

## **Media pluralism and concentration of ownership: the case of the United Kingdom.**

Professor Richard Collins.

### **Introduction – the influence of the European Union.**

Media ownership regulation in the UK is governed both by the provisions of competition law and by the Communications Act 2003 with both the general architecture of competition law and some specific provisions of sector specific legislation being influenced by the provisions in European Union (EU) instruments - notably the European Treaty and a variety of European Directives underpinning the regulatory regimes for electronic media of communication<sup>1</sup>. The UK regulatory regime was significantly liberalised in the Communications Act 2003 (CA 2003)

Both the UK and the EU foreground **pluralism and diversity** as significant objectives in their media ownership policies and regimes. The European Commission states that media pluralism is among the “pillars of Europe's audiovisual model”<sup>2</sup> And the UK regulator Ofcom referred to the need to “strike a balance between ensuring a degree of plurality on the one hand and providing freedom to companies to expand, innovate and invest..... The first is vital for democracy..... The second can also benefit citizens and consumers by providing a basis for delivering higher quality programmes, greater creativity and more risk-taking (Ofcom 2006: 2).

Both jurisdictions also give considerable, but not exclusive, prominence to **competition law** as a means of promoting media pluralism. And in this respect the liberalisation of UK media and communications law and policy has been strongly influenced by EU stipulations.

The European Treaty has powerful provisions against restriction of competition (Article 81), abuse of a dominant position (Article 82) and illegitimate provision of state aid (Article 87) - though the effect of the state aid provisions may be mitigated by Treaty provisions for services of general economic interest (Article 86). These provisions have strongly influenced the evolution of competition law in the UK and are reflected both in the main competition laws (the Competition Act 1998 and the Enterprise Act 2002) and in the media specific provisions of the CA 2003.

The provisions of Articles 81, 82 and 87 potentially may bear adversely on the established institutions and practices of public service broadcasting (PSB) in Member States. However, in 1997 proponents of public service broadcasting (PSB) secured the addition of a Protocol (the “Amsterdam Protocol”) to the European Treaty to guard

---

<sup>1</sup> Notably, but not exclusively, the Television without Frontiers Directive (see [http://ec.europa.eu/avpolicy/reg/tvwf/index\\_en.htm](http://ec.europa.eu/avpolicy/reg/tvwf/index_en.htm) on 21.5.2007 for an account of developments and the text of the most recent version of the forthcoming revised Directive) and the telecom “liberalisation” package (see Commission staff working document “Europe's Liberalised Telecommunications Market - A Guide to the Rules of the Game” at <http://europa.eu.int/ISPO/infosoc/telecompolicy/en/userguide-en.pdf> on 21.5.2007.

<sup>2</sup> See the rubric introducing the EU's new “audiovisual without frontiers” Directive at: [http://ec.europa.eu/information\\_society/newsroom/cf/itemlongdetail.cfm?item\\_id=2343](http://ec.europa.eu/information_society/newsroom/cf/itemlongdetail.cfm?item_id=2343) on 2.6.2007.

against the effect the Treaty's competition and state aid provisions on PSB. The "Amsterdam Protocol" (added to the European Treaty) provides, *inter alia* that:

The provisions of the Treaty establishing the European Community shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest.

But, notwithstanding the Amsterdam Protocol, a number of subsequent judgements hostile to PSB's interests have been made in cases brought by either the Competition Directorate of the European Commission (DG Competition) or by third parties (notably European commercial broadcasters). The judgement in the 2003 Altmark Trans case is a case in point.

The Altmark judgement resonates beyond public transport (its original locus) and establishes that where enterprises (including public service broadcasters) receive public funding their:

- public service obligations must be clearly defined.
- the level of funding must be clear in advance and objectively and transparently determined.
- funding should not exceed what's necessary to discharge public service obligations.
- and, where provision is not the result of a public procurement tender, costs must be shown to be reasonable in comparison to a comparable commercial operation.

The media specific Television without Frontiers Directive (TVWF) established the basis for a single market in television across the EU's 27 Member States. It requires non-discriminatory treatment for television signals emanating from one Member State by other Member States. Effectively it reduces Member States' powers to exercise control of entry to their television markets by firms domiciled in other EU Member States. Arguably, TVWF augments pluralism in European national media markets but, drawing on a distinction discussed more extensively below, it may be thought potentially to augment **external** pluralism but to have (possible) adverse effects on **internal** pluralism.

The effect of EU law and policy has thus been to require significant liberalisation of the media (particularly broadcasting) environment in Member States. In some Member States (such as the UK) this was largely a welcome influence which chimed with national public policy but in others it was not and is not so welcome. Moreover, the EU policy regime has been criticised for permitting an intensification of concentration of media ownership in national media markets and for the absence of a countervailing set of provisions to foster and preserve media pluralism.

**Audit of European media pluralism.**

In 2004 the Netherlands broadcasting regulator, the Commissariaat voor de Media, published a study of media concentration and ownership in Europe authored by David Ward (Ward 2004). Ward identified openness and pluralism, so as to sustain democracy, as the chief objectives of European regulation:

media regulation throughout Europe has been concerned with maintaining a plurality of outlets and operators throughout the media industry..... media markets should remain open and plural to enable fair competition and the perceived importance of the media in the democratic and social life of the public have converged to provide legal frameworks across Europe. These ensure that excessive market concentration does not threaten the possibility of competitive and plural media markets (Ward 2004: 6).

Ward identified **both** competition law and policy and a range of “limits and thresholds” (such as market share caps, ownership control and subsidies) as key regulatory instruments to secure the goals of pluralism and openness. Within this context he found the UK among the **least** concentrated of European media markets (although with significant levels of concentration in some sectors – concentration which has grown in the years since his study though, as Ofcom noted [2006: 2], by not as much as the rules permit) and endowed with one of Europe’s largest media markets. The UK had “the least degree of concentration in the television sector” (Ward 2004: 13) though in radio it was in the middle tier of concentration (less than some countries, more than others) though with, what Ward regarded as, a high degree of concentration (Ward 2004: 15). Comparison was more difficult in respect of newspapers (the UK is, together with the Netherlands, exceptional among the countries studied by Ward in having a strong national, rather than regional, press and also having a pronounced stratification between popular and serious newspapers. Nonetheless, Ward judged the UK to have a fairly high level of concentration in this sector (Ward 2004: 9) and to exhibit “a high degree of integration between the newspaper and radio sectors, terrestrial television and radio” (Ward 2004: np at para 12.1.3).

Perhaps not surprisingly, given Ward’s finding that the UK occupied intermediate position in respect of concentration of ownership among European countries, the UK “sits half way up” the “league table in terms of the extent of regulation” (Ofcom 2006: 14)<sup>3</sup>.

Media pluralism has been a long standing concern in the context of the European Union though it’s important to recognise that, some regular perturbations about the possible influence exerted by Mr Murdoch aside; concerns are more pronounced in respect of other EU media markets than they are about the UK. Media pluralism has recently become more salient in the European Commission’s policy portfolio. In January 2007 the European Commission released a working paper on media pluralism (EC 2007) which briefly surveys Member States’ audiovisual and print media markets and regulatory models. The working paper usefully updates key data presented in Ward’s study (and provides many more country studies than Ward) but it is less comprehensive in analytical depth than is Ward’s study. It is to be followed by an

---

<sup>3</sup> Ofcom’s comparison included Australia and the USA, both of which were found to regulate more extensively than the UK whereas European countries such as Finland and Sweden had considerably less ownership regulation than did and does the UK.

independent study on media pluralism in EU Member States and a Commission Communication on the indicators for media pluralism in the EU Member States (in 2008) which is, in turn, to precede a broad public consultation on formulation and application of media pluralism indicators (see Commission press release IP/07/52 at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/52&format=HTML&aged=0&language=EN&guiLanguage=en> on 21.5.2007).

The Commission working paper states that:

pluralism of ownership is important, it is a necessary but not sufficient condition for ensuring media pluralism. Media ownership rules need to be complemented by other provisions..... Media pluralism, in our understanding, implies all measures that ensure citizens' access to a variety of information sources, opinion, voices etc. in order to form their opinion without the undue influence of one dominant opinion forming power (EC 2007: 5).

The Commission thus acknowledges that established regimes, based on the separation between radio, television and newspaper markets, may not be optimal for the changing circumstances of media convergence and distinguishes between media markets in large and small EU Member States (their great differences in size and character posing different challenges and presenting different opportunities). In large markets, the Commission judges, “**external media pluralism**<sup>4</sup> - having many competing and diverse channels or titles controlled by many different players” may be attainable whereas in small markets “**internal pluralism**”<sup>5</sup> ie obligations “with respect to programme requirements or structural obligations such as the composition of management bodies or bodies responsible for programme/content selection” may be more appropriate (EC 2007: 8). Of course, concerns both for internal and external pluralism may figure in both large and small media markets: in large EU Member States such as Germany and the UK for example, the fostering of internal pluralism has been a significant justification for continuing high levels of public support for public service broadcasting.

In the UK, for example, Channel 4 is specifically charged with responsibilities for innovation and the service of minorities. And the BBC with specific public purposes notably:

- sustaining citizenship and civil society;
- promoting education and learning;
- stimulating creativity and cultural excellence;
- representing the UK, its nations, regions and communities;
- bringing the UK to the world and the world to the UK;
- in promoting its other purposes, helping to deliver to the public the benefit of emerging communications technologies and services and, in addition, taking a leading role in the switchover to digital television.

---

<sup>4</sup> My emphasis.

<sup>5</sup> My emphasis.

(See BBC Royal Charter para 4 at [http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/charter\\_agreement/royalchartersealed\\_sept06.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/charter_agreement/royalchartersealed_sept06.pdf) on 21.5.2007).

## **The United Kingdom.**

### **The legal regime.**

The regulatory regime in the UK is grounded in the Communications Act 2003 (henceforth CA 2003 at <http://www.opsi.gov.uk/acts/acts2003/20030021.htm> on 20.5.2007) and the Enterprise Act 2002 (at <http://www.opsi.gov.uk/acts/acts2002/20020040.htm> on 20.5.2007) and is (largely) administered by Ofcom. Broadly, the CA 2003 defines the regulatory norms and powers relevant to electronic media (and broadcasting in particular) and the Enterprise Act those relevant to newspapers. Policy and regulation is much more fully elaborated in respect of electronic media – aside from the specific merger provisions relating to newspapers (see below) policy instruments for printed media are conspicuous by their absence and do not extend far beyond the exemption of printed media from liability to pay VAT - value added tax (currently 17.5%)<sup>6</sup>.

The CA 2003 both liberalised and simplified (but perhaps not enough) the regulatory regime which applied before the Act (for an account of the *status quo ante* see Parliament 2006). It increased scope for:

- consolidation in television
- cross-media consolidation
- non-EEA<sup>7</sup> ownership of broadcasting services
- mergers of national radio service mergers
- newspaper mergers

and reformed local radio and local cross-media rules. Since the CA 2003 was promulgated there has been concentration of ownership has increased in radio, television and (local) newspaper sectors.

Broadly, the revised, current, UK ownership rules:

- limit control of television and radio by political parties and religious bodies
- limit consolidation within a media market or between markets so that there are sufficient media outlet owners to increase the likelihood of sufficient viewpoint plurality
- mandate provision of national and international news to the largest commercial television channel (ITV1/Channel 3)<sup>8</sup> by a suitably well funded

---

<sup>6</sup> Other EU Member States, eg Sweden, subsidise the newspaper press but this is not the case in the UK.

<sup>7</sup> European Economic Area – the 27 Member States of the European Union and, additionally, Iceland, Liechtenstein and Norway. Switzerland is, effectively, though not technically a member of the EEA.

provider independent of the BBC and not under the control of political or religious bodies.

The main provisions of UK ownership regulation provide:

- for prohibition of cross-ownership of ITV/Channel 3 and national newspapers with a market share of more than 20%.
- require ITV1/Channel 3 news to be provided by a news provider meeting certain quality (adequate funding) and ownership (no cross-ownership with national newspapers) stipulations.
- that national public telecommunication operators with a turnover exceeding £2bn are prohibited from holding licences to Channel 3, Channel 5 or a national radio service.
- complicated local radio provisions which (simplified) stipulate that, broadly, no operator should be able to increase holdings if by so doing their potential share of any local audience exceeds 55%. And which also provide that neither the owner of a local Channel 3 licence nor the owner of a local newspaper with a market share of 50% or more may hold a radio licence in the relevant area. The idea is that the radio regime in each locality should be based on a “two plus one” policy – two separately owned commercial (with ownership different to any local newspaper) and one BBC local service<sup>9</sup>.

### **Ofcom’s 2006 review of media ownership rules.**

Because of the rapid change in the UK media landscape Ofcom, the sectoral regulator for electronic communications and the lead competition authority in respect of media and communications, was charged with reviewing the media ownership rules defined in the CA 2003 not less often than triennially. Ofcom’s first review (Ofcom 2006) took place in 2006.

Ofcom argued that as diversity of services and news provision from different owners increases, and as consumer control grows, the need for ownership regulation will diminish. However, Ofcom found that these initiatives and innovations are insufficiently widely accessible and established to warrant relaxation of established ownership regulations. Not least because broadcast television remains the most important source of news: in 2005 68% of UK respondents identified television as their main source of news (and 15% for newspapers, 11% for radio and 5% for other sources). Source Ofcom 2006: 12.

As stated above, Ofcom has described the objectives of UK media ownership regulation as to:

---

<sup>8</sup> In the UK, ITV (Independent Television) and Channel 3 are often used synonymously. However, ITV is a company which holds the majority of licences for television channel 3 (usually known as ITV1 or simply ITV). ITV also provides other television channels – notably ITV2, ITV3, ITV4.

<sup>9</sup> Market definition, not surprisingly, has proven difficult given the lack of obvious correspondence between radio frequency propagation areas and the circulation areas, and advertising markets, of newspapers.

strike a balance between ensuring a degree of plurality on the one hand and providing freedom to companies to expand, innovate and invest on the other. The first is vital for democracy since plurality of ownership helps to ensure that citizens have access to a variety of sources of news, information and opinion. The second can also benefit citizens and consumers by providing a basis for delivering higher quality programmes, greater creativity and more risk-taking (Ofcom 2006: 2).

It identified the **supply of news** as the most important issue in respect of ownership and concentration regulation and found that, though alternative news sources on the Internet have grown in significance<sup>10</sup>, nonetheless in most areas “the present rules, remain valid” (Ofcom 2006: 2). It recognised that ownership plurality is assumed to be a proxy for viewpoint plurality but that ownership plurality did not necessarily correlate with viewpoint plurality or with editorial/viewpoint diversity.

Ofcom further argued that competition law can, but will not necessarily, promote plurality because regulation of mergers and anti-competitive agreements may inhibit lessening of competition and thus of pluralism. However, some media mergers which may be unexceptionable in terms of competition law and policy (because not diminishing competition to an unacceptable threshold) may be impermissible because they may unacceptably diminish diversity. However Ofcom recognised the potential for a concentration of resources to permit better news management and procurement (see discussion in Ofcom 2006 around pages 6-7).

Media companies are, of course, subject to general requirements of competition law<sup>11</sup> in the UK and additionally the Secretary of State **may** (at her or his discretion) subject a projected media merger, including those involving newspapers where thresholds for review are lower than for other kinds of enterprise<sup>12</sup>, to a public interest test. The public interest test (undertaken by Ofcom and the Office of Fair Trading) is to take into account:

- accurate presentation of news and free expression of opinion in newspapers
- plurality of views in the markets for newspapers

Additionally, in respect of mergers involving broadcasting services, the public interest test may take into account:

- media pluralism
- the need for a wide range of high quality broadcasting services appealing to a wide range of tastes and interests

---

<sup>10</sup> See Paterson 2006 for an account of internet news – essentially Paterson claims that Internet news emanates from a limited number of sources, notably 4 major news agencies, and that “source diversity” has not grown significantly.

<sup>11</sup> In general, any merger where the enterprise being taken over has a turnover of more than 100m euro or where market share exceeds 25% is subject to review.

<sup>12</sup> For newspapers, see Department for Trade and Industry guidance at <http://www.dti.gov.uk/ccp/topics2/guide/ukmediaguide.pdf> on 21.5.2007.

- media enterprises commitment to the objectives of section 319 of the CA 2003 (ie protection of minors, preservation of public order, impartiality of news etc).

In its media ownership review, Ofcom argued that in one sector, local radio, there may be grounds for further liberalisation. It argued convincingly that the complicated rules governing digital and analogue radio, which had on at least one occasion given rise to a perverse outcome<sup>13</sup>, should be reviewed and undertook to do so as part of its forthcoming “*Future of Radio Review*”. It also recognised the complexity of the local media cross-ownership rules (and their interdependence with the radio rules) and also undertook to review the operation of these rules as part of the “*Future of Radio Review*”. It also noted that pluralism in radio is rising as more digital and community radio (relatively new to the UK but with more than 100 licences granted) services come on stream.

Ofcom foreshadowed possible changes (see Ofcom 2006: 33) to media ownership rules subject to and subsequent to future review including:

- increasing the ownership thresholds
- Ofcom discretion to disregard the local digital radio rules in
- the public interest (eg to prevent a reduction in choice)
- combining the rules for local analogue and digital services
- abolishing rules for local services and relying on cross-media rules.

### **Relevant recent issues in the UK.**

It is striking that there have been no issues arising out of the media ownership rules in recent years, rather emerging issues have been framed in terms of competition considerations (though in respect of case 1 below the “capping” of the control threshold at 20%, which derives from provisions in the CA 2003, has framed the terms in which the case proceeds).

#### **Case 1. BSkyB/ ITV.**

In November 2006 BSkyB (39% owned by News International – a company controlling several major UK newspapers<sup>14</sup> - which is, in turn, controlled by Murdoch family interests) acquired 17.9% of the share capital of ITV – below the 20% threshold which would have automatically triggered competition concerns<sup>15</sup>. One of the major shareholders in the cable company NTL/Virgin Media, which had previously unsuccessfully proposed a merger with ITV, Richard Branson called for

<sup>13</sup> Following a permitted merger between two companies (Emap and SRH) active in local radio, in order to conform to regulatory rules an established service (“*Smash Hits*”) had to be divested in three localities. No alternative service filled the gap and the application of the ownership regulation rules had the effect of diminishing radio listeners’ choice in the localities in question. This phenomenon has come to be known as the “Emap issue”.

<sup>14</sup> Notably “The Times”, “The Sunday Times”, “The Sun” and “The News of the World”.

<sup>15</sup> A person will be treated as having control if able to ensure that affairs of the company are conducted in accordance with his wishes and anyone with an interest of 20 per cent or more in a body is assumed to exercise control unless shown otherwise.

the BSkyB acquisition to be referred to the Office of Fair Trading which received the complaint, reported to the Secretary of State (who, unprecedentedly, referred the matter to Ofcom for a public interest investigation) and who referred the matter to the Competition Commission for determination (by December 2007). ITV's evidence signalled its opposition to BSkyB's shareholding (on grounds that pluralism in news may be threatened and that BSkyB's holding may be sufficiently large, depending on other shareholders' behaviour, to block deals requiring 75% shareholder approval. The referral to the Competition Commission, even though BSkyB's stake of 17.9% is below the usual threshold deemed to constitute potential control, follows the Secretary of State's decision that the investment does raise public interest issues including the possibility that BSkyB's holding could endanger pluralism in news provision both for television and in a wider cross-media context. During the investigation BSkyB is required to seek permission for any sale of its shares in ITV.

### **Case 2. BSkyB and Virgin Media.**

BSkyB and Virgin Media are also embroiled in a separate dispute concerning BSkyB's decision in early 2007 to cease supplying certain television content channels for redistribution/resale by Virgin Media via its cable networks. The issue reputedly turns on the inability of the parties to agree on the price for supply/acquisition of the channels in question. There is no evidence of a referral to the Office of Fair Trading on this issue however Ofcom received a request (from BT<sup>16</sup>, Setanta, Top Up TV and Virgin Media) to investigate the pay TV industry and to consider whether to make a market reference to the Competition Commission under the Enterprise Act 2002. Consumer groups including the Ofcom Consumer Panel and the National Consumer Council also expressed concerns about the loss of BSkyB channels on Virgin Media's pay TV platform. Following its enquiry, Ofcom will decide whether to refer the matter to the Competition Commission and whether concerns would be addressed better using its sectoral powers or the Competition Act 1998 (see Ofcom News Release of 20.3.2007 at [http://www.ofcom.org.uk/media/news/2007/03/nr\\_20070320](http://www.ofcom.org.uk/media/news/2007/03/nr_20070320) on 20.5.2007).

### **Case 3. The BBC.**

Renewal of the BBC's Royal Charter and formulation of a new Framework Agreement governing the operations of the BBC. Renewal of the BBC's Royal Charter and Agreement (which expired in December 2006 and was renewed in different form to take effect in January 2007) was widely recognised to have been more controversial and contested than ever before. Significant changes to the terms of operation of the BBC are embodied in the Charter and Agreement. There can be no doubt that the continued existence of the BBC (and the very substantial levels of public financial support for its operations) reflects a widely held belief that the BBC contributes positively to both the quality and diversity of broadcasting services within the UK. However, a feature of the recent past has been the public articulation of a succession of concerns, not always by interested parties, that in varying domains (eg the television programme supply market, online services, news to mobile telephones, provision of educational curriculum materials) the BBC may have been acting anti-competitively, trading unfairly and acting as an enemy of diversity and pluralism rather than the reverse. Such contentions have been argued to be particularly difficult to address because the BBC may not be subject to the provisions of the Competition

---

<sup>16</sup> British Telecom.

and Enterprise Acts in the same way as commercial firms (see, *inter alia*, Cave, Collins and Crowther 2004).

Such concerns have been reflected in the establishment of a BBC Trust, to replace the BBC Governors, in a substantially new relationship to BBC management. The Trust is established as a quasi-regulatory body (and several of its members have substantial experience and expertise in competition policy and law) and has, among its functions, the administration of a “public value test” (including a market impact assessment) to proposals from the BBC management for new services or significant changes to existing services. Moreover, Ofcom’s powers in respect of the BBC (particularly in respect of fair trading) have been strengthened. The effect will be to subject the BBC’s behaviour to more exacting and independent scrutiny than before.

The Trust has been in existence for less than six months and it is too early to reach a judgement on its values, operation and effectiveness but one of its early decisions has been to require the BBC to suspend the “BBC Jam” service, which provided online support to schoolchildren, because of concerns about possible negative impact on the commercial market for such services (see BBC Trust Press Release at [http://www.bbc.co.uk/bbctrust/news/press\\_releases/14\\_03\\_2007.html](http://www.bbc.co.uk/bbctrust/news/press_releases/14_03_2007.html) on 21.5.2007). The Trust’s decision is significant in itself and may also foreshadow future decisions which may be more fully seized of competition and fair trading concerns (particularly in respect of the BBC’s effect on diversity and pluralism) than has hitherto been the case.

## **Conclusion.**

Fundamentally, regulation of media ownership derives from the contradiction between the social and political importance of diverse and pluralistic media (particularly information media) and the tendencies towards mergers arising from the high returns to economies of scope and scale in electronic and print media amplified by the effects of branding etc. There are (relatively) benign ways of reconciling these imperatives (eg with “wholesale” news supply by one or more trusted suppliers, such as news agencies, and with “retail” supply effected by different outlets each packaging (and putting their distinctive political “spin” on) information provided by the trusted supplier (eg AFP, Reuters, AP etc). Moreover, exploitation of economies of scale and scope under an umbrella of common ownership can work positively to preserve plurality of media outlets (and/or maintain or improve content quality) by keeping in existence media which would otherwise have ceased to exist (or would have declined in quality).

Technological change can shift the balance between the tendency of particular markets to favour either concentration or pluralism of ownership. But concentration of ownership does not **necessarily** mean that diversity is diminished. Indeed, a highly concentrated, large scale, media business can rationally adopt a strategy of providing a range of information media products, informed by different values, so as to increase market share beyond that achievable through a portfolio of products exhibiting similar values. However, there are sufficient examples to the contrary to suggest that, if diversity is to remain a key media policy objectives, then inhibition of concentration of ownership is likely to remain a key regulatory task. Regulation of ownership, that is of pluralism, is a proxy for the encouragement of diversity. The potential for

abusive behaviour and reduction of pluralism and diversity to unacceptable levels is likely to remain for the foreseeable future. Not least because an economically optimal market structure (eg monopoly) arrived at through fair competition may not be acceptable in respect of pluralism and/or diversity considerations (whether actual or potential).

In the UK, market size (and a tradition of national, rather than regional, media) has meant that the intensity of problems of ownership concentration experienced in smaller countries has, by and large, been avoided. Liberalisation of telecommunications has meant that online information providers have been free to establish businesses (eg The Independent Media Centre UK (Indymedia), Interworld Radio (IWR), OpenDemocracy, 18 Doughty Street)<sup>17</sup> and public finance, notably to the BBC<sup>18</sup>, has established a “gold standard” of information quality and trustworthiness. The controls on concentration and cross media ownership defined in the CA 2003 (and the Enterprise Act 2002) provide a back stop which has yet to be tested: though concentration has increased since the liberalisation measures embedded in the CA 2003 came into effect – but it has increased by less than the regulations permit. However, as cases 1, 2 and 3 briefly considered above suggest – it’s now competition law and regulation that bears most strongly on media ownership and conduct rather than specific rules concerning ownership. Some UK ownership regulations (see the notorious “Emap” issue) have undoubtedly had perverse effects.

Prediction of the future is a mug’s game but it seems likely that the future will see further liberalisation of media ownership rules (possibly following Ofcom’s review of radio) and a possible extension of pluralism in the public sector - particularly if Ofcom’s proposals for a “Public Service Publisher” (PSP) receiving and dispensing public finance to providers in television (and perhaps beyond to Internet based media) come to fruition. See documents, (and particularly Ofcom 2005: 68-80) accessible through Ofcom’s portal page at <http://www.ofcom.org.uk/consult/condocs/psb3/> on 20.5.2007. Regulation of ownership, whether through sector specific rules or generic competition law is likely to be vexed by the inherent difficulties of defining relevant markets, drawing boundaries around relevant media (should magazines and the Internet be in or out of ownership and concentration calculations?), assessing influence (should consumption or financial yardsticks be used?) and in weighting the media at issue (is a high share of the television of greater consequence than an equivalently high share of radio markets?<sup>19</sup>). And it is likely to continue to be vexed by the inherent weakness of using ownership (pluralism) as a proxy for diversity

---

<sup>17</sup> See [www.indymedia.org.uk](http://www.indymedia.org.uk) , [www.interworldradio.net](http://www.interworldradio.net) , [www.opendemocracy.net](http://www.opendemocracy.net) , [www.18doughtystreet.com](http://www.18doughtystreet.com) .

<sup>18</sup> The Hutton (2004) enquiry revealed significant deficiencies in the standards of BBC journalism and editorial procedures but there is evidence that the BBC has taken these to heart and improved its journalistic training and procedures. However, grounds for concern remain in respect of the possibly adverse impact of the BBC, an organisation of extraordinary scale and size relative to competitors, on competition, market entry and pluralism.

<sup>19</sup> An interesting essay “Keine Demokratie kann sich das leisten” by the German philosopher Juergen Habermas, published in the Sued Deutscher Zeitung of 16.5.2007 (at <http://www.sueddeutsche.de/kultur/artikel/455/114341/> on 24.5.2007) implicitly raises this issue by referring to the press as the “Leitmedien” – ie the medium from which other media take their lead. Habermas’ argument suggests, if his reasoning is followed, that press ownership is more significant than ownership of other media.

(content)? Real sceptics might also ask how far there is convincing evidence that the media have a decisive impact on social knowledge, values and beliefs.

## References.

Cave, M, Collins, R and P Crowther (2004) Regulating the BBC. in *Telecommunications Policy* 28 p 249-272.

European Commission (2007) *Commission staff working document. Media pluralism in the Member States of the European Union*. Brussels. European Commission. SEC(2007) 32. At [http://ec.europa.eu/information\\_society/media\\_taskforce/doc/pluralism/media\\_pluralism\\_swp\\_en.pdf](http://ec.europa.eu/information_society/media_taskforce/doc/pluralism/media_pluralism_swp_en.pdf) on 21.5.2007.

Hutton, the Lord (2004) *Report of the Inquiry into the Circumstances Surrounding the Death of Dr David Kelly C.M.G.* HC 247. London. At <http://www.the-hutton-inquiry.org.uk/content/report/index.htm> on 29.3.2005.

Ofcom (2005) *Review of Public Service Television Broadcasting Phase 3*. London. Ofcom. At <http://www.ofcom.org.uk/consult/condocs/psb3/psb3.pdf> on 21.5.2007.

Ofcom (2006) *Review of Media Ownership Rules*. London. Ofcom. At [http://www.ofcom.org.uk/research/media\\_owners/rulesreview/](http://www.ofcom.org.uk/research/media_owners/rulesreview/) on 20.5.2007.

Parliament (2006) *House of Commons Library Research Paper 02/68. Media Ownership and the Communications Bill*. London. House of Commons Library. At <http://www.parliament.uk/commons/lib/research/rp2002/rp02-068.pdf> on 20.5.2007.

Paterson, C (2006) *News Agency Dominance in International News. Paper 01/06*. Leeds. Centre for International Communications Research. At <http://ics.leeds.ac.uk/papers/cicr/exhibits/42/cicrpaterson.pdf> on 20.5.2007.

Ward, D (2004) *A mapping study of media concentration and ownership in ten European countries*. Hilversum. Commissariaat voor de Media. At [http://www.cmpd.eu.com/reports/media\\_concentration.pdf](http://www.cmpd.eu.com/reports/media_concentration.pdf) on 20.5.2007.