

Regulating Public Service Broadcasting in Europe

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Media/Cultural Industries

- Industrial production and circulation of texts (not restricted to written texts)
- David Hesmondhalgh: The Cultural Industries:
- Core cultural industries: broadcasting; film industries; content aspects of the Internet industry; music industries; print and electronic publishing; video and computer games; advertising and marketing
- These interact/interconnect with each other in complex ways, mainly because they compete for the same resources: disposable consumer income; advertising revenue; consumption time; creative and technical labour

Media economics

Media/cultural products have special characteristics:

- Hybrid/mixed in terms of markets, product and technology (operate in a dual market, selling a product to consumers and a service/audience to advertisers; diversified products and technologies and organizational means for distribution)
- High labour intensiveness and high fixed costs (although changing with new technologies and media expansion)
- High degree of uncertainty (in terms of consumer evaluation – still difficult to predict audience tastes) and uniqueness of the product
- Despite standardization media products can rarely be repeatedly sold in the same form
- Media especially prone to concentration
- Many media business are hard to enter without large capital resources
- Media are affected by the public interest

Why media matter?

- Make and circulate texts that influence our understanding of the world (the effect is complex)
- Manage and circulate creativity (are ‘symbol creators’ different? Geniuses? Responding to a higher calling? Or is it similar to other kinds of labour?)
- Agents of economic, social and cultural change (and the contents/texts are a good indicator of this)

ALSO

- Activities of media are economic and political (political function of media in a democracy + information and ideas cannot acceptably be monopolized by private individuals – a public good)
- As well as dependent on changing technologies of distribution
- Alternatively: internal – media professional – point of view

Media regulation - justifications

- Feintuck, M. (1999). *Media Regulation: Public Interest and the Law*. Edinburgh: Edinburgh University Press.

Regulation is justified on the grounds of:

- enabling effective communication. This notion is closely related to the freedom of speech ideal, as reflected, for example, in the First Amendment to the US Constitution or in Article 10 of the “European Convention on Human Rights”
- diversity which Feintuck relates specifically to political debate and cultural identities
- economic interest - benefits of undistorted competitive markets
- public interest - broadcasting in the public interest should guarantee universally accessible quality service (defined differently in the different national systems of public service broadcasting), diversity as well as national political and/or cultural interest.

Concerns over media concentration

- Curran, J. (May 2002). "Global Media Concentration: Shifting the Argument."
<http://www.opendemocracy.com>
- The first is that private concentration of symbolic power potentially distorts the democratic process. ... The second reason for concern is that the power potentially at the disposal of media moguls tends to be exerted in a one-sided way. ... The third reason for concern is that the concentration of market power can stifle competition. ... To this can be added perhaps a fourth concern. The dominant position that emerged in this debate – that media concentration undoubtedly exists but matters relatively little – fairly accurately reflects the balance of opinion, both in the relevant academic literature and in wider political debate. This is giving rise to a one-sided protection of our freedoms: a state of constant alert against the abuse of state power over the media, reflected in the development of numerous safeguards, not matched by an equivalent vigilance and set of safeguards directed against the abuse of shareholder power over the media. In this respect he provides the example of the British national press, pointing out that due to the long control of the market by an oligopoly no new independent national newspaper has been launched in the past seventy years.

Media regulation - techniques

Feintuck – 3 types: structural, behavioural and content regulation

- In shorthand, “content regulation” refers to limitations being imposed on what cannot or must be broadcast or published, while “structural regulation” refers to limits on the extent of that which can be owned within any market by any one corporate entity, and, in effect, “behavioural regulation” generally serves to limit how property held can be used in relation to its impact on actual or potential competitors.

Media regulation – trends

- 1990s liberalization and deregulation (minimalist regulatory intervention by governments) in North America and Europe
- Some consequences of the trend – McChesney, R. (2003). "Theses on Media Deregulation." *Media, Culture and Society*, 25(1):
- US 1996 Telecommunications Act had most impact on US radio; it changed the restriction on the ownership of radio stations (prior to the 1996 Act a single company could own 28 stations nationally and 4 in a single community) by completely removing the restriction on the number of national radio stations owned by a single firm and increasing the number of those owned in a community to 8. “Since 1996 well over half of US stations have been sold, and a stunning consolidation has hit the industry. One firm, Clear Channel, now owns nearly 1,200 stations. Every market is dominated by two to three firms that own nearly all the stations between them” (McChesney, 2003: 129). What McChesney finds worrying about this concentration of radio ownership is the decrease in the diversity of radio content as well as in the diversity of voices presented on the radio as well as increased commercialization.

A Snippet of History

- Guglielmo Marconi Italian inventor sent and received his first radio signal in Italy in 1895. 1901 received the letter "S" telegraphed from England to Newfoundland; first successful transatlantic radiotelegraph message.
- Nikola Tesla and Nathan Stufflefield took out patents for wireless radio transmitters. Tesla is now credited with being the first person to patent radio technology; the US Supreme Court overturned Marconi's patent in 1943 in favour of Tesla.
- In 1922 British Broadcasting Corporation Ltd. was founded
- 5 March 1926: Parliamentary Crawford Committee published its broadcasting report; termination of the British Broadcasting Company, Ltd. and creation of a Crown-chartered, non-commercial British Broadcasting Corporation from 1927; funded by a licence fee (compulsory radio licence until 1971), broadcasting characterized as public good.

Principles of Public Service Broadcasting

- universal accessibility (geographic)
- universal appeal (general tastes and interests)
- particular attention to minorities
- contribution to a sense of national identity and community
- distance from vested interests
- direct funding and universality of payment
- competition in good programming rather than for numbers and
- guidelines that liberate rather than restrict programme makers.

Media and the Public Interest

- Telecommunication services - part of businesses that are considered to be “affected with a public interest” due to:
 1. the essential nature of the service
 2. its tendency to monopoly and
 3. the requirement of universal accessibility.
- Difficulties with applying the term public interest to an area like communication due to misunderstandings according to which features of mass communication are essential and whether interferences with free market mechanisms are justified in order to secure these.

Systems of Public Service Media

1. Social devolutionary
2. Liberal corporativist
3. Public service

Public Service Broadcasting and EU Membership

The “Protocol [No. 32] on the system of public broadcasting in the Member States” was in 1997 annexed to the “Treaty on European Union” (“Treaty of Amsterdam”)

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, while the realisation of the remit of that public service shall be taken into account.

Public Service Broadcasting and Competition Policy

“the Protocol certainly did not remove public service broadcasting from the application of the state aid rules. ... Arguably it [the Protocol] reduces the Commission’s margin of discretion to the extent that only funding which clearly is not connected to the public service mission is illegal under the state aid rules” (Nitsche, 2001: 152-153)

Technological Developments and Regulation

“Report from the High Level Group on Audiovisual Policy” of October 1998

Deregulation: “there is a case to be made for the relaxation of unnecessarily restrictive regulations, especially as terrestrial free-to-air services will have to remain competitive with a host of new services emerging as a consequence of higher capacity on all networks”. Deregulation is understood as a means of increasing competitiveness, the deregulatory framework should “abide by certain principles and in particular it should encourage competition, pluralism and open, non-discriminatory access. It may take account of other, more specific, public policy goals, primarily set at national level”.

The Example of the Czech Television

483/1991 Sb.

ZÁKON

České národní rady

ze dne 7. listopadu 1991

o České televizi

ve znění zákonů č. 36/1993 Sb., č. 253/1994

Sb., č. 301/1995 Sb., č. 39/2001 Sb., č.

231/2001 Sb., č. 82/2005 Sb., č. 127/2005 Sb.,

č. 304/2007 Sb., č. 384/2008 Sb., č.

132/2010 Sb. a č. 153/2010 Sb.

§ 2

(1) Česká televize poskytuje službu veřejnosti tvorbou a šířením televizních programů, popřípadě dalšího multimediálního obsahu a doplňkových služeb na celém území České republiky (dále jen "veřejná služba v oblasti televizního vysílání").

(2) Hlavními úkoly veřejné služby v oblasti televizního vysílání jsou zejména

a) poskytování objektivních, ověřených, ve svém celku vyvážených a všestranných informací pro svobodné vytváření názorů,

b) přispívání k právnímu vědomí obyvatel České republiky,

c) vytváření a šíření programů a poskytování vyvážené nabídky pořadů pro všechny skupiny obyvatel se zřetelem na svobodu jejich náboženské víry a přesvědčení, kulturu, etnický nebo národnostní původ, národní totožnost, sociální původ, věk nebo pohlaví tak, aby tyto programy a pořady odrážely rozmanitost názorů a politických, náboženských, filozofických a uměleckých směrů, a to s cílem posílit vzájemné porozumění a toleranci a podporovat soudržnost pluralitní společnosti,

d) rozvíjení kulturní identity obyvatel České republiky včetně příslušníků národnostních nebo etnických menšin,

e) výroba a vysílání zejména zpravodajských, publicistických, dokumentárních, uměleckých, dramatických, sportovních, zábavných a vzdělávacích pořadů a pořadů pro děti a mládež.

§ 3

(1) Česká televize naplňuje veřejnou službu v oblasti televizního vysílání zejména tím, že

a) provozuje analogové televizní vysílání dvou televizních programů prostřednictvím zemských vysílacích rádiových zařízení, popřípadě jiných technických prostředků tak, aby v součtu území pokrytého signálem zemského analogového nebo zemského digitálního televizního vysílání a území pokrytého signály souběžného zemského analogového a zemského digitálního televizního vysílání byla pro obyvatele České republiky zajištěna možnost příjmu těchto televizních programů v rozsahu podle odstavce 3, a to za podmínek stanovených zvláštním právním předpisem 1a),

b) provozuje zemské digitální televizní vysílání televizních programů uvedených v písmenu a) a dalších alespoň dvou televizních programů zahrnutých v souhrnném datovém toku složeném z dílčích datových toků náležejících televizním a rozhlasovým programům, multimediálnímu obsahu a doplňkovým službám veřejné služby v oblasti televizního a rozhlasového vysílání, upravených pro společné šíření prostřednictvím zemské sítě vysílacích rádiových zařízení s plánovaným pokrytím alespoň 95 % obyvatel České republiky počítaných podle údajů vyplývajících z posledního sčítání lidu 1b) (dále jen "multiplex veřejné služby"),

- c) jako provozovatel multiplexu veřejné služby sestavuje společně s Českým rozhlasem souhrnný datový tok a odpovídá za jeho správu a jeho předání k šíření zemskou sítí vysílacích rádiových zařízení,
- d) zřizuje síť vlastních zpravodajů,
- e) v oblasti zpravodajských a publicistických pořadů zajišťuje regionální vysílání prostřednictvím televizních studií České televize (dále jen "televizní studia") pro území jejich působnosti. Regionální vysílání každého televizního studia musí vyváženě obsahovat příspěvky z celého území jeho působnosti,
- f) vytváří archivní fondy, udržuje je a podílí se na jejich využívání jako součásti národního kulturního bohatství,
- g) podporuje českou filmovou tvorbu,
- h) vysílá díla domácí a zahraniční tvorby,
- i) poskytuje alespoň na jednom vysílaném programu 24hodinovou programovou službu, včetně aktuálního zpravodajství,
- j) poskytuje teletextové služby,
- k) opatřuje alespoň 70 % vysílaných pořadů skrytými nebo otevřenými titulky a alespoň 2 % vysílaných pořadů vyrábí v českém znakovém jazyce nebo opatřuje simultánním tlumočením do českého znakového jazyka pro osoby se sluchovým postižením a dále alespoň 10 % vysílaných pořadů zpřístupňuje pro osoby se zrakovým postižením, /účinnost od 1.1.2011/
- l) vyvíjí činnost v oblastech nových vysílacích technologií a služeb.

Rada České televize

§ 4

(1) Orgánem, jímž se uplatňuje právo veřejnosti na kontrolu činnosti České televize je Rada České televize (dále jen "Rada"). Rada má 15 členů. Členy Rady volí a odvolává Poslanecká sněmovna Parlamentu České republiky (dále jen "Poslanecká sněmovna"), a to tak, aby v ní byly zastoupeny významné regionální, politické, sociální a kulturní názorové proudy.

(2) Návrhy kandidátů na členy Rady předkládají Poslanecké sněmovně organizace a sdružení představující kulturní, regionální, sociální, odborové, zaměstnavatelské, náboženské, vzdělávací, vědecké, ekologické a národnostní zájmy. Návrhy lze předložit ve lhůtě 15 dnů ode dne zveřejnění výzvy předsedy Poslanecké sněmovny k předložení návrhů způsobem stanoveným usnesením Poslanecké sněmovny.

(3) Členem Rady může být zvolen občan České republiky, který

a) je způsobilý k právním úkonům,

b) má trvalý pobyt na území České republiky, a

c) je bezúhonný; za bezúhonného se nepovažuje ten, kdo byl pravomocně odsouzen pro trestný čin spáchaný úmyslně, pokud jeho odsouzení pro tento trestný čin nebylo zahaleno nebo se na něho z jiného důvodu nehledí jako by nebyl odsouzen, a ten, kdo nesplňuje požadavky podle zvláštního zákona. 1e)

(4) Členové Rady jsou voleni z kandidátů navržených podle odstavce 2, a to na funkční období 6 let, přičemž každé 2 roky je volena jedna třetina členů; mohou být zvoleni opětovně. Na místa uprázdněná z jiného důvodu než pro uplynutí funkčního období jsou voleni noví členové na dobu zbývající do konce funkčního období toho člena, jehož místo se uprázdnilo; je-li tato doba kratší než 1 rok, omezení možnosti opětovného zvolení neplatí. V případě odvolání Rady podle § 6 odst. 3 a následném zvolení všech členů Rady Rada na své první schůzi losem určí 5 členů Rady s funkčním obdobím 2 roky, 5 členů Rady s funkčním obdobím 4 roky a 5 členů Rady s funkčním obdobím 6 let.

(5) Rada je ze své činnosti odpovědná Poslanecké sněmovně.

(6) Členství v Radě je veřejnou funkcí. 2) V souvislosti s jejím výkonem přísluší členům Rady odměna, jejíž výši určí svým usnesením Poslanecká sněmovna.

(7) Rada volí ze svého středu předsedu a odvolává ho.

Commission decisions on State aid to public service broadcasting (1999 -2010)

30. 20/07/2010 C27/2009 (ex. N34b/2009) – France - *Subvention pluriannuelle pour France Télévisions*

29. 20/07/2010 C38/2009 (ex. NN58/2009) – Spain - *New tax-based funding system for public broadcasting in Spain.*

28. 26/01/2010 E5/2005 – the Netherlands - *Yearly financing of Dutch public broadcasters*

27. 03/12/2009 C 38/2009 – Spain - *Investigation into the new financing of RTVE*

26. 28/10/2009 E 2/2008 – Austria – *State funding for Austrian public service broadcaster ORF*

25. 01/09/2009 C 27/2009 – France – *Investigation into the new financing of FT*

24. 04/08/2008 N287/08- Denmark - *Rescue Aid to TV2/Denmark A/S*

23. 16/07/2008 N 279/2008 – France – *Capital injection for France Télévisions*

22. 27/02/2008 E 8/2006 – Belgium – *State funding for Flemish public broadcaster VRT*

21. 27/02/2008 E 4/2005 – Ireland – *State aid financing of RTE and TNAG (TG4)*

20. 24/04/2007 E 3/2005 – Germany - *Financing of public service broadcasters in Germany*

19. 07/03/2007 NN 8/2007 – Spain - *Financing of workforce reduction measures in favour of RTVE*

18. 04/07/2006 NN 31/2006 – Portugal - *Financial support to public service broadcaster RTP*

17. 22/06/2006 C 2/2004 – Netherlands - *Ad-hoc financing measures of Dutch public service broadcasters*

16. 22/03/2006 N 638/2005 – France - *Aide à la création de la chaîne corse Via Stella*

15. 22/03/2006 E 14/2005 – Portugal - General financing system for RTP
14. 07/06/2005 N 54/2005 – France - Chaîne française d'information internationale
13. 20/04/2005 E 9/2005 – Italy - Licence fee payments to RAI
12. 20/04/2005 E 10/2005 – France - Licence fee payments to France 2 and 3
11. 20/04/2005 E 8/2005 – Spain - Financing of RTVE
10. 06/10/2004 N 313/2004 – Denmark - Recapitalisation of TV2
9. 19/05/2004 C 2/2003 – Denmark - Financing of TV2
8. 10/12/2003 C 60/99 – France - Ad-hoc payments to France 2 and 3
7. 15/10/2003 C 85/2001 – Portugal - Ad-hoc payments to RTP
6. 15/10/2003 C 62/99 – Italy - Ad-hoc payments to RAI
5. 01/10/2003 N 37/2003 – United Kingdom - BBC digital curriculum
4. 22/05/2002 N 631/2001 – United kingdom - BBC licence fee
3. 03/04/2002 NN 2/2002 – Germany - ZDF Medienpark
2. 14/12/1999 NN 88/98 – United Kingdom - BBC 24 hours news channel
1. 24/02/1999 NN 70/1998 – Germany - Kinderkanal/Phoenix

(*) **Commission decisions:** the Commission issues the following types of decisions – as defined in the [Council Regulation \(EC\) No 659/1999](#) of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (*Official Journal L 83, 27.03.1999, pages 1-9*), (see http://ec.europa.eu/comm/competition/state_aid/legislation/rules.html)

After a preliminary examination (phase I decisions):

1. **decision does not constitute aid** - where the Commission, after a preliminary examination, finds that the notified measure does not constitute aid - **art. 4(2)**
2. **decision not to raise objections** - where the Commission, after a preliminary examination, finds that no doubts are raised as to the compatibility with the common market of a notified measure, in so far as it falls within the scope of Article 87(1) of the Treaty - **art. 4(3)**
3. **decision to initiate the formal investigation procedure** - where the Commission, after a preliminary examination, finds that doubts are raised as to the compatibility with the common market of a measure - **art. 4(4)**

After a formal investigation procedure (phase II decisions):

1. **decision does not constitute aid (after formal investigation procedure)** - where the Commission, after formal investigation procedure, finds that, where appropriate following modification by the Member State concerned, the notified measure does not constitute aid - **art. 7(2)**

2. **positive decision** - where the Commission, after formal investigation procedure, finds that, where appropriate following modification by the Member State concerned, the doubts as to the compatibility of the notified measure with the common market have been removed - **art. 7(3)**

3. **conditional decision** - where the Commission attached to a positive decision conditions subject to which an aid may be considered compatible with the common market or laid down monitoring obligations - **art. 7(4)**

4. **negative decision without recovery** - where the Commission finds that the aid is not compatible with the common market and shall not be put into effect - **art. 7(5)**

5. **negative decision with recovery** - where the Commission finds that the aid is not compatible with the common market and, as it was unlawful aid, the Commission decides that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary - **art. 7(5) with art. 14(1)**

6. **decision to close formal investigation procedure following the withdrawal of notification** – **art. 8(2)**

As regards **existing aid**, the Commission may **propose "appropriate measures"** to the Member State concerned – **art. 18**

Where the Member State accepts these measures, the acceptance is recorded by the Commission and they become binding upon the Member State – **art. 19**

Where the Member State concerned does not accept the appropriate measures, the Commission may open the **formal investigation procedure** (see above) – **art. 4 (4)**.

Other types of decisions:

1. **revocation of decision** - where the Commission decides to revoke its previous decision due to the fact it was based on incorrect information provided during the procedure which was a determining factor for the decision – **art. 9**

2. **information injunction** – where the Commission requires the Member State to provide the information on alleged unlawful aid in a situation in which the Member State despite a reminder did not provide the information previously requested or provided incomplete information - **art. 10(3)**

BBC Digital Curriculum

Subject: State aid No N 37/2003 – United Kingdom BBC Digital Curriculum

2. DESCRIPTION OF THE SCHEME

- (4) On 9 January 2003, the Secretary of State approved the BBC's proposals for the Digital Curriculum, a new online service that would provide interactive learning materials free to homes and schools. The approval would allow the BBC to spend £150 million from the license fee funds on the Digital Curriculum over a period of five years from the date of approval of the scheme by the Commission.
- (5) The Digital Curriculum will provide an extensive online service, accessed via the internet. The proposed service is aimed for use in schools and homes. The Digital Curriculum service will be accessible through the BBC's existing BBCi online site and the Curriculum Online portal (see paragraph 9 below); in both cases free to all users. The service will be accessible by all with a PC and internet connection, or other suitable receiving devices. The Digital Curriculum is primarily intended to be a broadband service, but at the same time one where the majority of materials will nevertheless be accessible via narrowband connections. A broad range of media would be used in providing the Digital Curriculum and it will involve a mix of interactive learning resources.

(8) The Commission understands that there are four widely distributed MLEs currently available through the commercial market. Additionally, there are also various providers of electronic learning materials in the UK market.

(9) It is of significance that in addition to the BBC's Digital Curriculum service the UK Authorities have also introduced other schemes to encourage 'e-learning and teaching'. These have taken different forms in England, Wales, Northern Ireland and Scotland:

– In England, the largest 'market' in the UK, the government has launched the Curriculum Online portal providing a search engine and an electronic library of certified, educational materials. In addition, the Government has introduced an Electronic Learning Credit (eLCs) scheme whereby £330 million would be provided between the financial years 2002/3 to 2005/6 for schools to spend exclusively on non-BBC materials. The Commission understands that the eLCs are to be used strictly for material which is certified as eligible for the Curriculum Online programme; the programme comprises of products that have been designed and produced to deliver the Curriculum as taught in England.

(11) As the funding for the Digital Curriculum would come from the 'license fee' and the service will compete with active commercial providers the Commission has been asked to assess the 'scheme' under State Aid Rules both by the UK Authorities and the complainant.

(20) In order to ascertain whether the scheme constitutes aid within the meaning of Article 87(1), the Commission has to assess whether the scheme:

- is granted by the State or through state resources;
- provides an economic advantage;
- is capable of distorting competition by selectively favouring certain undertakings or the production of certain goods;
- affects trade between Member States.

6. Decision

The Commission has accordingly decided:

- to raise no objections to the scheme.

2009 Communication on State Aid

Communication from the Commission on the application of State aid rules to public service broadcasting

(Text with EEA relevance)

(2009/C 257/01)