Contemporary Trends in Media Regulation

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Technological developments

‘Wouldn’t it be great if the fridge could call you at work or in your car to let you know you were out of milk and tell you to buy some on the way home?’
(John Patrick of IBM on Transmission Control Protocol/Internet Protocol use in fridges; World Internet Conference June 1996)

Technology in Policy Debates

Throughout the world, information and communication technologies are generating a new industrial revolution already as significant and far-reaching as those of the past. It is a revolution based on information, itself the expression of human knowledge. Technology now enables us to process, store, retrieve and communicate information in whatever form it may take – oral, written or visual – unconstrained by distance, time and volume.

(Chapter 1 of the Bangemann Report that outlines recommendations to the European Council on infrastructures in the sphere of information of 1994)

Global Information Society

Visions of the future:

- political – GIS key to prosperity, optimized use of digital technologies secures growth; digital nervous system for government, education, healthcare, culture and commerce
- commercial – global marketplace consisting of numerous electronic shopping mall. All consumers can be reached individually via their network connections
- social – virtual village green with open networks for individuals to communicate and share ideas on an informal basis. A place to access free information, learn, a place for scientists and academics to exchange and develop knowledge.

Global Information Infrastructure

1995 – US Vice President Al Gore – build the GII using these five principles as foundation:

- encouraging private sector investment
- promoting competition
- providing open access to the network for all information providers and users
- creating a flexible regulatory environment that can keep pace with rapid technological and market changes
- ensuring universal service.

Vision of the European Commission

1993 European Commission white paper on growth, competitiveness and employment:

- stimulate the use of information technologies via strategic projects with a European dimension
- provide basic pan-European services such as ISDN and broadband
- create an appropriate framework to address issues such as privacy, security and intellectual property
- develop training on new technologies
- improve industrial and technological performance.

Changes in consumption patterns, markets, services

Some examples from the UK:

- UK television broadcasters generated revenue of £11.1bn in 2009, a fall of £49m (-0.4%). Growing subscription revenues – up 7.5% to £4.6bn – failed to offset declining net advertising revenue (NAR), which fell by 9.6% to £3.1bn.
- The BBC's estimated spending on TV services grew by 1.5% to £2.7bn.
- The commercial public service broadcasters (PSBs) – ITV1 and the Channel 3 licensees, GMTV1, Channel 4, Five and S4C – jointly saw the steepest decline in advertising revenue during 2009, down 14% to £1.9bn.
- Since 2004, the BBC's share of total TV revenue has remained broadly flat, at around 24%, while subscriptions' share grew by seven percentage points to 41%.
- Since 2004, advertising's share fell by six percentage points to 28%.

- Spend on first-run originated programming for the five main PSB channels fell in 2009, down by 7.4% to £2.41bn. Over the last five years the decline has been 20.9%.

- The number of television channels broad casting in the UK declined for the first time, from 495 at the end of 2008 to 490 in 2009.

- Total UK radio industry funding stood at £1.1bn in 2009, down by 4.0% on 2008 . This came as a result of a fall in commercial radio revenues of 11.5% to £432m, while we estimate that BBC radio spend rose by 1.6% to £660m.

- BBC expenditure on radio services rose by 26% over the five years to 2009, while commercial revenues fell by 22% over the same period . Taken together, radio industry income increased 1.5% in nom inal terms over five years.

- The number of radio listeners reached a new high of 90.6% (46.8 million adults) listening weekly in Q2 2010 - the highest recorded figure since a new RAJAR research methodology was introduced in 1999. It was up by almost half a million in a year and was also up by 300,000 listeners on Q1 2010. The combined reach of BBC stations was 67.0% in Q2 2010 and 63.7% for commercial radio.

- Despite there being more radio listeners, the time each spent listening has fallen over the past five years. Listening hours were down by 5.3% in the five years to 2009, and by 0.4% on 2008. Total listening hours to all the BBC's stations were down by 2.2% over five years and by 1.2% during 2009. By contrast, all commercial radio listener hours were stable over the year, but down 10.1% over five years.

- Internet take-up is almost at three-quarters of UK households. Internet take-up has now reached 73%, just below penetration of PCs (76%). Total broadband takeup is now 71%, with fixed broadband at 65% and mobile broadband at 15%.

- Mobile broadband is driving broadband growth. Broadband take-up grew by three percentage points to 71% in Q1 2010, but this was driven by mobile broadband, as fixed remained flat at 65%.

- Internet take-up is increasing among older age-groups. Take-up also grew rapidly among 55-64s (by 6pp) and 65-74s (by 7pp). Eight per cent of the male online universe is aged 65+, compared to just 3% for females. In contrast, 45% of the female online unique audience is under 35, but the corresponding figure among males is only 38%.

- Two-thirds of internet households (66%) use a wireless router. Take-up increased by 14 percentage points on Q1 2009, and since Q1 2007 has nearly doubled, enabling users to connect multiple devices to the internet.

- Online advertising grew through the downturn to reach £3.5bn in 2009. The 6% increase on 2008 was driven by growth in search (8%) and display (11%), but other classified fell (-5%) as the recession hit the property, automotive and recruitment sectors.

- Use of telecoms services continued to grow in 2009. Total mobile call volumes increased by 7% in 2009 (page 319), while the number of text messages increased by 25%. There was also a massive increase in data use: we estimate that total data volumes over the UK's internet infrastructure increased by 68% during 2009, and data volumes over mobile networks increased by 240%.

- But total retail revenues fell. Operator-reported retail telecoms revenue declined by 2.6% in 2009 to £30.4bn (the lowest annual figure since 2006), the first time since Oftel began collecting data on the telecoms industry in the 1990s. This was driven by the first year-on-year fall in mobile voice revenues (down 3.5%) combined with a small fall in fixed-line internet access revenues and an acceleration in the decline in fixed-voice revenues.

- Average household spend on telecoms services fell by 3.7% to £62.10 in 2009. This represented 3.0% of average household spend, down from 3.2% in 2008, with most of this drop being due to falling mobile prices. Overall, household spend on telecoms services has fallen by over 13% in real terms in the past five years (page 335), despite a 10% increase in call volumes (fixed and mobile) and 50% growth in the number of internet connections over the same period.

- Broadband speeds increased – but so did the gap between advertised and actual speeds. Average actual speeds increased from 4.1Mbit/s in April 2009 to 5.2Mbit/s in May 2010; however, this was just 46% of the average ‘up to’ advertised speed. Nearly half the population could have access to superfast broadband, but fewer than 0.5% of households did by the end of 2009.

- The average cost of a residential fixed-line broadband connection fell by a third between 2005 and 2009. Despite increasing speeds, average broadband costs have fallen year on year. The average monthly cost was £13.31 in 2009.

- Mobile broadband is driving increases in internet take-up. The proportion of households having mobile broadband as their only broadband connection increased from 3% of all households in Q1 2009 to 6% in Q1 2010. Fixed-line broadband takeup plateaued at 65%, households taking both fixed and mobile broadband was stable at 9% and the proportion of households with dial-up internet fell to 2%.

- Adoption of 3G mobiles accelerates. Nearly one in three mobile connections were using 3G at the end of 2009, as total 3G connections increased by 39% during the year to 25.5 million.

- Two-year mobile contracts are becoming standard. In Q2 2010, 63% of new mobile contracts were for 24 months, compared to 26% a year previously and just 3% in Q2 2008.

Technological Convergence – Bundling of Services

‘Pure bundling’ occurs when products or services are sold as a fixed package and cannot be bought separately (e.g. a car is an example of a pure bundle because it is unlikely that you would buy it in individual parts to build the car yourself).

‘Mixed bundling’ is when products are available as a part of a bundle or individually, but the package of items together is sold at a discounted price (e.g. Home contents and building insurance is often sold as a discounted package but each can be bought individually).

‘Tied bundling’ is when one product can only be purchased with another, but that other product is available to buy separately (e.g. shoes and shoelaces).

All three types can be found in the communications sector, although the most common are mixed bundles and tied bundles.

Bundled Communication Services – UK data

- Around half of all UK households now buy two or more of their communications services from one supplier in a bundle, up from less than a third five years ago. Triple-play voice, broadband and TV bundles account for a third of the total.
- Seventeen per cent of households took triple-play services in Q1 2010, compared to just 3% five years ago.
- But many people buy services on a stand-alone basis. Only half of all households (53%) that have a landline, fixed broadband service and pay-TV currently purchase these services as a triple-play bundle.
- Seventy per cent of people with a communications service bundle said that the main reason for taking a bundle was because it was cheaper. Almost half (49%) of those with a bundle also said that it was more convenient to deal with one supplier.

- Bundling often provides a route for users to take up a n ew service. Forty-five per cent of households with pay-TV in a bundle did not previously purchase pay-TV services, and 40% of households with broadband in a bundle did not previously have broadband.

- Those who buy bundles are, on average, more satisfied than those who buy single services. In particular, bundlers have higher satisfaction with value for money and customer service.

- There are some indications that consumers with bu ndles are less likely to switch provider than those with single services. Just 3% of those with a bundle switched their whole package in the year to Q1 2010, compared to 11% of those wi th stand-alone fixed broadband, 6% with stand-alone fixed voice and 3% with stand-alone pay-TV.

Free Market vs. State Intervention

McChesney argues “all media systems are the result of explicit government policies, subsidies, grants of rights and regulations. ... Indeed, to have anything close to competitive markets in media requires extensive government regulation in the form of ownership limits and myriad other policies” (2003: 126). Similarly, McKenna (2000) stresses that deregulation does not indicate that regulatory pro-competitive provisions are not incorporated in broadcasting regulation.

The US 1996 Telecommunications Act

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. Clear Channel now owns nearly 1,200 stations.

Self-Regulation

The Codex of Czech Television

Čl. 1 Divák – občan na prvním místě

Čl. 2 Zvláštní pozornost dětskému divákovi

Čl. 3 Poplatník televizního poplatku –otevřený vztah

Čl. 4 Tvůrce – základní předpoklad úspěchu

Čl. 5 Péče o informace ve zpravodajstvía aktuální publicistice

Čl. 6 Diskusní pořady a pluralita

Čl. 7 Otázky náboženství a etiky

Čl. 8 Umělecké pořady a vkus

Čl. 9 Jazykový projev

Čl. 10 Vzdělávací a osvětové pořady

Čl. 11 Zábavní pořady

Čl. 12 Sportovní vysílání

Čl. 13 Zákaz diskriminace

The Codex - continued

Čl. 14 Presumpce neviny
Čl. 15 Respekt k soukromí
Čl. 16 Pravidla při natáčení
Čl. 17 Zobrazování
Čl. 18 Živé vysílání
Čl. 19 Kritické situace
Čl. 20 Charitativní a dobročinná činnost
Čl. 21 Komerční části programu
Čl. 22 Střet zájmů
Čl. 23 Česká televize jako instituce
Čl. 24 Péče o archivní fond
Čl. 25 Základní pravidla hospodaření
Čl. 26 Žaloby a správní řízení

Self-regulation The Czech Council for Advertising

Co znamená samoregulace reklamy?

Podstatou samoregulace reklamy je, že stát či státní orgány reklamu neregulují. Reklama je tak regulována pravidly, která přijme sám reklamní průmysl. Takto přijatá pravidla jsou vyjádřena v Kodexu reklamy. Kodex reklamy se stát od státu liší podle historických, společenských a legislativních podmínek. Samoregulace nenahrazuje právní regulaci – legislativu. Tuto legislativu doplňuje o ta etická pravidla, na něž se legislativa nevztahuje. Samoregulace je velmi flexibilní, rychle se adaptující nástroj, který pružně reaguje na všechny změny reklamního a mediálního trhu. Jednou z hlavních výhod samoregulace reklamy je právě flexibilní přizpůsobení etických pravidel reklamy vývoji trhu.

Kdy RPR zasahuje?

Rada pro reklamu je oprávněna zahájit tzv. rozhodovací proces (proces projednávání stížností) pouze v souladu s jednacím řádem Rady pro reklamu, tj. v těchto případech:

- obdrží-li stížnost na konkrétní reklamu (stížnost může podat jakákoli v fyzická či právnická osoba nebo státní orgán)

- z vlastního podnětu, pokud Rada nabude přesvědčení, že konkrétní reklama může porušovat některá ustanovení Kodexu reklamy.

Kodex reklamy upravuje chování subjektů při reklamních aktivitách v tisku, na plak átovacích plochách, zásilkové službě, audiovizuální produkci, kinoreklamě a reklamě v rozhlasovém a televizním vysílání i na internetu. Všichni členové RPR se zavázali, že budou Kodex respektovat. Kontrolu dodržování Kodexu vykonává přímo veřejnost prostře dnictvím stížností, podávaných Radě. Stížnosti mohou podávat jakékoliv fyzické či právnické osoby, státní či jiné orgány.

Jaké má RPR pravomoci?

Rada pro reklamu jako nestátní, nezisková organizace nemůže udělovat finanční pokuty či jiné sankce. Rada pro reklamu vydává pouze rozhodnutí, která mají formu doporučení.

Rada pro reklamu může, v případě nerespektování jejích doporučujících rozhodnutí, předat podnět příslušnému Krajskému živnostenskému úřadu (KŽÚ) k dalšímu řešení. KŽÚ mají zákonem danou pravomoc udělovat sankce.

Kromě své hlavní činnosti, kterou je posuzování přípustnosti reklam z etického hlediska, se dnem nabytí účinnosti zákona č.40/95 Sb. o regulaci reklamy, Rada stala institucí, u které si mohou orgány dozoru nad dodržováním zákona (krajské živnostenské úřady, Rada ČR pro rozhlasové a televizní vysílání, Ministerstvo zdravotnictví ČR atd.) vyžádat odborná stanoviska k aplikaci výše uvedeného zákona v praxi. V této souvislosti Rada pro krajské živnostenské úřady z celé České republiky vydala více než 250 odborných stanovisek o souladu reklam se zákonem o regulaci reklamy.

Convergence

Convergence does not only blur the distinction among various forms of communication but also among services. In this respect Cooper (2003) makes an important point: advocates of convergence tend to equate all media while in fact distinct products are involved that are oriented at different geographic markets – both in terms of the commercial marketplace and the forum for democratic discourse. To make this issue more concrete we can look at the example of fibre optic cable, which “offers the potential for the delivery to individual households of television and radio, networked computer facilities, interactive services such as home banking, shopping and video on demand, combined with telecommunications (telephone and fax) facilities. Indeed, the ultimate potential of digitalisation, allowing the transfer of all such material down a single line, seems almost boundless” (Feintuck 1999: 23).

Issues for Regulators

"Does the existence of different regulatory authorities responsible for different aspects of telecommunications, media and IT [information technologies] activities offer a workable structure for regulatory supervision in the light of convergence or does convergence require a reassessment of regulatory responsibilities at a national or international level, and if so, in which areas?" (Drucker and Gumpert 2000: 48)

Competition Law

cost advantages associated with size will dictate that an industry should be an oligopoly unless some form of market intervention or Government regulation prevents the firms from growing to their most efficient size. If no such intervention takes place, existing firms in the industry may create barriers to entry where natural ones do not exist so that the industry will be dominated by a handful of large firms only because they are successful in preventing the entry of new firms. But substantial economies of scale in any industry will, in themselves, act as a natural barrier to entry in that any new firms will usually be smaller than established firms and so they will be at a cost disadvantage (Doyle, 2002: 9).

Preventing Media Concentration

"Competition policy has traditionally worked on the assumption that the efficiency of markets depends directly on their competitive structure and, especially, on the extent of seller concentration. So competition policy may sometimes involve 'structural' interventions – i.e. attempts to bring about market structures which are less concentrated – on the assumption that this will ensure good behaviour by competing firms to promote improved industrial performance" (Doyle, 2002: 168). Limits on media ownership are a typical example of such a structural intervention.

Ownership Regulation – Czech Broadcasting

231/2001 Sb.
ZÁKON
ze dne 17. května 2001
o provozování rozhlasového a televizního vysílání a o změně dalších zákonů
ČÁST ŠESTÁ
ZAJIŠTĚNÍ PLURALITY INFORMACÍ V ROZHLASOVÉM VYSÍLÁNÍ A TELEVIZNÍM VYSÍLÁNÍ
55
Zajištění plurality informací v celoplošném analogovém rozhlasovém a televizním vysílání
(1) Jedna právnická osoba nebo jedna fyzická osoba nesmí být držitelem více než jedné licence k celoplošnému analogovému televiznímu vysílání.
(2) Jedna právnická osoba nebo jedna fyzická osoba nesmí být držitelem více než jedné licence k celoplošnému analogovému rozhlasovému vysílání.
(3) Provozovatel celoplošného analogového rozhlasového vysílání se nesmí majetkově podílet na podnikání jiného provozovatele celoplošného analogového rozhlasového vysílání.
(4) Provozovatel celoplošného analogového televizního vysílání se nesmí majetkově podílet na podnikání jiného provozovatele celoplošného analogového televizního vysílání.

Behavioural Regulation

A different type of intervention – behavioural one – is becoming more frequent, this involves regulation that encourages monopolistic firms into behaviour in the public interest.

Media Economics

- media generate two commodities, content and audiences thus they represent a so-called dual-product market
- media industry characterized by economies of scale, “economies of scale are said to exist in any industry where marginal costs are lower than average costs. When the cost of providing an extra unit of a good falls as the scale of output expands, then economies of scale are present” (Doyle 2002: 13)
- economies of scope are also commonly characteristic of media enterprises, these are economies at the disposal of firms “large enough to engage efficiently in multi-product production and associated large scale distribution, advertising and purchasing” (Lipsey and Chrystal as quoted in Doyle, 2002: 14).