

Contemporary trends in media regulation

The spread of information and communication technologies provides major challenges to regulators and policy makers. We witness the convergence of media as well as media contents. The lecture opens with discussing some of the implications of these developments for regulation in the field of media and telecommunications. It draws upon examples from the US and European countries. It moves on to discuss another contemporary trend in (not only) media regulation: de-regulation or the reduction of government power in the regulation of media and telecommunications. The closing part of the lecture is devoted to self-regulation.

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)

Possibly play Microsoft or HP vision of the Future

The revolutionary character of information and communication technologies was also reflected in policy debates at all levels, including the European Union:

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.

In order to create the global information society, we need to build the Global Information Infrastructure (Information Superhighway), in the period between 1993 and 1996 governments all over the world announced plans for GII (a concept established by Al Gore in a speech at a International Telecommunications Union conference in 1994). Impossible to limit information infrastructure to national borders – a global issue of international concern.

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.

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.

Policies at all levels envisioned:

E-commerce

E-government (electronic signature)

E-healthcare

E-architecture

Concerns were restricted to issues of:

piracy (breaking intellectual property rights) and privacy (e.g. the case of Google StreetView in Prague – Data Protection Office banned Google from collecting data on the streets of Prague due to privacy issues)

Technological convergence:

Technological advances, in particular digitalisation, enable the integration of formerly different forms of communication, such as telecommunications, broadcasting and information technologies. Convergence does not only blur the distinction among various forms of communication but also among services. E.g. 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, M. (1999). *Media Regulation: Public Interest and the Law*. Edinburgh: Edinburgh University Press, p. 23.

Do we need different regulatory authorities responsible for different aspects of telecommunications, media and information technologies activities in the light of convergence or does convergence require a reassessment of regulatory responsibilities at a national or international level?

Different governments – different solutions:

In 2003 the UK Office of Communications was established and it replaced five regulators – the Broadcasting Standards Commission, the Independent Television Commission, the Office for Telecommunications, the Radio Authority and the Radiocommunications Agency.

The development of new technologies brought with itself changes in the way we consume media and media contents as well as telecommunications services and also in the

telecommunications and media markets. For example, in the case of the UK, the regulator OFCOM published an annual report and I will look at data from the 2009 report published in August 2010. The data relate to consumption patterns as well as market trends. WORD DOC

- 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 broadcasting 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 nominal 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 take-up 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 Ofcom 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 take-up 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.

Bundled services, in economic theory, there are three main types of bundles:

‘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.

The market for bundled communication services

- 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 still 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 new 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 bundles 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 with stand-alone fixed broadband, 6% with stand-alone fixed voice and 3% with stand-alone pay-TV.

After this rather long introduction let me turn to trends in media regulation, in this respect the trend-setters clearly are the USA¹ and Great Britain.

There appears to be general agreement that the major trend during the last two decades within broadcasting regulation (but not restricted to it) has been towards deregulation, for example, McQuail (1992b: 143) identifies “a more general ‘liberalizing’ and deregulation political-economic trend in Europe”. Murdock (2004) argues that the marketization of broadcasting was promoted by liberalization which

has introduced competition into broadcast markets that were previously either public monopolies (as in most western European countries) or duopolies with strong public service regulation, as in Britain. ... As well as massively enlarging their sphere of action private television interests also succeeded in winning more space for manoeuvre by pressing for the rules governing ownership and advertising to be relaxed and getting the underlying purpose of regulation redefined.

Liberalization was combined with deregulation which implies a minimalist regulatory approach on the part of the state as well as increased stress on self-regulation and in addition there is the prevalence of regulation after the event rather than pro-active regulation.² In Feintuck’s words deregulation results in “accepting and legitimising market trends rather than establishing positive targets for regulation” (1999:164).

Much of the discussion on the role of media in society and the ways of ensuring these roles has been formed around the dichotomy of free market versus state, in the case of regulation of deregulation versus government regulation. This dichotomy though leads to a deadlock and is based on the false premise that the free market involves no state intervention, as 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

¹ In this respect I agree with Calabrese, “of course, there is a vitally important global dimension to all of this, in that for many years the US has served as both the model and, when models fail, the primary source of political and economic pressure, to get the rest of the world to fall into line with its media policy frameworks” (2004: 112).

² In relation to British broadcasting regulation Graham Murdock pointed out that “what has been relinquished is regulation which is pro-active and aims to create a communications environment that honours certain public obligations to open debate and diversity of opinions” (Metykova, 2003).

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. Murdock (1997: 12-13) points out that deregulation is a misnomer,

what is at stake is not so much the number of rules but the shift in their overall rationale, away from a defence of the public interest (however that was conceived) and towards the promotion of corporate interests. Communications corporations benefit from this shift at two levels. They not only gain from changes to the general laws governing corporate activity in areas such as trade-union rights but, more importantly, they have also gained considerably from the relaxation of the additional rules designed to prevent undue concentration in the market-place of ideas and to ensure diversity of expression.

Let me now illustrate what some aspects of deregulation involve with concrete examples. The US 1996 Telecommunications Act and its implementation provide a very telling example of what deregulation of media ownership can involve. According to McChesney (2003: 128) the Act most directly affected US radio³ as 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. Another change in the rules applied by the US Federal Communications Commission was announced on 2 June 2003. A 20-month review of its media ownership policy was to determine whether its broadcast ownership rules were “necessary in the public interest as the result of competition”⁴

³ In this respect see also McKenna (2000 : 103), among other significant changes he lists the following: “section 202 eliminates total TV station ownership limits per se and raises former limits on national audience totals from 25 to 35 per cent. The Act also formalized the position whereby existing TV station owners’ licences were renewed as of right.”

⁴ Cooper (2003: 111) argues that during the review of media ownership rules FCC attempted to prove that there is substitutability between media – this is crucial also in respect of the entire deregulation argument – FCC’s own data show that there is very little substitutability between media either for viewers as a source of information gathering or for advertisers as a source of information dissemination

(www.fcc.gov/ownership). Following the review the FCC “revised the local television multiple ownership rule; modified the local radio ownership rule by revising the local radio market definition; raised the national television ownership limit from 35% to 45%; retained the dual network rule and developed a single set of cross-media limits to replace both the radio/television cross-ownership rule and the newspaper/broadcast cross-ownership rule” (ibid.). The new rules have not been implemented yet at the time of writing (early 2005) as the decision was appealed against in various federal appellate courts.⁵ **COPY Statement of Commissioner**

Another characteristic feature of recent developments in media regulation is increased reliance on self-regulation. Self-regulatory authorities are usually set up by the industry itself, however, their establishment can be supervised by a government body. A report on self-regulation prepared by the Programme in Comparative Media at [Oxford University](http://www.oxfordjournals.org/)⁶ deals in detail with aspects of self-regulation in print media, broadcasting, film industry, electronic game industry and the Internet. The authors of the report identified the following reasons for setting up self-regulatory codes: to provide an alternative to direct statutory regulation; to prevent direct statutory regulation by the state; to build public trust/consumer confidence; to avoid legal or user-perceived liability; to protect children and other consumers; to exert moral pressure on those who would otherwise behave “unprofessionally”; to reinforce the competitive advantage of a group of industry players; to mark professional status and to raise the public image of the given industry (ibid., 17-18). In relation to broadcasting, self-regulation is most evident in the case of public service broadcasters who establish internal bodies that self-regulate and self-monitor them.

Kodex CT

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

⁵ In this respect see also Cooper (2003) for a detailed qualitative and quantitative market analysis which demonstrates that the FCC should maintain structural limits on media ownership.

⁶ “Self-Regulation of Digital Media Converging on the Internet: Industry Codes of Conduct in Sectoral Analysis” (further “Self-regulation”) accessible at <http://www.self-regulation.info>.

Čl. 5 Péče o informace ve zpravodajství a 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

Čl. 14 Presumpce nevinny

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

However, there are also self-regulatory bodies that deal with commercial broadcasters. For example, in the area of broadcasting and the protection of minors, Germany probably provides the most striking example. In 1993 the major German commercial broadcasters founded Freiwillige Selbstkontrolle Fernsehen (Voluntary Television Review Body) which was to ensure that commercial broadcasters complied with child protection that exceeded

normal legal stipulations. They use the mechanism of pre-publication review when a review panel of 5 to 7 people examines a broadcast and makes a decision about it (taking into account how the broadcasters intend to broadcast it, e.g. the timing etc.). The decisions made by FSF are compulsory (for more detail see www.fsf.de or “Self-regulation ...”).

Another area that is related to broadcasting and is often self-regulated is advertising. To use an example from Eastern Europe, we can mention the Czech Council for Advertising (for more detail see www.rpr.cz) which was set up in 1994 by the industry to self-regulate advertising in all media, its structure was based on that of the British Advertising Standards Authority (ASA).⁷ The Council is mainly involved in handling complaints relating to advertising, its powers are rather limited as it can only make recommendations to change an advert or to stop using it. Upon request the Council prepares analyses for government agencies in relation to the implementation of the *Act on Advertising*. There is, however, a statutory body in the Czech Republic that deals with advertising and sponsorship in relation to radio and television broadcasting - the Czech Council for Radio and Television Broadcasting (does so on the basis of Act no. 40/1995 Coll. on the regulation of advertising).

Jaké má RPR cíle?

Rada pro reklamu vznikla za účelem prosazování samoregulace reklamy. Hlavním cílem Rady pro reklamu je zajišťovat a prosazovat na území České republiky čestnou, legální, pravdivou, a decentní reklamu.

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.

⁷ In this respect it is interesting to point out that ASA regulated non-broadcast advertising, it was only on 1 November 2004 that the Office for Communications in an attempt to deregulate broadcast advertising contracted out its regulation to ASA (see www.asa.org.uk and www.ofcom.org.uk).

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.

Kterými oblastmi reklamy se RPR zabývá?

Rada pro reklamu se zabývá posuzováním stížností na reklamu:

- v tisku
- na plakátovacích plochách
- zásilkových služeb
- v audiovizuální produkci
- v kinech
- v rozhlasovém a televizním vysílání.
- na internetu

Kterými oblastmi reklamy se RPR nezabývá?

Rada pro reklamu se nezabývá reklamou volební, reklamou politických stran ve všech jejích formách. Rada pro reklamu se rovněž nezabývá stížnostmi, v nichž převažují právní výhrady nad etickými.

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 jakákoliv 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 plakátovacích 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 prostřednictvím 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.

Dále Rada pro reklamu vykonává následující činnosti:

- vydává Kodex reklamy
- prostřednictvím arbitrážní komise prosazuje dodržování Kodexu
- vykonává osvětovou a vzdělávací činnost
- vydává stanoviska COPY ADVICE
- vydává odborná stanoviska pro Krajské živnostenské úřady
- v otázkách etiky reklamy spolupracuje se státními orgány, soudy, sdruženími a dalšími institucemi v České republice i v zahraničí
- hájí zájmy reklamního průmyslu a podílí se na tvorbě legislativy zasahující do oblasti reklamy a marketingové komunikace
- zastupuje své členy v EASA – The European Advertising Standards Alliance
- realizuje další činnosti.

There are a number of questions that arise in relation to the accountability, transparency and efficiency of self-regulatory bodies. Let us look at the example of the British self-regulatory press body (although press is not of major concern for my analysis, nonetheless, it is more self-regulated than audiovisual media thus I consider it important to at least make a passing reference to it). The Press Complaints Commission was set up in 2001 following a government report on its self-regulatory predecessor the Press Council. The report of the Calcutt committee recommended the introduction of privacy laws and the replacement of the Press Council by a statutory regulator. The industry reacted by establishing the Press Complaints Commission. Chris Frost (2004) analyzed complaints handled by PCC during the first ten years of its existence to show whether the commission works effectively in obliging newspapers to behave more responsibly (PCC obviously claims that this is what it achieved). Already the fact that PCC received more than 20,000 complaints in those ten years and adjudicated only 707 and upheld 321 of them is telling. However, Frost is not interested only in statistics, rather he looks at various areas that the complaints related to and shows that PCC's record is particularly poor in regulating complaints about discrimination, during the

ten years that Frost analyzed only 6 complaints were upheld.⁸ The reasons behind this have to do with PCC's code itself as the Commission decided not to take complaints from third parties thus only those named in an article could complain. This approach was criticized even by the UK Culture, Media and Sport Select Committee.⁹

Thus if a government is to transfer some areas from its regulation to self-regulatory bodies there are a number of issues to be taken into account. In this respect the example of the British Office for Communications is interesting, it created a set of criteria that will be taken into account when transferring regulatory functions to self-regulatory ones. Ofcom will sanction the change in case self-regulation is beneficial to consumers; works with a clear division of responsibilities between co-regulator and Ofcom; is accessible to the public; no interference from interested parties; adequately funded and staffed; near universal participation; effective and credible sanctions; provide auditing and review by Ofcom; publicly accountable¹⁰; consistent with similar regulation and have an independent appeals mechanism (for more detail see www.ofcom.org.uk). Yet, at the authors of "Self-regulation ..." point out:

Most attention to self-regulation and its accreditation by statutory bodies or government departments has focused on the issues of effectiveness, transparency and sanctions, i.e. with features of the self-regulatory institution and code. These aspects of the self-regulatory regime remain very relevant, but accreditation must also involve other dimensions such as financial sustainability, implications for speech freedoms and the structure of interests of the industry sector. If criteria such as those recently outlined in the UK by Ofcom are to justify a shift to self-regulation there must also be some reflection on the nature of the public policy objectives concerned, and whether they are likely to be coterminous with the aims of the industry itself ("Self-regulation ...", 86).

During the last few decades a number of changes in regulatory practices as well as regulatory bodies were justified by technological convergence. Technological advances, in particular digitalisation, enable the integration of formerly different forms of communication, such as telecommunications, broadcasting and information technologies. Convergence does not only

⁸ This is particularly striking as solely in relation to the coverage of Euro96 PCC received 306 complaints about the allegedly racist depiction of the German team once England was drawn to play it.

⁹ See House of Commons Culture, Media and Sport Committee, "Privacy and Media Intrusion", accessed from: <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmcomeds/458/458.pdf>.

¹⁰ On the issue of media accountability and responsibility in relation to market mechanisms and government regulation see also Bardoel and d'Haenens (2004).

blur the distinction among various forms of communication but also among services.¹¹ 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). Under these circumstances significant questions are raised regarding the regulatory framework, Drucker and Gumpert (2000: 48) summarize them in the following way: “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?” **COPY OF OFCOM here**

The role of competition law in broadcasting regulation has been crucial. Some understand technological convergence as a development that calls for the increased application of competition law in all areas and the concurrent abandonment of sector specific regulation, as Drucker and Gumpert (2000: 48) point out “ ‘technological convergence’ quickly leads to the consideration of ‘market convergence’ which immediately suggests ‘regulatory convergence’” and leads to the introduction of competition law. They go on to warn that

the development of convergent technology should not be entirely controlled by free market forces, because there is little room for the participation of community members in any sense other than as consumers. We believe that the current path shifts the emphasis from communities of place to virtual communities, where entertainment and commerce are divorced from obligation, and technological and commercial convergence leads to regulatory convergence divorced from locality (ibid.: 51).

¹¹ 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.

Economic justifications in regulation centre on perceived benefits of undistorted competitive markets. However, as Doyle (among others) points out “perfect competition exists when there are many sellers of a good or a service that is homogeneous (i.e. exactly the same or not differentiated) and no firm(s) dominate(s) the market. In such a situation economic forces operate freely. ... It is very rare to find an example of perfect competition in the real world” (2002: 8). Rather, what we face is imperfect competition where

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).

In order to fully appreciate Doyle’s point some of the terms she uses need to be explained. First of all, media concentration “or media integration is defined as an increase in the presence of one (monopoly) or a few media companies (oligopoly) in any market as a result of acquisitions and mergers or the disappearance of competitors”¹² (Meier and Trappel, 1998: 41). In more concrete terms the possible impacts of media concentration include, for example, the threat to the diversity of content and the reduction of the number of different information sources.

The more media become exposed to profit-generating objectives (a serious concern in the cases of diagonal and multimedia concentration), the more *normative journalism* will be replaced by *market journalism*. Advertisers do not pay for high-level quality journalism, but for the requested “quality” of the sector of society to be reached. Market journalism, however, provides for a different construction of reality in the

¹² We distinguish various types of concentration. My descriptions are based on Meier and Trappel, 1998: 41-42. Horizontal media concentration refers to concentration within one and the same industry section (an example can be the merger of two newspapers in the same geographical market). Vertical media concentration is involved when a media enterprise gains control over some steps necessary for the production and distribution of a given media (for example, distribution, promotion etc.). Cross-media concentration refers to a situation when a media enterprise gains cross-ownership of different media products (respectively outlets) in different media markets and industries. Diagonal media concentration includes not only cross-media concentration but also activities of an enterprise from a different industrial sector in media markets.

media and for a substantially different media reality. Its first and foremost objective is not to inform but to satisfy the targeted sector of society (ibid.: 57, original emphasis).

It thus becomes clear that concentration is in general unwanted on any type of market, yet, even if we were to have perfect competition on the media market, there are arguments that the audiences would not get “what they want” as the media market is based on advertising and as, for example, Doyle (2002: 67) points out, “advertising is a faulty funding mechanism in that it creates an incentive for the broadcaster to maximize not overall viewer welfare but the supply of whatever mix of programming yields the audience volumes, while patterns of intensity of viewer demand for different sorts of output may be ignored.” Even though there are other funding options available (e.g. direct payment from viewers), these are unlikely to elevate market failure. This is explained by the economic theory of discrimination: small groups with atypical preferences will not be served by the market due to impersonal economic processes – simply because they are too small to generate profit (Cooper, 2003 : 37).

Let me briefly consider instruments aimed at handling/preventing concentration in media markets. The usual tool within the European Union in general and member states in particular is competition law. “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. (as in the case of FCC) WORD DOC

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.
- (5) Provozovatel celoplošného televizního vysílání ze zákona se nesmí slučovat s provozovatelem celoplošného analogového televizního vysílání, a to tak, že jejich statutární orgány nebo členové statutárních orgánů jsou stejné osoby nebo osoby blízké nebo jsou společníky ve stejné obchodní společnosti nebo jsou osobami blízkými.
- (6) Provozovatel celoplošného rozhlasového vysílání ze zákona se nesmí slučovat s jiným provozovatelem celoplošného analogového rozhlasového vysílání, a to tak, že jejich statutární orgány nebo členové statutárních orgánů jsou stejné osoby nebo osoby blízké nebo jsou společníky ve stejné obchodní společnosti nebo jsou osobami blízkými.
- (7) Provozovatel celoplošného analogového televizního vysílání se nesmí slučovat s provozovatelem celoplošného analogového televizního vysílání jiným způsobem (§ 58).
- (8) Provozovatel celoplošného analogového rozhlasového vysílání se nesmí slučovat s provozovatelem celoplošného analogového rozhlasového vysílání jiným způsobem (§ 58).
- (9) Ustanovení odstavců 1, 2, 3, 4, 7 a 8 se nevztahují na rozhlasové a televizní vysílání šířené prostřednictvím kabelových systémů a družic.
- (9) Ustanovení odstavců 1, 2, 3, 4, 7 a 8 se nevztahují na rozhlasové a televizní vysílání šířené prostřednictvím kabelových systémů, družic a zvláštních přenosových systémů.
- (10) Ustanovení odstavců 7 a 8 se nevztahují na osoby zabývající se náborem a prodejem reklamních služeb, služeb spojených se sponzorstvím a teleshoppingem, služeb spojených s výzkumem trhu a služeb spojených s nákupem pořadů, vyjma pořadů zpravodajských.

§ 55a

Zajištění plurality informací v celoplošném digitálním rozhlasovém a televizním vysílání

- (1) Jedna právnická osoba nebo jedna fyzická osoba nesmí být současně držitelem více než dvou licencí k provozování celoplošného digitálního televizního vysílání opravňujících k šíření plnoformátových programů.
- (2) Jedna právnická osoba nebo jedna fyzická osoba nesmí být současně držitelem více než dvou licencí k provozování celoplošného digitálního rozhlasového vysílání.
- (3) Provozovatel celoplošného digitálního televizního vysílání se nesmí majetkově podílet na podnikání jiného provozovatele celoplošného televizního vysílání.
- (4) Provozovatel celoplošného digitálního rozhlasového vysílání se nesmí majetkově podílet na podnikání jiného provozovatele celoplošného rozhlasového vysílání.
- (5) Provozovatel celoplošného televizního vysílání ze zákona se nesmí slučovat s provozovatelem celoplošného digitálního televizního vysílání, a to tak, že jejich statutární orgány nebo členové statutárních orgánů jsou stejné osoby nebo osoby blízké nebo jsou společníky ve stejné obchodní společnosti nebo jsou osobami blízkými.
- (6) Provozovatel celoplošného rozhlasového vysílání ze zákona se nesmí slučovat s jiným provozovatelem celoplošného digitálního rozhlasového vysílání, a to tak, že jejich statutární orgány nebo členové statutárních orgánů jsou stejné osoby nebo osoby blízké nebo jsou společníky ve stejné obchodní společnosti nebo jsou osobami blízkými.
- (7) Provozovatel celoplošného digitálního televizního vysílání se nesmí slučovat s provozovatelem celoplošného digitálního televizního vysílání jiným způsobem (§ 58).
- (8) Provozovatel celoplošného digitálního rozhlasového vysílání se nesmí slučovat s provozovatelem celoplošného digitálního rozhlasového vysílání jiným způsobem (§ 58).

(9) Ustanovení odstavců 1, 2, 3, 4, 7 a 8 se nevztahují na rozhlasové a televizní vysílání šířené prostřednictvím kabelových systémů, družic a zvláštních přenosových systémů.

(10) Ustanovení odstavce 3 se nevztahuje na dohody provozovatelů digitálního televizního vysílání šířeného prostřednictvím vysílačů o společném provozování elektronického programového průvodce. Ustanovení odstavců 7 a 8 se nevztahují na osoby zabývající se náborem a prodejem reklamních služeb, služeb spojených se sponzorstvím a teleshoppingem, služeb spojených s výzkumem trhu a služeb spojených s nákupem pořadů, vyjma pořadů zpravodajských.

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

There are other basic economic characteristics of media that should be borne in mind when assessing economic justifications for media regulation. Doyle (2002: 12) reminds us that media generate two commodities, content and audiences thus they represent a so-called dual-product market. Another significant feature of the media industry is that it is 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” (ibid.: 13). In other words, the cost of supplying the media product to an extra consumer is nil or very low compared to the total cost of making the media product divided by its audience. Further, 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). “They arise when there are some shared overheads or other efficiency gains available that make it more cost-effective for two or more related products to be produced and sold jointly, rather than separately. Savings may arise if specialist inputs gathered for one product can be re-used in another.” (Doyle, 2002: 14). In other words, media output is such that a product created for one market can be turned into a product for another – an interview for a documentary programme can be used for other television/radio programmes as well.

It must also be borne in mind that “mass communications is a uniquely sensitive industry prone to market failure” (Marsden as quoted in Feintuck 1999: 164). Doyle (2002: 64)

stresses that the term market failure is usually used in two ways, to describe “any failure by the market system to allocate resources efficiently” and also to describe a “failure of the market to advance socially desirable goals other than efficiency, such as preserving democracy and social cohesion”. Baker notes that “the most commonly recognized reason for markets to produce ‘inefficient’ or non-wealth-maximizing results is ‘transaction costs’ that prevent some costs and some benefits from being brought to bear on the actions or decision making of market participants. The consequence of this failure is often described as an externality” (2002: 41). Or in the words of the economist Milton Friedman “an externality is the effect of a transaction ... on a third party who has not consented to or played any role in the carrying out of that transaction” (Bakan, 2004: 61).¹³ A frequently mentioned negative externality is pollution, on the other hand an example of positive externality can be a playground freely accessible to all or a nice view. Baker insists that to assess whether media give their audiences what the audiences want we must take externalities into account. Positive externalities mean that the media product has value for which its producer is not paid.

The audience pays for the benefit to itself but is deterred from purchasing by being required to also pay for benefits to third parties. In this circumstance, “failure to buy” does not necessarily mean that the audience does not want the content. ... Rather, it only means that the audience does not want the content at the improperly high price. ... Likewise, negative externalities permit artificially low prices – the audience pays for only a portion of its real cost. Purchases do not mean that the audience wants the content – only that it wants the content when charged less than its real cost (ibid., 42).

Baker goes on to point out two particular difficulties with assessing externalities in the media context. The first is that such externalities often involve non-economic values (more informed citizens) and secondly, they often involve freedom of expression (preventing harm to others that is caused by broadcasting a message). A related issue that researchers (as well as policy makers) face is that “these externalities are not only virtually impossible to measure. Often their significance, even their valence, is disputable. Therefore, whether any particular regime gives the audience what it wants will likewise be continually contestable. Although empirical information is helpful, the evaluation is inherently political” (ibid.: 43).

¹³ Bakan is a Canadian professor of law and in his analysis of the corporation makes a very strong and important point: “Corporations are created by law and imbued with purpose by law. Law dictates what their directors and managers can do, what they cannot do, and what they must do. And, at least in the United States and other industrialized countries, the corporation, as created by law ... compels executives to prioritize the interests of their companies and shareholders above all others and forbids them from being socially responsible – at least genuinely so” (ibid.: 35). In other words, “They [corporations] are institutions which have really only one mission, and that is to increase shareholder value” (Debra Spar as quoted in Bakan, 2004: 35).

Having outlined some of the concerns that market failure raises, it is important to stress that “the most commonly used policy tools to address market failures in broadcasting are regulation and public ownership” (Doyle 2002: 66), Doyle goes on to argue that of these two options the latter one – public ownership – is more efficient.

The above mentioned justifications present a typology of rationales connected with broadcasting regulation. Apart from these, one also needs to consider techniques which are applied in broadcasting regulation. Feintuck (1999:51) outlines a tripartite classification of such techniques: 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 (ibid.).

In relation to regulatory techniques applied in the field of broadcasting Feintuck identifies a shift away from structural and content regulation to that of behaviour in the marketplace.

Doyle (2002: 169) argues that the changing emphasis

reflects important theoretical developments in the area of industrial organization over recent decades. It is now widely recognized that what matters for efficiency is not necessarily the number of rival suppliers that exist in a market *per se* but whether competitive pressure from incumbent or even potential market entrants is sufficient to induce firms to cooperate efficiently and to deter anti-competitive behaviour.

It also needs to be borne in mind that one of the causes of this shift is technological convergence, Drucker and Gumpert (2000: 44) point out that

in the upcoming era of convergence it will also be difficult to regulate content control as to broadcast quotas. It will be more difficult to regulate the content rules, because one can no longer count on television stations. There are countless Internet sites making broadcast regulation hard to control simply because of the sheer quantity of broadcasts. In addition, the consumer can regulate the amount of local sites he visits, if he/she decides to visit local sites at all. For this reason it is unlikely that broadcast quotas (associated with E.U. directives) be adequately applied to the Internet.

Another dimension that needs to be kept in mind in relation to broadcasting regulation is its international dimension as (even national) regulatory activity is not confined to single states and is developed on the basis of international agreements within organizations such as the European Union, the United Nations and the World Trade Organization. As Drucker and Gumpert point out, “an organisational structure based on an exclusive view, focusing on the regulation of a medium is antiquated, and single-issue international agreements (e.g., copyright) are too limited to be effective. All regulatory schema must allow for domestic, regional, and transnational community citizen participation” (2000: 51). It is not only membership in transnational organizations and the requirements that it involves in relation to broadcasting policy at the national level but also the practical need to consolidate steps at international level. For example, the introduction of digital terrestrial television requires co-ordination of frequencies at the national as well as European level.