

2.2.3 UK Media Ownership Regulation

Richard Collins

Professeur en Media Studies

The Open University

Royaume-Uni

2.2.3.1 A sketch of who owns what in UK media – 2004

BBC (public corporation) : 2 terrestrial analogue TV channels, several digital TV channels, 5 national radio channels and numerous local radio stations giving UK wide local coverage, many magazines.

Granada Group (public commercial company) : 6 (of 13) ITV television licences, share of the news provider ITN. Proposed merger with Carlton under review by Office of Fair Trading.

Carlton : 4 ITV television licences, share of the news provider ITN. Proposed merger with Granada under review by Office of Fair Trading.

News Corporation : 36% of BSkyB, *News of the World*, *The Sun*, *The Times*, *The Sunday Times*.

Daily Mail and General Trust : *The Daily Mail*, *Mail on Sunday*, *Evening Standard* (London evening paper), national teletext licence, GWR radio, share of the news provider ITN.

Guardian Media Group : *The Guardian*, *The Observer*, *Manchester Evening News*, local radio stations.

Trinity Mirror, *Daily Mirror*, *Sunday Mirror*, *The People*, local newspapers.

Telegraph Group : In June 2004 the Barclay brothers bought the *Daily* and *Sunday Telegraphs* (UK circulation 871,000 and 679,000 respectively) and the *Spectator* magazine for £665m from Hollinger following the *contretemps* between the company and Lord Black. The Telegraph titles complement the Barclays' other newspaper holdings, notably *The Scotsman* newspaper (daily circulation 70,000) which they acquired in 1995 together with stablemates

Scotland on Sunday and the *Edinburg Evening News*. The Barclays also control the weekly *Business newspaper* (formerly *Sunday Business*) which they bought in 1998.

Scottish Media Group : 2 ITV television licences, Virgin radio.

Independent Newspapers (Tony O'Reilly group) : *The Independent*, *Independent on Sunday*.

Northern and Shell : *The Daily Express*, *Sunday Express*, magazines.

Numerous other companies with sectoral and cross sectoral holdings of varying sizes. EG Bertelsmann (with majority holding in Channel 5), United News and Media (minority share of Channel 5 and minority share in the news provider ITN), Pearson (*Financial Times*, *Economist*, etc), Capital Radio (local radio) EMAP (magazines and radio), Gannett (extensive local newspaper holdings), Channel 4 Corporation (public company – Channel 4, E4, Film on Four).

To summarise briefly, the UK media market is characterised by:

- A class stratified press with 5 national daily “quality” or “broadsheet”¹ titles (*Financial Times, Telegraph, Times, Guardian, Independent*) each owned by a different interest, a mid-market national daily press (Daily Mail, Daily Express) with each title owned by a different interest and a “tabloid” or “red-top” down market national daily press of three titles (*The Sun, Daily Mirror, Daily Star*) where only one of the titles (*Daily Mirror*) is owned by a company without other titles in the national newspaper market.
- A television market dominated by three organisations – the licence fee BBC (publicly owned), the advertising funded ITV (with major licences now owned by three companies but likely to soon be only one or perhaps two companies) and subscription and advertising funded BSkyB (controlled by a major newspaper interest).
- A radio market dominated by the BBC and with growing concentration of ownership of the commercial sector with newspaper proprietors (eg Daily Mail and General Trust and Guardian Media Group) with a growing presence.
- UK based firms remain the most important owners but overseas interests (such as News International’s influence in News Corporation, Bertelsmann, Gannett) are also of some significance.
- Some significant areas of concentrated ownership have emerged. The BBC (television and radio), News Corporation (newspapers and television), Carlton/Granada (assuming the proposed merger is approved – television).

2.2.3.2 Introduction

The most important change effected by the UK *Communications Act 2003* is the integration of five established regulators, Oftel, the three broadcasting regulators - the Independent Television Commission, the Broadcasting Standards Commission, The Radio Authority – and the Radiocommunications Agency, into a new agency Ofcom. The Act has also effected a significant liberalisation of UK media ownership regulation. The media ownership regime in the UK prior to the 2003 Act (other than the provisions, which apply under general

1. Broadsheet refers to the traditional format used by papers in this sector. The name persists despite the adoption of a tabloid format by “*The Times*” and “*The Independent*”.

competition law) was defined in Schedule 2 of the *1990 Broadcasting Act* (special provisions governing newspaper mergers expressed in the *Fair Trading Act 1973* excepted. These provisions were liberalised through the *Enterprise Act 2002*²).

Broadly, the *Broadcasting Act 1990* used the Government's power to control entry to UK broadcasting markets, and thus to impose conditions on broadcasting licences, to limit cross-ownership of broadcast and print media; limit concentration of ownership in broadcasting and prohibit certain classes of proprietors (notably non EEA³ citizens and advertising agencies, religious and local government bodies) from holding broadcasting licences. Though some licencing powers, notably for television broadcasting, are retained in the *Communications Act 2003* a feature of the Act (as of the developing European Union framework) is a move to "general authorisation" of market entry under general conditions rather than restricting entry to firms adhering to specific conditions of licence. The Act also introduces provision for radio frequency spectrum trading and, though spectrum licences are retained, spectrum licencing is to be light touch, open, non-discriminatory and transparent.

The changes effected by the *Communications Act 2003* move media regulation closer to that which obtains in other sectors (ie the media are treated as less "special" than once they were) notably by reducing the level and complexity of *ex ante* regulation of ownership. However, in important respects, the stringency of *ex post* regulation has been increased (for the media and for other sectors) through the passing into effect of the *Enterprise Act 2002*. Moreover, the *Communications Act 2003* has increased considerably the competition regulation powers of the UK media regulator(s) in consequence of the Act's "transposition" of a number of European Union Directives.⁴ This may mean that some actions and forms of sectoral organisation (eg mergers), which will no longer be prohibited on *ex ante* grounds in the forthcoming *Communications Act* (eg merger of Channel 3 licence holders), may be found unacceptable on competition grounds (eg reduction of competition in the television

2. The *Enterprise Act* became law in November 2002. It strengthens considerably UK competition law (eg by providing the Office of Fair Trading with stronger investigatory powers and by making it easier for companies to secure damages if competitors are found to have acted anti-competitively). In respect of newspapers, essentially, the *Enterprise Act* moves regulation closer to that which obtains for other sectors of the economy and embodies measures to implement the Government's commitment that "the special merger regime for newspaper transfers will be replaced by a streamlined and less burdensome regime [...]. The new regime will be aligned to the new system for general mergers that will be introduced by the *Enterprise Bill*" (DTI/DCMS 2002a: 61).

3. European Economic Area – members of the European Union and several other European countries.

4. That is the "liberalisation package" of 2000 and notably the Framework Directive 2002, Access and Interconnection Directive 2002, Network and Services Directive 2002, Universal Service Directive 2002. See European Parliament and the Council of the European Union 2002, 2002a, 2002b, 2002c.

advertising market). However, it is too early to judge what the effects of the *Enterprise Act 2002* and the *Communications Act 2003* on media ownership prove to be.

2.2.3.3 Media Ownership regulation and the Communications Act 2003

The *Communications Bill* has significantly liberalised media ownership regulation and requires Ofcom to review ownership regulation not less frequently than every three years. It liberalises the ownership regime by amending the provisions in the *Broadcasting Act 1990* (notably in Schedule 2) so that:

- non EEA persons are to be permitted to hold broadcasting licences;
- advertising agencies are to be permitted to hold broadcasting licences;
- religious organisations are to be permitted to hold some classes of broadcasting licences;⁵
- combined ownership of Channel 3 and Channel 5 is permitted;
- local authorities, under strictly limited conditions, are to be permitted to hold broadcasting licences;⁶
- most existing restrictions on accumulations of interests (ie concentration of ownership) and on licence holding by newspapers and telecommunications providers (ie cross ownership) are to be repealed (but some survive in Schedule 14 of the Bill notably in respect of Channel 3);

5. That is:

- restricted service licences;
- digital programme licences;
- digital additional services licences;
- licences to provide television licensable content services;
- licences under Part 3 of the 1990 Act (other than a national licence) - meaning local analogue radio licences, licences to provide radio licensable content services, and licences to provide additional services;
- national and local digital sound programme licences.

6. Not where the service appears to be designed to affect public support for a political party but only where the service in question is provided to comply with the functions of local authorities under section 142 of the *Local Government Act 1972*.

- rules for local sound broadcasting licences are to be liberalised on the basis of a “two plus one”⁷ model but a company controlling more than 50% of the local newspaper market or holding a Channel 3 licence the coverage of which is significantly the same as the sound broadcasting licence in question will not be permitted to hold a radio licence in the area so affected;
- rules governing ownership of Channel 5 television (but not Channel 3) are to be liberalised enabling a proprietor of a national newspaper group with more than a 20 per cent of the total national market share to become an owner and exercise control;
- restricts companies from holding more than a 20 per cent share of any Channel 3 (ITV) television licence if they own a company with more than either a 20 per cent share of the total national newspaper market share or (a new provision in the 2003 Act) in the case of a regional Channel 3 licence a 20 per cent share of a relevant local newspaper market;
- prevents one person from owning more than one national radio multiplex⁸ licence (or local radio multiplex licences in cases where there is overlap of services so that the potential audience of one service includes at least half the potential audience of another);⁹
- defines licence conditions to ensure that any holder of a regional Channel 3, or local radio service, licence must notify Ofcom in advance of any proposals that may result in a change of control;

7. ie two separately owned commercial and one BBC radio station in the locality in question.

8. The term radio multiplex refers to the transmission of digital radio signals, each of which may originate from different service providers, which are “interwoven” to achieve spectrum efficiency. The proposed measure is designed to ensure plurality of ownership of radio transmission facilities.

9. The factors that would be considered in establishing rules of this sort include:

- the degree of overlap of the different services involved;
- the size of the potential audience for those services and the times when they would be made available;
- the extent to which there would be other persons with licences to broadcast to the same potential audience, the number of those persons and the audience size and coverage area of their stations;
- whether that person runs national newspapers, and the national market share of those newspapers;
- whether that person runs local newspapers that serve any part of the coverage area for which they would hold a radio licence, and the newspapers' local market share;
- whether and to what extent the coverage area of the licence in question overlaps with the coverage area of a regional Channel 3 service for which he also owns the licence.

- where change of control may result, Ofcom shall review the impact of the change of control on the quality and the regional character of the service and must vary the licence so that conditions are more burdensome than before.

The Act has thus strikingly liberalised ownership regulation. The restrictions that remain focus on Channel 3 (prohibiting newspaper groups from holding of a Channel 3 licence if they have more than a 20% share of the newspaper market in the relevant local or national Channel 3 area) and on limiting concentration in mature radio markets (so that two separately owned commercial services are provided). The complex provisions prescribed in the *1990 Broadcasting Act* which limit cross and concentration of ownership have, for the most part, been repealed. As too has the requirement that holders of broadcasting licences be citizens of an EEA state. However, the Government retains broad powers, through secondary legislation, to set conditions to changes of ownership in the interests of ensuring that “the most influential media in any community [are not] being controlled by too narrow a range of interests” (DTI/DCMS 2002b para 9.4.3). How these powers will be exercised remains to be seen.

Change of control

The Act also strengthens ownership regulation by extending the meaning of "control" in the following ways:

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

National Ownership Regulation

Possibly the most controversial of the Government’s ownership proposals is liberalisation of national (or, strictly, EEA ownership) ownership regulation. Removal of the requirement that holders of UK broadcasting terrestrial broadcasting licences be EEA citizens has been widely viewed as an unwelcome opening of the UK broadcasting market to US capital (*The Guardian*, 21.11.2002: 28, representatively stated that “Many MPs fear that broadcasting standards would be affected by a glut of imported American programming”) and in particular to Rupert Murdoch (though the special provisions for Channel 3 have the effect of excluding Mr Murdoch – with his present portfolio of UK media holdings – from acquiring a controlling

interest in that channel). However, the Government has firmly adhered to its deregulatory proposals, pointing out the arbitrariness of excluding potential investors from Australia, Canada and the United States when investors from Germany, Finland and other EEA countries are permitted. Indeed, Government has strongly foregrounded the importance of making the UK a more attractive destination for inward overseas investment in the media sector. The Independent Television Commission (one of the established regulators which will be merged into Ofcom) recently published the findings of its timely enquiry into the UK television programme supply market which identified the following potential benefits accruing from liberalisation of national media ownership regulation (ITC 2002: 15):

- scale of available investment for programming – both for the UK networks, and also productions made in the UK for overseas markets;
- access to new management, expertise and talent;
- new approaches to commissioning, which would help both the production sector and international competitiveness, for example, commissioning in longer runs, more investment in pilots;
- access to critical mass in distribution – in international markets which are becoming more competitive, a link to broadcasters offering global distribution scale might be critical in achieving programme and other rights sales.

2.2.3.4 Evolution of the Communications Bill

The *Communications Bill* was preceded by both a White Paper (DCMS 2000) and by a consultation on media ownership regulation (DCMS 2001). In its consultation paper, the Government stated its intention to be “as deregulatory as possible” (DCMS 2001: 6 para 1.2). The *Communications Bill* embodied the Government’s deregulatory intention and, by proposing to abolish national ownership rules for broadcasting, went further than the Government foreshadowed in its consultation paper. In the consultation paper the Government had stated, “Our working assumption remains that we will keep the current prohibitions on non-EEA ownership of broadcasters” (DCMS 2001: 18 para 6.1.5). However, the Government abandoned these prohibitions. In this, as in other provisions (eg the substitution of the “three plus one” radio regime foreshadowed in the Draft Bill by a “two plus one” regime), where the Government has changed its views it has changed them in a liberalising direction. It rejected several of the recommendations made by The Joint

Parliamentary Scrutiny Committee in its report on the Draft Communications (House of Lords and House of Commons 2002) – notably the Scrutiny Committee’s recommendations to:

- retain prohibitions on advertising agencies holding broadcasting licences;
- delay abolition of national ownership regulation;
- extend prohibition of cross ownership of a national newspaper group and a terrestrial television channel to Channel 5;
- require, in any mature radio market, three separately owned commercial channels plus the BBC (a “three plus one” scheme).

(House of Lords and House of Commons 2001: 110-112).

2.2.3.5 Who wins?

The most obvious potential beneficiaries of the changed ownership regime are the two largest ITV companies, Carlton and Granada, which are no longer formally prohibited, under *ex ante* rules, from merging. Carlton and Granada have also combined to establish ITV as the brand for Channel 3 (formerly the constituent companies foregrounded their brands) and as a distinct company owned by Carlton and Granada. Further beneficiaries include established UK media companies that may become takeover targets. Among companies to have experienced rises in their share prices are the two leading UK commercial radio companies, GWR and Capital Radio. Prices rose in consequence of their increased attractiveness to overseas investors (the US companies Viacom and Clear Channel has been named as possible acquirers) as well as the companies potential to improve operating efficiency through merger.¹⁰

However, although prices have risen and mergers in the broadcasting sector have been widely anticipated, mergers such as Carlton/Granada in television and/or Capital/EMAP (major players in the London radio market) in radio may be vulnerable to prohibition on competition grounds. Each of these possible mergers would, potentially, give rise to an unacceptable concentration of advertising market power that might be prohibited by Ofcom (or the Office of Fair Trading) on simple competition grounds and at the time of writing the proposed

10. See for example <<http://media.guardian.co.uk/whitepaper/story/0,7521,852406,00.html>>.

Carlton/Granada merger was under review by the Office of Fair Trading. Removing the *ex ante* merger prohibitions in the *Broadcasting Act* therefore does not necessarily leave the way clear for any and all possible mergers in the UK communications sector. Moreover, some *ex ante* prohibitions remain. For example, a merged Carlton/Granada would have to divest some of its holdings in Independent Television News (ITN), the “appointed news provider” which provides news to Channel 3 (ITV) Channel 4 and Channel 5.

Most of the speculation on the possible consequences of the Government’s liberalisation proposals has centred on the opening of Channel 5 to ownership by Rupert Murdoch’s “News International”. Formally, the Act makes possible such a concentration of ownership. But the established majority owners of Channel 5, the German company Bertelsmann, has indicated its intention to maintain its holdings and Mr Murdoch has stated explicitly that “We are not interested in terrestrial”. Mr Murdoch also expressed scepticism about possible American interest in the acquisition of ITV and said, “The only company that is capable of buying ITV would indeed be Viacom”.¹¹

The changes in the *Communications Act* have more impact on broadcasting than on other media sectors. But the Act does have important provisions for the newspaper sector. It moves the responsibility for approval of newspaper mergers from the Office of Fair Trading to Ofcom and streamlines the merger regime by focusing only on mergers that seem to raise competition or pluralism concerns. The liberalisation of the newspaper ownership regime has not been welcomed unreservedly. Whilst the main trade association, The Newspaper Society, welcomed the Government’s proposals to abolish the requirements for prior consent and criminal sanctions for any newspaper transfer, but it has commented that the Government’s Policy on newspaper mergers “sets out a regime that would be extremely complex and uncertain in its application to all newspaper titles and newspaper companies – large and small. It enhances, not lessens, the discretionary powers of Government in newspaper merger cases; it involves four regulatory bodies in newspaper merger cases” and that “The complexities of the proposed scheme would increase the regulatory burden upon the regional and local press”.¹²

11 <<http://media.guardian.co.uk/whitepaper/story/0,7521,836489,00.html>>).

12.<<http://www.newspapersoc.org.uk/news-reports/press-releases/2002/submission-commsfinal.html>>.

We may anticipate some further concentration and some increase in non-EEA ownership of the UK media sector. However, although removal of the *ex ante* provisions in the *Broadcasting Act* may open the field to mergers between established UK firms, some of the most commercially attractive potential mergers may well be prohibited on competition grounds. But, particularly in the radio sector, some measure of non-EEA (notably American) foreign direct investment and ownership may well develop after the Bill is enacted. But, although times and sentiments change, there seems no proximate possibility of Rupert Murdoch extending his already strong presence in UK newspapers and satellite television to UK terrestrial broadcasting. Moreover, changes as a consequence of the provisions in the Act, if changes there be, seem more likely in the broadcasting than in the newspaper sector. The scale of the Government's media ownership liberalisation surprised many. A representative spokesperson Mathew Horsman, Investec Securities media analyst and formerly a leading media correspondent, stated "This goes well beyond what anyone expected, particularly given the signals that government has been making about safeguarding plurality. There is huge commercial logic to this, but it is surprising it has come from a Labour government." (*cited in Wells and Cassey 2002*).

Responses to the Act have followed predictable lines. The Conservative Party has argued that liberalisation has not gone far enough, the Liberal Democrats that it has gone too far (echoed by some leading members of the Labour Party). The leading left pressure group on media policy issues (which has strong union support), the Campaign for Press and Broadcasting Freedom (CPBF), has, as expected, deprecated the Government's proposals for liberalising media ownership regulation. Its chair, Julian Petley, predicted "a wholesale dumbing down of broadcasting as foreign-owned companies churn out mass-produced programmes aimed at attracting the biggest audiences and the highest profits. The bill [...] lets these companies entirely off the hook, failing to stipulate the amount and quality of news, current affairs, education and entertainment material they must carry" (CPBF 2002). Whereas a wide range of media industry spokespeople, including industry sectors not directly affected by the Government's proposals supported the Government's proposals; for example, the advertising industry. ISBA (Incorporated Society of British Advertisers) commented "foreign ownership could bring considerable investment into UK media and therefore that barriers should not be put in the way" (ISBA 2002).

References

Broadcasting Act 1990. Chapter 42. London. HMSO.

Broadcasting Act 1996. Chapter 55. London. HMSO.

CPBF (Campaign for Press and Broadcasting Freedom) (2002) Press release of 20.11.2002 at <http://www.cpbf.org.uk/>.

DCMS [Department of Culture, Media and Sport] (2000) *A New Future for Communications*. [The Communications White Paper]. Cm 5010. London. HMSO.

DCMS [Department of Culture, Media and Sport] (2001) *Consultation on Media Ownership Rules*. London. DCMS.

DTI/DCMS [Department of Trade and Industry and Department of Culture, Media and Sport] (2002): *Draft Communications Bill*. Cm 5508-I. Norwich: The Stationary Office.

DTI/DCMS [Department of Trade and Industry and Department of Culture, Media and Sport] (2002a): *A New Future for Communications. Communications Bill. Draft Regulatory Impact Statement*. Norwich: The Stationary Office.

DTI/DCMS [Department of Trade and Industry and Department of Culture, Media and Sport] (2002b): *The Draft Communications Bill. The Policy*. Cm 5508-III. Norwich: The Stationary Office.

European Parliament and the Council of the European Union (2002) *Directive 2002/19/EC of 7 March 2002 on access to and interconnection of electronic communications networks and associated facilities*. OJL 108/7 of 24.4.2002.

European Parliament and the Council of the European Union (2002a) *Directive 2002/20/EC of 7 March 2002 on the authorisation of electronic communications networks and services* OJL 108/21 of 24.4.2002.

European Parliament and the Council of the European Union (2002b) *Directive 2002/21/EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services* OJL 108/33. of 24.4.2002.

European Parliament and the Council of the European Union (2002c) *Directive 2002/22/EC of 7 March 2002 on universal service and users rights relating to electronic communications networks and services*. OJL 108/51 of 24.4.2002.

Guardian, The. Newspaper. Monday to Saturday. London.

House of Lords and House of Commons (2002) *Report of the Joint Committee on the Draft Communications Bill*. Volume I – Report HL Paper 169-I. HC 876-I. London. TSO.

Incorporated Society of British Advertisers (ISBA) (2002) Press Release of 31st July 2002 at <http://www.isba.org.uk/news/july-aug/31072002.html>.

ITC (Independent Television Commission). (2002). *A Review of the UK Programme Supply Market*. London. Independent Television Commission. At http://www.itc.org.uk/uploads/A_Review_of_the_UK_Programme_Supply_Market.doc.

Parliament. (2002) *Communications Bill*. At <http://www.publications.parliament.uk/pa/cm200203/cmbills/006/en/03006x-o.htm>.

Wells, M and J Cassy (2002) Murdoch wins and loses as UK eases ownership rules. In *The Age*. At <http://www.theage.com.au/articles/2002/05/08/1019441519873.html>.