules about accumulations of broadcast licences and combinations of press/media interests.
- ie no bright line.

Media Ownership UK 2

- Competition law – case by case
- Back-up: S58 Enterprise Act 2002 – media plurality test
- 2009 – Ofcom said 1 x Channel 3 regional TV licence plus local analogue radio licence and local newspaper in same area not meet media pluralism test
- By 2010 after Gov't response Ofcom thought this was Ok due to BBC & plans for new local TV stations.

Media Ownership UK Problems

- Problems in UK:
- Media Pluralism test only used once in 2006 BSkyB / ITV and may not work effectively
- BSkyB bought 17.9% of ITV to stop NTL (Virgin) buying it – cost £940 million. BSkyB argued 20% allowed for diversity and it had less. 2010 told to reduce it to 7.5% After lost case before CA – but took 3 years! NB believed BSkyB lost up to £500 million.

Media Ownership UK

Problems 2

- 1. No on-going monitoring as with licensing – needs a merger to happen.
- 2. UK law has some criteria to use in print and broadcasting sectors but they differ and it's not clear why (eg need for source diversity in broadcasting but not print)
- 3. No clear methodology as to how to apply – 2006 case led to 3 years of litigation up to CA inc controversial issues about how to define the relevant market or audience.

Media Ownership UK 3

- 3. No methodology as to how to apply – 2006 case led to 3 years of litigation.
- 4. In UK Ofcom the specialist communications regulator did not adjudicate - the general competition regulator did – inefficient use of resources.

Media Ownership – Other Examples

- **Italy** – Media Interests dominate politics esp. Berlusconi.
- **Germany** – dual approach –
- specific regulation and competition regulation.

Media Ownership – Other Examples

- Problem specific regulation deals with broadcasting and “dominance over public opinion” with specified figures
- ***Springer / Pro7Sat 1*** 2006 decision then appealed thru courts to BGH as cross media – newspapers & TV
- Ultimately banned on general competition grounds re dominance in TV advertising market

Conclusion

- **Interesting area – confluence of:**
- **Company Law**
- **Broadcasting Law**
- **Competition law**
- **Human Rights law**
- **Main aim agreed – pluralism but**
- **Serious debate about policy and how to achieve it.**